SCAC MEETING AGENDA
Friday, December 1, 2017
Saturday, December 2, 2017
9:00 a.m.

Location: **Texas Associations of Broadcasters**
502 E. 11th Street, #200
Austin, Texas 78701
(512) 322-9944

1. **WELCOME (Babcock)**

2. **STATUS REPORT FROM CHIEF JUSTICE HECHT**

   Justice Boyd will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the October 27 meeting.

3. **RULES ON ENFORCEMENT OF A FOREIGN JUDGMENT OR ARBITRATION AWARD IN FAMILY LAW CASES**

   Legislative Mandates Committee Members:
   Jim Perdue, Jr. – Chair
   Hon. Jane Bland – Vice Chair
   Hon. Robert Pemberton
   Prof. Elaine Carlson
   Pete Schenkkan
   Hon. David L. Evans
   Robert Levy
   Hon . Brett Busby
   Wade Shelton
   Richard Orsinger
   Karl Hays – Texas Family Bar Foundation
   Brian Webb – The Webb Family Law Firm

   (a) FAMLAW DRAFT Rule 308b Rev. 11/29/2017 with 11/29/17 R. Orsinger Email
      (i) Rule 203 Determining Foreign Law
      (ii) Cal Dive Offshore Contractors, Inv. v. Bryant
      (iii) Rule 1009 Translating a Foreign Language Document
      (iv) Castrejon v. The State of Texas
   (b) Texas 2017 HB45 Enrolled
   (c) Bill Analysis – House Committee Report
   (d) Attorney General Ken Paxton – Opinion No. KP-0094
   (e) HB 45 and Proposed Rule 308b DRAFT 10/13/2017 [Justice Busby's comments]

4. PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND POLICIES ON ASSISTANCE TO COURT PATRONS BY COURT AND LIBRARY STAFF

Judicial Administration Sub-Committee Members:

Nina Cortell - Chair
Hon. David Peeples – Vice Chair
Hon. Tom Gray
Prof. Lonny Hoffman
Hon. David Newell
Hon. Bill Boyce
Michael A. Hatchell
Kennon Wooten

(f) Supplemental Report & Exhibits
(g) Revised Proposed SCOT Court Staff Policy on Patrons Assistance 11/27/17
(h) Revised Proposed SCOT Clerk Policy on Court Patron Assistance 11/27/17

5. PROPOSED AMENDMENTS TO THE PROTECTIVE ORDER KIT FORMS

Legislative Mandates Committee Members:

Jim Perdue, Jr. – Chair
Hon. Jane Bland – Vice Chair
Hon. Robert Pemberton
Prof. Elaine Carlson
Pete Schenkkan
Hon. David L. Evans
Robert Levy
Hon . Brett Busby
Wade Shelton
Richard Orsinger
Kennon Wooten
Trish McAllister – Texas Access to Justice Commission

(i) 11/21/2017 Summary of Changes to Protective Order Kit
(j) 11/21/2-17 Protective Order Final DRAFT clean
(k) 11/21/2017 Protective Order Final DRAFT Highlighted

6. NEW RULE ON LAWYER ACCESS TO JUROR SOCIAL MEDIA ACTIVITY

216-299a Sub-Committee Members:

Prof. Elaine Carlson – Chair
Hon. David Peeples – Vice Chair
Hon. Kent Sullivan
Alistair B. Dawson
O. C. Hamilton
Robert Meadows
Thomas C. Riney
Kennon Wooten
John Browning – Passman & Jones

(l) Final Proposed Changes to Disciplinary Rules 11/28/17

7. GUIDELINES FOR SOCIAL MEDIA USE BY JUDGES

216-299a Sub-Committee Members:

Prof. Elaine Carlson – Chair
Hon. David Peeples – Vice Chair
Hon. Kent Sullivan
Alistair B. Dawson
O. C. Hamilton
Robert Meadows
Thomas C. Riney
Kennon Wooten
John Browning – Passman & Jones

(m) Final Proposed Changes to Code of Judicial Conduct 11/28/17
- (i) Code of Judicial Conduct-Pre-2002 and Current Canon 5; Canon 3-B(10)
- (ii) Rules of Engagement
- (iii) ABA Formal Opinion

8. FORMS FOR AN APPLICATION FOR INJUNCTIVE RELIEF IN CYBERBULLYING CASES

735-822 Sub-Committee Members:

Hon. Stephen Yelenosky - Chair
Lamont Jefferson – Vice Chair
Frank Gilstrap
Pete Schenkkan

(n) Instructions for Petition for a Cyberbullying Restraining Order
(o) Petition For a Cyberbullying Restraining Order

9. DISCOVERY RULES

171-205 Sub-Committee Members:

Robert Meadows - Chair
Hon. Tracy Christopher – Vice
Prof. Alexandra Albright
Hon. Jane Bland
Hon. Harvey Brown
David Jackson
Cristina Rodriguez
Hon. Ana Estevez
Hon. Kent Sullivan

(p) Discovery Subcommittee Proposed Amendments December 1, 2017 Cover Letter
(q) Discovery Subcommittee Proposed Amendments December 2017

Walker, Marti

From: Richard Orsinger <richard@ondafamilylaw.com>
Sent: Wednesday, November 29, 2017 2:25 PM
To: Walker, Marti; 'aalbright@law.utexas.edu'; 'adawson@beckredden.com'; Babcock, Chip; 'brett.busby@txcourts.gov'; 'cristina.rodriguez@hoganlovells.com'; 'd.b.jackson@att.net'; 'dpeeples@bexar.org'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercscd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'harvey.brown@txcourts.gov'; 'Honorable Robert H. Pemberton'; 'jane.bland@txcourts.gov'; 'jperduejr@perdueandkidd.com'; Sullivan, Kent; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley'; 'lisa@kuhnhobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'och@atlashall.com'; 'pkelly@texasappeals.com'; 'psbaron@baroncounsel.com'; 'pschenkkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'rhwallace@tarrantcounty.com'; 'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'shanna.dawson@txcourts.gov'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'coliden@lockelord.com'; 'wshelton@shelton-valadez.com'; 'Justice Boyd; 'Elaine Carlson; 'Viator, Mary; 'bill.boyce@txcourts.gov'; Sharon Tabbert (Assistant to B. Dorsaneo; judgebillboyce@gmail.com; Dee Dee Jones; Lisa Verm; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; david.newell@txcourts.gov; crwatson@dgclaw.com; Holly.Taylor@txcourts.gov; mike@carousel-books.net
Subject: SCAC--TRCP 308b--enforcement of foreign decrees and arbitration awards in cases involving husband-wife or parent-child controversies under the Texas Family Code
Attachments: FAMLAW DRAFT Rule 308b 11 29 17 Final Draft.doc

Dear SCAC member—I have attached a revised version of TRCP 308b, changed in response to comments at the last SCAC meeting. I am attempting to get a redline, and if I can I will forward it to you.

Highlights of this new version of the Rule are:

1. A party seeking recognition or enforcement of a foreign judgment or arbitration award must provide written notice of this fact within 60 days of fling his/her first pleading, along with an explanation of the basis for the request.

2. A party who intends to oppose recognition or enforcement must provide written notice of opposition within 30 days receiving the notice in 1, along with an explanation of the basis for the opposition.

3. Within 75 days of when the first notice was filed, the court must have a pretrial conference to set deadline and make orders regarding proof of foreign law, translation of foreign language documents, and designation of testifying experts.

4. The court must have a hearing at least 30 days prior to trial on the question of enforceability. The court must rule within 10 days after the hearing, and must sign an order within 15 days after the hearing. The written order must include findings of fact and conclusions of law.

5. If there is a temporary hearing, the court must set deadlines that are appropriate to the temporary situation.

6. In the event of default, the proponent still must present evidence of why the foreign judgment or arbitration award should be recognized and enforced. Even in a default situation, the court must conduct a hearing on the record and issue a written order containing findings of fact and conclusions of law.

There are continuing discussion among some members of the subcommittee about Rule 308b(b), and whether the rule should say "under the Hague Convention ... including The ICARA" or something different. That issue may not be resolved before the meeting on Friday, December 2, and it will no doubt be discussed by those who are interested in the subject. Additionally, the full subcommittee has not seen and commented on the attached revision, but the closeness of the meeting requires that this draft be provided to the full committee now.

Thanks.

Richard R. Orsinger

Rule 308b. Determining the Enforceability of Judgments or Arbitration Awards Based on Foreign Law in Certain Suits Under the Family Code

(a) Applicability.

(1) Except as provided by Subsection (b), this rule applies to the recognition or enforcement of a judgment or arbitration award based on foreign law in a suit involving a marriage relationship or a parent-child relationship under the Family Code.

(2) Rules 203(c) and (d) apply to an action to which this rule applies.

(3) Rules 203(a) and (b), Texas Rules of Evidence, do not apply to an action to which this rule applies.

(b) Exceptions.

(1) This rule does not apply to an action brought under the Hague Convention on International Child Abduction, including the International Child Abduction Remedies Act (22 U.S.C. §§ 9001 et seq.).

(2) In the event of a conflict between this Rule and any federal or state law, the federal or state law will prevail.

(c) Notice

(1) A party who intends to seek recognition or enforcement of a judgment or arbitration award to which this rule applies must:

(a) provide written notice to the court and all parties in either the party's original pleading, or not later than 60 days from the date of the filing of the party's original pleading; and

(b) describe the basis for the court's authority to recognize, enforce or decide to enforce the judgment or arbitration award.

(2) A party who intends to oppose the recognition or enforcement of a judgment or arbitration award to which this rule applies must:

(a) provide written notice to the court and to all parties of the party's objection within 30 days of service of notice required by Subsection (1); and

(b) explain the basis for the party's opposition and whether the party asserts that the judgment or arbitration award violates constitutional rights or public policy.

(d) Pretrial Conference.

(1) Not later than the 75th day after the date a party files notice of the intention to seek recognition or enforcement of a judgment or arbitration award to which this rule applies, the court shall conduct a pretrial conference to set appropriate deadlines and make other appropriate orders regarding the following:

(A) the submission of materials or sources that the court may consider in determining foreign law;
(B) the translation of foreign language documents; and
(C) the designation and disclosure of information concerning expert witnesses who will testify regarding recognition or enforcement of judgment or arbitration award.

(e) Hearing.

(1) The court must, after timely notice to the parties, conduct a hearing on the record at least 30 days before trial to determine whether the judgment or arbitration award based on foreign law may be enforced.

(2) The court must make the determination required by Subsection (1) no more than 10 days after the hearing.

(f) Order. Within 15 days of the hearing required by Subsection (f), the court must issue a written order regarding its determination. The order must include findings of fact and conclusions of law. The court may issue any orders necessary to preserve the principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy. The deadline for making a determination and signing a written order may not be altered absent urgent circumstances.

(g) Hearings on Temporary Orders. Notwithstanding any other provision of this rule, the court may set filing deadlines and conduct the determination hearing to

accommodate the circumstances of the case in connection with issuing temporary orders.

(h) Default Orders.

(1) The recognition or enforcement of a judgment or arbitration award based on foreign law shall not be taken as confessed by the failure of a party to file an answer. In the event of a default, the court shall require that the party seeking the recognition or enforcement of the judgment or arbitration award establish its enforceability.

(2) In the event of a default, the establishment of the enforceability of a judgment or arbitration award based on foreign law must include a hearing on the record and a written order of the court containing findings of fact and conclusions of law.

(i) Definitions. As used in this Rule ----

(1) "Comity" means the recognition by a court of one jurisdiction of the laws and judicial decisions of another jurisdiction.

(2) "Foreign law" means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

Addition to Rule 203, Texas Rules of Evidence

Rule 203. Determining Foreign Law

(e) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship. Subsections (a) and (b) of this rule do not apply to an action in which a party seeks a determination of foreign law and to which Rule 308b, Texas Rules of Civil Procedure, applies.

Addition to Rule 1009, Texas Rules of Evidence

Rule 1009. Translating a Foreign Language Document

(h) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship. Except as provided by Rule 308b, Texas Rules of Civil Procedure, this rule applies to a translation of a foreign language document in

a suit brought under the Family Code involving a marriage relationship or parent-child relationship.

Vernon's Texas Rules Annotated
Texas Rules of Evidence (Refs & Annos)
Article II. Judicial Notice (Refs & Annos)

TX Rules of Evidence, Rule 203

Rule 203. Determining Foreign Law

Currentness

(a) Raising a Foreign Law Issue. A party who intends to raise an issue about a foreign country's law must:

(1) give reasonable notice by a pleading or other writing; and

(2) at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law.

(b) Translations. If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation.

(c) Materials the Court May Consider; Notice. In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials.

(d) Determination and Review. The court--not the jury--must determine foreign law. The court's determination must be treated as a ruling on a question of law.

Credits
Eff. March 1, 1998. Amended by orders of Supreme Court March 10, 2015 and Court of Criminal Appeals March 12, 2015, eff. April 1, 2015.

Notes of Decisions (35)

Rules of Evid., Rule 203, TX R EVID Rule 203
Current with amendments received through October 1, 2017

End of Document

478 S.W.3d 914
Court of Appeals of Texas,
Houston (14th Dist.).

Cal Dive Offshore Contractors Inc., Appellant
v.
Nigel Bryant, Appellee

NO. 14–13–00883–CV
|
Opinion filed October 20, 2015

Synopsis

Background: Worker, a citizen of the United Kingdom, brought negligence action against owner of dive ship after worker slipped and fell on deck of ship while working as saturation diver on a project on the outer continental shelf of China. Following jury trial, the 152nd District Court, Harris County, entered judgment in favor of worker. Owner appealed.

Holdings: The Court of Appeals, J. Brett Busby, J., held that:

[1] worker adequately informed trial court of English law, such that, in applying English law, court was not required to presume that English law was the same as Texas law;

[2] despite application of English law, trial court acted within its discretion in submitting issue of worker's damages to jury using a question adapted from Texas pattern jury charge; and

[3] evidence was sufficient to support verdict that, under English law, owner breached duty of care to worker.

Affirmed.

West Headnotes (17)

[1] Action
What law governs

State's courts may apply foreign law.

Cases that cite this headnote

[2] Action
What law governs

When determining foreign law, a trial court may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including affidavits, testimony, briefs, and treatises. Tex. R. Evid. 203.

1 Cases that cite this headnote

[3] Evidence
Laws of foreign countries

A party asking a trial court to take judicial notice of foreign law must furnish the court with sufficient information to enable it to comply with the request; if the party seeking the application of foreign law fails to provide the necessary information to the trial court, there is a presumption that the law of the foreign jurisdiction is identical to that of Texas. Tex. R. Evid. 203.

Cases that cite this headnote

[4] Appeal and Error
Necessity of timely objection

Ship owner did not waive its challenge to application of English law in worker's negligence action through filing a responsive argument and English legal materials less than 30 days before trial, where worker was the party seeking to apply English law to his claims and had timely raised the issue with trial court. Tex. R. Evid. 203.

Cases that cite this headnote

[5] Evidence
Laws of foreign countries

Worker, who was a saturation diver, adequately informed trial court of English law, such that trial court was not required to presume that English law was the same as Texas law, in worker's negligence action

against dive ship owner in which worker successfully sought application of English law, where worker provided declaration of English solicitor stating that controlling English law provided that duty that ship owner owed to worker was to take such care for worker's safety as was reasonable under circumstances, ship owner submitted additional materials on applicable English law, including statute and case law, and worker provided trial court with citations to two American cases discussing relevant English law. Tex. R. Evid. 203.

Cases that cite this headnote

[6] Negligence

Reasonable or ordinary care in general

The common duty of care established in English law by the Occupiers Liability Act 1957 is the same as the ordinary negligence duty of care recognized by Texas, that is, that an occupier has a duty of care under English law to act as an ordinary reasonable person under the same or similar circumstances, rather than the duty of care found in Texas premises liability law.

Cases that cite this headnote

[7] Damages

Measure of Damages for Injuries to the Person

Trial court acted within its discretion in submitting issue of worker's damages to jury using a question adapted from Texas pattern jury charge, in worker's negligence action against ship owner, even though court applied English law to worker's action, where Texas law permitted recovery of same damages as those recoverable under English law.

Cases that cite this headnote

[8] Shipping

Vessels and places for work

Evidence was sufficient to support verdict that, under English law, dive ship owner breached duty of care to worker, who was working as diver and who slipped and fell on deck of ship; worker testified that a deck foreman told worker just after accident that an oily substance in area of fall had been reported three times and that foreman hoped worker's fall would lead to something being done about it, worker testified he believed that oily substance originated from ship's remotely operated vehicle (ROV), which had been taken out of water about two hours before worker's accident, and timing of ROV's removal from water was confirmed by ship's records.

Cases that cite this headnote

[9] Appeal and Error

Prejudicial Effect

To obtain reversal of a judgment based on a claimed error in excluding evidence, a party must show that the trial court did in fact err and that the error probably resulted in rendition of an improper judgment.

Cases that cite this headnote

[10] Appeal and Error

Extent of Review

To determine whether excluded evidence probably resulted in the rendition of an improper judgment, an appellate court reviews the entire record.

1 Cases that cite this headnote

[11] Appeal and Error

Evidence in General

Appeal and Error

Prejudicial Effect

To challenge a trial court's evidentiary ruling successfully on appeal, the complaining party must demonstrate that the judgment turns on the particular evidence that was excluded or admitted.

Cases that cite this headnote

[12] Appeal and Error

Evidence immaterial to issue

Appeal and Error

Same or Similar Evidence Otherwise Admitted

A reviewing court ordinarily will not reverse a judgment because a trial court erroneously excluded evidence when the excluded evidence is cumulative or not controlling on a material issue dispositive to the case.

Cases that cite this headnote

[13] Evidence

Irrelevant, collateral, or immaterial matters

Trial court acted within its discretion in prohibiting dive ship owner from questioning worker's damages expert about how expert accounted for taxation in calculating worker's damages, in worker's negligence action arising out of slip and fall and ship deck; it was undisputed that worker, an English expatriate living in Thailand, was not required to pay federal income taxes on his earnings as a deep sea diver, and expert did account for that fact in preparation of his opinion of lost earning capacity. Tex. Civ. Prac. & Rem. Code Ann. § 18.091(a).

Cases that cite this headnote

[14] Appeal and Error

Nature of evidence in general

Dive ship owner failed to preserve for appeal its challenge to trial court's denial of mistrial based on testimony regarding settlement, in worker's negligence action against owner arising out of slip and fall on ship deck, where owner did not object to settlement testimony and did not request an instruction that jury disregard such testimony.

Cases that cite this headnote

[15] Trial

Discretion of court

A trial court has discretion to grant or deny a motion for mistrial.

Cases that cite this headnote

[16] Appeal and Error

Conduct of trial or hearing in general

In reviewing a trial court's decision on a motion for mistrial, appellate court does not substitute its judgment for that of the trial court but instead decides only whether the trial court's decision constitutes an abuse of discretion.

1 Cases that cite this headnote

[17] Trial

Restriction to Special Purpose

Although offers of compromise and settlement generally are inadmissible, an error in admitting such evidence can be cured by an instruction to the jury to disregard the evidence.

Cases that cite this headnote

***917 On Appeal from the 152nd District Court, Harris County, Texas, Trial Court Cause No. 2011–57457**

Attorneys and Law Firms

Micajah Daniel Boatright, William R. Peterson and Russell S. Post, Houston, TX, for Appellee.

Chester Joseph Makowski, Houston, TX, for Appellant.

Panel consists of Chief Justice Frost and Justices Christopher and Busby.

OPINION

J. Brett Busby, Justice

Appellant Cal Dive Offshore Contractors, Inc., appeals from a final judgment in favor of appellee, Nigel Bryant, following a jury trial on Bryant's suit for injuries sustained in a slip-and-fall accident on Cal Dive's ship. Cal Dive raises six issues on appeal. In its first, second, and fourth issues, Cal Dive argues that the trial court erred in its

application of English law to the case. We overrule these issues because Bryant adequately informed the trial court of the applicable English law and the trial court did not abuse its discretion when it concluded that English law provided a general negligence standard and submitted the case to the jury using Texas general negligence and damages questions. In its third issue on appeal, Cal Dive argues there is legally and factually insufficient evidence that it breached a duty it owed to Bryant. We overrule this issue, concluding the evidence is sufficient given the testimony that an oily substance previously had been reported in the area where Bryant fell.

Cal Dive asserts in its fifth issue that the trial court abused its discretion when it prevented Cal Dive from questioning Bryant's expert economist about whether Bryant was required to pay taxes on his earnings. Because the potential prejudicial effect of this questioning significantly outweighed its probative value, we conclude the trial court did not abuse its discretion and overrule Cal Dive's fifth issue. In its final issue, Cal Dive contends the trial court erred when it denied Cal Dive's motion for mistrial based on Bryant's cross-examination of Cal Dive's corporate representative regarding Cal Dive's willingness to settle the case. We overrule this issue because Cal Dive failed to object to the settlement testimony or ask for a jury instruction to disregard, and therefore Cal Dive failed to preserve this issue for appellate review. We affirm the trial court's final judgment.

BACKGROUND

Bryant, a citizen of the United Kingdom residing in Thailand, worked as a saturation diver. Prior to the events underlying this litigation, Bryant had worked all over the world on subsurface oil and gas construction projects at depths up to 1,200 feet. In September 2010, Bryant was working for an entity related to Cal Dive on a project on the outer continental shelf of China. While Bryant was walking on the deck of the diving ship owned by Cal Dive, he slipped. Bryant tried to break his fall by grabbing a nearby handrail. Bryant suffered a severe separation of his left shoulder as a result of the fall. While standing back up after his fall, Bryant observed that there was an oily substance on the deck with water on top of it. Bryant went to see the diving vessel's medic, who believed Bryant had dislocated his shoulder and needed to be evacuated to the Chinese mainland to be examined by a medical doctor.

While waiting to be taken to the Chinese mainland by helicopter, a deck foreman saw Bryant and asked him what had happened. When Bryant mentioned the location ***918** of his fall, Bryant testified the deck foreman replied that the oily substance in that area had been reported three times, and "that, now, maybe, something would be done about it." Bryant believed that the oily substance he had slipped on had come from the vessel's Remotely Operated Vehicle (ROV), which had been taken out of the water about two hours before his fall and stored just above the gangway on which Bryant fell.

Bryant eventually returned to Thailand to have his shoulder evaluated. The doctor recommended immediate reconstructive surgery, which occurred the same day as the examination.

Following his surgery, Bryant was given a rehabilitation protocol to get him ready to return to work. Bryant was eventually cleared to return to work and he informed Cal Dive that he was ready to work once again. Cal Dive initially told Bryant there was a job for him. But, after a delay caused by confusion over whether Bryant needed a new medical clearance for deep-sea diving, Bryant testified that Cal Dive told him the position had been filled and it no longer had a job for him. Bryant then found a diving job with another company working in Malaysia.

After two weeks of dive work in Malaysia, Bryant's left shoulder began hurting again. Bryant tried to contact Cal Dive to inform Cal Dive that he was still having problems from the injury he suffered on Cal Dive's ship and needed additional medical attention. Bryant testified that Cal Dive never returned his call.

Bryant underwent a second surgery to repair his shoulder. Although the surgery was necessary to restore as much function and reduce as much pain as possible, Bryant's surgeon explained that Bryant would "never be 100 percent" and should not return to his job as a saturation diver, a job that paid him between $130,000 and $150,000 a year.

Bryant filed suit against Cal Dive in Houston, Texas, where Cal Dive maintained its principal place of business. Bryant asserted Cal Dive was negligent under the law of the United Kingdom. Pursuant to Texas **Rule of Evidence 203**, entitled "Determining Foreign Law," Bryant filed

a Notice of Intent to Rely on Foreign Law. Bryant attached the declaration of Peter George Handley, an English solicitor with experience in English maritime negligence law, to his Rule 203 submission. Bryant had asked Handley to determine whether English law provided a cause of action for a person injured aboard a vessel and, if so, the elements of that cause of action, as well as to describe the damages available to such an injured person.

In his declaration, Handley stated that English law "provides a cause of action to a Claimant injured aboard a vessel as the result of the negligence and/or breach of [a] statutory duty of the Owner of the vessel and/or other persons in possession or control of the vessel." Handley further explained that "negligence occurs where the Defendant (be it the Owner and/or the Charterer and/or the Operator and/or the Manager of the vessel) is in breach of his duty of care owed to the Claimant." Handley then described the three duties that could be breached:

(1) The duty of care owed in the law of tort to take such care for the safety of the Claimant whilst onboard the vessel as is reasonable in all the circumstances;

(2) The duty of care owed as occupiers of the vessel (pursuant to the Occupiers Liability Act 1957) to see that the Claimant is safe whilst aboard the vessel; and/or

***919** (3) The common law duty of care owed as employers to provide the Claimant (if an employee of the Defendant) with a safe place of work, safe plant, machinery and equipment, and a safe system of work.

Handley also discussed the measure of damages available to a plaintiff injured as a result of another's negligence. Handley explained that, under English law, damages in a personal injury action are meant to "put the party who has been injured ... in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation." According to Handley, English law entitles a plaintiff to recover general, or non-pecuniary, damages, including physical and psychological pain and suffering, as well as physical impairment. English law also provides for the recovery of special or pecuniary damages, including "loss of earnings or loss of earning capacity," "loss of pension rights," "medication costs," "the costs of medical consultations and surgical or other treatments," "care and assistance," and "adaptation of accommodation."

Bryant filed his foreign-law submission eight months prior to trial. A short time before trial, Cal Dive filed special exceptions contending that Bryant's only English cause of action was under the Occupiers Liability Act 1957 and 1984.[1] Cal Dive provided copies of the Acts to the trial court and argued that they imposed the same status (licensee or invitee) and knowledge (actual or constructive) requirements as Texas premises liability law. Cal Dive also argued that Bryant's total damages were limited to $20,961 because English damage awards are "largely controlled by the *Guidelines for the Assessment of General Damages in Personal Injury Cases.*" Cal Dive did not file an affidavit or declaration by an English lawyer, nor did Cal Dive attach to its special exceptions the complete text of the *Guidelines,* instead attaching only an unauthenticated excerpt that it represented to the trial court came from the *Guidelines.*

Bryant filed a motion to strike Cal Dive's foreign-law submission because it was untimely. In addition to asking the trial court to strike Cal Dive's submission, Bryant also argued that Cal Dive's statements regarding English law were inaccurate. Bryant specifically argued that the Occupiers Liability Act eliminated all distinctions between invitees and licensees, and that the duty of care detailed by Handley mirrored the duty imposed by the Act. According to Bryant, both the Act and Handley characterized the duty of care as one of reasonableness under the circumstances. Bryant further asserted that the English standard is virtually identical to the duty and standard of care imposed under ordinary Texas negligence law, which provides that one generally has a duty of care to act as an ordinary reasonable person under the same or similar circumstances.

The trial court, after reviewing the submissions of the parties and hearing extensive argument on the subject, denied Cal Dive's special exceptions and decided to submit the case to the jury under English law. The court did not rule on Bryant's motion to strike, and Bryant did not object to the trial court's failure to rule. At the charge conference, the trial court provided the parties with a proposed charge embodying the court's conclusion that both the liability and damages standards under ***920** English law were the same as those imposed by Texas general negligence law, not Texas premises liability law as Cal Dive had argued. The trial court overruled Cal Dive's objections to the jury charge, refused the premises liability

questions Cal Dive had requested, and submitted the case to the jury on a general negligence theory.

The jury found that Cal Dive was negligent, failed to find that Bryant was negligent, and found that Bryant was entitled to a total of $450,000 in damages for loss of earning capacity, medical care, and past physical pain and mental anguish. The jury awarded no damages for physical impairment or future physical pain and mental anguish. The trial court signed a final judgment based on the jury's verdict. Cal Dive filed motions for new trial and for judgment notwithstanding the verdict, which the trial court denied. This appeal followed. [2]

ANALYSIS

I. The trial court did not err in its application of English law because Bryant met the requirements of Texas Rule of Evidence 203.

In its first, second, and fourth issues, Cal Dive argues the trial court erred in its application of English law to the facts of this case because (1) Bryant did not adequately inform the trial court about English law; (2) the trial court failed to submit a question to the jury inquiring into Cal Dive's knowledge of the spilled oil, which it argues is required by English law; and (3) the trial court submitted Bryant's damages to the jury using the Texas Pattern Jury Charge for personal injury damages rather than the English *Guidelines for the Assessment of General Damages in Personal Injury Cases,* which Cal Dive argued significantly limited Bryant's damages. In response, Bryant argues, among other things, that Cal Dive waived its issues challenging the trial court's application of English law because it did not file its English legal materials at least thirty days before trial as required by Rule 203. We address these issues together.

A. Standard of review and applicable law

A trial court must submit in its charge to the jury all questions, instructions, and definitions that are raised by the pleadings and the evidence. *See* Tex. R. Civ. P. 278; *Hatfield v. Solomon,* 316 S.W.3d 50, 57 (Tex.App.–Houston [14th Dist.] 2010, no pet.) (citing *Hyundai Motor Co. v. Rodriguez,* 995 S.W.2d 661, 663–64 (Tex.1999)). The goal is to submit to the jury the issues for decision logically, simply, clearly, fairly, correctly, and completely. *Hatfield,* 316 S.W.3d at 57. To achieve this goal, trial courts enjoy broad discretion so long as the charge is legally correct. *Id.* We review whether a challenged portion of a jury charge is legally correct using a de novo standard of review. *Id.* (citing *St. Joseph Hosp. v. Wolff* 94 S.W.3d 513, 525 (Tex.2003)).

[1] Texas courts may apply foreign law. *Long Distance Int'l, Inc. v. Telefonos de Mexico, S.A.,* 49 S.W.3d 347, 351 (Tex.2001). The court, not the jury, determines the laws of foreign countries. *Id.* (citing Tex. R. Evid. 203). A party intending to raise an issue about foreign law must give notice and, at least thirty days before trial, furnish copies of any written materials or sources the party intends to use as proof of foreign law. *Id.* Rule 203 is described as a hybrid rule because the presentation ***921** of foreign law to the court resembles the presentment of evidence, but the meaning of the foreign law and its application to the facts are decided and reviewed as questions of law. *Id.*; *see* Tex. R. Evid. 203 (stating court's determination of foreign law is "treated as a ruling on a question of law").

[2] **[3]** When determining foreign law, a trial court may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including affidavits, testimony, briefs, and treatises. [3] *PennWell Corp. v. Ken Assoc., Inc.,* 123 S.W.3d 756, 760 (Tex.App.–Houston [14th Dist.] 2003, pet. denied) (citing Tex. R. Evid. 203). The specific procedures established by Rule 203 must be followed for the determination of foreign law. *Id.* at 761. A party asking a trial court to take judicial notice of foreign law must furnish the court with sufficient information to enable it to comply with the request. *Id.*; *cf. Ahumada v. Dow Chemical Co.,* 992 S.W.2d 555, 558 (Tex.App.–Houston [14th Dist.] 1999, pet. denied) ("Summary judgment is not precluded when experts disagree on the interpretation of the law if, as in this case, the parties do not dispute that all of the pertinent foreign law has been properly submitted as evidence."). If the party seeking the application of foreign law fails to provide the necessary information to the trial court, there is a presumption that the law of the foreign jurisdiction is identical to that of Texas. *PennWell Corp.,* 123 S.W.3d at 760.

B. Cal Dive did not waive its challenge to the application of English law.

[4] In a cross-issue raised in his appellate brief, Bryant argues Cal Dive waived its challenge to the application

of English law because, in Bryant's view, Cal Dive did not comply with the time requirement set forth in Rule 203. *See* Tex. R. Evid. 203 (stating that "a party who intends to raise an issue about a foreign country's law must ... at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove foreign law."). Because Bryant was the party seeking to apply English law to his claims and had timely raised the issue with the trial court, we conclude Cal Dive did not waive its challenge to the application of English law by filing responsive argument and English legal materials less than thirty days before trial. *See Nexen, Inc. v. Gulf Interstate Eng'g Co.,* 224 S.W.3d 412, 418–19 (Tex.App.–Houston [1st Dist.] 2006, no pet.) (concluding that the appellant did not waive its argument that foreign law applied to case because appellee had initially raised argument that foreign law might apply and had produced and relied on foreign legal materials). Furthermore, the trial court does not appear to have set a deadline for Cal Dive's response, and that court considered Cal Dive's arguments regarding English law on the merits and rejected them in the court's jury charge. To the extent Bryant argues that Cal Dive's submission improperly included English legal materials on issues that were outside the scope of those addressed by Bryant's original submission, we conclude Bryant failed to preserve that argument for our review because he did not obtain a ruling on his motion to strike or object to the trial court's failure to rule on it. We therefore consider Cal Dive's legal arguments based on English law.

C. Bryant adequately informed the trial court of the applicable English law.

[5] ***922** Cal Dive contends in its first issue that Bryant failed to prove English law adequately, and therefore the trial court should have presumed that it was the same as Texas premises liability law.[4] Approximately eight months before trial, Bryant filed his Notice of Intent to Rely on Foreign Law with the trial court and attached Handley's declaration. Bryant argued that, as explained in Handley's declaration, controlling English law provided that the duty Cal Dive owed to Bryant was to take such care for Bryant's safety as was reasonable under the circumstances. According to Bryant, this duty mirrors the duty of ordinary care Texas courts use to charge the jury in a general negligence case. Bryant's notice began an ongoing discussion between the parties and the trial court on the applicable English law.

In the course of the discussion of English law, Cal Dive submitted additional materials on the applicable English law, including the Occupiers Liability Act 1957 and 1984, an English case, *Lowther v. H. Hogarth & Sons, Ltd.,* [1959] Vol. I Lloyd's Rep. Q.B. 171, and an excerpt allegedly from the *Guidelines for the Assessment of General Damages in Personal Injury Cases.* Cal Dive argued that: Bryant failed to meet his burden under Rule 203 to inform the trial court adequately of the applicable foreign law; English law governing the case was, for all practical purposes, the same as Texas premises liability law (an issue we discuss in Part I.D. below); and English law limited Bryant's damages to $20,961 (an issue we discuss in Part I.E. below).

Finally, Bryant provided the trial court with citations to two American cases that, he argued, established that England had eliminated all distinctions between invitees and licensees in the Occupiers' Liability Act 1957. *See Kermarec v. Compagnie Generale Transatlantique,* 358 U.S. 625, 632 n. 10, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959) ("These distinctions have after thorough study ... been eliminated entirely from the English law by statutory enactment."); *Nixon v. Mr. Prop. Mgmt. Co., Inc.,* 690 S.W.2d 546, 552 (Tex.1985) (Kilgarlin, J. concurring) (recognizing England's elimination of invitee and licensee and instead imposing a "common duty of care" toward all visitors).

Having reviewed the record and the parties' arguments, we see no indication that pertinent parts of English law were missing from the materials submitted to the trial court. *Cf. Ahumada,* 992 S.W.2d at 558. Although the trial court expressed uncertainty regarding the English liability standard early in the ongoing discussion, the trial court received additional materials from the parties thereafter. Accordingly, we conclude the parties adequately informed the trial court of English law. *See Phillips v. United Heritage Corp.,* 319 S.W.3d 156, 164 (Tex.App.–Waco 2010, no pet.) (concluding appellant complied with Rule 203 requirements after considering foreign legal materials filed before trial as well as a trial brief based in part on previously filed foreign legal materials); *Nexen, Inc.,* 224 S.W.3d at 418 (concluding trial court made proper choice of law after it was presented with the issue and was provided evidence of the applicable foreign law by both parties); *PennWell Corp.,* 123 S.W.3d at 761 (examining materials filed by both sides before concluding appellant

met Rule 203 burden to inform trial court adequately about Japanese law); ***923** *Lawrenson v. Global Marine, Inc.,* 869 S.W.2d 519, 525–26 (Tex.App.–Texarkana 1993, writ denied) (affirming trial court's reliance on affidavits of English solicitor to establish English law). We therefore overrule Cal Dive's first issue. [5]

D. The trial court did not err when it refused to include a premises liability theory in the jury charge.

In its second issue, Cal Dive argues that the trial court erred in its application of English law when it refused to include Cal Dive's requested jury question regarding its actual or constructive knowledge of the oily substance on the deck of the dive vessel. According to Cal Dive, the Occupiers Liability Act 1957 did not do away with the requirement under English law that a plaintiff prove the owner/occupier of the premises had actual or constructive knowledge of an unreasonable risk of harm. In Cal Dive's view, because English law retained this requirement, the trial court's failure to include a jury question on that subject was error. We disagree.

The Occupiers Liability Act 1957 abolished common-law distinctions between invitees and licensees in favor of a single designation: visitor. Occupiers Liability Act 1957 § 1(2) (stating that visitors generally "are the same ... as the persons who would at common law be treated as ... invitees or licensees"); *Kermarec,* 358 U.S. at 632 n. 10, 79 S.Ct. 406. The 1957 Act also changed the duty owed to such visitors, providing that "[a]n occupier of premises owes the same duty, the 'common duty of care,' to all his visitors," with certain exceptions not relevant here. Occupiers Liability Act 1957 § 2(1). The 1957 Act defines the common duty of care owed to all visitors as follows:

> The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

Id. § 2(2).

The 1957 Act makes clear that its purpose was to supplant the common law and impose a new liability standard. *See id.* § 1(1) (providing that the Act "shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them"); *see also Nixon,* 690 S.W.2d at 552. Contrary to Cal Dive's argument, this new duty to licensees and invitees—quoted above—does not include the common-law requirement that the occupier have actual or constructive knowledge of an unreasonable risk of harm. [6] The Occupiers Liability Act 1984 confirms this conclusion, adopting a duty to nonvisitors that does require such knowledge. [7]

[6] ***924** We conclude that the common duty of care established by the Occupiers Liability Act 1957 is the same as the ordinary negligence duty of care recognized by Texas: an occupier has a duty of care under English law to act as an ordinary reasonable person under the same or similar circumstances, not the duty of care found in Texas premises liability law. *See Trudy's Texas Star, Inc. v. City of Austin,* 307 S.W.3d 894, 914–15 (Tex.App.–Austin 2010, no pet.) (recognizing that under Texas negligence law, one generally has a duty of care to act as an ordinary reasonable person under the same or similar circumstances); *see also Lynch v. Hilton Worldwide, Inc.,* Civil No. 11–1362 JBS/AMD, 2011 WL 5240730, at *7 (D.N.J. Oct. 31, 2011) (stating that, under Occupiers Liability Act 1957, an English hotel owner has a statutory duty "to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for which he is invited or permitted by the occupier to be there."). Therefore, the trial court did not err when it refused Cal Dive's jury question requiring actual or constructive knowledge. [8] We overrule Cal Dive's second issue.

E. The trial court did not err when it submitted the damages issues to the jury using Texas law.

[7] In its fourth issue, Cal Dive argues the trial court erred by charging the jury using elements for personal injury damages under Texas law rather than using English law as embodied in the *Guidelines for the Assessment of General Damages in Personal Injury Cases.* In Cal Dive's view, the *Guidelines* limited Bryant to maximum damages of $20,961. We disagree.

In his declaration, Handley provided an explanation of the elements of damages available to a personal injury plaintiff under English law. As summarized above, these

damages include general (or non-pecuniary) damages, such as physical and psychological pain and suffering and physical impairment, as well as special (or pecuniary) damages, such as loss of earning capacity and medical costs. Because Texas law permits the recovery of the same damages as those recoverable under English law, we conclude the trial court did ***925** not abuse its discretion when it submitted Bryant's damages to the jury using a question adapted from the Texas Pattern Jury Charge. *See Golden Eagle Archery, Inc. v. Jackson,* 116 S.W.3d 757, 763 (Tex.2003) (identifying types of damages recoverable under Texas law in a personal injury action); *see also Hatfield,* 316 S.W.3d at 57 (stating that trial court has broad discretion in submitting charge to the jury so long as charge is legally correct).

Even if we assume that the unauthenticated excerpt from the *Guidelines for the Assessment of General Damages in Personal Injury Cases* provided by Cal Dive accurately states English law on the subject, it would not change the result because the *Guidelines* deals only with general damages. As Handley explained, general damages encompass elements such as pain and suffering, loss of mental or physical capacity, and loss of enjoyment, companionship, and consortium. As Handley also explained, in addition to general damages, a personal injury plaintiff can recover special damages, such as loss of earning capacity and medical care. The jury awarded Bryant only $8,000 for past physical pain and mental anguish, an amount well within the *Guidelines*' alleged $20,961 limit. Bryant's remaining damages are special damages, which are not limited by the *Guidelines.* We overrule Cal Dive's fourth issue.

II. Legally and factually sufficient evidence supports the jury's finding that Cal Dive breached a duty owed to Bryant.

In its third issue on appeal, Cal Dive asserts (1) this is a premises liability case; and (2) the evidence is legally and factually insufficient that Cal Dive had actual or constructive knowledge of the oily substance's presence on the diving vessel's deck before Bryant slipped and fell. We already have rejected Cal Dive's premises liability argument. Regarding the presence of the oily substance, we conclude the evidence is legally and factually sufficient to support the jury's finding that Cal Dive breached its duty of reasonable care.

A. Standard of review

When an appellant attacks the legal sufficiency of an adverse finding on an issue on which it did not have the burden of proof, the appellant must demonstrate on appeal that there is no evidence to support the adverse finding. *Univ. Gen. Hosp., L.P. v. Prexus Health Consultants, LLC,* 403 S.W.3d 547, 550 (Tex.App.–Houston [14th Dist.] 2013, no pet.). In conducting a legal-sufficiency review, we must consider the evidence in the light most favorable to the appealed finding and indulge every reasonable inference that supports it. *Id.* at 550–51 (citing *City of Keller v. Wilson,* 168 S.W.3d 802, 821–22 (Tex.2005)). The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the decision under review. *Id.* at 551. This Court must credit favorable evidence if a reasonable trier of fact could, and disregard contrary evidence unless a reasonable trier of fact could not. *Id.* The trier of fact is the sole judge of the witnesses' credibility and the weight to be given their testimony. *Id.*

This Court may sustain a legal sufficiency (or no-evidence) issue only if the record reveals one of the following: (1) the complete absence of evidence of a vital fact; (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a scintilla; or (4) the evidence established conclusively the opposite of the vital fact. *Id.* Evidence that is so weak as to do no more than create a mere surmise or suspicion that the fact exists is less than a scintilla. *Id.*

***926** In reviewing the factual sufficiency of the evidence, we must examine the entire record, considering both the evidence in favor of, and contrary to, the challenged findings. *See Maritime Overseas Corp. v. Ellis,* 971 S.W.2d 402, 406–07 (Tex.1998); *Cain v. Bain,* 709 S.W.2d 175, 176 (Tex.1986). When a party challenges the factual sufficiency of the evidence supporting a finding for which it did not have the burden of proof, we may set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Ellis,* 971 S.W.2d at 407; *Nip v. Checkpoint Systems, Inc.,* 154 S.W.3d 767, 769 (Tex.App.–Houston [14th Dist.] 2004, no pet.). The amount of evidence necessary to affirm is far less than the amount necessary to reverse a judgment. *GTE Mobilnet of S. Tex. v. Pascouet,* 61 S.W.3d 599, 616 (Tex.App.–Houston [14th Dist.] 2001, pet. denied). This Court is not a factfinder. *Ellis,* 971

S.W.2d at 407. Instead, the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *GTE Mobilnet,* 61 S.W.3d at 615–16. Therefore, we may not pass upon the witnesses' credibility or substitute our judgment for that of the jury, even if the evidence also would support a different result. *Id.* When presented with conflicting evidence, a jury may believe one witness and disbelieve others, and it also may resolve any inconsistencies in the testimony of any witness. *McGalliard v. Kuhlmann,* 722 S.W.2d 694, 697 (Tex.1986). If we determine the evidence is factually insufficient, we must detail the evidence relevant to the issue and state in what regard the contrary evidence greatly outweighs the evidence in support of the verdict; we need not do so when affirming a jury's verdict. *Gonzalez v. McAllen Med. Ctr., Inc.,* 195 S.W.3d 680, 681 (Tex.2006) (per curiam).

B. The evidence is legally and factually sufficient to support the jury's verdict.

[8] As detailed above, Bryant testified that after his fall and while he was waiting to be transported to the Chinese mainland, a Cal Dive deck foreman told Bryant that the oily substance in the area of his fall had been reported three times and that he hoped Bryant's fall and injury might get something done about it. Bryant also testified that he believed that the oily substance had originated from the dive ship's ROV, which had been taken out of the water about two hours before the fall and stored just above the gangway where he fell. The timing of the ROV's removal from the water was confirmed by the ship's records. We conclude this testimony is legally and factually sufficient evidence that Cal Dive had notice of the oily substance with sufficient time before Bryant fell to have done something about it, or, at minimum, Cal Dive had notice that accumulation of an oily substance in the area was a recurring problem that required attention. The evidence is therefore legally and factually sufficient that Cal Dive breached a duty owed to Bryant.

In its appellate brief, Cal Dive asserts that the testimony of the ship's safety officer, Ian Harrison, establishes that Cal Dive did not have actual or constructive notice of the oily substance on the deck. Cal Dive specifically points to Harrison's testimony that: (1) he had not received any reports of foreign substances leaking from the ROV; (2) the ROV was not stored in the area where Bryant fell; (3) the ROV had a containment system to prevent spills; (4) Harrison regularly patrolled the ship checking for safety issues; and (5) Harrison checked the area where Bryant fell within five minutes after speaking with Bryant about the accident and Harrison found no oily substance but instead ***927** only some water in a depression that had been worn over time in the deck surface. We disagree that the testimony emphasized by Cal Dive changes the result.

Cal Dive's argument is contrary to our standard of review. Specifically, this argument omits Bryant's testimony that the ROV was stored over the area where he fell and that a deck foreman had informed him the oily substance on the walkway had been reported three times prior to Bryant's fall. In addition, the argument fails to account for Harrison's own testimony that (1) he did not check the walkway where Bryant had fallen until after he had spoken with Bryant, which could have occurred as much as three hours after the incident; and (2) when Harrison finally arrived, a power washer was located next to the spot where Bryant had fallen. Finally, the argument overlooks the photographs Harrison took as part of his investigation of the incident, which showed a power washer at the scene of Bryant's fall. It is the jury's task to evaluate the credibility of witnesses and to resolve conflicts in, and then weigh, the evidence. *Golden Eagle Archery,* 116 S.W.3d at 761. The jury could have believed Bryant and disbelieved Harrison's testimony about the location of the ROV. *See McGalliard,* 722 S.W.2d at 697. The jury also could have believed Bryant's testimony that he slipped on an oily substance and reasonably concluded that the oily substance had been cleaned by the time Harrison made his way to check the walkway where Bryant had fallen. *See City of Keller v. Wilson,* 168 S.W.3d 802, 821 (Tex.2005) ("Courts reviewing all the evidence in a light favorable to the verdict must assume jurors made all inferences in favor of their verdict if reasonable minds could, and disregard all other inferences in their legal sufficiency review."); *Walters v. Am. States Ins. Co.,* 654 S.W.2d 423, 426 (Tex.1983) (stating that juries are entitled to make inferences if they are reasonable and based on the facts proved). We conclude the evidence is legally and factually sufficient and overrule Cal Dive's third issue. *See United Parcel Service, Inc. v. Rankin,* 468 S.W.3d 609, 617 (Tex.App.–San Antonio 2015, pet. filed) (concluding evidence was legally and factually sufficient based, in part, on reasonable inferences the jury could have made); *CA Partners v. Spears,* 274 S.W.3d 51, 75 (Tex.App.–Houston [14th Dist.] 2008, pet. denied) (concluding evidence was factually sufficient despite record containing evidence contradicting factual findings).

III. The trial court did not abuse its discretion when it prohibited Cal Dive from cross-examining Bryant's economist regarding taxation.

In its fifth issue, Cal Dive asserts the trial court abused its discretion when it sustained Bryant's objection under Texas Rule of Evidence 403 and prohibited Cal Dive from cross-examining Dr. McCoin, Bryant's expert economist, regarding how he accounted for taxation in calculating Bryant's damages for lost earning capacity.

A. Standard of review

The decision to admit or exclude evidence lies within the sound discretion of the trial court. *Bay Area Healthcare Grp., Ltd. v. McShane,* 239 S.W.3d 231, 234 (Tex.2007). A trial court exceeds its discretion if it acts in an arbitrary or unreasonable manner or without reference to guiding rules or principles. *Barnhart v. Morales,* 459 S.W.3d 733, 742 (Tex.App.–Houston [14th Dist.] 2015, no pet.) (citing *Bowie Mem'l Hosp. v. Wright,* 79 S.W.3d 48, 52 (Tex.2002)). When reviewing matters committed to the trial court's discretion, a reviewing court may not substitute ***928** its own judgment for the trial court's judgment. *Id.* Thus, the question is not whether this Court would have admitted the evidence. Rather, an appellate court will uphold the trial court's evidentiary ruling if there is any legitimate basis for the ruling, even if that ground was not raised in the trial court. *Hooper v. Chittaluru,* 222 S.W.3d 103, 107 (Tex.App.–Houston [14th Dist.] 2006, pet. denied) (op. on reh'g). Therefore, we begin by examining possible bases for upholding the trial court's decision that are suggested by the record or urged by the parties. *Id.*

Relevant evidence is generally admissible. Tex. R. Evid. 402. A trial court may exclude relevant evidence, however, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence. Tex. R. Evid. 403; *see Strauss v. Continental Airlines, Inc.,* 67 S.W.3d 428, 449 (Tex.App.–Houston [14th Dist.] 2002, no pet.).

[9] **[10]** **[11]** **[12]** To obtain reversal of a judgment based on a claimed error in excluding evidence, a party must show that the trial court did in fact err and that the error probably resulted in rendition of an improper judgment. *Hooper,* 222 S.W.3d at 107. To determine whether excluded evidence probably resulted in the rendition of an improper judgment, an appellate court reviews the entire record. *Barnhart,* 459 S.W.3d at 742 (citing *Interstate Northborough P'ship v. State,* 66 S.W.3d 213, 220 (Tex.2001)). To challenge a trial court's evidentiary ruling successfully, the complaining party must demonstrate that the judgment turns on the particular evidence that was excluded or admitted. *Hooper,* 222 S.W.3d at 107 (citing *Interstate Northborough P'Ship,* 66 S.W.3d at 220). A reviewing court ordinarily will not reverse a judgment because a trial court erroneously excluded evidence when the excluded evidence is cumulative or not controlling on a material issue dispositive to the case. *Id.*

B. The trial court did not abuse its discretion when it prohibited Cal Dive from questioning Dr. McCoin in front of the jury about how he accounted for taxation in calculating Bryant's damages.

[13] Cal Dive argues that the trial court abused its discretion by prohibiting it from questioning Dr. McCoin about how he accounted for taxation in calculating Bryant's damages for lost earning capacity. Cal Dive asserts that it should have been permitted to question Dr. McCoin on this subject under section 18.091(a) of the Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. § 18.091(a) (West 2015) (requiring claimants seeking damages for loss of earning capacity to present their evidence "in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law"). Bryant objected that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice, as Cal Dive's purpose in asking Dr. McCoin this line of questioning was to paint Bryant as a bad person because he did not pay United States income taxes. The trial court agreed and sustained Bryant's objection, thereby prohibiting Cal Dive from questioning Dr. McCoin about his treatment of income taxes in the formation of his opinion.

We conclude Cal Dive has not shown the trial court abused its discretion when it sustained Bryant's Rule 403 objection. On this record, it is undisputed that (1) Bryant, an English expatriate living in Thailand, was not required to pay federal income taxes on his earnings as a deep sea ***929** diver; and (2) Dr. McCoin did account for that fact in the preparation of his opinion of lost earning capacity. Because no reduction for federal income

taxes was required, Dr. McCoin's opinion complied with section 18.091(a). Thus, we conclude the trial court reasonably could have concluded that the probative value of explaining the lack of federal taxation to the jury was negligible while its potential prejudicial effect was significant. *See* Tex. R. Evid. 403; *Farmers Tex. Cnty. Mut. Ins. Co. v. Pagan,* 453 S.W.3d 454, 463 (Tex.App.–Houston [14th Dist.] 2014, no pet.). Finally, Cal Dive has not shown on appeal how it was allegedly harmed as a result of the trial court's exclusion of this evidence. *See* Tex. R. App. P. 44.1; *Pagan,* 453 S.W.3d at 465. We therefore overrule Cal Dive's fifth issue.

IV. Cal Dive failed to preserve its challenge to the trial court's denial of a mistrial for appellate review.

[14] Travis Trahan, a Cal Dive vice-president, testified at trial regarding the qualifications to become a saturation diving supervisor, the time it would take to qualify, and the amount of money that a supervisor could potentially earn, from $800 to $1,100 a day. According to Trahan, a diving supervisor position with Cal Dive, unlike a saturation diving position, did not require heavy labor. The implication from Trahan's testimony was that Bryant, even with his injured shoulder, could continue to work in the diving industry earning a very good living.

During cross-examination, Bryant's attorney questioned Trahan not only about his testimony that Cal Dive classified a diving supervisor position as a light-to-medium-duty job rather than a heavy-duty one, but also about Cal Dive's current willingness to hire Bryant as a supervisor. Cal Dive did not lodge any objection to this line of questioning. At the end of the questions regarding Cal Dive's willingness to hire Bryant as a supervisor, the parties asked the trial court for a brief recess to discuss settlement of the case. Again, Cal Dive did not object. The parties did not settle the case during the recess and when the trial resumed, Cal Dive did not ask the trial court to instruct the jury to disregard the testimony regarding the possibility of settling the case. Cal Dive instead asked the trial court to grant a mistrial based on the testimony regarding settlement, which the trial court denied. In its sixth issue, Cal Dive argues the trial court erred when it denied Cal Dive's motion for mistrial.

[15] **[16]** A trial court has discretion to grant or deny a motion for mistrial. *Schlafly v. Schlafly,* 33 S.W.3d 863, 868 (Tex.App.–Houston [14th Dist.] 2000, pet. denied). In reviewing a trial court's decision on a motion for mistrial, we do not substitute our judgment for that of the trial court but instead decide only whether the trial court's decision constitutes an abuse of discretion. *Id.* A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.,* 701 S.W.2d 238, 241–42 (Tex.1985).

[17] Although offers of compromise and settlement generally are inadmissible, an error in admitting such evidence can be cured by an instruction to the jury to disregard the evidence. *Beutel v. Paul,* 741 S.W.2d 510, 513 (Tex.App.–Houston [14th Dist.] 1987, no writ). Because Cal Dive did not object to the settlement testimony and did not request an instruction that the jury disregard the settlement testimony, it did not preserve this issue for appellate review. *See Columbia Med. Ctr. of Las Colinas v. Bush,* 122 S.W.3d 835, 862 (Tex.App.–Fort Worth 2003, pet. denied) (citing *State Bar v. Evans,* 774 S.W.2d 656, 658 (Tex.1989)). ***930** We overrule Cal Dive's sixth issue.

CONCLUSION

Having overruled each of the issues raised by Cal Dive and the cross-issue raised by Bryant in this appeal, we affirm the trial court's judgment.

All Citations

478 S.W.3d 914

Footnotes

1 *See* Occupiers Liability Act 1957, 5 and 6 Eliz. 2, c. 31 (Eng. & Wales); *see also* Occupiers Liability Act 1984, c. 3 (Eng. & Wales).

2 We abated this appeal following oral argument because Cal Dive filed for bankruptcy. *See* Tex. R. App. P. 8.2. After the bankruptcy court lifted its stay to permit this Court to render a decision, we reinstated the appeal. *See* Tex. R. App. P. 8.3(a).

3 If the court considers sources not submitted by a party, it must give the parties notice and a reasonable opportunity to comment and to submit further materials. Tex. R. Evid. 203.

4 Cal Dive does not argue on appeal that Texas law, rather than English law, should govern Bryant's claims. Rather, Cal Dive argues only that we should presume English law is the same as Texas law because Bryant did not adequately prove the content of English law.

5 Because the trial court had adequate information to apply English law, we need not decide whether Cal Dive is correct that this case should have been submitted to the jury under Texas law using a premises liability theory.

6 The Act does not prohibit considering the occupier's knowledge in determining whether the occupier discharged its common duty of reasonable care under the 1957 Act. But there is nothing in the Act to indicate that knowledge is a separate element required for liability to visitors (i.e., licensees and invitees).

7 The 1984 Act provides:

> An occupier of premises owes a duty to another (not being his visitor) in respect of [dangers due to the state of the them] if—premises or to things done or omitted to be done on
>
> (a) he is aware of the danger or has reasonable grounds to believe that it exists;
>
> (b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in that vicinity or not); and
>
> (c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.
>
> Occupiers Liability Act 1984 § 1(3).

8 Cal Dive points to the transcript of the court's oral findings and judgment following a bench trial in a factually similar case, *Lowther v. H. Hogarth & Sons, Ltd.,* [1959] Vol. I Lloyd's Rep. Q.B. 171. That transcript includes some dicta to the effect that the common duty of care owed under the 1957 Act did not differ from the duty owed at common law, which required proper care to see that invitees were not exposed to unusual dangers of which the occupier knew or ought to have known. *Id.* at 177. This observation is inconsistent with the text of the 1957 Act discussed above, but we note that the *Lowther* court did not have the benefit of the 1984 Act, which requires knowledge only as to non-visitors. In any event, the *Lowther* court went on to apply the common duty of reasonable care from the 1957 Act and hold that no breach had occurred, finding that there was no danger from oil on the deck when the defendants' employee made his last examination, noting the impracticability—even when taking reasonable care—of maintaining passages so that there is never a slippery place, and observing that it was difficult to envisage what further efforts the defendants could have made to ensure oil was cleaned up at more frequent intervals. *Id.* at 178–79. As we shall see in Part II below, this case is different from *Lowther* in that there were reports of oil on the deck before Bryant slipped.

Vernon's Texas Rules Annotated
Texas Rules of Evidence (Refs & Annos)
Article X. Contents of Writings, Recordings, and Photographs (Refs & Annos)

TX Rules of Evidence, Rule 1009

Rule 1009. Translating a Foreign Language Document

Currentness

(a) Submitting a Translation. A translation of a foreign language document is admissible if, at least 45 days before trial, the proponent serves on all parties:

(1) the translation and the underlying foreign language document; and

(2) a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate.

(b) Objection. When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial.

(c) Effect of Failing to Object or Submit a Conflicting Translation. If the underlying foreign language document is otherwise admissible, the court must admit--and may not allow a party to attack the accuracy of--a translation submitted under subdivision (a) unless the party has:

(1) submitted a conflicting translation under subdivision (a); or

(2) objected to the translation under subdivision (b).

(d) Effect of Objecting or Submitting a Conflicting Translation. If conflicting translations are submitted under subdivision (a) or an objection is made under subdivision (b), the court must determine whether there is a genuine issue about the accuracy of a material part of the translation. If so, the trier of fact must resolve the issue.

(e) Qualified Translator May Testify. Except for subdivision (c), this rule does not preclude a party from offering the testimony of a qualified translator to translate a foreign language document.

(f) Time Limits. On a party's motion and for good cause, the court may alter this rule's time limits.

(g) Court-Appointed Translator. If necessary, the court may appoint a qualified translator. The reasonable value of the translator's services must be taxed as court costs.

Credits

Eff. March 1, 1998. Amended by orders of Supreme Court March 10, 2015 and Court of Criminal Appeals March 12, 2015, eff. April 1, 2015.

Editors' Notes

NOTES AND COMMENTS

Comment to 1998 change: This is a new rule.

Notes of Decisions (14)

Rules of Evid., Rule 1009, TX R EVID Rule 1009
Current with amendments received through October 1, 2017

End of Document

428 S.W.3d 179
Court of Appeals of Texas,
Houston (1st Dist.).

Francisco J. CASTREJON, Appellant
v.
The STATE of Texas, Appellee.

No. 01–12–00601–CR.
|
Jan. 23, 2014.

Synopsis

Background: Defendant was convicted in the County Criminal Court at Law No. 1, Harris County, of prostitution. Defendant appealed.

Holdings: The Court of Appeals, Evelyn V. Keyes, J., held that

[1] State's failure to submit written translation and affidavit of qualified translator to defendant 45 days before trial did not preclude admission of recording of defendant's conversation with undercover officer;

[2] recording of conversation was admissible without written translation; and

[3] police officer was qualified to offer translation of conversation at trial.

Affirmed.

Massengale, J., filed concurring opinion.

West Headnotes (14)

[1] Criminal Law
Reception and Admissibility of Evidence

The appellate court reviews a trial court's decision to admit evidence for an abuse of discretion.

1 Cases that cite this headnote

[2] Criminal Law
Reception and Admissibility of Evidence

The appellate court will not reverse a trial court's evidentiary ruling unless it falls outside the zone of reasonable disagreement.

1 Cases that cite this headnote

[3] Criminal Law
Appointment and services of interpreter

The appellate court affords a trial court wide discretion in determining the adequacy of interpretive services for translation of foreign-language document. Rules of Evid., Rule 1009.

3 Cases that cite this headnote

[4] Criminal Law
Appointment and services of interpreter

The question on appeal regarding trial court's admission of foreign-language translation is not whether the best means of interpretive services were employed but whether the services employed were constitutionally adequate. Rules of Evid., Rule 1009.

Cases that cite this headnote

[5] Criminal Law
Appointment and services of interpreter

The foreign-language translation of document admitted by the trial court must be accurate or true, but it need not be perfect. Rules of Evid., Rule 1009.

Cases that cite this headnote

[6] Criminal Law
Sound recordings

Rule of evidence regarding admission of foreign-language translations did not affect admissibility of underlying audio recording, in defendant's trial for prostitution where

trial court admitted recording of defendant's conversation with undercover police officer posing as a prostitute; rule only applied to translation of recording. Rules of Evid., Rule 1009.

Cases that cite this headnote

[7] **Criminal Law**
Sound recordings

State's failure to submit written translation and affidavit of qualified translator to defendant 45 days before prostitution trial did not preclude admission of recording of conversation held partly in Spanish and partly in English between defendant and undercover officer posing as prostitute; 45–day notice requirement applied only to admission of translation of recording, not to admission of the underlying recording itself, 45–day notice requirement did not apply when, as in defendant's case, translation was offered by live testimony at trial, and lack of 45–day notice did not prevent defendant from requesting appointment of an interpreter. Vernon's Ann.Texas C.C.P. art. 38.30(a); Rules of Evid., Rule 1009(a, e, f).

Cases that cite this headnote

[8] **Criminal Law**
Sufficiency and Scope of Motion

Motions in limine do not preserve error.

Cases that cite this headnote

[9] **Criminal Law**
Appointment and services of interpreter

Nothing in statute governing appointment of interpreters precludes a party from requesting the appointment of an interpreter whenever the need arises during a proceeding. Vernon's Ann.Texas C.C.P. art. 38.30.

Cases that cite this headnote

[10] **Criminal Law**
Sound recordings

Criminal Law
Appointment and services of interpreter

State was not required to produce a contemporaneous written translation of audio recording of conversation held partly in Spanish and partly in English between defendant and undercover officer posing as prostitute, in order for the recording to be admissible in prostitution trial; rule of evidence did not require written translation for admission of recording, defendant did not move for appointment of licensed court interpreter to make written transcription at or before trial, and no affidavit from a qualified translator was required because no written translation was offered. Vernon's Ann.Texas C.C.P. art. 38.30; V.T.C.A., Government Code § 57.002(a); Rules of Evid., Rule 1009(a, e, g).

Cases that cite this headnote

[11] **Criminal Law**
Adding to or changing grounds of objection

Defendant did not preserve for appellate review any error in the State's failure to provide written translation of audio recording of conversation held partly in Spanish and partly in English between defendant and undercover officer posing as prostitute, prior to offering the recording into evidence in prostitution trial, although defendant objected at the time State offered the recording into evidence, where defendant objected solely on the ground of the lack of proper certified interpreter, and defendant did not object to lack of a written transcript until closing argument. Rules of Evid., Rule 1009(a).

Cases that cite this headnote

[12] **Criminal Law**
Appointment and services of interpreter

Trial court acted within its discretion, in trial for prostitution, when it implicitly determined that police officer, who posed as prostitute

and recorded conversation with defendant, and who interpreted the foreign-language part of the recording at trial, was qualified to translate the recording through testimony at trial, although officer was not certified translator and she testified that she was not fluent in Spanish; rule of evidence did not require that officer be certified translator, and officer testified that she was able to communicate with potential clients in Spanish when she worked undercover as a prostitute, that she conversed with Spanish-speaking suspects "quite frequently," that she had experience taking police reports in Spanish and questioning witnesses in Spanish, that she had taken spanish classes offered by police department, and that she spoke "street Spanish." Rules of Evid., Rule 1009(e).

Cases that cite this headnote

[13] Courts

Interpreters

Individuals called upon to act as interpreters during criminal proceedings are not required to have specific qualifications or training; instead, what is required is sufficient skill in translating and familiarity with the use of slang. Vernon's Ann.Texas C.C.P. art. 38.30; Rules of Evid., Rule 1009.

1 Cases that cite this headnote

[14] Criminal Law

Appointment and services of interpreter

Criminal Law

Appointment of interpreter or stenographer

The competency of an individual to act as an interpreter is a question for the trial court, and, absent an abuse of discretion, this determination will not be disturbed on appeal. Vernon's Ann.Texas C.C.P. art. 38.30; Rules of Evid., Rule 1009.

3 Cases that cite this headnote

Attorneys and Law Firms

***180** Michael S. Driver, Houston, TX, for Appellant.

***181** Devon Anderson, District Attorney, Carly Dessauer, Assistant District Attorney, Houston, TX, for Appellee.

Panel consists of Justices KEYES, HIGLEY, and MASSENGALE.

OPINION

EVELYN V. KEYES, Justice.

A jury convicted appellant, Francisco J. Castrejon, of the Class B misdemeanor offense of prostitution. [1] The trial court assessed punishment at ten days' confinement in the Harris County Jail and a $500 fine. In one issue, appellant contends that the trial court erroneously admitted a recorded conversation held partly in Spanish and partly in English without proper notice that the State intended to introduce this recording and without a written transcript from a licensed translator.

Specifically, appellant contends that the trial court erred in admitting the recording of a conversation he held partly in Spanish with the arresting officer, Officer G. Das, because, under Texas **Rule of Evidence 1009**(a), the State was required to give forty-five days' notice that it intended to use the recording as evidence at trial and to submit a contemporaneous written English translation prepared by a certified translator, and the State failed to do so. He also contends that, because of this failure, his defense counsel was unable to request that the trial court appoint an interpreter pursuant to Code of Criminal Procedure article 38.30 to submit a translation of the recording. He further contends that Officer Das was not qualified to render an accurate English translation of the conversation.

Concluding that appellant has misconstrued the law, we affirm.

Background

Houston Police Department ("HPD") Vice Division Officer Das was working undercover on Bissonnet Street

in southwest Houston on October 17, 2012, in an attempt to combat the prostitution problem in the area. Officer Das posed as a prostitute and maintained a telephone connection with her backup officers underneath her clothing to record any conversations that she had with individuals who propositioned her. Officer Das encountered appellant, who was driving along Bissonnet, and they negotiated payment for a sexual encounter to occur in a nearby parking lot. This conversation was recorded by audio recording. After Officer Das began to walk toward the parking lot and appellant started to follow her in his vehicle, the backup officers arrested appellant. No translation of the recording of the conversation between Officer Das and appellant, which was partly in English and partly in Spanish, was made prior to trial.

Appellant filed a pre-trial motion in limine in which he sought to exclude, among other things, "[a]ny reference to a conversation between persons if such conversation is contained in an audio recording that constitutes the best evidence of the conversation that transpired" and "[a]ny reference or attempt to translate any conversation between persons if such conversation was conducted in a foreign language, in whole or in part, except if such translation has been disclosed by the State, and served upon all parties, at least 45 days prior to the date of trial, upon the affidavit of a qualified translator pursuant to the Rules of Evidence." The trial court denied the first request and allowed the State to reference the conversation between Officer Das and appellant, but it granted the second request and required ***182** the State to approach the bench before it discussed the audio recording of this conversation or attempted to translate it.

At trial, Officer Das testified that she is able to communicate with suspects who speak only Spanish. She testified that she has experience taking police reports in Spanish and questioning witnesses in Spanish and that, over the course of her twenty-year career in the Vice Division, she has dealt with Spanish-speaking suspects "quite frequently." She also stated that she has taken Spanish classes through HPD, and she characterized the type of Spanish that she speaks as "street Spanish," which is what many suspects who solicit prostitutes speak. Officer Das acknowledged that she is not fluent in Spanish, but she is "comfortable" speaking it, she is able to "get [her] point across and [she] can understand what people are saying to [her]" in Spanish.

Officer Das testified that she was walking along Bissonnet when appellant drove by in his car, "slowed his car down considerably," made eye contact with her, pulled into the next driveway, and parked his car in the parking lot. Appellant maintained eye contact with Officer Das, so she decided to approach his car. Officer Das testified that appellant called out to her in Spanish.

After the prosecutor asked Officer Das what happened next, defense counsel objected and asked to approach the bench. He argued that any answer to this question would "necessarily involve the witness' translation of a conversation that took place in a foreign language," and he renewed his objection from his motion in limine to any reference to or attempt to translate any conversation in a foreign language because "[t]here is no certified interpreter that is present here today" and "[n]one has been disclosed to defense counsel." The trial court asked whether Officer Das was the one who had the conversation in Spanish with appellant, and, after the State responded that she was, the court overruled defense counsel's objection and allowed Officer Das to testify concerning the conversation.

Officer Das then testified that she and appellant exchanged pleasantries in Spanish, and she stated, in Spanish, what they said to one another. She stated that she informed appellant that she had a hotel room and that he asked her "how much?" She testified that she asked, "For what?" and she then stated the English translation for the two sex acts that she had offered to perform. She then specifically stated the Spanish words that she had used in the conversation with appellant and their English translations for the jury. She testified that appellant indicated, in Spanish, that he wished to have sexual intercourse with her, and she told him, also in Spanish, that that would cost $15. He repeated "fifteen" twice more during the course of their conversation. Appellant then suggested that they go to a nearby parking lot instead of a hotel room.

The State asked Officer Das whether an audio recording existed of this conversation, whether the recording was "in line with" Das' testimony, and whether the recording was in English or Spanish. Officer Das affirmed that there was an audio recording and agreed that the recording was "in line with the verbal part of [their] conversation" and that the recording contained both English and Spanish.

The State then offered the recording into evidence. The following exchange occurred:

[Defense counsel]: Judge, we renew our objection based on the Motion in Limine that any audio that is admitted into evidence without the proper certified interpreter would be a violation of not only Texas Rules of Evidence but my client's rights to confrontation.

***183** The Court: Okay. And you are not offering a transcript?

[The State]: No, Your Honor.

The Court: Simply the audio and her testimony regarding it; is that correct?

[The State]: That's correct, Judge.

The Court: Your objection will be overruled.

No written English translation of the Spanish part of the audio recording was offered into evidence. The recording was not played for the jury at that time. Defense counsel did not object to admission of the recording on the basis that the State failed to give forty-five days' notice of its intent to introduce the recording, and he did not object on the basis that no English translation of the Spanish on the recording was offered; nor did he seek a continuance so that the Spanish portion of the tape could be translated. Moreover, he did not object at any time to Officer Das' translation at trial.

During closing argument, the prosecutor indicated that he wished to play the recording for the jury. Defense counsel objected and the following occurred:

[Defense counsel]: Certainly, Judge, playing the tape that is in Spanish without a translation is going to confuse the jury. We renew our objection as stated in the motion in limine. There's been no transcript. There's no translation to what is actually on this audio. And I believe that if the jury heard it in the absence of any translation, they are just simply going to assume that whatever counsel is saying is on that tape.

The Court: Officer [Das] testified about the authenticity about the recording that she was saying and the defendant was saying, so I'm going to overrule your objection. It's already in evidence. He may publish it.

[The State]: At the risk of being redundant, just for purposes of the record, should there be an appeal, the State would also like to play in reference to closing argument to contradict the length of time the defense said the conversation went on, regardless of the statements provided and already admitted pieces of evidence. He could use it in closing arguments to show that at least the defendant was telling some untruths.

[Defense counsel]: Judge, the time has passed for cross-examination. If Your Honor is going to allow it to come in, you are certainly entitled to make that ruling, Judge. But with the added ruling that they be allowed to somehow now explain—

The Court: It's already in evidence. It's State's Exhibit No. 2 that was admitted into evidence. It can be published at this point.

[Defense counsel]: Our objection, Judge, is that publishing that without the translation is improper.

The Court: Your objection is overruled.

The jury convicted appellant of the offense of prostitution, and the trial court assessed punishment at ten days' confinement and a $500 fine.

Admissibility of Spanish Audio Recording

Appellant argues, first, that the trial court erred by admitting the recording of his conversation with Officer Das, which was partly in English and partly in Spanish, because, under Texas Rule of Evidence 1009(a): (1) the State was required to give forty-five days' notice that it intended to use the recording as evidence at trial, and the State failed to do so, and (2) the State was required to submit a contemporaneous written English translation ***184** prepared by a qualified translator, which it also failed to do. We disagree.

A. Standard of Review and Law Governing Foreign–Language Translations

[1] [2] [3] [4] [5] We review a trial court's decision to admit evidence for an abuse of discretion. *Torres v. State,* 71 S.W.3d 758, 760 (Tex.Crim.App.2002). We will not reverse a trial court's evidentiary ruling unless

it falls outside the zone of reasonable disagreement. *Id.* We afford a trial court wide discretion in determining the adequacy of interpretive services. *Linton v. State,* 275 S.W.3d 493, 500 (Tex.Crim.App.2009). The question on appeal is not whether the "best" means of interpretive services were employed but whether the services employed were constitutionally adequate. *Id.* The translation must be "accurate or 'true,' but it need not be perfect." *Flores v. State,* 299 S.W.3d 843, 855 (Tex.App.-El Paso 2009, pet. ref'd) (quoting *Linton,* 275 S.W.3d at 501–02); *see also Peralta v. State,* 338 S.W.3d 598, 604 (Tex.App.-El Paso 2010, no pet.) (holding same).

B. Failure to Provide Forty–Five Days' Notice of Intent to Use Audio Recording and Written Translation by Certified Translator

Texas Rule of Evidence 1009(a) ("Translation of Foreign Language Documents") governs the admissibility of translated documents. It provides,

> A translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate. Such affidavit, along with the translation and the underlying foreign language documents, shall be served upon all parties at least 45 days prior to the date of trial.

TEX.R. EVID. 1009(a). Rule 1009(a) applies when a party offers a written translation of a foreign language document. It requires that the written translation be coupled with an affidavit by a qualified translator setting forth the translator's qualifications and certifying that the translation is fair and accurate and that the translation be provided forty-five days in advance of trial. *Id.*

Rule 1009 also provides, however, that submission of a written translation of a foreign language document by a qualified translator forty-five days in advance of trial in compliance with subsection 1009(a) is not the only means by which a party may offer a translation of a document. Subsection 1009(e) allows the trial court to admit a translation of a foreign language document "at trial either by live testimony or by deposition testimony of a qualified expert translator." TEX.R. EVID. 1009(e); *see Peralta,* 338 S.W.3d at 606 ("In the event the time requirements of subsection (a) [of rule 1009] are not met, a party may nevertheless introduce the translation at trial either by live testimony or by deposition testimony of a qualified expert translator.").

1. Forty–Five Days' Notice Requirement for Admissibility

[6] **[7]** Appellant argues first that the recording was inadmissible because he was not given forty-five days' notice of the State's intent to introduce the recording, as required by subsection 1009(a). However, Rule 1009(a)'s forty-five day notice requirement does not apply to the admission of the underlying recording of appellant's conversation with Officer Das. The requirement applies only to the admission of the translation of the recording, and it applies to admission of the translation only if that translation was not admissible under another subsection of Rule 1009—here, subsection 1009(e). Rule 1009(e) does not ***185** require the contemporaneous admission of a written transcript of the exhibit being translated through live testimony; and it does not require forty-five days' notice. *See Peralta,* 338 S.W.3d at 606. It requires only that the translation be offered by live testimony or by the deposition of a certified expert translator. TEX.R. EVID. 1009(e). Thus, the fact that the State did not submit a written translation and affidavit of a qualified translator to appellant forty-five days before trial does not preclude admission of the recording.

[8] We observe, moreover, that, although appellant raised the failure of the State to provide forty-five days' notice of a written translation in his motion in limine, he did not reassert this specific objection at trial. As the State points out, "[i]t is axiomatic that motions in limine do not preserve error." *Thierry v. State,* 288 S.W.3d 80, 87 (Tex.App.-Houston [1st Dist.] 2009, pet. ref'd); *Harnett v. State,* 38 S.W.3d 650, 655 (Tex.App.-Austin 2000, pet. ref'd) ("Even if there has been a violation of the order on the motion in limine, it is incumbent that a party object to the admission or exclusion of evidence or other action in order to preserve error for appeal."); *see also Williams v. State,* 402 S.W.3d 425, 437 (Tex.App.-Houston [14th Dist.] 2013, pet. ref'd) ("The appellate complaint must comport with the specific objection made at trial. An objection stating one legal theory may not be used to support a different legal theory on appeal.") (internal citations omitted). We also note that, had appellant been concerned about the lack of time to counter the

translation, Rule 1009(f) provides that the trial court, "upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this Rule." *See* TEX.R. EVID. 1009(f).

[9] Finally, to the extent appellant contends that because he did not receive forty-five days' notice that the State intended to offer the recording he was unable to request that the trial court appoint an interpreter pursuant to Code of Criminal Procedure article 38.30, we note that nothing in article 38.30 precludes a party from requesting the appointment of an interpreter whenever the need arises during the proceeding. Instead, article 38.30(a) expressly provides, "When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, ... an interpreter must be sworn to interpret for the person charged or the witness." TEX.CODE CRIM. PROC. ANN. art. 38.30(a) (Vernon Supp.2013); *see also Leal v. State,* 782 S.W.2d 844, 849 (Tex.Crim.App.1989) (stating that situation in which recording of conversation in foreign language is offered is "analogous to one where a non-English speaking witness testifies, and the safeguards of Art. 38.30 apply"). Upon learning that the State intended to offer the recording into evidence, defense counsel could have requested that the trial court appoint an interpreter to translate the Spanish part of the recording into English and that it grant extra time for the translation to be made. The record does not indicate that he made any such request.

2. Written Translation Requirement for Admissibility

[10] Appellant also argues that the State was required to produce a contemporaneous written translation of a foreign language recording in order for the recording itself to be admissible. Appellant did not cite any authority for his claim; nor have we found any. The text of Rule 1009, which, as we have held, does not affect admissibility of the underlying recording, but only of the translation, does not require a written transcript when the interpreter translates the recording during live testimony at trial. *See* ***186** TEX.R. EVID. 1009(e); *cf. Leal,* 782 S.W.2d at 849–50 (holding that trial court erroneously admitted unsworn translation of Spanish conversation but not addressing whether contemporaneous written transcript was required if interpreter translated conversation during live testimony); *Peralta,* 338 S.W.3d at 606 (upholding admission of videotaped confession in Spanish when English translation was accompanied by affidavit from interpreter and noting that Rule 1009(e) allows introduction of translation by live testimony at trial).

Moreover, appellant did not move for the appointment of a licensed court interpreter to make a written transcription of the recording at trial or before trial, although he was permitted to do so by Rule 1009(g) and by the Texas Government Code. *See* TEX.R. EVID. 1009(g) ("The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs."); TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp.2013) (requiring appointment of licensed court interpreter on motion of party).

Here, it is undisputed that the State did not provide to appellant and did not introduce into evidence a written English translation of the recorded conversation in mixed Spanish and English between appellant and Officer Das. Because no written English transcription of the audio recording was offered translating the Spanish on the recording into English, no affidavit from a qualified translator as to the authenticity of the translation was required. *See* TEX.R. EVID. 1009(a).

Instead, Officer Das translated portions of the conversation that she had with appellant during her live testimony at trial and was subjected to cross-examination about her testimony. Proceeding in this manner does not render the recording of the conversation inadmissible. *See* TEX. R EVID. 1009(e); *Peralta,* 338 S.W.3d at 606.

[11] Moreover, although appellant objected at the time the State offered the recording, he objected solely on the ground that "any audio that is admitted into evidence without the proper certified interpreter" would violate the rules of evidence. The trial court asked the State to clarify whether it was offering a written transcript of the recording. After the State replied that it was not, the trial court overruled appellant's objection. Appellant did not object to the lack of a written transcript until closing argument, when the State requested to publish the recording to the jury. This late objection was insufficient to preserve error. *See Wilson v. State,* 71 S.W.3d 346, 349 (Tex.Crim.App.2002) (stating that "the objection must be made at the earliest possible opportunity" to preserve error); *Bessey v. State,* 199 S.W.3d 546, 555 (Tex.App.-Texarkana 2006) (holding same), *aff'd,* 239 S.W.3d 809 (Tex.Crim.App.2007). But, even if the issue had been preserved, Officer Das' translation of the Spanish portion

of the recording in her live testimony at trial would not be inadmissible.

3. Officer Das' Qualifications to Interpret

[12] Finally, appellant argues that the trial court's admission of the audio recording was erroneous because the State failed to demonstrate that Officer Das was a certified translator and capable of accurately translating the recording for the jury.

As we have already pointed out, although appellant objected both to the admission of the recording and to Officer Das' testimony on the basis that no certified interpreter had translated the recording, appellant did not object with specificity to the accuracy of any part of Officer ***187** Das' translation. *See* TEX.R. EVID. 103(a) (providing, in relevant part, that error may not be predicated upon trial court ruling admitting evidence unless substantial right of party is affected and timely objection "stating the specific ground of objection" appears of record). **Rule of Evidence 1009**(b) provides that "[a]ny party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation." TEX.R. EVID. 1009(b).

Appellant cross-examined Officer Das, but he did not challenge her translation of the Spanish spoken in the conversation. Aside from questioning on appeal whether Officer Das "could provide a fair and unbiased translation," appellant did not bring any specific errors in her translation of the recording to the attention of the trial court, nor has he brought any specific errors to our attention. *See* TEX.R. EVID. 1009(b); *Montoya v. State,* 811 S.W.2d at 673 ("The trial court was not under a duty to interrogate the interpreter to determine his qualifications; .... Appellant has not directed this court to any part of the record where alleged errors in translation occurred which prevented him from confronting the witnesses."). Nor did appellant "stat[e] with specificity what [he] contends is a fair and accurate translation." TEX.R. EVID. 1009(b). Moreover, appellant did not move for the appointment of a certified interpreter, even though he was entitled to do so. *See* TEX.R. EVID. 1009(g) (permitting court to appoint qualified translator "if necessary"); TEX. GOV'T CODE ANN. § 57.002(a) ("A court shall appoint a certified court interpreter or ... a licensed court interpreter for an individual who ... does not comprehend or communicate in English if a motion for the appointment of an interpreter ... is filed by a party ... in a civil or criminal proceeding in the court.").

Furthermore, under its plain language, Rule 1009(e) provides for "the admission of a translation of foreign language documents at trial either by live testimony *or* by deposition testimony of a qualified expert translator." TEX.R. EVID. 1009(e) (emphasis added). Thus, the fact that a conversation was in a foreign language does not, in and of itself, render an audio recording of that conversation inadmissible. *See Leal,* 782 S.W.2d at 849. Nor does the fact that a translation of a recording is made by the live testimony of a witness who is not a qualified expert, rather than by the deposition testimony of a qualified expert, render the testimony inadmissible. Instead, the situation is analogous to one in which a non-English-speaking witness testifies, and, in that circumstance, the safeguards of Code of Criminal Procedure article 38.30 apply. *See id.*

Article 38.30 ("Interpreter") provides, in relevant part,

> When a motion for appointment of an interpreter is filed by any party ..., an interpreter must be sworn to interpret for the person charged or the witness. *Any person may be subpoenaed, attached or recognized in any criminal action or proceeding,* to appear before the proper judge or court *to act as interpreter therein, under the same rules and penalties as are provided for witnesses.* In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with the use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between the person charged or witness ***188** and the appointed interpreter during the proceedings.

TEX.CODE CRIM. PROC. ANN. art. 38.30(a) (emphasis added). The El Paso Court of Appeals has held that when "the interpreter was positively identified,

qualified, officially sworn, and subjected to cross-examination, the requirements of Texas Code of Criminal Procedure, Article 38.30 [are] met." *Peralta,* 338 S.W.3d at 605 (citing *Flores,* 299 S.W.3d at 856).

[13] **[14]** Neither article 38.30 nor Rule 1009 requires an interpreter to be "certified" or "licensed" in order to provide an admissible translation. *See* TEX.CODE CRIM. PROC. ANN. art. 38.30(a); TEX.R. EVID. 1009. Individuals called upon to act as interpreters during criminal proceedings are not required to have specific qualifications or training; instead, what is required is "sufficient skill in translating and familiarity with the use of slang." *Kan v. State,* 4 S.W.3d 38, 41 (Tex.App.-San Antonio 1999, pet. ref'd); *see also Leal,* 782 S.W.2d at 849 (holding that, pursuant to article 38.30, interpreter must "possess adequate interpreting skills for the particular situation" and must be "familiar with the use of slang"); *Mendiola v. State,* 924 S.W.2d 157, 161 (Tex.App.-Corpus Christi 1995, pet. ref'd) (holding that article 38.30 does not require interpreter to be "official" or "certified" interpreter). The competency of an individual to act as an interpreter is a question for the trial court, and, absent an abuse of discretion, this determination will not be disturbed on appeal. *See Kan,* 4 S.W.3d at 41; *see also Linton,* 275 S.W.3d at 500 (holding that trial court has "wide discretion in determining the adequacy of interpretive services"); *Montoya v. State,* 811 S.W.2d 671, 673 (Tex.App.-Corpus Christi 1991, no pet.) ("[C]ompetency is a question for the court, and a ruling on this subject will be reversed only for an abuse of discretion.").

Here, the person who interpreted the Spanish part of the recording was Officer Das, who was also a participant in the recorded conversation. She was placed under oath and was subject to cross-examination on the contents of the recording. The remaining question, then, is whether she was a qualified interpreter of the Spanish part of the conversation. Officer Das testified that she is able to communicate with potential clients in Spanish when she works undercover as a prostitute. She testified that she converses with Spanish-speaking suspects "quite frequently" and that she has experience taking police reports in Spanish and questioning witnesses in Spanish. She stated that she has taken Spanish classes offered by HPD and that, like many defendants in prostitution cases, she speaks "street Spanish." She acknowledged that she is not fluent in Spanish, but she also stated that she feels comfortable speaking it and that she can "get [her] point across" and can understand what is being said to her.

We conclude that the trial court reasonably could have determined that Officer Das had "sufficient skill in translating" Spanish, possessed "adequate interpreting skills for the particular situation," and was "familiar with the use of slang" in Spanish such that she could render an accurate English translation of the recording of her conversation with appellant. *See Leal,* 782 S.W.2d at 849; *Kan,* 4 S.W.3d at 41. We hold that the trial court did not abuse its discretion in implicitly determining that Officer Das was qualified to translate the recording and in admitting the recording. *See Linton,* 275 S.W.3d at 500; *Kan,* 4 S.W.3d at 41.

Appellant has not demonstrated that the trial court's admission of the audio recording or the court's allowance of Officer Das' testimony was erroneous or has in any way affected his substantial rights, as necessary ***189** to establish reversible error on appeal. *See* TEX.R.APP. P. 44.2(b).

We overrule appellant's sole issue.

Conclusion

We affirm the judgment of the trial court.

Justice MASSENGALE, concurring.

MICHAEL MASSENGALE, Justice, concurring.
I concur in the court's judgment, affirming Castrejon's conviction. Specifically, I agree that Castrejon waived his complaint about the absence of an appropriate translator by failing to request one as provided by law. I also agree that he has failed to demonstrate any harm resulting from the admission of the recording. Those reasons are fully sufficient to resolve this appeal. *See* TEX.R.APP. P. 33.1, 44.2.

I disagree with the majority's further analysis—which is pure dicta—positing that the Spanish-language recording was admissible because the testimony of Officer Das qualified as a translation of foreign language documents under the rules of evidence. *See* TEX.R. EVID. 1009(e).

This thoroughly unnecessary frolic is misguided for at least three reasons.

First, the analysis completely misses the point about the admissibility of the foreign language document itself, i.e., the audio recording of the conversation in Spanish between Castrejon and Das. Rule 1009(e) authorizes the admission of a "translation" of foreign language documents at trial—it does not address Castrejon's complaint about admitting and publishing to the jury the Spanish-language recording. [1]

Second, Das's testimony never purported to be a "translation" of the recording. Instead, she testified in English about her memory and understanding of what was communicated between her and Castrejon. [2] That is not the same thing as the "translation of foreign language documents," which implies transforming a foreign language document into a restatement of the substance of that document into the same substance expressed in English. In her testimony, Das distinguished between her memory of the interaction and what she wrote in her offense report, which she characterized as a "fairly accurate" "summary of and translation of the conversation," though not a "word-for-word transcription." 4 CR 68. The offense report was not admitted into evidence, though it was used at trial for impeachment purposes. The recording was not played during her testimony. Das's testimony did include some references to "translation," such as when she testified, "And then I said, translation is, 'Do you want a blow job or a f___?' " However, such references were expressions in English of what was communicated in Spanish, based on her first-hand memory of the conversation. They were not translation "of foreign language documents at trial by live testimony" as contemplated by Rule 1009(e). That rule is simply inapplicable.

Finally, to support its reliance on Rule 1009(e), the majority takes the additional step of writing the "qualified expert translator" standard out of the rule. [3] The majority ***190** replaces that standard with article 38.30(a) of the Code of Criminal Procedure, and thus imposes a much lower standard for the translation of foreign language documents at trial than the Rule 1009(e) "qualified expert translator" standard. Although it is not unprecedented to seek guidance from article 38.30 in this circumstance, [4] I respectfully suggest that such an analysis confuses the different purposes of the two rules. Rule 1009(e) is, self-evidently, a rule of evidence governing "Expert Testimony of Translator" in the broader context of Rule 1009, which governs "Translation of Foreign Language Documents." Distinct from the procedure for *translation of foreign language evidence* so that it can be understood by the jury and used in determining guilt or innocence, Article 38.30 of the Code of Criminal Procedure addresses a completely different need for *courtroom interpreters*—the need to accommodate "a person charged or a witness" who "does not understand and speak the English language." TEX.CODE CRIM. PROC. ANN. art. 38.30(a) (West Supp.2013). In such a circumstance, article 38.30 specifies a procedure by which "an interpreter must be sworn to interpret for the person charged or the witness." *Id.* The interpreter provided under article 38.30 ensures due process [5] by facilitating an understanding of trial proceedings for the purposes of a defendant or a witness. [6] The rule does not purport to undercut the standard applicable to translating documents for evidentiary purposes at trial. Nevertheless, the majority has interpreted Rule 1009(e)—titled "Expert Testimony of Translator"—to authorize the State to use police officers who have no special knowledge, training, or qualification as interpreters or translators for the purpose of offering translations of foreign language documents into evidence at trial, even if the officer admits that she is not fluent in the language. This is an incorrect and unnecessary interpretation of Rule 1009(e), but at least it can be disregarded as dicta.

***191** All of these difficulties would be avoided were the panel majority content to rely on well-established principles requiring preservation of error and demonstration of harm to overturn a conviction. *See* TEX.R.APP. P. 33.1, 44.2. Because the majority insists on embellishing its analysis, I cannot join its opinion. I therefore concur only in affirming the judgment of the trial court.

All Citations

428 S.W.3d 179

Footnotes

1 *See* TEX. PENAL CODE ANN. § 43.02(a)(1) (Vernon Supp.2013).

1 The State, in its brief, agrees. The first section of its analysis is titled: "Rule 1009 does not apply to appellant's trial." State's Br. at 7.

2 The State, in its brief, agrees. It argues: "Officer Das never translated the audio recording," and that "[s]he only testified from memory regarding what appellant told her when he propositioned her." State's Br. at 7.

3 The majority is forced to resort to this reasoning to justify its insistence upon including the Rule 1009(e) analysis because Officer Das could not possibly have served as a "qualified expert translator" as required by the text of the rule. She is not "qualified as an expert" in translation from Spanish to English "by knowledge, skill, experience, training, or education." TEX.R. EVID. 702. Das admitted at trial that she is not fluent in Spanish. She also lacks relevant training or education. On cross-examination she testified that she had taken some Spanish classes, though none in the past five years.

4 *See, e.g., Leal v. State,* 782 S.W.2d 844, 849 (Tex.Crim.App.1989). Of the three reported instances in which the Court of Criminal Appeals has relied upon *Leal* in a majority opinion, none has been for the proposition discussed above concerning the qualifications of interpreters for purposes of adducing evidence at trial. *See Hacker v. State,* 389 S.W.3d 860, 871 n. 39 (Tex.Crim.App.2013) (citing *Leal* in support of proposition that "motive alone is not sufficient to corroborate the testimony of an accomplice"); *Ex parte Goodbread,* 967 S.W.2d 859, 864 (Tex.Crim.App.1998) (quoting *Leal* for proposition that an indictment "may not charge more than one offense"); *Colella v. State,* 915 S.W.2d 834, 856 (Tex.Crim.App.1995) (citing *Leal* for proposition: "Evidence of motive alone is never sufficient to corroborate the testimony of an accomplice witness.").

5 *See Linton v. State,* 275 S.W.3d 493, 500 (Tex.Crim.App.2009) ("The federal constitution 'requires that a defendant sufficiently understand the proceedings against him to be able to assist in his own defense.' " (quoting *Ferrell v. Estelle,* 568 F.2d 1128, 1132 (5th Cir.1978), *withdrawn on appellant's death,* 573 F.2d 867)); *Garcia v. State,* 149 S.W.3d 135, 140 (Tex.Crim.App.2004) ("The right to be present includes the right to understand the testimony of the witnesses.").

6 Similarly, section 21.023 of the Civil Practice and Remedies Code allows a person "well versed in and competent to speak the Spanish and English languages" to serve as a "court interpreter" in certain counties, including Harris County. TEX. CIV. PRAC. & REM.CODE § 21.023 (West 2008); *see also id.* § 21.021(4).

AN ACT

relating to requiring the Texas Supreme Court to adopt rules and provide judicial instruction regarding the application of foreign laws in certain family law cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) litigants in actions under the Family Code involving a marriage relationship or a parent-child relationship are protected against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards by courts of this state by a well-established body of law, described by Tex. Att'y Gen. Op. No. KP-0094 (2016), which includes protections provided under:

(A) the United States Constitution and the Texas Constitution;

(B) federal law, treaties, and conventions to which the United States is a signatory;

(C) federal and state judicial precedent; and

(D) the Family Code and other laws of this state;

(2) the legislature has enacted statutes, including the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), that address comity regarding foreign judgments and arbitration awards;

(3) as recognized by courts and commentators, the UCCJEA does not define the aspects of a foreign law that violate fundamental principles of human rights or certain terminology used by that Act;

(4) the Family Code allows parties to a suit involving the marriage relationship or affecting the parent-child relationship to engage in arbitration and authorizes the court to render an order reflecting the arbitrator's award;

(5) the Family Code should not be applied to enforce a judgment or arbitrator's award affecting a marriage relationship or a parent-child relationship based on foreign law if the foreign law applied to render the judgment or award does not:

(A) grant constitutional rights guaranteed by the United States Constitution and the Texas Constitution;

(B) consider the best interest of the child;

(C) consider whether domestic violence or child abuse has occurred and is likely to continue in the future; or

(D) consider whether the foreign judgment or arbitrator's award affecting the parent-child relationship may place the child in substantial risk of harm; and

(6) the rules of procedure and evidence adopted by the Texas Supreme Court and judicial education required by the Texas Supreme Court can ensure the full implementation and uniform application by the courts of this state of the well-established body of law described by Subdivision (1) of this section in order to protect litigants in actions under the Family Code involving a marriage relationship or a parent-child relationship against violations of constitutional rights and public policy.

SECTION 2. Subchapter A, Chapter 22, Government Code, is amended by adding Sections 22.0041 and 22.022 to read as follows:

Sec. 22.0041. RULES REGARDING FOREIGN LAW AND FOREIGN JUDGMENTS IN CERTAIN FAMILY LAW ACTIONS. (a) In this section:

(1) "Comity" means the recognition by a court of one jurisdiction of the laws and judicial decisions of a court of another jurisdiction.

(2) "Foreign judgment" means a judgment of a court, tribunal, or administrative adjudicator of a jurisdiction outside of the states and territories of the United States.

(3) "Foreign law" means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

(b) The supreme court shall adopt rules of evidence and procedure to implement the limitations on the granting of comity to a foreign judgment or an arbitration award involving a marriage relationship or a parent-child relationship under the Family Code to protect against violations of constitutional rights and public policy.

(c) The rules adopted under Subsection (b) must:

(1) require that any party who intends to seek enforcement of a judgment or an arbitration award based on foreign

law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party, including by providing information required by Rule 203, Texas Rules of Evidence, and by describing the court's authority to enforce or decide to enforce the judgment or award;

(2) require that any party who intends to oppose the enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party and include with the notice an explanation of the party's basis for opposition, including by stating whether the party asserts that the judgment or award violates constitutional rights or public policy;

(3) require a hearing on the record, after notice to the parties, to determine whether the proposed enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship violates constitutional rights or public policy;

(4) to facilitate appellate review, require that a court state its findings of fact and conclusions of law in a written order determining whether to enforce a foreign judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship;

(5) require that a court's determination under Subdivision (3) or (4) be made promptly so that the action may proceed expeditiously; and

(6) provide that a court may issue any orders the court considers necessary to preserve principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards.

(d) In addition to the rules required under Subsection (b), the supreme court shall adopt any other rules the supreme court considers necessary or advisable to accomplish the purposes of this section.

(e) A rule adopted under this section does not apply to an action brought under the International Child Abduction Remedies Act (22 U.S.C. Section 9001 et seq.).

(f) In the event of a conflict between a rule adopted under this section and a federal or state law, the federal or state law prevails.

Sec. 22.022. JUDICIAL INSTRUCTION RELATED TO FOREIGN LAW AND FOREIGN JUDGMENTS. (a) The supreme court shall provide for a course of instruction that relates to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship for judges involved in those actions.

(b) The course of instruction must include information about:

(1) the limits on comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code; and

(2) the rules of evidence and procedure adopted under Section 22.0041.

(c) The supreme court shall adopt rules necessary to accomplish the purposes of this section.

SECTION 3. The Texas Supreme Court shall adopt rules as required by this Act as soon as practicable following the effective date of this Act, but not later than January 1, 2018.

SECTION 4. This Act takes effect September 1, 2017.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 45 was passed by the House on May 6, 2017, by the following vote: Yeas 135, Nays 8, 2 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 45 was passed by the Senate on May 22, 2017, by the following vote: Yeas 26, Nays 5.

_____
Secretary of the Senate

APPROVED: _____
Date

_____
Governor

BILL ANALYSIS

C.S.H.B. 45
By: Flynn
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert the need for clear procedures regarding how Texas courts should determine whether to afford comity to the laws of foreign nations and the judgments of foreign courts in actions under the Family Code involving the marriage relationship or the parent-child relationship to protect against violations of constitutional rights and public policy. C.S.H.B. 45 seeks to require the Supreme Court of Texas to provide such procedures.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 45 amends the Government Code to require the Supreme Court of Texas to adopt rules of evidence and procedure to implement limitations on the granting of comity to a foreign judgment or an arbitration award involving a marriage relationship or a parent-child relationship under the Family Code to protect against violations of constitutional rights and public policy and to set out requirements for such rules. The bill defines "foreign judgment," among other terms, as a judgment of a court, tribunal, or administrative adjudicator of a jurisdiction outside of the states and territories of the United States.

C.S.H.B. 45 requires the supreme court to adopt any other additional rules the supreme court considers necessary or advisable to accomplish the purposes of the bill's provisions. The bill establishes that a rule adopted under the bill does not apply to an action brought under the federal International Child Abduction Remedies Act and that, in the event of a conflict between a rule adopted under the bill and a federal or state law, the federal or state law prevails.

C.S.H.B. 45 requires the supreme court to provide for a course of instruction that relates to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship for judges involved in those actions. The bill requires the course instruction to include information about the limits on comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code, and information about the rules of evidence and procedure adopted under the bill's provisions. The bill requires the supreme court to adopt rules necessary to accomplish the purposes of these provisions.

C.S.H.B. 45 requires the supreme court to adopt rules as required by the bill not later than January 1, 2018.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 45 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows: CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States. The term does not include a law of a Native American tribe of a state or territory of the United States. Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution of this state. Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) A contract provision providing that a foreign law is to govern a dispute arising under the contract is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state. (b) A contract provision providing that the forum to resolve a dispute arising under the contract is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this	No equivalent provision.

state.
Sec. 148.004. LIMITATION ON FORUM NON CONVENIENS. If a resident of this state commences an action in this state, a court may not grant a motion for forum non conveniens if the foreign law that would be applied to the dispute in the forum to which the moving party seeks to have the action removed would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION 2. (a) Section 148.002, Civil Practice and Remedies Code, as added by this Act, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.
(b) Section 148.003, Civil Practice and Remedies Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.
(c) Section 148.004, Civil Practice and Remedies Code, as added by this Act, applies only to a motion for forum non conveniens made on or after the effective date of this Act. A motion for forum non conveniens made before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

SECTION 1. The legislature finds that:
(1) litigants in actions under the Family Code involving a marriage relationship or a parent-child relationship are protected against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards by courts of this state by a well-established body of law, described by Tex. Att'y Gen. Op. No. KP-0094 (2016), which includes protections provided under:
(A) the United States Constitution and the Texas Constitution;

(B) federal law, treaties, and conventions to which the United States is a signatory;
(C) federal and state judicial precedent; and
(D) the Family Code and other laws of this state;
(2) the legislature has enacted statutes, including the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), that address comity regarding foreign judgments and arbitration awards;
(3) as recognized by courts and commentators, the UCCJEA does not define the aspects of a foreign law that violate fundamental principles of human rights or certain terminology used by that Act;
(4) the Family Code allows parties to a suit involving the marriage relationship or affecting the parent-child relationship to engage in arbitration and authorizes the court to render an order reflecting the arbitrator's award;
(5) the Family Code should not be applied to enforce a judgment or arbitrator's award affecting a marriage relationship or a parent-child relationship based on foreign law if the foreign law applied to render the judgment or award does not:
(A) grant constitutional rights guaranteed by the United States Constitution and the Texas Constitution;
(B) consider the best interest of the child;
(C) consider whether domestic violence or child abuse has occurred and is likely to continue in the future; or
(D) consider whether the foreign judgment or arbitrator's award affecting the parent-child relationship may place the child in substantial risk of harm; and
(6) the rules of procedure and evidence adopted by the Texas Supreme Court and judicial education required by the Texas Supreme Court can ensure the full implementation and uniform application by the courts of this state of the well-established body of law described by Subdivision (1) of this section in order to protect litigants in actions under the Family Code involving a marriage relationship or a parent-child relationship against violations of constitutional rights and public policy.

No equivalent provision.

SECTION 2. Subchapter A, Chapter 22, Government Code, is amended by adding Sections 22.0041 and 22.022 to read as follows:

Sec. 22.0041. RULES REGARDING FOREIGN LAW AND FOREIGN JUDGMENTS IN CERTAIN FAMILY LAW ACTIONS. (a) In this section:

(1) "Comity" means the recognition by a court of one jurisdiction of the laws and judicial decisions of a court of another jurisdiction.

(2) "Foreign judgment" means a judgment of a court, tribunal, or administrative adjudicator of a jurisdiction outside of the states and territories of the United States.

(3) "Foreign law" means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

(b) The supreme court shall adopt rules of evidence and procedure to implement the limitations on the granting of comity to a foreign judgment or an arbitration award involving a marriage relationship or a parent-child relationship under the Family Code to protect against violations of constitutional rights and public policy.

(c) The rules adopted under Subsection (b) must:

(1) require that any party who intends to seek enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party, including by providing information required by Rule 203, Texas Rules of Evidence, and by describing the court's authority to enforce or decide to enforce the judgment or award;

(2) require that any party who intends to oppose the enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party and include with the notice an explanation of the party's basis for opposition, including by stating whether the party asserts that the judgment or award violates constitutional rights or public policy;

(3) require a hearing on the record, after notice to the parties, to determine whether the proposed enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship violates constitutional rights or public policy;

(4) to facilitate appellate review, require that a court state its findings of fact and

conclusions of law in a written order determining whether to enforce a foreign judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship;

(5) require that a court's determination under Subdivision (3) or (4) be made promptly so that the action may proceed expeditiously; and

(6) provide that a court may issue any orders the court considers necessary to preserve principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards.

(d) In addition to the rules required under Subsection (b), the supreme court shall adopt any other rules the supreme court considers necessary or advisable to accomplish the purposes of this section.

(e) A rule adopted under this section does not apply to an action brought under the International Child Abduction Remedies Act (22 U.S.C. Section 9001 et seq.).

(f) In the event of a conflict between a rule adopted under this section and a federal or state law, the federal or state law prevails.

Sec. 22.022. JUDICIAL INSTRUCTION RELATED TO FOREIGN LAW AND FOREIGN JUDGMENTS. (a) The supreme court shall provide for a course of instruction that relates to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship for judges involved in those actions.

(b) The course of instruction must include information about:

(1) the limits on comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code; and

(2) the rules of evidence and procedure adopted under Section 22.0041.

(c) The supreme court shall adopt rules necessary to accomplish the purposes of this section.

No equivalent provision.	SECTION 3. The Texas Supreme Court shall adopt rules as required by this Act as soon as practicable following the effective date of this Act, but not later than January 1, 2018.
SECTION 3. This Act takes effect September 1, 2017.	SECTION 4. Same as introduced version.

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2016

The Honorable Dan Flynn
Chair, Committee on Pensions
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0094

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

Dear Representative Flynn:

You ask a number of questions concerning "the extent to which current law authorizes or requires a judge of a state court to refuse to apply foreign law in certain family law disputes."[1] You explain that by "foreign law," you mean "the law of a country other than the United States," and by "family law dispute," you mean "a legal dispute regarding a marital relationship or a parent-child relationship." Request Letter at 1. While you propose nineteen different factual scenarios, they each involve the application of foreign law that violates a party's right to due process or the public policy of this State. *Id.* at 1–3. As the Texas Supreme Court has explained, "[t]he basic rule is that a court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Larchmont Farms, Inc. v. Parra*, 941 S.W.2d 93, 95 (Tex. 1997). Mere differences between Texas law and foreign law do not necessarily render the foreign law unenforceable, but if a foreign law "violates good morals, natural justice, or is prejudicial to the general interests of our own citizens," a court may refuse to enforce it. *Robertson v. Estate of McKnight*, 609 S.W.2d 534, 537 (Tex. 1980). Furthermore, the United States Supreme Court has explained that "due process requires that no other jurisdiction shall give effect . . . to a judgment elsewhere acquired without due process." *Griffin v. Griffin*, 327 U.S. 220, 228 (1946). It is with these principles in mind that we address your specific questions.

You first ask whether a judge may refuse to enforce a judgment of another country that is based on the application of foreign law that violated a party's due process rights or was contrary to the public policy of this State. Request Letter at 1. "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction." *Griffin*, 327 U.S. at 228. Texas courts have long held "the chief requisite for the recognition of a foreign judgment necessarily is that an opportunity for a full and fair trial was afforded." *Banco Minero v. Ross*, 172 S.W. 711, 714–15 (Tex. 1915) (declining to recognize a judgment by a Mexican court after finding that it was entered without a full and fair trial before an

[1]Letter from Honorable Dan Flynn, Chair, House Comm. on Pensions, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Dec. 17, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

impartial tribunal). Thus, if a judgment was obtained in a foreign jurisdiction in violation of a party's due process rights, a state court judge may refuse to enforce the judgment. Similarly, Texas courts will consider whether a judgment obtained in a foreign country was based on foreign law contrary to this State's public policy, and, if so, the courts may refuse to enforce the judgment. *See Ashfaq v. Ashfaq*, 467 S.W.3d 539, 543–44 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (considering whether Pakistani divorce law violated Texas public policy).

You next ask whether a judge may refuse to enforce a decision of an agreed-upon arbitrator if the arbitrator's application of foreign law or the application of principles of a particular faith resulted in an arbitration decision violating a party's due process rights or was contrary to the public policy of this State. Request Letter at 2. "Parties in an arbitration proceeding have due process rights to notice and a meaningful opportunity to be heard." *Ewing v. Act Catastrophe-Tex. L.C.*, 375 S.W.3d 545, 551 (Tex. App.—Houston [14th Dist.] 2012, pet. denied); *see* TEX. CIV. PRAC. & REM. CODE § 171.044(a) (requiring notice of arbitration). To the extent that an arbitration award is obtained in violation of these due process rights, a judge is authorized to refuse enforcement of the award. Furthermore, a Texas court "may refuse to enforce an arbitration award that is contrary to public policy." *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 413 (Tex. App.—Dallas 2007, no pet.).

In your third question, you ask whether a judge may refuse to apply foreign law that would otherwise apply under the principles of conflict of laws if applying such law would violate due process or the public policy of this State. Request Letter at 2. Traditional conflict-of-law principles prescribe that issues that are strictly procedural in nature are governed by the laws of the forum state. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 122 (AM. LAW INST. 1971); *Arkoma Basin Expl. Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 387 n.17 (Tex. 2008). Thus, a court of this State would apply Texas procedural law, not the procedures of a foreign law, to determine the substantive rights of the parties. With regard to the public policy concerns you raise, "[i]f the law of the foreign jurisdiction with the most significant contacts is against good morals or natural justice, or is prejudicial to the general interests of our citizens, Texas courts should refuse to enforce said law." *Vanderbilt Mortg. & Fin., Inc. v. Posey*, 146 S.W.3d 302, 316 (Tex. App.—Texarkana 2004, no pet.) (internal quotation marks omitted).

In your fourth question, you ask whether a judge may refuse to enforce a contract provision that provides for foreign law to govern the dispute if applying the law would violate a party's right to due process or the public policy of this State. Request Letter at 2. As with the choice-of-law principles discussed above, although a contract may provide for foreign law to govern the rights of parties to a dispute, a court of this State will apply Texas law to matters of procedure. *Man Indus. (India), Ltd. v. Midcontinent Express Pipeline, L.L.C.*, 407 S.W.3d 342, 352 (Tex. App.—Houston [14th Dist.] 2013, pet. denied). With regard to foreign law that violates the public policy of this State, the United States Supreme Court has explained that a state is not required to "lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, . . . or, in other words, violate the public policy of the state where the enforcement of the foreign contract is sought." *Griffin v. McCoach*, 313 U.S. 498, 506 (1941); *see also United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987) ("a court may refuse to enforce contracts that violate . . . public policy"). Thus, a court may refuse to enforce

a contract provision that requires the application of foreign law to a dispute if doing so would violate the public policy of this State.

In your fifth question, you ask whether a judge may refuse to enforce a contractual forum-selection provision providing that a dispute will be resolved by a court outside of the United States if doing so would violate the party's right to due process or the public policy of this State. Request Letter at 2. Enforcement of forum-selection clauses is generally mandatory; however, a court has authority to refuse to enforce the clause upon a showing that "enforcement would be unreasonable or unjust" or because "enforcement would contravene a strong public policy of the forum where the suit was brought." *In re AutoNation, Inc.*, 228 S.W.3d 663, 668 n.15 (Tex. 2007); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 559 (Tex. 2004). Thus, if the enforcement of a forum-selection clause would violate the party's right to due process or the public policy of this State, a court may refuse to enforce it.

You next ask, based on the principle of forum non conveniens, whether a judge may exercise jurisdiction over a case, despite a more convenient alternative forum, if the foreign forum would apply foreign law that would violate a party's right to due process or the public policy of this State. Request Letter at 2. A court generally has authority to dismiss a suit on grounds of forum non conveniens because a court outside Texas has jurisdiction over the suit and is a more appropriate forum. *A.P. Keller Dev., Inc. v. One Jackson Place, Ltd.*, 890 S.W.2d 502, 505 (Tex. App.—El Paso 1994, no writ). "[T]rial courts possess broad discretion in deciding whether to dismiss a case on forum-non-conveniens grounds." *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 676 (Tex. 2007). The United States Supreme Court has articulated, and the Texas Supreme Court has adopted, a number of factors that courts should consider in deciding a forum-non-conveniens motion. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508–09 (1947); *In re Smith Barney, Inc.*, 975 S.W.2d 593, 596 (Tex. 1998) ("We embraced *Gulf Oil's* analysis long ago."). Among the factors to be considered are whether an adequate alternative forum would have jurisdiction over the case and whether certain private interests of the litigants would weigh in favor of the alternative forum. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 677–79. In determining whether an adequate alternative forum exists, courts should consider whether the parties will be "deprived of all remedies or treated unfairly." *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 671 (5th Cir. 2003). And in determining whether the private interests of the litigants weigh in favor of an alternative forum, a court should consider, among other private-interest factors, any "obstacles to [a] fair trial" in the alternative forum. *Flaiz v. Moore*, 359 S.W.2d 872, 874 (Tex. 1962). Thus, if an alternative forum to Texas would apply law that would violate a party's right to due process or the public policy of this State, such factors could provide grounds for a judge to deny a motion to dismiss for forum non conveniens.

In your seventh question, you ask whether a judge abuses his or her discretion if a judge allows the application of a foreign law in the scenarios previously described and doing so violates a party's right to due process or the public policy of this State. Request Letter at 3. A court's decision regarding whether a contract, arbitration award, foreign judgment, or application of foreign law violates public policy is a question of law that is reviewed de novo by a reviewing court. *See Sanchez v. Palau*, 317 S.W.3d 780, 785 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (court's ruling on recognition of a foreign country judgment is reviewed de novo); *Xtria, L.L.C. v. Int'l Ins. All., Inc.*, 286 S.W.3d 583, 591 (Tex. App.—Texarkana 2009, pet. denied)

(judgment confirming an arbitration award is reviewed de novo); *Johnson v. Structured Asset Servs., L.L.C.*, 148 S.W.3d 711, 726 (Tex. App.—Dallas 2004, no pet.) (whether a contract violates public policy is a question of law, which is reviewed de novo). Thus, as a matter of law, a court is without discretion to apply foreign law in a circumstance where doing so violates a party's right to due process or the clearly established public policy of this State. A trial court's forum-non-conveniens ruling is subject to review for clear abuse of discretion. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 676. Whether a court abuses its discretion in ruling on any given forum-non-conveniens motion will depend on a weighing of all the factors and the relevant facts of the particular case. *See id.* at 679 (considering all the factors articulated in *Gulf Oil* and concluding that the denial of a forum-non-conveniens motion was a clear abuse of discretion).

In your eighth question, you ask whether a judge may refuse to enforce a provision of a contract that is entered into voluntarily that provides for any of the following:

- An arranged marriage
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows child labor in dangerous conditions
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that lacks laws against child abuse
- Granting custody of a female child to a conservator who would remove the child to a foreign jurisdiction that allows the practice of female genital mutilation
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows a person to be subjected to any form of slavery
- Providing for a consequence or penalty for breach of the contract that violates the public policy of this State, such as the infliction of bodily harm

Request Letter at 3. Parties do not have a right to enter into contracts that violate the strong public policy of this State. *See Fairfield Ins. Co. v. Stephens Martin Paving, L.P.*, 246 S.W.3d 653, 664 (Tex. 2008). A state's public policy is embodied in its constitution, statutes, and the decisions of its courts. *See Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 250 (Tex. 2002); *Churchill Forge, Inc. v. Brown*, 61 S.W.3d 368, 373 (Tex. 2001). With regard to family law disputes, the Legislature has clearly articulated that it is the public policy of this State to:

> (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

> (2) provide a safe, stable, and nonviolent environment for the child; and
>
> (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

TEX. FAM. CODE § 153.001(a). To the extent that any contract term, including those specific terms that you raise, violates the public policy of this State, a court may refuse to enforce it. *See City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702, 710 (Tex. App.—Fort Worth 2014, pet. denied) (voiding a contract after finding that "it contravenes the legislature's public policy"); *see also Southwestern Bell Tel. Co. v. Gravitt*, 551 S.W.2d 421, 427 (Tex. App.—San Antonio 1976, writ ref'd n.r.e.) ("[A] general restraint on marriage is unenforceable whether the restraint results from a promise not to marry or from enforcement of a condition providing for forfeiture of rights in case of marriage.").

In your ninth question, you ask whether a judge may refuse to enforce an adoption order entered by a foreign court or tribunal if the order would result in a violation of fundamental rights, Texas law, or the public policy of this State. Request Letter at 3. Section 162.023 of the Family Code provides:

> Except as otherwise provided by law, an adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of this state and enforced as if the order were rendered by a court in this state *unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state.*

TEX. FAM. CODE § 162.023(a) (emphasis added). Under the plain language of the Legislature's exception in subsection 162.023(a), a court may refrain from enforcing an adoption order if doing so would violate the fundamental rights or the laws or public policy of this State.

In your tenth question, you ask whether a judge may refuse to enforce a premarital agreement or property partition agreement if the agreement is unconscionable. Request Letter at 3. "Unconscionable contracts . . . are unenforceable under Texas law." *In re Poly-Am., L.P.*, 262 S.W.3d 337, 348 (Tex. 2008); TEX. BUS. & COM. CODE § 2.302(a). Provisions in the Family Code provide specifically with regard to premarital and partition agreements that such agreements are not enforceable if the party against whom enforcement is requested proves, among other requirements, that the agreement was unconscionable when it was signed. *See* TEX. FAM. CODE §§ 4.006(a)(2), .105(a)(2). Whether any specific agreement is unconscionable must be determined by a court after analyzing the relevant facts. *See Ski River Dev., Inc. v. McCalla*, 167 S.W.3d 121, 136 (Tex. App.—San Antonio 2005, pet. denied) (explaining the factors to be examined in determining whether a contract is unconscionable).

You also ask whether a judge may refuse to enforce a premarital agreement if the agreement violates the public policy of this State or a statute that imposes a criminal penalty. Request Letter at 3. Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters "not in violation of public policy or a statute imposing a criminal penalty." TEX. FAM. CODE § 4.003(a)(8). "[P]arties have the right to contract as they see fit as long as their agreement does not violate the law or public policy"; however, courts may refuse to enforce a contract, or a provision in a contract, on the ground that it is against public policy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 & n.11 (Tex. 2004); *Security Serv. Fed. Credit Union v. Sanders*, 264 S.W.3d 292, 297 (Tex. App.—San Antonio 2008, no pet.). Furthermore, a contract that cannot be performed without violating the law contravenes public policy and is void. *Lewis v. Davis*, 199 S.W.2d 146, 148–49 (Tex. 1947); *Merry Homes, Inc. v. Chi Hung Luu*, 312 S.W.3d 938, 945 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

In your final question, you ask to what extent chapter 36 of the Civil Practice and Remedies Code authorizes "a judge to refuse to enforce a judgment of a foreign court regarding a family law dispute where the judgment grants or denies payment of a sum of money to one of the parties." Request Letter at 3. Chapter 36 is the "Uniform Foreign Country Money-Judgment Recognition Act," and it authorizes a court to "refuse recognition of the foreign court judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005." TEX. CIV. PRAC. & REM. CODE §§ 36.003, .0044(g). Relevant to your request, "foreign country judgment" is defined for purposes of chapter 36 to mean "a judgment of a foreign country granting or denying a sum of money," but it expressly excludes a judgment for "support in a matrimonial or family matter." *Id.* § 36.001(2)(B). Thus, chapter 36 will have limited applicability to family law disputes. To the extent that it applies, however, a court need not recognize a foreign-country money judgment if, among other grounds, "the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend" or if "the cause of action on which the judgment is based is repugnant to the public policy of this state." *Id.* § 36.005(b)(1), (3).

SUMMARY

Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

Very truly yours,

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Rev. 10.2.17

Rule 308b. Determining the Enforceability of Judgments or Arbitration Awards Based on Foreign Law in Certain Suits Under the Family Code

(a) Applicability. Except as provided by Subsection (b), this rule applies to the enforcement of a judgment or arbitration award based on foreign law in a suit brought under the Family Code involving a marriage relationship or a parent-child relationship.

(b) Exceptions.

(1) This rule does not apply to an action brought under the Hague Convention on International Child Abduction, including the International Child Abduction Remedies Act (22 U.S.C. §§ 9001 et seq.).
(2) In the event of a conflict between this Rule and any federal or state law, the federal or state law will prevail.
(3) Rules 203(a) and (b), Texas Rules of Evidence, do not apply to an action to which this rule applies.

(c) Notice. A party who intends to seek enforcement of a judgment or arbitration award to which this rule applies must:
(1) provide written notice to the court and to each other party in the party's original pleading; and
(2) ~~state~~ describe the basis for the court's authority to enforce or decide to enforce the judgment or arbitration award.

(d) Objections. A party who intends to oppose the enforcement of a judgment or arbitration award to which this rule applies must:
(1) provide written notice to the court and to each other party of the party's objection within 30 days of receiving the notice required by Subsection (c); and
(2) ~~state~~ explain the basis for the party's opposition and whether the judgment or arbitration award violates constitutional rights or public policy.

(e) Translations.

(1) Except as provided by Subsections (2) and (3), a translation from a language other than English of a judgment or arbitration award to which this rule applies, and of any materials, documents or sources on which a party intends to rely that are not written in English, is subject to Rule 1009, Texas Rules of Evidence.

Commented [BB1]: I am concerned about this subsection because it allows a party to give no advance notice of foreign law materials or sources that are originally written or have subsequently been published in English. I also think this is contrary to the statute, which says the party must provide information required by Rule 203. If we just want to alter Rule 203's time limits, we should be clear about that. In addition, I find it confusing that we only reveal later that parts (c) and (d) of Rule 203 do apply. Suggest we deal with Rule 203 in one place.

Commented [BB2]: Let's use the statute's word.

Commented [BB3]: Statute's word

(2) A translation described by Rule 1009(a), Texas Rules of Evidence, that is offered by a party seeking to enforce a judgment or arbitration award to which this rule applies must be served upon each other party no later than 60 days after the party's original petition is filed.
(3) If a party contests the accuracy of another party's translation of a foreign language document, the party must serve an objection and a conflicting translation on each opposing party no later than 30 days after the party receives a translation described by Subsection (2).

~~(f) Adjustment of Time Limits.~~(4) On a party's motion and for good cause, the court may alter the time limits for submitting and objecting to translations.

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Commented [BB4]: Because this just relates to translations, I think it should be part (4) under (e).

(~~g~~f) ~~Determination~~ Hearing.

(1) The court must, after timely notice to the parties, conduct a hearing on the record at least 30 days before trial to determine whether the judgment or arbitration award based on foreign law may be enforced.
(2) The court's determination is subject to Rules 203(c) and (d), Texas Rules of Evidence.

Commented [BB5]: See comment above.

(3) The court must make the determination required by Subsection (1) no more than 10 days after the hearing.

(~~h~~g) ~~Written~~ Order. ~~After~~ Within 15 days of the ~~determination~~ hearing required by Subsection (~~g~~f), the court must issue a written order regarding its determination. The ~~written~~ order must ~~enumerate~~ include findings of fact and conclusions of law. The court may issue any orders necessary to preserve the principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy. ~~The written order must be signed no later than 15 days after the hearing.~~

(~~i~~h) Hearings on Temporary Orders. Notwithstanding any other provision of this rule, the court may set filing deadlines and conduct the ~~determination~~ hearing to accommodate the circumstances of the case in connection with issuing temporary orders. The deadline for making a determination and signing a written order may not be altered absent urgent circumstances.

(~~j~~i) Definitions. As used in this Rule ----

(1) "Comity" means the recognition by a court of one jurisdiction of the laws and judicial decisions of another jurisdiction.

(2) "Foreign law" means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

Addition to Rule 203, Texas Rules of Evidence

Rule 203. Determining Foreign Law

(e) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship.
(1) Subsections (a) and (b) of this rule do not apply to an action in which a party seeks a determination of foreign law and to which Rule 308b, Texas Rules of Civil Procedure, applies.
~~(2) This rule does not apply to an action brought under the Hague Convention on International Child Abduction, including the International Child Abduction Remedies Act (22 U.S.C. §§ 9001 et seq.).~~

Commented [BB6]: The statute says a rule adopted under it is not applicable to ICARA actions. That does not describe either existing Rules 203 or 1009.

Addition to Rule 1009, Texas Rules of Evidence

Rule 1009. Translating a Foreign Language Document

(h) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship.
(1) Except as provided by Rule 308B, Texas Rules of Civil Procedure, this rule applies to a submitted translation of a foreign language document in a suit brought under the Family Code involving a marriage relationship or parent-child relationship.
~~(2) This rule does not apply to an action brought under the Hague Convention on International Child Abduction, including the International Child Abduction Remedies Act (22 U.S.C. §§ 9001 et seq.).~~

Supplemental Report on Proposed Texas Supreme Court Policies on Assistance to Court Patrons by Clerks and by Court Personnel
Submitted by the Texas Access to Justice Commission

November 27, 2017

Background

The Texas Access to Justice Commission ("Commission") submitted two policies to the Texas Supreme Court to that deal with assistance to court patrons by court clerks and by court personnel ("Policies") on November 1, 2016. The Policies were referred to the Judicial Administration subcommittee ("Subcommittee"). On July 6, 2017, the Commission submitted a detailed report on the Policies, outlining the need for the policies and process involved in developing them. The Supreme Court Advisory Committee ("SCAC") discussed the Policies during the August 11, 2017 meeting and asked the Subcommittee to review the Policies further. Questions about the unauthorized practice of law ("UPL") arose during a Subcommittee meeting, and the Commission volunteered to review the policies through an UPL lens. This supplemental report contains much of the same information in the initial report and includes a discussion of potential UPL concerns.

Supreme Court Policies

The Commission proposed two polices to address interaction between court patrons and court clerks/court personnel that differ only in audience: the Texas Supreme Court Policies on Assistance to Court Patrons by Court Personnel is directed towards to court personnel subject to a judge or judicial administrator's direction and control, such as court staff, bailiffs, law librarians and staff, and court volunteers, while the Texas Supreme Court Policies on Assistance to Court Patrons by District and County Clerks focuses exclusively on court clerks. Based on feedback from a few clerks and because many clerks are elected officials, we felt that that clerks would respond more positively to a policy directed solely to them.

The Policies are exactly the same. For discussion purposes, we will only be referencing the Policy for court personnel in this supplemental report. The original version of that Policy is attached in Exhibit 1.[1] The current version of the Policy, which was revised due to UPL concerns and after discussion with the Subcommittee members, can be found in Exhibit 2.[2]

When drafting the original proposals, the Commission reviewed policies governing interaction between court patrons and court that exist in state Codes of Ethics promulgated by judicial councils (California), by circuit court administrative order (Florida), for municipal court clerks (Georgia), through Supreme Court

[1] Original version of court policies on the treatment of court patrons.
[2] Current version of court policies on the treatment of court patrons.

Order (Colorado, Illinois, North Carolina), in model codes of conduct for court/judicial employees (Michigan, Nevada, North Dakota, Ohio), and in Codes of Judicial Conduct (Maine).[3]

The Illinois Supreme Court Policy on Assistance to Court Patrons by Circuit Clerks, Court Staff, Law Librarians, and Court Volunteers[4] served as the template for our proposed policies. We maintained many of the permitted and prohibited assistance but augmented it with more precise definitions and eliminated redundancies. For explanation only, we included footnotes showing which other states have similar items permitted or prohibited in their policies, guidelines, or codes of conduct.

The crux of both the proposed Policies on Assistance to Court Patrons is the definition of "legal information" found in Section (b)(3):

> "Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

This definition briefly outlines the permissible information a clerk or other court personnel can convey to any court patron. It highlights that legal information is neutral and does not require analysis of a patron's facts and circumstances. For concrete examples of the definition, section (c) of the policy delineates permitted assistance that are examples of providing legal information. The list is intended to be illustrative and permissive rather than requirements. To provide further clarity, section (d) lists prohibited forms of assistance. This section contains examples of legal advice that clerks and court personnel should not give under any circumstances.

During the course of giving presentations throughout the state, it became clear that there were varying beliefs on whether such simple things as telling people where to file their pleadings was information or advice, let alone whether assisting someone in finding the appropriate pleading was information or advice. These are issues that are constantly discussed among court staff, law librarians, and clerks. Aside from basic things, such as the provision of signage and giving directions within the courthouse building, there is no true consensus on any one issue. Knowing that specificity would cut through the debate and uncertainty, the Commission decided it would be best to provide a longer list of specific examples of what constituted legal information versus legal advice instead of a shorter list of general examples.

Unauthorized Practice of Law

After the submission of the original proposed Policies, the Commission took a closer look at places where they may appear to cross the line into the unauthorized practice of law. The relevant statute discussing the UPL is Section 81.101 of the Texas Government Code.[5] This section is concerned with preparation of documents, managing legal actions, giving advice, and rendering service that requires legal skills or knowledge, and states:

> (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the

[3] *See* Exhibit 3 for excerpts of relevant provisions
[4] *See* Exhibit 4
[5] *See* Exhibit 5

giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

Application of Statute to Policies

The Policies permit providing information, encouraging patrons to get advice from a lawyer, offering educational classes, recording information verbatim, reviewing for completeness, assisting self-guided research, and several areas around forms: assisting in identifying, providing, explaining information needed, and informing patrons no form exists.

Most of the items delineated in section (c) of the Policies can be construed solely as providing legal information, which is not UPL. However, a closer look was given to five items that could be construed as UPL. The current version of the Policies were revised based on the recommendations below and further discussion with the Subcommittee members on the overall Policies.[6]

1. Assistance with Forms:
   Although Gov. Code §81.101(c) specifically allows the distribution and display of forms, the Court stated in *Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985)[7], that the act of determining whether a specific immigration form should be filed at all does require special legal skills. Three Policies discuss how court personnel can assist court patrons with forms:

   (6) Assisting court patrons in identifying and providing forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;
   (7) Explaining the nature of the information required to fill out the forms;
   (8) Informing court patrons if no approved form exists to accomplish the request and directing the court patron to other legal resources;

[6] *See* Exhibit 2
[7] *See* Exhibit 7

Due to *Cortez*, item 6 should be reworded. Assisting court patrons in identifying which forms are necessary could be UPL if there were multiple forms to choose from in a practice area – i.e. choosing a transfer on death deed vs. a will. We propose the following edit:

(6) ~~Assisting~~ Helping court patrons locate forms ~~in identifying and providing forms~~ and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;

Items 7 should be struck from the list of permitted actions. This does not provide a safe harbor for questioning court personnel to provide assistance and may lead to impermissible actions.

Item 8 should be struck as duplicative. Directing court patrons to forms is covered in subsection (c)(6) while directing court patrons to other resources is covered in subsection (c)(11).

2. Requiring the Use of Legal Skill or Knowledge:
Two items should be reviewed closely for "requiring the use of legal skill or knowledge." The items were initially numbered "10" and "11", but due to the proposed strikes above, will be renumbered to (8) and (9) in the comments below.

(10) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, and case number, and if incomplete, stating why the document or form is incomplete;
(11) Providing assistance to court patrons pursuing self-guided research;

Item 10 should be renumbered to item (8) and be reworded to preclude a reading that would allow/require clerks to review for legal sufficiency instead of ensuring a pleading met the requirements for filing. The Commission proposes the following edit:

(8) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, ~~and~~ case number, and other items necessary for filing, and if incomplete, stating why the document or form is incomplete;

Additionally, we added "(2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;" under prohibited assistance in subsection (d)(2).

Item 11, renumbered to (9), is essential for non-attorney personnel at law libraries and self-help centers, so the Commission proposes the following edit in order to clarify the permissible form of assistance:

(9) ~~Providing assistance to~~ Directing court patrons ~~pursuing~~ (who are conducting self-guided research) to resources;

PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY DISTRICT AND COUNTY CLERKS AND THEIR STAFF

(a) Purpose and Scope.

The purpose of this policy is to provide guidance to district and county clerks and personnel subject to their direction and control as to what services may and may not be offered to assist court patrons to achieve fair and efficient resolution of their cases.

Services permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied these services on the basis of being a self-represented litigant.

(b) Definitions.

(1) "Court patron" means any person, such as an attorney, self-represented litigant, or member of the public, who is accessing the judicial system.
(2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
(3) "Legal information" means neutral information about the law and the legal process. Legal information includes information regarding court procedures and records, forms, pleadings, practices, due dates and legal authority provided in statutes, cases, or rules. Legal information is different from legal advice, which involves giving guidance regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

(c) Permitted Services. Clerks and their staff may provide legal information to court patrons, including assisting them as follows:

(1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;[1]
(2) Informing court patrons of legal resources and referrals if available, including, but not limited to:[2]
    a. Pro bono legal services;

[1] Arizona, California, Colorado, Florida, Illinois, Nevada, North Carolina
[2] Arizona, California, Colorado, Illinois, Nevada, North Carolina

b. Low-cost legal services;
c. Limited scope legal services;
d. Legal aid programs and hotlines;
e. Law and public libraries;
f. Non-profit alternative dispute resolution services;
g. Lawyer referral services;
h. Internet-based resources;
i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
j. Units or departments of government; or
k. Domestic violence resources.

(3) Encouraging self-represented litigants to obtain legal advice from a lawyer;[3]

(4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;[4]

(5) Offering educational classes and informational materials;[5]

(6) Assisting court patrons in identifying and providing forms and related instructions based on the court patron's description of what he or she wants to request from the court. Clerks and their staff must provide forms for the waiver of filing fees or other forms as required by law;[6]

(7) Explaining the nature of the information required to fill out the forms;

(8) Informing court patrons if no approved form exists to accomplish the request and directing the court patron to other legal resources;

(9) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;[7]

(10) Reviewing documents and forms for completeness, such as checking for signature, notarization, correct county name, and case number, and if incomplete, stating why the document or form is incomplete;[8]

(11) Providing assistance to court patrons pursuing self-guided research;[9]

(12) Providing docket information, including but not limited to:[10]
a. Stating whether an order has been issued;
b. Explaining how to get a copy if one was not provided;

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[3] Colorado, Illinois, Nevada
[4] Illinois
[5] Colorado, Illinois, Nevada
[6] Arizona, Colorado, Illinois, Nevada, North Carolina
[7] Colorado, Illinois, Nevada, North Carolina
[8] Colorado, Illinois
[9] California, Illinois, North Carolina
[10] Arizona, Colorado, Illinois, Nevada, North Carolina

c. Reading the order to the individual if requested; or
d. Providing instructions about how to access such information.

(13) Informing court patrons of the process for requesting a foreign language or sign language interpreter;[11]

(14) Instructing a court patron on how to obtain access to a case file that has not been restricted by statute, rule or order, and provide access to such a file;[12]

(15) Providing the same services and information to all parties to an action, as requested;[13] or

(16) Providing other services consistent with the intent of this policy.[14]

(d) Prohibited Services. Clerks and their staff shall not:

(1) Recommend whether a case should be brought to court or comment on the merits of a pending case;[15]

(2) Give an opinion about what will happen if a case is brought to court;[16]

(3) Represent court patrons in court;[17]

(4) Provide legal analysis, strategy or advice to a court patron;[18]

(5) Disclose information in violation of the law;[19]

(6) Deny a self-represented litigant access to the court, the court docket, or any services provided to other court patrons;[20]

(7) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;[21]

(8) Refer a court patron to a specific lawyer or law firm, except for as provided by section (c)(2);[22] or

(9) Otherwise engage in the unauthorized practice of law.[23]

(e) Unauthorized Practice of Law and Privilege. Services provided in accordance with section (c) of this policy do not constitute the unauthorized practice of law and do not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

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[11] Colorado, Illinois
[12] Arizona, Colorado, Illinois
[13] Colorado, Illinois
[14] Colorado, Illinois
[15] Colorado, Illinois, North Carolina
[16] Colorado, Illinois, North Carolina
[17] Colorado, Illinois
[18] Illinois, Nevada, North Carolina
[19] Colorado, Illinois, Nevada
[20] Colorado, Illinois
[21] Colorado, Illinois
[22] Colorado, Florida, Illinois
[23] Illinois

PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY COURT STAFF, LAW LIBRARIANS, AND COURT VOLUNTEERS[1]

(a) Purpose and Scope.

Court personnel are encouraged to provide assistance and legal information to all court patrons. This policy is intended to provide guidance to court personnel subject to a judge or judicial administrator's direction and control, such as court staff, bailiffs, law librarians and staff, and court volunteers, as to what assistance may and may not be offered to court patrons to achieve fair and efficient resolution of their cases.

Assistance permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied assistance on the basis of being a self-represented litigant.

(b) Definitions.

(1) "Court patron" means any person, such as an attorney, self-represented litigant, or other member of the public, who is accessing the judicial system.
(2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
(3) "Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

(c) Permitted Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, may provide assistance and legal information to court patrons as follows:

(1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;
(2) Informing court patrons of legal resources and referrals if available, including, but not limited to:
    a. Pro bono legal services;
    b. Low-cost legal services;
    c. Limited scope legal services;

[1] Current as of 11/27/2017.

d. Legal aid programs and hotlines;
e. Law and public libraries;
f. Non-profit alternative dispute resolution services;
g. Lawyer referral services;
h. Internet-based resources;
i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
j. Units or departments of government; or
k. Domestic violence resources.

(3) Encouraging self-represented litigants to consult a lawyer;

(4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;

(5) Offering educational classes and informational materials;

(6) Helping court patrons locate court forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;

(7) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;

(8) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, case number, and other items necessary for filing, and if incomplete, stating why the document or form is incomplete;

(9) Directing court patrons (who are conducting self-guided research) to resources;

(10) Providing docket information, including but not limited to:
a. Stating whether an order has been issued;
b. Explaining how to get a copy if one was not provided;
c. Reading the order to the individual if requested; or
d. Providing instructions about how to access such information.

(11) Informing court patrons of the process for requesting a foreign language or sign language interpreter;

(12) Instructing a court patron on how to obtain access to a case file that has not been restricted by statute, rule or order, and provide access to such a file;

(13) Providing the same assistance and information to all parties to an action, as requested; or

(14) Providing other assistance consistent with the intent of this policy.

(d) Prohibited Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, shall not:

(1) Recommend whether a case should be brought to court or comment on the merits of a pending case;
(2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;
(3) Give an opinion about what will happen if a case is brought to court;
(4) Represent court patrons in court;
(5) Provide legal advice, analysis, or strategy to a court patron;
(6) Disclose information in violation of the law;
(7) Deny a self-represented litigant access to the court, the court docket, or any assistance provided to other court patrons;
(8) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;
(9) Refer a court patron to a specific lawyer or law firm, except as provided by section (c)(2); or
(10) Otherwise engage in the unauthorized practice of law.

(e) Unauthorized Practice of Law and Privilege. Assistance provided in accordance with section (c) of this policy does not constitute the unauthorized practice of law and does not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

(f) Code of Judicial Conduct. Assistance provided in accordance with section (c) of this policy does not violate the Code of Judicial Conduct.

Judicial Employee Interaction with Court Patrons
Selected Excerpts from Codes of Conduct/Ethics and Court Orders
Compiled 11/8/2017

Arizona Code of Conduct for Judicial Employees

RULE 2.6 Assistance to Litigants
A judicial employee shall assist litigants to access the courts by providing prompt and courteous customer service and accurate information consistent with the employee's responsibilities and knowledge and the court's resources and procedures while remaining neutral and impartial and avoiding the unauthorized practice of law. Employees are authorized to provide the following assistance:

(A) Explain how to accomplish various actions within the court system and provide information about court procedures, without recommending a particular course of action;
(B) Answer questions about court policies and procedures, without disclosing confidential or restricted information as provided in Rule 3.2;
(C) Explain legal terms, without providing legal interpretations by applying legal terms and concepts to specific facts;
(D) Provide forms and answer procedural questions about how to complete court papers and forms with factual information by the court customer, without recommending what words to put on the forms;
(E) Provide public case information, without providing confidential case information as provided in Rule 2.5;
(F) Provide information on various procedural options, without giving an opinion about what remedies to seek or which option is best;
(G) Cite statutes, court rules or ordinances a judicial employee knows in order to perform the employee's job, without performing legal research for court customers;
(H) When asked to recommend a legal professional such as an attorney, a legal document preparer, or process server, refer the customer to a resource like a directory or referral service, without recommending a specific legal professional; and
(I) Provide scheduling and other information about a case, without prejudicing another party in the case or providing information to or from a judge that is impermissible ex parte (one party) communication about a case.

Comment: For fuller explanation see the Guide to Court Customer Assistance: Legal Advice - Legal Information Guidelines for Arizona Court Personnel, Administrative Office of the Courts, Court Services Division, 2007 upon which this rule is based.

Code of Ethics for the Court Employees of California

Guideline for Tenet Seven PROHIBITION AGAINST GIVING LEGAL ADVICE
Given the experience and visibility of court employees, it is natural for those who deal with the court, including attorneys and litigants as well as the general public, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court employees can and should provide information that is within their own level of professional training and experience, so long as the information does not compromise the neutrality of the court or the court's appearance of neutrality. For example, court employees can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process and assist self-represented litigants in

court self-help centers. They should provide litigants with information about non-profit legal services agencies, certified lawyer referral service programs and court-based self-help assistance. They must not, however, cross the line separating court employees, whether licensed attorneys or not, from attorneys practicing law in the community. Court employees must not give any legal or procedural information that tends to favor one side of a case. Court employees should cite this tenet when pressed by those seeking legal advice.

Colorado

Chief Justice Directive 13-01 Concerning Colorado Courts' Self-Represented Litigant Assistance

Role of Self-Help Personnel

(a) Basic Services. Self-Help Personnel may provide the following services:

(1) Provide general information about court procedures and logistics, including requirements for service, filing, scheduling hearings and compliance with local procedure;

(2) Provide, either orally or in writing, information about court rules, terminology, procedures, and practices;

(3) Inform Self-Represented Litigants of available pro bono legal services, low cost legal services, unbundled legal services, legal aid programs, alternative dispute resolution services including mediation and services offered by the Office of Dispute Resolution, lawyer referral services, and legal resources provided by state and local libraries;

(4) Encourage Self-Represented Litigants to obtain legal advice without recommending a specific lawyer or law firm;

(5) Explain options within and outside the court system, including providing information about community resources and services;

(6) Provide information about domestic violence resources;

(7) Offer educational sessions and materials, as available, and provide information about classes, such as parenting education classes;

(8) Assist Self-Represented Litigants in selecting the correct forms, and instructions on how to complete forms, based on the Self-Represented Litigant's description of what he or she wants to pursue or request from the court, including, but not limited to, providing forms for the waiver of filing fees. Where no form exists to accomplish the Self-Represented Litigant's request, Self-Help Personnel should inform the litigant of that fact;

(9) Record information provided by the Self-Represented Litigant on approved forms if that person cannot complete the forms due to disability, language, or literacy barriers;

(10) Assist Self-Represented Litigants to understand what information is needed to complete filling in the blanks on approved forms; Chief Justice Directive 13-01 3

(11) Review finished forms to determine whether forms are complete, including checking for signatures, notarization, correct county name, and case number;

(12) Assist in calculating child support using the standardized computer-based program, based on financial information provided by the Self-Represented Litigant;

(13) Answer general questions about how the court process works;

(14) Answer questions about court timelines;

(15) Provide docket information;

(16) Provide information concerning how to get a hearing scheduled;

(17) Inform Self-Represented Litigants of the availability of interpreter and sign language assistance and process requests for such services;

(18) At the direction of the court, review Self-Represented Litigants' documents prior to hearings to determine whether procedural requirements have been met;

(19) Assist Self-Represented Litigants with preparation of proposed court orders based upon the parties' agreement or stipulation for signature of judge or magistrate;

(20) Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested;
(21) Provide a Self-Represented Litigant with access to information from a case file that has not been restricted by statute, rule or directive, including CJD 05-01;
(22) Provide assistance based on the assumption that the information provided by the Self-Represented Litigant is accurate and complete;
(23) Provide the same services and information to all parties to an action, as requested;
(24) Provide language and/or citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the situation;
(25) Provide other services consistent with the intent of this Chief Justice Directive and the direction of the court, including programs in partnership with other agencies and organizations.

(b) Prohibited Services. Self-Help Personnel shall not:
(1) Recommend whether a case should be brought to court; Chief Justice Directive 13-01 4
(2) Give an opinion about what will happen if a case is brought to court;
(3) Represent litigants in court;
(4) Tell a Self-Represented Litigant that Self-Help Personnel may provide legal advice;
(5) Provide legal analysis, strategy, or advice;
(6) Disclose information in violation of a court order, statute, rule, chief justice directive, or case law;
(7) Deny a Self-Represented Litigant access to the court;
(8) Tell the Self-Represented Litigant anything Self-Help Personnel would not repeat in the presence of the opposing party, or any other party to the case;
(9) Refer the Self-Represented Litigant to a specific lawyer or law firm for fee-based representation.

Florida

Eighth Judicial Circuit of Florida
Administrative Order No. 10.06

Section Two: Confidentiality
B) Court staff are not precluded from responding to inquiries concerning court procedures, but a court staff shall not within the course of their job description give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court staff designated for that purpose.

Section Five: Performance of Duties
F) No court employee shall give legal advice or recommend the names of private attorneys.

Prohibition against Giving Legal Advice
Given the experience and visibility of court staff, it is natural for those who deal with the court, including attorneys and litigants as well as the general public, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court staff can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process. They must not, however, cross the line separating court staff from a licensed legal practitioner by giving their opinion on the law or, worse, giving their opinion as the law unless given in the context of their job description. Court staff should cite this tenet when pressed by those seeking gratuitous legal advice.

Model Code of Conduct for Judicial Employees in the State of Nevada

1.7 Assisting Litigants
Nevada Supreme Court Rule 44 authorizes judicial employees to provide information to pro per litigants under certain circumstances. Judicial employees who are employed by a governmental entity and working within a governmental environment and who are not supervised by a licensed Nevada attorney are authorized to do the following:

A. Encourage persons to obtain legal advice from a licensed Nevada attorney outside of the qualifying public entity;
B. Provide information about available pro bono, free/low cost civil legal services, legal aid programs and lawyer referral services;
C. Provide information about available forms/pleadings/instructions without providing advice or recommendations as to any specific course of action;
D. Engage in oral communications to assist persons in the completion of blanks on forms;
E. Provide orally or in writing definitions of legal terminology from widely accepted legal dictionaries or other dictionaries without advising whether or not a particular definition is applicable to the situation of the requesting person;
F. Provide orally or in writing citations, constitutions, statutes, administrative/court rules, and case law without providing legal research as defined below or advising whether or not a particular provision is applicable to the situation of the requesting person;
G. Provide information on docketed cases;
H. Provide general information about court process, procedure and practice;
I. Provide information about mediation, parenting courses and/or courses for children of divorcing parents;
J. Provide orally or in writing information on local court rules and/or administrative orders; and
K. Provide general information about community resources.

No person or entity described in this rule and not licensed to practice law in Nevada or being supervised by a Nevada licensed attorney may do any of the following:

A. Provide orally or in writing any interpretation by application of the following to specific facts: legal terminology, constitution, statutes, or administrative/court rules or case law;
B. Provide orally or in writing information that must be kept confidential by statute, administrative/court rule or case law;
C. Create content on documents not provided by self-represented litigants;
D. Perform direct legal research for any litigant by applying the law to specific facts, expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative/court rules or case law to the particular circumstances of the requesting person; and
E. Lead persons to believe they are the legal representatives of anyone in any capacity or induce the public to rely on them for legal advice.

North Carolina

Order Adopting Guidelines for Court Staff Providing Legal Information to the Public

III. Authorized Information and Assistance: Court staff may do all of the following:

A. Provide public information contained in any of the following:
1. Dockets or Calendars
2. Case files
3. Indexes

B. Provide a copy of, or recite, any of the following:
   1. State and local court rules
   2. Court procedures
   3. Applicable fees and costs
C. Inform an individual where to find statutes and rules without advising whether a particular statute or rule is applicable.
D. Identify and provide applicable forms and written instructions without providing recommendations as to any specific course of action.
E. Answer questions about how to complete forms, such as where to write in particular types of information, but not questions about how the individual should phrase his or her responses on the forms.
F. Define terms commonly used in court processes.
G. Provide phone numbers for lawyer referral services, local attorney rosters, or other assistance services, such as the AOC website and other attorney association websites, known to the court staff.
H. Provide appropriate aids and services for individuals with disabilities to the extent required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

IV. Unauthorized Information and Assistance: Court staff may not do any of the following:

A. Provide legal advice or recommend a specific course of action for an individual.
B. Apply the law to the facts of a given case, or give directions regarding how an individual should respond or behave in any aspect of the legal process.
C. Recommend whether to file a complaint or other pleading.
D. Recommend phrasing for or specific content of pleadings.
E. Fill in a form, unless required by the Americans With Disabilities Act of 1990.
F. Recommend specific persons against whom to file complaints or other pleadings.
G. Recommend specific types of claims or arguments to assert in pleadings or at trial.
H. Recommend what types or amounts of damages to seek or the specific individuals from whom to seek damages.
I. Recommend specific questions to ask witnesses or parties.
J. Recommend specific techniques for presenting evidence in pleadings or at trial.
K. Recommend which objections to raise regarding an opponent's pleadings or motions at trial or when and how to raise them.
L. Recommend when or whether an individual should request or oppose a continuance.
M. Recommend when or whether an individual should settle a dispute.
N. Recommend whether an individual should appeal a judge's decision.
0. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
P. Perform legal research.
Q. Predict the outcome of a particular case, strategy, or action.

Illinois Supreme Court Policy

On Assistance to Court Patrons by Circuit Clerks, Court Staff, Law Librarians, and Court Volunteers

Effective April, 2015

ILLINOIS SUPREME COURT POLICY ON ASSISTANCE TO COURT PATRONS BY CIRCUIT CLERKS, COURT STAFF, LAW LIBRARIANS, AND COURT VOLUNTEERS

(a) Purpose and Scope.

The purpose of this policy is to provide guidance to circuit clerks, court staff, law librarians, and court volunteers acting in a non-lawyer capacity as to what services may and may not be offered to assist court patrons to achieve fair and efficient resolution of their cases.

No court patron should be denied services permitted under this policy on the basis of being a self-represented litigant. Services to court patrons should be provided in a nondiscriminatory manner to all applicants without regard to race, color, religious creed, ancestry, national origin, age, sex, disability, sexual orientation or any category prohibited by federal or Illinois law.

(b) Definitions.

(1) "Court patron" means any individual who seeks information to file, pursue or respond to a case on his or her own behalf or on the behalf of another.
(2) “Self-represented litigant” means any individual who seeks information to file, pursue or respond to a case on his or her own behalf where a licensed attorney has not filed an appearance on behalf of that individual.
(3) "Legal information" means general factual information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance regarding an individual’s legal rights and obligations in light of his or her particular facts and circumstances. Legal information is neutral.
(4) “Approved forms” mean standardized forms and related instructions that have been approved pursuant to Supreme Court Rule 10-101; forms included in the Illinois Supreme Court Rules; and local circuit court forms adopted to facilitate local case-processing procedures.

(c) Prohibited Services. Circuit clerks, court staff, law librarians, and court volunteers—acting in a non-lawyer capacity on behalf of the court—shall not:

(1) Recommend whether a case should be brought to court or comment on the merits of a pending case;
(2) Give an opinion about what will happen if a case is brought to court;
(3) Represent litigants in court;
(4) Provide legal analysis, strategy or advice to a court patron, or perform legal research other than assistance in self-guided legal research for any court patron;

(5) Disclose information in violation of a court order, statute, rule, case law or court directive;
(6) Deny a self-represented litigant access to the court or any services provided to other court patrons.
(7) Tell a litigant anything he or she would not repeat in the presence of any other party involved in the case;
(8) Refer a litigant to a specific lawyer or law firm for fee-based representation; or
(9) Otherwise engage in the unauthorized practice of law as prohibited by law.

(d) Permitted Services. To assist court patrons, circuit clerks, court staff, law librarians, and court volunteers—acting in a non-lawyer capacity on behalf of the court—may, as resources and expertise permit:

(1) Provide legal information about court rules, court terminology andcourt procedures, but not limited to providing information regarding; requirements for service, filing, scheduling hearings and compliance with local procedure;
(2) Inform court patrons of legal resources and referrals if available,, including but not limited to:
   a. Pro bono legal services;
   b. Low-cost legal services;
   c. Limited scope legal services;
   d. Legal aid programs and hotlines;
   e. Law and public libraries;
   f. Non-profit alternative dispute resolution services;
   g. Lawyer referral services;
   h. Internet-based resources;
   i. Court-sponsored or -affiliated educational classes, including, but not limited to, parenting education and traffic safety classes and alternative dispute resolution services;
   j. Units or departments of government; or
   k. Domestic violence resources.
(3) Encourage self-represented litigants to obtain legal advice from a lawyer;
(4) Provide information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations and other courthouse offices;
(5) Offer educational classes and informational materials;
(6) Assist court patrons in identifying approved forms and related instructions based on the court patron's description of what he or she wants to request from the court, including but not limited to, providing approved forms for the waiver of filing fees. When necessary, explain the nature of the information required to fill out the approved forms. Where no approved form exists to accomplish the court patron's request, inform the litigant of that fact and direct him or her to other legal resources;

(7) Record verbatim information provided by the self-represented litigant on approved forms if that person is unable to complete the forms due to disability or literacy barriers;
(8) Review finished forms to determine whether forms are complete, including checking for signature, notarization, correct county name and case number;
(9) Provide assistance to litigants pursuing self-guided research;
(10) Provide docket information, including but not limited to:
    a. Stating whether an order has been issued
    b. Explaining how to get a copy if one was not provided
    c. Reading the order to the individual if requested
    d. Providing instructions about how to access such information;
(11) Inform court patrons of the process for requesting a foreign language or sign language interpreter;
(12) At the direction of the court, review documents for completeness prior to hearing;
(13) Provide a court patron with access to a case file that has not been restricted by statute, rule or order, or instructions about how to obtain such access;
(14) Provide the same services and information to all parties to an action, as requested;
(15) Provide services based on the assumption that the information provided by the court patron is accurate and complete;
(16) Provide other services consistent with the intent of this policy.

(e) Unauthorized Practice of Law and Privilege.
Services provided in accordance with section (d) of this policy do not constitute the unauthorized practice of law. Information exchanged in accordance with section (d) of this policy is neither confidential nor privileged, except as otherwise protected by law. Services provided in accordance with section (d) of this policy do not create an attorney-client relationship. It should be communicated through the use of signage or a direct, in-person disclosure to court patrons that information and services provided in accordance with section (d) of this policy are not confidential, privileged or create an attorney-client relationship.

(f) Rules of Professional Conduct. Circuit clerks, court staff, law librarians, and court volunteers—who are licensed attorneys, licensed law student interns and other persons working under the supervision of an attorney—must abide by all applicable Rules of Professional Conduct when providing services and information in accordance with section (d) of this policy.

(g) Copy Fees. Court patrons may be required to pay a reasonable printing or reproduction fee for forms and instructions. However, the fee may be reduced or waived for persons who are otherwise eligible to sue or defend without cost pursuant to the Code of Civil Procedure.

TEXAS GOVERNEMENT CODE

SUBCHAPTER G. UNAUTHORIZED PRACTICE OF LAW

Sec. 81.101. DEFINITION. (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 799, Sec. 1, eff. June 18, 1999.

Sec. 81.1011. EXCEPTION FOR CERTAIN LEGAL ASSISTANCE. (a) Notwithstanding Section 81.101(a), the "practice of law" does

not include technical advice, consultation, and document completion assistance provided by an employee or volunteer of an area agency on aging affiliated with the Texas Department on Aging who meets the requirements of Subsection (b) if that advice, consultation, and assistance relates to:

(1) a medical power of attorney or other advance directive under Chapter 166, Health and Safety Code; or

(2) a designation of guardian before need arises under Section 679, Texas Probate Code.

(b) An employee or volunteer described by Subsection (a) must:

(1) provide benefits counseling through an area agency on aging system of access and assistance to agency clients;

(2) comply with rules adopted by the Texas Department on Aging regarding qualifications, training requirements, and other requirements for providing benefits counseling services, including legal assistance and legal awareness services;

(3) have received specific training in providing the technical advice, consultation, and assistance described by Subsection (a); and

(4) be certified by the Texas Department on Aging as having met the requirements of this subsection.

(c) The Texas Department on Aging by rule shall develop certification procedures by which the department certifies that an employee or volunteer described by Subsection (a) has met the requirements of Subsections (b)(1), (2), and (3).

Added by Acts 2001, 77th Leg., ch. 845, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.102. STATE BAR MEMBERSHIP REQUIRED. (a) Except as provided by Subsection (b), a person may not practice law in this state unless the person is a member of the state bar.

(b) The supreme court may promulgate rules prescribing the procedure for limited practice of law by:

(1) attorneys licensed in another jurisdiction;

(2) bona fide law students; and

(3) unlicensed graduate students who are attending or have attended a law school approved by the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.103. UNAUTHORIZED PRACTICE OF LAW COMMITTEE. (a) The unauthorized practice of law committee is composed of nine persons appointed by the supreme court.

(b) At least three of the committee members must be nonattorneys.

(c) Committee members serve for staggered terms of three years with three members' terms expiring each year.

(d) A committee member may be reappointed.

(e) Each year the supreme court shall designate a committee member to serve as chairperson.

(f) All necessary and actual expenses of the committee should be provided for and paid out of the budget of the state bar.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, Sec. 25, eff. Sept. 1, 1991.

Sec. 81.104. DUTIES OF UNAUTHORIZED PRACTICE OF LAW COMMITTEE. The unauthorized practice of law committee shall:

(1) keep the supreme court and the state bar informed with respect to:

(A) the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys in that unauthorized practice of law; and

(B) methods for the prevention of the unauthorized practice of law; and

(2) seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.105. LOCAL COMMITTEES. This chapter does not prohibit the establishment of local unauthorized practice of law committees to assist the unauthorized practice of law committee in carrying out its purposes.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.106. IMMUNITY. (a) The unauthorized practice of law committee, any member of the committee, or any person to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an act or omission in the course of the official duties of the committee.

(b) A complainant or a witness in a proceeding before the committee or before a person to whom the committee has delegated authority and who is assisting the committee has the same immunity that a complainant or witness has in a judicial proceeding.

Added by Acts 1991, 72nd Leg., ch. 795, Sec. 26, eff. Sept. 1, 1991.

LEXSEE 692 S.W.2d 47

UNAUTHORIZED PRACTICE COMMITTEE, STATE BAR OF TEXAS, Petitioner, v. EDDIE CORTEZ ET UX, INDIVIDUALLY AND d/b/a CORTEZ AGENCY, Respondents

No. C-3380

SUPREME COURT OF TEXAS

692 S.W.2d 47; 1985 Tex. LEXIS 922; 28 Tex. Sup. J. 407

May 8, 1985

SUBSEQUENT HISTORY:
[1]**

Rehearing Denied June 19, 1985.

PRIOR HISTORY:
From Dallas County, Fifth District.

JUDGES:
Spears.

OPINIONBY:
SPEARS

OPINION:

[*48] This is an injunction case in which the Unauthorized Practice of Law Committee (the Committee) of the State Bar of Texas seeks to enjoin Eddie and Rita Cortez (the Cortezes) from engaging in certain acts alleged to be the practice of law. The trial court rendered judgment n.o.v. for the Unauthorized Practice Committee and issued a permanent injunction against the Cortezes. The court of appeals reversed the trial court judgment and dissolved the temporary injunction. *674 S.W.2d 803*. We reverse the judgment of the court of appeals and affirm the trial court judgment.

Mr. and Mrs. Cortez are engaged in the business of providing immigration and bookkeeping services. Neither Mr. or Mrs. Cortez is a licensed attorney at law. Mrs. Cortez provides assistance to persons who are seeking to obtain immigration visas and permanent residency. The undisputed evidence at trial showed that the most common practice performed by Mrs. Cortez is the selection and completion of the I-130 form (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa) **[**2]** for customers, by interviewing them, and filling out the form according to the instructions provided by the Immigration and Naturalization Service. Mrs. Cortez testified that normally a form G-325A (Biographical Information) and a form I-485 (Petition to Acquire Residency) were also required and she prepared these as well. She also completed several other forms less frequently, such as the I-140, I-600, N-600, and OF-230.

The Cortezes charged a fee, usually $400, for preparing these forms, gathering and storing the supporting documentation, and seeing that the alien has all documents necessary for his embassy interview. They have solicited customers by advertising in a Spanish- language newspaper. The translation of the ad reads, "The Cortez Agency has had 35 years of experience in every kind of immigration case. Consultation of Immigration by Cortez."

The Committee brought suit to enjoin the immigration activities of the Cortez Agency, and trial was before a jury. The sole special issue, submitted without objection, asked:

Do you find from a preponderance of the evidence that the Cortez Agency has given advice or rendered service requiring the use of legal skill and knowledge **[**3]** in interviewing persons and advising them as to whether or not to file a petition or application under the Immigration and Naturalization Act to secure a benefit for the client or relative of the client which require a careful determination of the facts, conclusions and legal consequences involved?

The jury answered, "We do not."

The Committee moved for and obtained a judgment n.o.v. which permanently enjoined the Cortezes from advising customers whether or not to file particular petitions, from preparing for customers any **[*49]** petition or application under the immigration laws, and from soliciting clients or customers through advertisements which suggest expertise and competence to handle immigration problems or cases.

Although the Committee vigorously argued that what the Cortezes were doing was undisputed, thus leaving a question for the court, the court of appeals dissolved the injunction holding that different inferences could be drawn from the undisputed testimony regarding the Cortezes' activities, thus creating a fact issue for the jury. The court of appeals further held that the determination of whether an activity required legal skill or knowledge was also **[**4]** a question for the jury. Therefore, the court of appeals held the jury finding was binding on the trial court. *674 S.W.2d at 807-08.*

The Committee brings three points of error alleging that the trial court was correct in disregarding the jury verdict. First, the Committee argues that the activities of the Cortezes have been indisputably determined; therefore, no jury is needed to resolve a factual dispute. Second, the Committee contends that whether the undisputed activities constitute the unauthorized practice of law is a question of law for the court and not one for the jury. Third, the Committee argues that the undisputed activities of the Cortezes do constitute the practice of law. We will examine these questions together because of the interdependence among them.

We begin with the legislative expression of what constitutes the practice of law in Texas. The State Bar Act, *Tex. Rev. Civ. Stat. Ann. art. 320a-1*, § 19(a)(Vernon Supp. 1985) defines the practice of law as follows:

For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on **[**5]** behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

This definition contains two major parts, one encompassing services rendered in connection with legal proceedings and one encompassing services rendered out of court.

The parties have focused upon both major parts of this definition to determine whether the Cortezes are practicing law. First, the statute specifically characterizes the preparation of pleadings incident to legal proceedings as the practice of law. The Committee argues that because the I-130 form, commonly filled out by Mrs. Cortez for others, constitutes the initial document petitioning the government for a preferential **[**6]** immigration status, its preparation falls within the statutory definition. The Cortezes' expert witness, Mr. Sauceda, an attorney, stated that he did not consider the form I-130 to be a "petition," as attorneys would say, to start an action in a lawsuit. Second, the parties have focused upon the portion of the definition relevant to out-of-court matters by inquiring whether the preparation of these immigration forms required the use of legal skill or knowledge and whether the legal effect of the forms must be carefully determined. This question was the gist of the special issue submitted to the jury, which found that the Cortezes activities did not require the use of legal skill and knowledge. We do not decide whether the forms such as the I-130 constitute pleadings within the meaning of section 19(a) of the State Bar Act. Rather, we decide the case on the portion of the section dealing with out-of-court services.

The evidence of Mrs. Cortez's activities in interviewing customers and filling out **[*50]** forms to be filed with the Immigration and Naturalization Service was undisputed, and showed that she was advising her customers as to whether they qualified to file the various **[**7]** petitions and applications. The question of whether interviewing clients or customers and preparing immigration forms is the practice of law is one of first impression for this court. Apparently only one state court of last resort has addressed this issue. In *The Florida Bar v. Moreno-Santana, 322 So. 2d 13 (Fla. 1975)*, the Supreme Court of Florida enjoined a non-lawyer from preparing immigration and naturalization forms for others and from advertising or representing the ability to perform such services. *Id. at 15.* The Cortezes seek to distinguish this Florida case by noting that the individual there represented himself to be an attorney. The Florida court, however, adopted the findings of the referee that the preparation of immigration forms to change the status of an alien requires legal training. *Id. at 15-16.* In *The Florida Bar v. Retureta-Cabrera, 322 So. 2d 28, 29 (Fla. 1975)*, another individual was enjoined from preparing these immigration forms.

Although the act of recording a client's responses to the questions on the form I-130 probably does not

require legal skill or knowledge, the act of determining whether the I-130 should be filed at all does require **[**8]** special legal skills. The Cortezes often filed I-130 forms which reflected that the alien seeking a visa was in this country illegally and furnished the immigration authorities with the alien's address, thus making deportation more likely. Therefore, advising a client as to whether to file an I-130 requires a careful determination of legal consequences.

Another danger is also presented by the manner in which the Cortezes conduct their business. When Mrs. Cortez was asked what she would do if the client did not qualify for a preference under the form instructions, she testified that she would say that there was no way she could help. This act, when combined with the advertisement representing experience in every kind of immigration case, could likely mislead a customer to believe there is nowhere else to seek help and no other possibility for obtaining permanent residency. This is a type of occurrence which is sought to be prevented by prohibiting the unauthorized practice of law. We therefore hold that the undisputed activities of the Cortezes in selecting and preparing the various immigration forms required legal skill and knowledge.

Our holding presumes we have concluded that when **[**9]** the activities alleged to be the practice of law are undisputed, it is for the court to decide whether those activities amount to practicing law, and we now set forth the reasons for this conclusion. In the definition of practicing law in section 19(a) of the State Bar Act, the legislature ended the section stating:

This definition is not exclusive and does not deprive the judicial branch of the power and authority under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

The Committee argues that the legislature is making clear that the courts should decide what is the practice of law. The court of appeals held that judges and juries are both components of the judicial branch, and therefore this language "does not mandate that a judge alone should decide." *674 S.W.2d at 806.* We will examine the history of this language to determine the legislative intent.

In *Hexter Title & Abstract Co. v. Grievance Committee, Fifth Congressional Dist., State Bar of Texas, 142 Tex. 506, 179 S.W.2d 946 (1944),* this court reviewed certain acts to determine if they constituted the unauthorized **[**10]** practice of law under article 430a of the 1925 Penal Code (repealed). n1 After finding a violation under the statute, **[*51]** this court specifically left undecided "whether or not this court would have the implied authority to determine what would constitute the practice of law, independent of the statute ...." *Id.* at 954. In the companion cases of *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Dean, 190 S.W.2d 126* (Tex.Civ.App. -- Austin 1945, no writ) and *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Coryell, 190 S.W.2d 130* (Tex.Civ.App. -- Austin 1945, writ ref'd w.o.m.), the Austin court of appeals addressed this previously reserved question, observing:

independently of any statutory provisions as to what may constitute practice of law, the court has the duty and the inherent power to determine in each case what constitutes the practice of law, and to inhibit persons from engaging in the practice of law without having obtained a license to do so. This power of the court, the related statutes of this State, and the decisions are more fully discussed in our opinion in the companion *Dean* **[**11]** case.

Coryell at 131. In *Dean*, the court stated that the legislative definition was not exclusive and "does not deprive the judicial branch of the power and authority, both under the State Bar Act and the adjudicated cases, to determine whether other services and acts not therein enumerated, may constitute the practice of law." *Dean* at 129.

n1 Unauthorized Practice Act, ch. 238, 1933 Tex. Gen. Laws 835, 835-38, *repealed by* Act of June 1, 1949, ch. 301, § 1, 1949 Tex. Gen. Laws 548.

The legislature lifted the language from *Dean* and placed it in section 19(a) of the State Bar Act with the apparent intent to recognize the inherent power of the courts to determine what is the practice of law on a case by case basis, unconfined by the statute. *Coryell* and *Dean* have been cited by this court in recognizing the inherent power of the courts. *See Eichelberger v. Eichelberger, 582 S.W.2d 395, 398 & n. 1 (Tex. 1979).* Therefore, even though we have used the legislative definition **[**12]** of the practice of law to aid us in this case, the courts are not bound by the jury's determination of whether the undisputed acts fell within this statutory definition.

The court of appeals determined that this final question should be one for the jury and relied on *Robertus v. State, 119 Tex.Crim. 370, 45 S.W.2d 595, 597 (1931)* which held that a jury should decide whether certain activities constituted the practice of medicine.

674 S.W.2d at 807. Cases involving other professions are not determinative here. The courts have the duty and authority to supervise the legal profession by ensuring that those practicing law are qualified and by determining the boundaries of the practice of law. The direct policing relationship between the courts and the legal profession does not exist between the courts and other professions. The right to trial by jury still exists, of course, in cases where the alleged acts are disputed and factual determinations must be made, but the courts may ultimately decide whether certain undisputed activities constitute the unauthorized practice of law.

We hold that the trial court was proper in rendering judgment n.o.v. and in granting the permanent injunction **[**13]** against the Cortezes. Accordingly, the judgment of the court of appeals is reversed, and the trial court judgment is affirmed.

PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY COURT STAFF, LAW LIBRARIANS, AND COURT VOLUNTEERS[1]

(a) Purpose and Scope.

Court personnel are encouraged to provide assistance and legal information to all court patrons. This policy is intended to provide guidance to court personnel subject to a judge or judicial administrator's direction and control, such as court staff, bailiffs, law librarians and staff, and court volunteers, as to what assistance may and may not be offered to court patrons to achieve fair and efficient resolution of their cases.

Assistance permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied assistance on the basis of being a self-represented litigant.

(b) Definitions. [*Note question posed in Note 2***.[2]]**

(1) "Court patron" means any person, such as an attorney, self-represented litigant, or other member of the public, who is accessing the judicial system.
(2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
(3) "Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.[3]

(c) Permitted Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, may provide assistance and legal information to court patrons as follows:

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[1] A parallel policy will be provided for court clerks.

[2] The subcommittee seeks input and discussion on whether a definitions section should be included. Stated another way, can the same objectives be better achieved through sections (a), (c), and (d)?

[3] Note the definition in Section 81.101 of the Texas Government Code:

> (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;
(2) Informing court patrons of legal resources and referrals if available, including, but not limited to:
    a. Pro bono legal services;
    b. Low-cost legal services;
    c. Limited scope legal services;
    d. Legal aid programs and hotlines;
    e. Law and public libraries;
    f. Non-profit alternative dispute resolution services;
    g. Lawyer referral services;
    h. Internet-based resources;
    i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
    j. Units or departments of government; or
    k. Domestic violence resources.
(3) Encouraging self-represented litigants to consult a lawyer;
(4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;
(5) Offering educational classes and informational materials;
(6) Helping court patrons locate court forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;
(7) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;
(8) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, case number, and other items necessary for filing, and if incomplete, stating why the document or form is incomplete;
(9) Directing court patrons (who are conducting self-guided research) to resources;
(10) Providing docket information, including but not limited to:
    a. Stating whether an order has been issued;
    b. Explaining how to get a copy if one was not provided;
    c. Reading the order to the individual if requested; or
    d. Providing instructions about how to access such information.
(11) Informing court patrons of the process for requesting a foreign language or sign language interpreter;
(12) Instructing a court patron on how to obtain access to a case file that has not

been restricted by statute, rule or order, and provide access to such a file;

(13) Providing the same assistance and information to all parties to an action, as requested; or

(14) Providing other assistance consistent with the intent of this policy.

(d) Prohibited Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, shall not:

(1) Recommend whether a case should be brought to court or comment on the merits of a pending case;

(2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;

(3) Give an opinion about what will happen if a case is brought to court;

(4) Represent court patrons in court;

(5) Provide legal advice, analysis, or strategy to a court patron;

(6) Disclose information in violation of the law;

(7) Deny a self-represented litigant access to the court, the court docket, or any assistance provided to other court patrons;

(8) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;

(9) Refer a court patron to a specific lawyer or law firm, except as provided by section (c)(2); or

(10) Otherwise engage in the unauthorized practice of law.

(e) Unauthorized Practice of Law and Privilege. Assistance provided in accordance with section (c) of this policy does not constitute the unauthorized practice of law and does not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

(f) Code of Judicial Conduct. Assistance provided in accordance with section (c) of this policy does not violate the Code of Judicial Conduct.

PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY DISTRICT AND COUNTY CLERKS AND THEIR STAFF

(a) Purpose and Scope.

Court personnel are encouraged to provide assistance and legal information to all court patrons. This policy is intended to provide guidance to district and county clerks and personnel subject to their direction and control as to what assistance may and may not be offered to court patrons to achieve fair and efficient resolution of their cases.

Assistance permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied assistance on the basis of being a self-represented litigant.

(b) Definitions.

(1) "Court patron" means any person, such as an attorney, self-represented litigant, or other member of the public, who is accessing the judicial system.
(2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
(3) "Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

(c) Permitted Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, may provide assistance and legal information to court patrons as follows:

(1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;
(2) Informing court patrons of legal resources and referrals if available, including, but not limited to:
    a. Pro bono legal services;
    b. Low-cost legal services;
    c. Limited scope legal services;
    d. Legal aid programs and hotlines;
    e. Law and public libraries;
    f. Non-profit alternative dispute resolution services;
    g. Lawyer referral services;

h. Internet-based resources;
i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
j. Units or departments of government; or
k. Domestic violence resources.

(3) Encouraging self-represented litigants to consult a lawyer;

(4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;

(5) Offering educational classes and informational materials;

(6) Helping court patrons locate court forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;

(7) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;

(8) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, case number, and other items necessary for filing, and if incomplete, stating why the document or form is incomplete;

(9) Directing court patrons (who are conducting self-guided research) to resources;

(10) Providing docket information, including but not limited to:
a. Stating whether an order has been issued;
b. Explaining how to get a copy if one was not provided;
c. Reading the order to the individual if requested; or
d. Providing instructions about how to access such information.

(11) Informing court patrons of the process for requesting a foreign language or sign language interpreter;

(12) Instructing a court patron on how to obtain access to a case file that has not been restricted by statute, rule or order, and provide access to such a file;

(13) Providing the same assistance and information to all parties to an action, as requested; or

(14) Providing other assistance consistent with the intent of this policy.

(d) Prohibited Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, shall not:

(1) Recommend whether a case should be brought to court or comment on the merits of a pending case;

(2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;

(3) Give an opinion about what will happen if a case is brought to court;
(4) Represent court patrons in court;
(5) Provide legal advice, analysis, or strategy to a court patron;
(6) Disclose information in violation of the law;
(7) Deny a self-represented litigant access to the court, the court docket, or any assistance provided to other court patrons;
(8) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;
(9) Refer a court patron to a specific lawyer or law firm, except as provided by section (c)(2); or
(10) Otherwise engage in the unauthorized practice of law.

(e) Unauthorized Practice of Law and Privilege. Assistance provided in accordance with section (c) of this policy does not constitute the unauthorized practice of law and does not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

(f) Code of Judicial Conduct. Assistance provided in accordance with section (c) of this policy does not violate the Code of Judicial Conduct.

MEMORANDUM

To: Richard Orsinger

From: Jocelyn Fowler on behalf of the SCOT Protective Order Task Force

CC: Martha Newton, Stewart Gagnon, Jeana Lungwitz, Trish McAllister

Date: November 21, 2017

Re: Updates to Proposed Protective Order Kit Changes

Dear Mr. Orsinger,

Thank you for your patience and time spent reviewing the Protective Order Kit updates. Included for your review is a summary of the changes made to the Kit, a clean updated copy of the Kit, and updated copy with highlights indicating major changes to the Kit.

I have tried to organize the updates to be easily understood and followed throughout. If you need any clarification or would like it organized a different way please let me know. Since we last submitted proposed changes to the SCAC, the Task Force has made edits required by the 85th Legislature's actions. The Task Force also identified a few changes that we missed from earlier sessions and general changes that make the document easier to use for the intended audience.

To help identify these new edits from the ones you have previously seen, I have highlighted previously seen comments in yellow and new edits in green. The following summary includes:

I. Revisions in response to the 85th legislative changes
II. Non-legislative changes since last submission
III. Answers to previous questions from Mr. Orsinger
IV. Revisions in response to the 84th legislative changes
V. Revisions in response to the 83rd legislative changes

Summary of Changes to Protective Order Kit
Green Highlight = New Edits
Yellow Highlights = Edits submitted previously

I. Revisions in response to the 85th legislative changes

1) Tx. Fam. Code §85.025(a-1)(1)

Amendments to §85.025(a-1)(1) added another basis for a Protective Order that exceeds two years. No charge or conviction for such an offense is required for the court to determine an extension of the final Protective Order is necessary to protect the applicant and members of the family. The Task Force addressed this in the two ways.

Changes to Kit:

a) **Page 5, Para. 8 of the "Application" ("Affidavit" and "Declaration")** – expanded the question to prompt for more details on previous incidences of violence. This will help provide a basis for determining the duration of the Protective Order. Also added more lines for explanation. Please note, this moved other items on the Affidavit down making the Notary Sworn statement not fit unless it was formatted to the left column.

b) **Page 6, Para. 15 of the "Protective Order"** – Added the basis for exceeding the two year duration of a Protective Order created by §85.025.

2) Tx. Fam. Code §82.011

SB 1242 amended parts of the Family Code related to confidentiality of certain personal information of a person protected by a Protective Order. §82.011 allows a court to render an Order that keeps the applicant's mailing address confidential but still accessible to the court clerk. The statute requires the applicant to designate a person and mailing address to receive notices and documents on the applicant's behalf. Confidentiality of an applicant's information was already addressed some in the Kit.

Changes to Kit:

a) **Page 2, Para. 3(f) of the "Temporary Ex Parte Protective Order,"** – added instructional language in italics telling the applicant they can provide an alternate contact.

b) **Page 5, Para. 10 of the "Protective Order"** – Created a new paragraph, Para. 10, to address new statute requirements for confidentiality of Protected People

II. Non-legislative changes since last submission

1) **Graphic changes** – Changed the order around for some paragraphs in the explanatory pages. Revised the formatting for readability. Created cover pages for each separate pleading to help the petitioner differentiate between the sample and pleadings for filing.

2) **On Explanatory Pages** – Updated any resource references, including websites & phone numbers that had changed. Corrected grammatical errors. Clarified some information to be more plain language and accurate.

3) **On Explanatory Pages** – Changed all mentions of the alleged perpetrator to say "the other person." The pleadings still have "Respondent." This should address Mr. Orsinger's concern.

4) **Page 2, Para. 4b of the "Application for a Protective Order"** – Added "under Number 2 'Children'?" to help better refer Applicant to relevant information.

5) **Page 4, Para. 12 of the "Application for a Protective Order"** – Moved the warning down below para. 12 for graphic reasons. It seems easier to read as belonging to para. 12 when it sits under the item rather than before. *See also notes under 'Other' on page 6 of this document.*

6) **Page 4, Para. 13 of the "Application for a Protective Order"** – Added an automatic checkmark for fees and costs in conformity with Family Code §81.003 and §81.005. These are established statutes that did not have any changes recently. The Task Force just realized per the statute it was appropriate to auto-check this request for the Applicant.

7) **Page 1, Para. 1 of the "Temporary Ex Parte Protective Order"** – changed wording from "The person named below must follow all Orders…." To "The person named below is ordered to follow all Orders..." Since this is an Order, the Task Force felt this language was necessary and appropriate.

III. Answers to previous questions from Mr. Orsinger

1) In the explanatory forms the alleged perpetrator of violence is sometimes called "the other person," or "your partner," and in the forms themselves he is referred to as "Respondent." Is there a reason to be consistent in the term to apply to the alleged perpetrator?

   Answer: Changed all references in explanatory forms to "the other person." Did not want to say Respondent in explanatory forms because it is not plain language. To connect the dots to Respondent in the pleadings forms, the instructional bubble on page 1 of the "Application," Sample Version explains who the Respondent is.

2) On p. 1 of the form Application for Protective Order, the applicant is asked to check the box for the AG Child Support Division case number. Since the AG doesn't get involved in family violence orders, what is the purpose of getting this information? Does it affect where the application can be filed, or who receives notice of the protective order?

   Answer: This was added in response to a change made to Tx. Fam. Code §82.004(5) during the 83rd Legislature. See original reports notes below under V(2).

3) On p. 2 of the form Application for Protective Order, para. 4b, the applicant is asked whether the Respondent is seeking or attempting to seek contact with this child. Should we ask whether this effort is consistent with or inconsistent with an existing order? Does that matter?

Answer: No, it does not matter. Any existing order involving a child will be attached pursuant to para. 4a on page 1 of the Application. It will be for the judge to determine whether any attempts at contact are consistent with an existing order. A *pro se* applicant should not be required to make that determination.

4) On p. 4 of the Application, para. 11, the form says "any information that you include available for public inspection." It's not clear to me what that means. Does that mean any information not kept confidential under para. 12?

Answer: Yes, it applies to information not kept confidential under para. 12. We moved the warning block down below para. 12, because it is referencing 12, not 11. We realized this was confusing. The warning block was added to give the Applicant ample warning that any contact information they include on the "Application" & "Temporary Ex Parte Order" will be given to the Respondent and available to the public. Para. 12 only applies to the Final Protective Order.

IV. Revisions in response to the 84th legislative changes

1) Tx. Fam. Code §81.0015

§81.0015 adds a presumption that family violence occurred and is likely to occur again if certain conditions are true. A presumption now exists if a respondent has been convicted or received deferred adjudication for particular offenses under Title 5 and 6 of the Penal Code and also meets other criteria under the statute.

Changes to the Kit:

a) Page 2, Para. 4b of the "Application of Protective Order" – The addition of a new paragraph 4b reflects the presumption. Additionally, an instruction bubble is included on the sample "Application for Protective Order" explaining that a judge will assume family violence has occurred if any box is checked. As referenced in para. 4b, a list of the relevant offenses under Title 5 and 6 of the Penal Code is included on the last page of the Protective Order Kit.

b) Page 2, "Findings," 2nd paragraph of the Protective Order – The presumption is added to the "Findings" section of the "Final Protective Order" under "Statutory Grounds for the Protective Order have been established."

2) Tx. Fam. Code §81.011

§81.011 now allows an applicant to use a digitized signatures to sign the application for a protective order.

Changes to the Kit:

a) Page 4 of the Sample "Application" only – The ability to use a digitized signature is explained in an instruction bubble on top of the line for the Applicant's signature.

3) Tx. Fam. Code §85.025(c)(1)-(2)

§85.025 extends the expiration date of a Protective Order if the person who is the subject of the Protective Order is confined or imprisoned and the Protective Order would expire not later than the first anniversary of the date the person is released. The statute sets out the expiration date for a Protective Order in such cases.

Changes to the Kit:

a) **Page 6, Para. 15 of the "Protective Order"** – A clause explaining the revised expiration standards in such cases is included at the bottom of the paragraph.

4) Tx. Fam. Code §85.022

In connection with the Open Carry law passed during the 84th Legislature, §85.022 was amended to strike the word "concealed" from the requirement to suspend a license to carry a handgun for a person found to have committed family violence. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

a) Page 2, Para. 6(i) of the "Application" – Added an automatic checkmark for Applicant to request suspension of a license to carry since this is required by state law. Struck "concealed" per the statute. Modified the language from "under state law" to "by the State of Texas" to conform all language on this issue across the Kit.

b) Page 3, Para. 4(j) of the "Protective Order" – Struck "concealed" per the statute. Modified the language from "under state law" to "by the State of Texas" to conform all language on this issue across the Kit. Note that this has been automatically checked since the original 2005 version pursuant with state law.

5) Tx. Fam. Code §85.042(a)

Mandates that the court clerk shall send copies of the Protective Order to all required parties no later than the next business day after the court issues the order. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

c) Page 6, Para. 14 of the "Protective Order" – Added the requirement of not later than next business day in the first sentence

6) Tx. Fam. Code §86.0011(a)

Mandates on receipt of an original or modified Protective Order from the clerk of the issuing court, a law enforcement agency shall immediately, but not later than the third business day after the date the order is received, enter the information required

by §411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

a) **Page 6, Para. 14 of the "Protective Order"** – Added the requirement of immediately but not later than the third business day in the last sentence.

Other:

1) The Task Force received feedback from a county clerk about some potential problems with an applicant's contact information remaining confidential. There was a concern that if an applicant marks the "keep information confidential" box on page 4 of the "Application for a Protective Order," they will not realize the confidentiality only pertains to the "Final Protective Order." An applicant's information provided on the "Application for a Protective Order" and the "Temporary Ex Parte Protective Order" will not be kept confidential.

The Task Force added warning language above para. 12 on page 4 of the "Application for a Protective Order" to address this issue.

Oct 2017 Update: The Task Force moved this warning down below para. 12 for graphic reasons. It seems easier to read as belonging to para. 12 when it sits under the paragraph rather than above.

V. Revisions in response to the 83rd legislative changes

1) Tx. Fam. Code §82.003(3):

§82.003(3) now allows an additional venue for filing a Protective Order application. In addition to filing in the county where the applicant or respondent resides under §82.003(1) & (2), or in the county where a divorce or SAPCR is pending under §85.062(a)(1), the applicant may file in the county where the violence occurred.

Changes to the Kit

a) **Explanatory Forms --** This information has been added to the "Where do I file the forms?" portion on the page 1 of the instructions.

b) **Page 5, Para. 2 of the "Affidavit" and "Declaration"** – Added a new para. 2 on both the "Affidavit" and "Declaration" forms to read: "In which county did this happen?"

2) Tx. Fam. Code §82.004(5)

§82.004(5) adds to the list of things that must be in an application for a Protective Order. The applicant must now state whether they are receiving services from a Title IV-D agency, and, if known, the agency case number.

Changes to the Kit

a) **Page 1, Para. 4a of the "Application for Protective Order**– This question was added to the paragraph asking about other court cases.

3) Tx. Fam. Code §85.021(1)(C) and §85.022(b)(7)

Additions to §85.021 and §85.022 expand the definition of "possession" to mean actual or constructive care of an animal. Under §85.021(1)(C), in a Protective Order, a court may prohibit any party from "removing a pet, companion animal, or assistance animal… from the possession or actual or constructive care of a person named in the order."

Under §85.022(b)(7), in a Protective Order, the court may prohibit the person found to have committed family violence from "harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, … that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order."

Changes to the Kit

a) **Page 2, Para. 6(k) of the "Application of Protective Order"** – Added "…taking…" to the list of prohibitions regarding pets, companion animals, or assistance animals.

b) **Page 2, Para. 3(l) of the "Temporary Ex Parte Protective Order"** – Added "Not take…" to the list of prohibitions regarding pets, companion animals, or assistance animals.

c) **Page 3, Para 4(i) of the "Protective Order"** – Added "Not take…" to the list of prohibitions regarding pets, companion animals, or assistance animals.

4) Tx. Fam. Code §§85.042 (a)(3) and (a-1)

§§85.042(a)(3) and (a-1) extends the list of people to whom a court clerk must deliver the Protective Order. §85.042 (a)(3) to the Title IV-D agency, if applicable, and a staff judge advocate or provost marshal, if applicable.

Changes to the Kit

a) **Page 6, Para. 14 of the "Protective Order"** – Reflects this new requirement for the Clerk

Other:

The Task Force made minor changes to page four of the kit which provides contact information for important resources.

PROTECTIVE ORDER KIT

APPROVED BY THE SUPREME COURT OF TEXAS:

PROTECTIVE ORDERS: FAQ

What is a Protective Order?

A court order that protects you from someone who has been violent or threatened to be violent. Violence can include sexual assault.

How can a Protective Order help me?

It can order the other person to:

- Not hurt or threaten you
- Not contact you or go near you, your children, other family relatives, your pets, your home, where you work, or your children's schools
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a Protective Order?

You can get a Protective Order if:

- Someone has hurt you or threatened to hurt you, **and**
- You are afraid that person may hurt you again, **and**
- Either you, your spouse or dating partner has a close relationship with the person who hurt you (close relationships include: marriage, close relatives, dating or living together, have a children together.)

You can also get a Protective Order if you have had a Protective Order against the other person in the past and the other person violated the parts of that order designed to protect you.

You can also get a Protective Order if you have been sexually assaulted or stalked, even if you do not have a close relationship with the person who sexually assaulted or stalked you. For more information about this kind of Protective Order, contact the Texas Advocacy Project, Inc. at **800-374-HOPE**(4673) or the Texas Association Against Sexual Assault at **512-474-7190**. You may find forms for a sexual assault or stalking Protective Order at **texaslawhelp.org**.

How much does a Protective Order cost?

It is free for you.

How do I ask for a Protective Order?

Fill out the following forms found in this kit:

- Application for Protective Order
- *Either* an Affidavit *or* Declaration (see below)
- Temporary Ex Parte Protective Order
- Protective Order
- Respondent Information

Do I use the Affidavit or Declaration form?

Your Application must include only **one** of these forms:

Affidavit	**OR**	**Declaration**
If you want your Date of Birth and Address kept confidential. **MUST** be signed in front of a notary.		Date of Birth and Address will be public information (not confidential.) Does **NOT** have to be signed in front of a notary.

Where do I file the forms?

After you fill out the forms, make two copies and take them all to the courthouse. You may file the forms in one of three places: the county where you live, the county in which the other person lives, or any Texas county in which the violence occurred. **If you have a divorce or custody case pending against the other person, file the forms in the same county as the case or the county where you live.*

What if I live or have children with the other person?

The judge can make orders about who gets to use the house, apartment, or car. The judge can also make other orders like protection of pets, child custody, child support, visitation, and spousal support.

Can I get protection right away?

The judge may give you a 'Temporary Ex Parte Protective Order,' which is a temporary order that protects you until you court hearing. Please note: If you do not receive a court document entitled "Temporary Ex Parte Protective Order" that is signed by a judge after you apply, you do **NOT** have a Protective Order yet. You must go to your hearing and ask the judge for a Protective Order.

In some cases, the judge orders the other person to leave the home right away. If you want this, ask the judge when you file your application and be ready to testify at a hearing.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks, and that is when the judge will decide if you get a Protective Order and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court*. You can find this at: **www.texaslawhelp.org/protectiveorderkit** or ask the court clerk for a copy.

How will the other person know about the Protective Order?

You must have the other person "served" **before** the court hearing. This means a law enforcement officer --not you-- will "serve" the other person a copy of your application. The clerk can arrange for law enforcement to serve the other person for FREE.

Please note: When the other person receives your application, they will also receive a copy of your signed Affidavit or Declaration. If the other person is in the military, a copy of your application and Affidavit or Declaration will also be sent to the officials on base.

How long will the Protective Order last?

In most cases, a Protective Order will last up to 2 years. There are some situations where a court can issue an order that lasts longer than 2 years.

Need help? There is an instruction sheet for each form, but if you need more help, contact: the Family Violence Legal Line at **800-374-HOPE(4673)** or go to **www.texaslawhelp.org**

*Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help you for free. The State Bar of Texas may also be able to refer you to a lawyer if you call **800-252-9690**.*

GET READY FOR COURT

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you
- Bring any evidence you have, like photographs, medical records, or torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative, or police. The judge may ask them to testify.
- If you had a Protective Order in the past, bring a copy of it.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, and tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court. Proof of Service is a document that shows when and where the other person was given a copy of your Application for Protective Order.

Practice what you want to say.

Make a list of the orders you want and practice saying them out loud. Do not take more than 3 minutes to say what you want.

If you get nervous, just read from your application list. Use that list to see if the judge has made every order you asked for.

Get there 30 minutes early.

1. Find the courtroom.
2. When the courtroom opens, go in and tell the clerk or officer that you are present.
3. Watch the cases before yours so you will know what to do.
4. When your name is called, go to the front of the courtroom.

The judge may ask questions.

The other person or his/her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers. If you don't understand the question, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When other people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What if I don't speak English?

When you first file your application, tell the clerk you will need an interpreter. Ask the clerk for free interpretation services.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you first file your application, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE(4673)**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE(7233)**

What happens after the hearing?

If the judge agrees you need protection, they will sign your Protective Order. Take your signed order to the court clerk. Ask for a certified copy of your order and keep it with you at all times.

Make sure copies of your order are sent to your children's daycare, babysitter, school, and to the other person's staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which they are assigned. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call the Family Violence Legal Line: **800-374-HOPE(4673)**

Or go to: **www.texaslawhelp.org**

*Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help you for free. The State Bar of Texas may also be able to refer you to a lawyer if you call **800-252-9690**.*

MAKE A SAFETY PLAN

A safety plan can help keep you and your children safe. Ask a domestic violence counselor to help you with your plan.

During an attack

When an attack starts, try to escape. Leave your home and take your children, ***no matter what time it is*!**

- Go to a friend's house or to a domestic violence shelter. Call 800-799-SAFE(7233) to find a shelter near you.
- Defend and protect yourself. Later, take photos of any injuries.
- Call for help. Scream as loud and long as you can.
- Stay close to a door or window so you can get out if you need to.
- Stay away from the bathroom, kitchen, and weapons.

Be ready to leave

Leaving is the most dangerous time. Thinking about your safety plan before an attack will help you when the time comes.

- Practice your escape. Know which doors, windows, elevator, or stairs are best. Practice with your children if they are old enough.
- Have a safe place to go in an emergency. Memorize their phone number.
- Keep a cell phone or calling card with you always so you can call in an emergency.
- Ask a neighbor or co-worker to call the police if they hear or see abuse.
- Get rid of guns and weapons in your house.
- Teach your children how to dial 911 to get help in an emergency.
- Have a safety plan for your children when you can't be with them. Teach them this plan.
- Have a "code word" to use with your children, family, friends, and neighbors. Ask them to call the police when you say that word.
- Keep a bag ready with clothes and extra keys for your house and car. Hide it in a place you can get to quickly or leave it at a friend's house.
- Get your own post office box so you can safely get checks and mail.
- Open your own checking or savings account and try to get a credit card in your name.
- Put important things in a safe place where you can get them easily, such as your:
    - Medicines
    - Driver's license, ID, social security card
    - Cash, check book, credit cards
    - Legal papers, important phone numbers
- Make plans for any pets.
- Review your safety plan a lot and make changes if needed.

Be safe with technology

- Get a new email address.
- Change your passwords and PIN numbers often.
- Search your name online to see if your phone numbers or address are listed.
- If you have social media, "de-friend" the other person or make a new page.
- Use a computer that the other person doesn't know about like at a library or friend's house.
- Get a cell phone that the other person doesn't know about. Call the domestic violence shelter and ask if they can give you a donated cell phone: **800-799-SAFE(7233)**.
- Save emergency phone numbers with a made up name in your cell phone. For example, save the domestic violence shelter in your phone as "Angie."

Be safe when you live on your own

- Change the locks on your door as soon as you can.
- Put locks on all doors and windows.
- Ask your phone company for an unlisted number. (Sometimes this is free.) Don't call the other person from your phone. Screen all calls.
- If you move, don't tell the other person where you live.
- Give your children's schools and daycare a list of who is allowed to pick them up.
- Tell your neighbors and landlord that the other person no longer lives with you. Ask them to call the police if they see the other person near your home.
- Take care of yourself by asking for what you need and going to a support group.
- If you have to see the other person, meet in a public place and bring someone with you.
- If you are thinking of going back to the other person, talk to someone you trust first.
- Be safe at work by asking your co-workers to call the police if they see the other person at your job. Bring a picture of the other person to work.
- Take a different way home and to work. Go to different stores and places -- change your routine.
- If you drive, park where there is a lot of light.
- Have someone walk with you to your car or to the bus stop.

Be safe with a Protective Order

- Always keep your Protective Order with you and call the police if the other person violates it.
- Give copies of your Protective Order to your family, friends, neighbors, school, and daycare.
- If you need to get property from your home, you can request that a police officer go with you for safety.

LSC SJI

Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

Important things to take with you

Keep these papers in a safe place where the other person can't find them!

Identification --

- □ Driver's License or other government-issued ID
- □ Birth Certificate
- □ Social Security Card
- □ Children's Birth Certificate and Social Security Cards

Financial --

- □ Money and credit cards in your name
- □ Checking and savings account numbers

Legal Papers --

- □ Protective Order
- □ Lease or house papers
- □ Car registration and insurance
- □ Health and life insurance papers
- □ Medical records for you and your children
- □ School records
- □ Works permits/Green Cards/Visa
- □ Passport
- □ Divorce and custody papers
- □ Marriage license
- □ Mortgage and loan payment books and account numbers

Other --

- □ Medications
- □ House and car keys
- □ Valuable jewelry
- □ Address book
- □ Pictures
- □ Clothes for you and your children
- □ Diapers and formula
- □ Pets

Remember to keep these papers in a safe place where the other person can't find them!

Important resources

Police and Emergencies: 911

National Domestic Violence (DV) Hotline
1-800-799-SAFE (7233)
1-800-787-3224 (TTY) for the Deaf
Online chat: www.thehotline.org

Texas Council on Family Violence
1-800-525-1978
To find a legal advocate near you, go to: **www.tcfv.org**

2-2-1 Texas
221 or 877-541-7905

Child and Elderly Abuse/Neglect
1-800-252-5400

Rape Abuse & Incest National Network
1-800-656-HOPE (4673)

Texas Advocacy Project—Legal Line
1-800-374-HOPE (4673)

National Dating Violence Helpline
866-331-9474
www.loveisrespect.org

Lawyer Referral Service
1-877-9TEXASBAR or 1-800-252-9690

Child Support Office
1-800-252-8014

Crime Victim's Compensation
1-800-983-9933

Protective Order Application, Affidavit, and Declaration Forms

WITH INSTRUCTIONS

Sample Only — Do Not File

Cause No.: _____

Applicant: Your name here. You are the Applicant. _____ § In the _____ Court

§

§

§

§

§

§

Name of person you want protection from. This is the Respondent.

The clerk fills out this part

Respondent: _____ § _____ County, Texas

Application for Protective Order

1 Parties Your name here.

Name:

Applicant: _____ Name of person you want protection from

Respondent: _____

County of Resid... County where each person lives _____

Respondent's address for service: _____ Best address to give the other person a copy of this form _____

Check all that apply:

The Applicant and Respondent are or were members of the same family or household.
The Applicant and Respondent are parents of the same child or children.
The Applicant and Respondent used to be married.
The Applicant and Respondent are or were dating.
The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	Yes	No	_____
b.	_____ Names of children needing protection	Yes	No	_____ County where each person lives
c.	_____	Yes	No	_____
d.	_____	Yes	No	_____

Check all that apply:

Other children are listed on a sheet attached to this Application.
The Children are or were members of the Applicant's family or household.
The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____ Names of other adults needing protection	_____ County where each person lives
b.	_____	_____

4a Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

Yes No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): A copy of the final order is attached.
A copy of the final order will be filed before the hearing on this Application.
The Texas Office of the Attorney General Child Support Division has been involved with a child support case. List the agency case number for each open case, if known.
Case Number: _____

4b Presumption of Family Violence: Has the Respondent been convicted [illegible]dication community supervision for any crime under Title 5 or Title 6 of the Texas Penal Co[illegible] kit)

The judge will assume family violence has occurred if any of these boxes are checked

Yes No

If "Yes," say what kind of case:

_____

If the Respondent was convicted or placed on community supervision for a Title 5 crime, did the Court make a finding that the crime involved family violence?

Yes No

Was the crime against a child listed in this petition under Number 2 "Children"?

Yes No

Have the Respondent's parental rights to this child been terminated?

Yes No

Is the Respondent seeking or attempting to seek contact with this child?

Yes No

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

The Respondent committed family violence and is likely to commit family violence in the future.

The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): Attached, or

Not available now but will be filed befo[illegible] Application

Read and check one or both

The Applicant requests a PROTECTIVE ORDER and asks the C[illegible]ders marked with a check ✔

Check all the orders you want the judge to make

6 ✔Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ✔ Not commit family violence against any person named on page 1 of this form.

b. Not communicate in a threatening or harassing manner with any person named on page 1 of this form.

c. Not communicate a threat through any person to any person named on page 1 of this form.

d. Not communicate or attempt to communicate in any manner with (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.

f. Not go within 200 yards of the residence, workplace, or school of the (*Check all that apply*):
Applicant Other Adults named on page 1 of this form.

g. Not go 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.

h. Not stalk, follow, or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ✔ Suspend any license to carry a handgun issued to the Respondent by the State of Texas.

j. Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.

k. Prohibit the Respondent from taking, harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

l. Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
_____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 Property Orders

The Residence located at: Your home address here, unless you want it to be confidential

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

The Applicant also asks the Court to make these orders (*Check all that apply*):

The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

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

The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:

List the property you want to use or control, like a car or furniture, even if the other person owns it with you.

The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 Spousal Support Order

Check here if you want spousal support.

...ondent or otherwise legally entitled to support from the Respondent and asks ... pay support in an amount set by the Court.

9 Orders Related to Removal, Possession, and Support of Children

The Res... ...ing of the Applicant's children: _____

Check here and fill out this section if you want the judge to make orders about who the children can stay with, restrictions on travel, and child support.

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.

The Respondent must not remove the children from the jurisdiction of the Court.

Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.

Require the Respondent to pay child support in an amount set by the Court.

10 ✔Temporary Ex Parte Protective Order

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children, or Other Adults named on page 1 of this form immediate and irreparable injury, loss, and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing.

11 Ex Parte Order: Vacate Residence Immediately

The A... ...with the Respondent at: Your home address here or has resided at this

Check here if you want the judge to order the other person to move out.

... filing this Application. The Respondent committed family violence against a ... the 30 days prior to the filing of this Application, as described in the attached

Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the 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 the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ✔Keep Information Confidential

Check here if you want to keep your contact information private

keep addresses and telephone numbers for residences, workplaces, schools, and

WARNING: A copy of this court document will be served to the respondent with any information that you include available for public inspection. Marking the box on number 12 means that you are asking the judge to order the clerk to remove some addresses and telephone numbers from the final order in this case so that the public cannot see them. If you are requesting this, DO NOT INCLUDE this personal information in this form OR a temporary ex parte protective order form.

13 ✔Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____ Sign Here or Digitized Signature is acceptable _____
Applicant, *Pro se*

List your address/phone or another address/phone if you want yours kept confidential.

Address where Applicant may be contacted: _____
_____

Phone # where Applicant may be contacted: _____ Fax #: _____
(List another address/phone if you want yours kept confidential)

Use this form if YOU WANT your Date of Birth and Address to REMAIN CONFIDENTIAL.

You will need to have it SIGNED BY A NOTARY.

Do NOT use the Declaration form if you use this form.

AFFIDAVIT

County of ____ (Write the name of your county here) ____

State of Texas

My name is _____ (Your name here) _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____

_____

_____

(Answer every question on this form)

2. In which county did this happen?_____
3. What date did this happen? _____ / ____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened? _____
7. Did you get medical care? Yes No If yes, describe your injuries: _____

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

_____

_____

_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____

_____

_____

_____

_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

13. Has the Defendant ever been convicted of family violence? Yes No
If yes, list when and in which county and state the convictions occurred: _____

_____

_____

(Do NOT sign until the notary tells you to)

▶ _____
Applicant signs here

(Notary fills this part out)

On ____ / ____ / _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is 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 and to the best of her/his knowledge and belief. Subscribed and sworn before me on ____ / ____ / _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

Sample Only — Do Not File

Use this form if you want your Date of Birth and Address to be public information (not confidential).

You will NOT need to have it signed by a notary.

Do NOT use the Affidavit form if you use this form.

DECLARATION

County of _____ (Write the name of your county here)
State of Texas

My name is _____ (Your name here) (First Middle Last), my date of birth is _____ (Your date of birth here)
and my address is _____ (Your address here) (Street), _____
(City), _____ (State), _____ (Zip Code) _____ (Country) _____.

I declare under penalty of perjury that the fore[illegible]

Executed in _____ County, State[illegible] (Write your County, State, and the Date you signed here) day of _____ (Month), _____ (Year).

_____ (Sign your name here) _____ (Declarant Signature).

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____
_____
_____

(Answer every question on this form)

2. In which county did this happen? _____
3. What date did this happen? _____ / _____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened?
7. Did you get medical care? Yes No If yes, describe your inj

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

_____
_____
_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____
_____
_____
_____
_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

13. Has the Defendant ever been convicted of family violence?
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

(Sign Here)

▶ _____
Applicant signs here

Protective Order Application, Affidavit, and Declaration Forms

FILL OUT AND FILE

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
	§	
Respondent: _____	§	_____ County, Texas

Application for Protective Order

1 Parties

Name: County of Residence:

Applicant: _____ _____

Respondent: _____ _____

Respondent's address for service: _____

Check all that apply:

The Applicant and Respondent are or were members of the same family or household.
The Applicant and Respondent are parents of the same child or children.
The Applicant and Respondent used to be married.
The Applicant and Respondent are or were dating.
The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	Yes	No	_____
b.	_____	Yes	No	_____
c.	_____	Yes	No	_____
d.	_____	Yes	No	_____

Check all that apply:

Other children are listed on a sheet attached to this Application.
The Children are or were members of the Applicant's family or household.
The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____	_____
b.	_____	_____

4a Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

Yes No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*):

A copy of the final order is attached.
A copy of the final order will be filed before the hearing on this Application.
The Texas Office of the Attorney General Child Support Division has been involved with a child support case. List the agency case number for each open case, if known.
Case Number: _____

4b Presumption of Family Violence: Has the Respondent ever been convicted of or placed on deferred adjudication community supervision for any crime under Title 5 or Title 6 of the Texas Penal Code? (see list of crimes at the end of the kit)

Yes No

If "Yes," say what kind of case:

_____

If the Respondent was convicted or placed on community supervision for a Title 5 crime, did the Court make a finding that the crime involved family violence?

Yes No

Was the crime against a child listed in this petition under Number 2 "Children"?

Yes No

Have the Respondent's parental rights to this child been terminated?

Yes No

Is the Respondent seeking or attempting to seek contact with this child?

Yes No

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

The Respondent committed family violence and is likely to commit family violence in the future.

The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): Attached, or

Not available now but will be filed before the hearing on this Application

The Applicant requests a PROTECTIVE ORDER and asks the Court to make all Orders marked with a check ✔

6 ✔Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ✔ Not commit family violence against any person named on page 1 of this form.

b. Not communicate in a threatening or harassing manner with any person named on page 1 of this form.

c. Not communicate a threat through any person to any person named on page 1 of this form.

d. Not communicate or attempt to communicate in any manner with (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.

f. Not go within 200 yards of the residence, workplace, or school of the (*Check all that apply*):
Applicant Other Adults named on page 1 of this form.

g. Not go 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.

h. Not stalk, follow, or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ✔ Suspend any license to carry a handgun issued to the Respondent by the State of Texas.

j. Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.

k. Prohibit the Respondent from taking, harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

l. Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
_____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 Property Orders

The Residence located at: _____

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

The Applicant also asks the Court to make these orders (*Check all that apply*):

The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

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

The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks the Court to order the Respondent to pay support in an amount set by the Court.

9 Orders Related to Removal, Possession, and Support of Children

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

_____

_____

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.

The Respondent must not remove the children from the jurisdiction of the Court.

Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.

Require the Respondent to pay child support in an amount set by the Court.

10 ✔Temporary Ex Parte PROTECTIVE ORDER

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children, or Other Adults named on page 1 of this form immediate and irreparable injury, loss, and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing.

11 Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: _____ or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence

against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the 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 the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ✔Keep Information Confidential

The Applicant asks the Court to keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

WARNING: A copy of this court document will be served to the respondent with any information that you include available for public inspection. Marking the box on number 12 means that you are asking the judge to order the clerk to remove some addresses and telephone numbers from the final order in this case so that the public cannot see them. If you are requesting this, DO NOT INCLUDE this personal information in this form OR a temporary ex parte protective order form.

13 ✔Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

_____

Phone # where Applicant may be contacted: _____ Fax #: _____

(List another address/phone if you want yours kept confidential)

AFFIDAVIT

County of _____

State of Texas

My name is _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the most **recent time** the Respondent hurt you or threatened to hurt you:

_____

_____

_____

2. In which county did this happen? _____
3. What date did this happen? _____ / _____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened? _____
7. Did you get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____

_____

_____

_____

_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

13. Has the Defendant ever been convicted of family violence? Yes No
If yes, list when and in which county and state the convictions occurred: _____

_____

_____

▶ _____
Applicant signs here

On _____ / _____ / _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is 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 and to the best of her/his knowledge and belief. Subscribed and sworn before me on _____ / _____ / _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

DECLARATION

County of _____
State of Texas

My name is _____ (First Middle Last), my date of birth is _____,
and my address is _____ (Street), _____
(City), _____ (State), _____ (Zip Code) _____ (Country) _____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of ___ day of _____ (Month), _____ (Year).

_____ (Declarant Signature).

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____
_____
_____

2. In which county did this happen? _____
3. What date did this happen? _____ / ____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened? _____
7. Did you get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____
_____
_____
_____
_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

13. Has the Defendant ever been convicted of family violence?
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

▶ _____
Applicant signs here

Temporary Ex Parte Protective Order Form

WITH INSTRUCTIONS

Sample Only — Do Not File

Cause No.: _____

Applicant: _____ § In the _____ Court

v. Look at the top of your Application for Protective Order and copy the same information here. of

§

Respondent: _____ § _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: _____ a.m. The court fills out this part.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration 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 the Respondent or hearing. No bond is required.

1 Respondent: The person named below is ordered to follow all Orders marked with a ch

What county does s/he live in?

Name: _____ Who do you want protection from? _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
Applicant:	Your name here _____	_____ County where each person lives
Children:	_____ Names of the children you want protected by this order	_____
	_____	_____
	_____	_____
Other Adults:	_____ Names of the other adults needing protection	_____
	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ✔

The Respondent (person named in 1) must:

a. Not commit an act against any person named in **2** above that is intended injury, assault, or sexual assault or that is a threat that reasonably place physical harm, bodily injury, assault, or sexual assault.

The Court fills out the rest of this form. The judge may ask you questions before making the orders

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to any person named in **2** above.

Sample Only — Do Not File

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. (except to go to court hearings)

f. Not go within 200 yards of the Residence, workplace, or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____
Here you may give the name and mailing address of another person to receive documents on your behalf.

g. ✔Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. Not go 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. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. Not stalk, follow, or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. Not remove the Children from the jurisdiction of the Court.

l. Not take, harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. Not interfere with the 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.

n. Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____
(*Check one*):

is jointly owned or leased by the Applicant and Respondent;
is solely owned or leased by the Applicant; or
is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the 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 the 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 the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: ____ a.m. p.m. on: _____ (*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

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

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

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.

6 Duration of Order: This 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.

7 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 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.

This Ex Parte Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Temporary Ex Parte Protective Order Form

FILL OUT AND FILE

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: _____ a.m. p.m.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration 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 the Respondent or hearing. No bond is required.

1 Respondent: The person named below is ordered to follow all Orders marked with a check.

Name: _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this PROTECTIVE ORDER:

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

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ✔

The Respondent (person named in 1) must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to any person named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. (except to go to court hearings)

f. Not go within 200 yards of the Residence, workplace, or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____
Here you may give the name and mailing address of another person to receive documents on your behalf.

g. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. Not go 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. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. Not stalk, follow, or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. Not remove the Children from the jurisdiction of the Court.

l. Not take, harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. Not interfere with the 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.

n. Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;
is solely owned or leased by the Applicant; or
is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the 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 the 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 the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: ____ a.m. p.m. on: _____ (*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

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

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

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.

6 Duration of Order: This 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.

7 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 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.

This Ex Parte Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Protective Order Form

WITH INSTRUCTIONS

Sample Only — Do Not File

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

Your name here

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

Names and birthdays of children needing protection

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

Names of other adults needing protection

_____

VS.

Respondent

Name of person you want protection from

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR			(last 3 #)
DRIVERS LICENSE NO.			STATE	EXP DATE

Fill out information describing the person you want protection from

Distinguishing F

For example: tattoos, piercings, scars, facial hair

A Court hearing was held on: Date: _____ Time: _____ a.m. p.m.

Write the actual date and time of the hearing

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been pr and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or

as otherwise provided for in Section 15 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Sample Only — Do Not File

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

The 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); *or* the applicant is dating or married to a person who was married to or dating the Respondent.

The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.

Under Texas Family Code Section 81.0015, there is a presumption that the Respondent has committed family violence and is likely to commit family violence in the future.

The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant Respondent

Appeared in person and announced ready.

Appeared in person and by attorney, _____, and announced ready.

Appeared by signature below evidencing agreement to the entry of this Protective Order.

Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
Applicant:	Your name here	County where each person lives
Children:	Names of children needing protection	
Other Adults:	Names of other adults needing protection	

3 A Record of Testimony (*Check one*): was made by: _____

was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ✔

The Respondent must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to anyone named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

Applicant Children Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. Not stalk, follow, or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. Not take, harm, threaten, or interfere with the care, custody or control of the following pet, companion animal, or assistance animal: _____ (*describe the animal*).

j. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a handgun issued to the Respondent by the State of Texas is hereby SUSPENDED.

5 Family Violence Prevention Program

The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*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:

_____

The 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. The 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.

The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;

is solely owned or leased by the Applicant; or

is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ a.m. p.m. on: _____ (*date*).

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

7 Other Property Orders

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

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

8 Spousal Support Order

IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the 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 in **2** above.

Removal — *Check one or both*:

The Respondent must:

Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

Not remove the Children from the jurisdiction of the Court.

Possession — *Check one*:

The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

The Applicant is granted primary possession of the Children, and the 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 herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the 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 — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered. — *Check one*:

The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment 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.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 Confidentiality of Information

The Court Clerk is ordered to strike contact information for Protected People, including: addresses, mailing addresses, telephone numbers, places of employment, businesses, child-care facilities, and schools from the public records of the Court, and maintain a confidential record of this information. The Clerk of the Court is prohibited from releasing contact information of Protected People except to the Court or to law enforcement for the purpose of entering the information into the Department of Public Safety law enforcement information system. **It is ordered that all contact information for the Protected People is confidential.**

It is ordered that the following person is designated as a person to receive any notice or documents filed with the Court related to the application on behalf of the Applicant:

Name: _____

Address: _____

It is ordered that the Applicant's mailing address is confidential and shall only be disclosed to the Court.

11 Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $_____ + *all other Court fees and costs*: $_____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

12 Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $_____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

13 Service

This Protective Order (*Check all that apply*):

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

14 Copies Forwarded

Not later than the next business day, 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.
Police Chief of the City of _____.
Children's child-care facility/schools listed above.
The Title IV-D agency
The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned whose address is as follows: _____.

Any law enforcement agency receiving a copy of this Protective Order MUST immediately, but not later than the 3rd business day, enter all required information into the Department of Public Safety's statewide law enforcement information system.

15 Duration of Order

This Protective Order is in full force and effect until:

_____ (*this date must be no more than two years from the date this Order is signed*.)
_____ (*duration*) This date is more than two years from the date this Protective Order is signed.

The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or
The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.
The Court finds that the Respondent committed an act constituting a felony offense involving family violence against the Applicant or a member of the Applicant's family or household regardless of whether the Respondent has been charged with or convicted of the offense.

If the Protective Order is scheduled to expire while the Respondent is confined or imprisoned or within one year of Respondent's release, the Protective Order will expire one year after the Respondent's release if Respondent was sentenced for more than five years; or two years after the date of Respondent's release if Respondent was sentenced for five years or less.

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 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 the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

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

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Protective Order Form

FILL OUT AND FILE

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

_____

VS.

Respondent

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY NO. (Last 3 #)		
		_____ _____ _____		
DRIVERS LICENSE NO.			STATE	EXP DATE
_____				

Distinguishing Features: _____

_____

A Court hearing was held on: Date: _____ Time: _____ a.m. p.m.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or

as otherwise provided for in Section 15 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

The 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); *or* the applicant is dating or married to a person who was married to or dating the Respondent.

The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.

Under Texas Family Code Section 81.0015, there is a presumption that the Respondent has committed family violence and is likely to commit family violence in the future.

The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant Respondent

Appeared in person and announced ready.

Appeared in person and by attorney, _____, and announced ready.

Appeared by signature below evidencing agreement to the entry of this Protective Order.

Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

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

3 A Record of Testimony (*Check one*): was made by: _____

was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ✔

The Respondent must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to anyone named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

Applicant Children Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)

Applicant Children Other Adults named in **2** above.

(Except to go to court hearings or to exchange Children as authorized by a court order)

f. Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)

Applicant Other Adults named in **2** above.

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

Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

Disclosed as follows:

Applicant's Residence: _____

Applicant's Workplace/School: _____

Other: _____

g. Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)

Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

Disclosed as follows:

Children's Residence: _____

Children's Child-care/School: _____

Other: _____

h. Not stalk, follow, or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. Not take, harm, threaten, or interfere with the care, custody or control of the following pet, companion animal, or assistance animal: _____ (*describe the animal*).

j. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a handgun issued to the Respondent by the State of Texas is hereby SUSPENDED.

5 Family Violence Prevention Program

The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*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:

_____

The 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. The 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.

The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;

is solely owned or leased by the Applicant; or

is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ a.m. p.m. on: _____ (*date*).

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

7 Other Property Orders

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

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

8 Spousal Support Order

IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the 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 in **2** above.

Removal — *Check one or both*:

The Respondent must:

Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

Not remove the Children from the jurisdiction of the Court.

Possession — *Check one*:

The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

The Applicant is granted primary possession of the Children, and the 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 herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the 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 — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered. — *Check one*:

The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment 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.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 Confidentiality of Information

The Court Clerk is ordered to strike contact information for Protected People, including: addresses, mailing addresses, telephone numbers, places of employment, businesses, child-care facilities, and schools from the public records of the Court, and maintain a confidential record of this information. The Clerk of the Court is prohibited from releasing contact information of Protected People except to the Court or to law enforcement for the purpose of entering the information into the Department of Public Safety law enforcement information system. **It is ordered that all contact information for the Protected People is confidential.**

It is ordered that the following person is designated as a person to receive any notice or documents filed with the Court related to the application on behalf of the Applicant:

Name: _____

Address: _____

It is ordered that the Applicant's mailing address is confidential and shall only be disclosed to the Court.

11 Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $_____ + *all other Court fees and costs*: $_____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

12 Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $_____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

13 Service

This Protective Order (*Check all that apply*):

Was served on the Respondent in open court.

Shall be personally served on the Respondent.

Shall be mailed by the Clerk of the Court to the Respondent's last known address.

Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

14 Copies Forwarded

Not later than the next business day, 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.
Police Chief of the City of _____.
Children's child-care facility/schools listed above.
The Title IV-D agency
The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned whose address is as follows: _____.

Any law enforcement agency receiving a copy of this Protective Order MUST immediately, but not later than the 3rd business day, enter all required information into the Department of Public Safety's statewide law enforcement information system.

15 Duration of Order

This Protective Order is in full force and effect until:

_____ (*this date must be no more than two years from the date this Order is signed*.)

_____ (*duration*) This date is more than two years from the date this Protective Order is signed.

The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or

The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

The Court finds that the Respondent committed an act constituting a felony offense involving family violence against the Applicant or a member of the Applicant's family or household regardless of whether the Respondent has been charged with or convicted of the offense.

If the Protective Order is scheduled to expire while the Respondent is confined or imprisoned or within one year of Respondent's release, the Protective Order will expire one year after the Respondent's release if Respondent was sentenced for more than five years; or two years after the date of Respondent's release if Respondent was sentenced for five years or less.

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 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 the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

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

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Respondent Information for Protective Orders

If the Court grants you a Protective Order, then fill out this form and file it with the clerk. Unless otherwise noted, fill in information below for the Respondent. If you do not know the information requested, leave that section blank. Please try to provide, at a minimum, the Respondent's name, date of birth, sex, height, weight, eye color, hair color, and race. Law enforcement needs this information to serve (give) the Respondent with the Protective Order and enter the Respondent's information into the statewide law enforcement database.

If the Court does not grant you a Protective Order, then do not fill out this form.

Respondent's Name: _____

Alias (Nickname): _____

Respondent's Relationship to Applicant: _____

Respondent's Address: _____ City: _____ State: _____ Zip: _____

County: _____ Email Address: _____ Date of Birth: _____ Place of Birth: _____

SSN (*last 3#*) # ___ ___ ___ Identification Number/State: _____ /_____ Expiration Date: _____

Driver's License Number/State: _____ /_____ Expiration Date: _____

Other Identification Number: _____

Respondent is is not on active duty with the military

Sex: M F Height: ____ ft ____ in Weight: _____ lbs

Race

American Indian or Alaskan Native (I)
Asian Pacific Islander (A)
Black (B)
White (W)
Unknown (All other non-whites) (U)
Other: _____
_____

Ethnicity

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

Eye color

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

Hair color

Black (BLK)
Blond or Strawberry (BLN)
Brown (BRO)
Gray or partially gray (GRY)
Red or Auburn (RED)
White (WHI)
Sandy (SDY)
Completely Bald or Unknown (xxx)
Other (*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 _____

Other Identifying Information (*Check all that apply to the Respondent and describe)*

Glasses _____
Beard _____
Moustache _____
Missing front teeth _____
Bald _____

Tattoos _____
Scars _____
Markings _____
Piercings _____
Mental Health Condition _____

Drug/Alcohol Use _____
Weapons _____
Other _____
Other _____

Respondent's Vehicle Information: Vehicle ID # (VIN): _____ Year: ____ Make: _____ Model: _____

Color: _____ License Plate #: _____ State: _____ License Plate Year of Expiration: _____

Respondent's Employment Information (name of employer): _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Hours/Dept: _____ Supervisor: _____

Respondent's Attorney (*Name*): _____ Phone: _____ Address: _____

_____ City: _____ State: _____ Zip: _____

Other people who may have information to help find Respondent:

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

*****Protected Person Information*****

(Use additional pages if necessary)

Name of Protected Person: _____

Sex: M F Date of Birth: _____ SSN (*last 3#*) ____ ____ ____ County: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknown

Employment Information (*name of employer*): _____

Address: _____ City: _____ State: ____ Zip: _____

Employment Information (*name of employer*): _____

Address: _____ City: _____ State: ____ Zip: _____

*****Protected Child Information*****

(Use additional pages if necessary)

Name of Protected Child: _____

Sex: M F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknow

Name of Protected Child: _____

Sex: M F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknow

List of Crimes under Texas Penal Code Titles 5 and 6

When answering question 4b on the Application for Protective Order form, look at this list to see if Respondent has been convicted or received deferred adjudication community supervision for any of the following crimes.

Title 5 Crimes

- Unlawful Restraint
- Kidnapping
- Aggravated Kidnapping
- Smuggling of Persons
- Trafficking of Persons
- Continuous Trafficking of Persons
- Continuous Sexual Abuse of a Young Child or Children
- Public Lewdness
- Indecent Exposure
- Indecency with a Child
- Invasive Visual Recording
- Assault
- Sexual Assault
- Aggravated Assault
- Aggravated Sexual Assault
- Injury to a Child, Elderly Individual, or Disabled Individual
- Abandoning or Endangering a Child
- Deadly Conduct
- Terroristic Threat
- Leaving a Child in a Vehicle

Title 6 Crimes

- Prohibited Sexual Conduct
- Interference with Child Custody
- Agreement to Abduct from Custody
- Enticing a Child
- Criminal Nonsupport
- Harboring Runaway Child
- Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case
- Violation of Protective Order Preventing Offense Caused by Bias or Prejudice
- Repeated Violation of Certain Court Orders or Conditions of Bond in the Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case
- Sale or Purchase of Child
- Advertising for Placement of Child
- Interference with Rights of Guardian of the Person
- Continuous Violence Against the Family

PROTECTIVE ORDER KIT

APPROVED BY THE SUPREME COURT OF TEXAS:

PROTECTIVE ORDERS: FAQ

What is a Protective Order?

A court order that protects you from someone who has been violent or threatened to be violent. Violence can include sexual assault.

How can a Protective Order help me?

It can order the other person to:

- Not hurt or threaten you
- Not contact you or go near you, your children, other family relatives, your pets, your home, where you work, or your children's schools
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a Protective Order?

You can get a Protective Order if:

- Someone has hurt you or threatened to hurt you, **and**
- You are afraid that person may hurt you again, **and**
- Either you, your spouse or dating partner has a close relationship with the person who hurt you (close relationships include: marriage, close relatives, dating or living together, have a children together.)

You can also get a Protective Order if you have had a Protective Order against the other person in the past and the other person violated the parts of that order designed to protect you.

You can also get a Protective Order if you have been sexually assaulted or stalked, even if you do not have a close relationship with the person who sexually assaulted or stalked you. For more information about this kind of Protective Order, contact the Texas Advocacy Project, Inc. at **800-374-HOPE**(4673) or the Texas Association Against Sexual Assault at **512-474-7190**. You may find forms for a sexual assault or stalking Protective Order at **texaslawhelp.org**.

How much does a Protective Order cost?

It is free for you.

How do I ask for a Protective Order?

Fill out the following forms found in this kit:

- Application for Protective Order
- *Either* an Affidavit *or* Declaration (see below)
- Temporary Ex Parte Protective Order
- Protective Order
- Respondent Information

Do I use the Affidavit or Declaration form?

Your Application must include only **one** of these forms:

Affidavit	**OR**	**Declaration**
If you want your Date of Birth and Address kept confidential. **MUST** be signed in front of a notary.		Date of Birth and Address will be public information (not confidential.) Does **NOT** have to be signed in front of a notary.

Where do I file the forms?

After you fill out the forms, make two copies and take them all to the courthouse. You may file the forms in one of three places: the county where you live, the county in which the other person lives, or any Texas county in which the violence occurred. **If you have a divorce or custody case pending against the other person, file the forms in the same county as the case or the county where you live.*

What if I live or have children with the other person?

The judge can make orders about who gets to use the house, apartment, or car. The judge can also make other orders like protection of pets, child custody, child support, visitation, and spousal support.

Can I get protection right away?

The judge may give you a 'Temporary Ex Parte Protective Order,' which is a temporary order that protects you until you court hearing. Please note: If you do not receive a court document entitled "Temporary Ex Parte Protective Order" that is signed by a judge after you apply, you do **NOT** have a Protective Order yet. You must go to your hearing and ask the judge for a Protective Order.

In some cases, the judge orders the other person to leave the home right away. If you want this, ask the judge when you file your application and be ready to testify at a hearing.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks, and that is when the judge will decide if you get a Protective Order and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court*. You can find this at: **www.texaslawhelp.org/protectiveorderkit** or ask the court clerk for a copy.

How will the other person know about the Protective Order?

You must have the other person "served" **before** the court hearing. This means a law enforcement officer --not you-- will "serve" the other person a copy of your application. The clerk can arrange for law enforcement to serve the other person for FREE.

Please note: When the other person receives your application, they will also receive a copy of your signed Affidavit or Declaration. If the other person is in the military, a copy of your application and Affidavit or Declaration will also be sent to the officials on base.

How long will the Protective Order last?

In most cases, a Protective Order will last up to 2 years. There are some situations where a court can issue an order that lasts longer than 2 years.

Need help? There is an instruction sheet for each form, but if you need more help, contact: the Family Violence Legal Line at **800-374-HOPE(4673)** or go to **www.texaslawhelp.org**

*Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help you for free. The State Bar of Texas may also be able to refer you to a lawyer if you call **800-252-9690**.*

GET READY FOR COURT

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you
- Bring any evidence you have, like photographs, medical records, or torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative, or police. The judge may ask them to testify.
- If you had a Protective Order in the past, bring a copy of it.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, and tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court. Proof of Service is a document that shows when and where the other person was given a copy of your Application for Protective Order.

Practice what you want to say.

Make a list of the orders you want and practice saying them out loud. Do not take more than 3 minutes to say what you want.

If you get nervous, just read from your application list. Use that list to see if the judge has made every order you asked for.

Get there 30 minutes early.

1. Find the courtroom.
2. When the courtroom opens, go in and tell the clerk or officer that you are present.
3. Watch the cases before yours so you will know what to do.
4. When your name is called, go to the front of the courtroom.

The judge may ask questions.

The other person or his/her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers. If you don't understand the question, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When other people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What if I don't speak English?

When you first file your application, tell the clerk you will need an interpreter. Ask the clerk for free interpretation services.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you first file your application, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE(4673)**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE(7233)**

What happens after the hearing?

If the judge agrees you need protection, they will sign your Protective Order. Take your signed order to the court clerk. Ask for a certified copy of your order and keep it with you at all times.

Make sure copies of your order are sent to your children's daycare, babysitter, school, and to the other person's staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which they are assigned. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call the Family Violence Legal Line: **800-374-HOPE(4673)**

Or go to: **www.texaslawhelp.org**

*Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help you for free. The State Bar of Texas may also be able to refer you to a lawyer if you call **800-252-9690**.*

MAKE A SAFETY PLAN

A safety plan can help keep you and your children safe. Ask a domestic violence counselor to help you with your plan.

During an attack

When an attack starts, try to escape. Leave your home and take your children, ***no matter what time it is*!**

- Go to a friend's house or to a domestic violence shelter. Call 800-799-SAFE(7233) to find a shelter near you.
- Defend and protect yourself. Later, take photos of any injuries.
- Call for help. Scream as loud and long as you can.
- Stay close to a door or window so you can get out if you need to.
- Stay away from the bathroom, kitchen, and weapons.

Be ready to leave

Leaving is the most dangerous time. Thinking about your safety plan before an attack will help you when the time comes.

- Practice your escape. Know which doors, windows, elevator, or stairs are best. Practice with your children if they are old enough.
- Have a safe place to go in an emergency. Memorize their phone number.
- Keep a cell phone or calling card with you always so you can call in an emergency.
- Ask a neighbor or co-worker to call the police if they hear or see abuse.
- Get rid of guns and weapons in your house.
- Teach your children how to dial 911 to get help in an emergency.
- Have a safety plan for your children when you can't be with them. Teach them this plan.
- Have a "code word" to use with your children, family, friends, and neighbors. Ask them to call the police when you say that word.
- Keep a bag ready with clothes and extra keys for your house and car. Hide it in a place you can get to quickly or leave it at a friend's house.
- Get your own post office box so you can safely get checks and mail.
- Open your own checking or savings account and try to get a credit card in your name.
- Put important things in a safe place where you can get them easily, such as your:
    - Medicines
    - Driver's license, ID, social security card
    - Cash, check book, credit cards
    - Legal papers, important phone numbers
- Make plans for any pets.
- Review your safety plan a lot and make changes if needed.

Be safe with technology

- Get a new email address.
- Change your passwords and PIN numbers often.
- Search your name online to see if your phone numbers or address are listed.
- If you have social media, "de-friend" the other person or make a new page.
- Use a computer that the other person doesn't know about like at a library or friend's house.
- Get a cell phone that the other person doesn't know about. Call the domestic violence shelter and ask if they can give you a donated cell phone: **800-799-SAFE(7233)**.
- Save emergency phone numbers with a made up name in your cell phone. For example, save the domestic violence shelter in your phone as "Angie."

Be safe when you live on your own

- Change the locks on your door as soon as you can.
- Put locks on all doors and windows.
- Ask your phone company for an unlisted number. (Sometimes this is free.) Don't call the other person from your phone. Screen all calls.
- If you move, don't tell the other person where you live.
- Give your children's schools and daycare a list of who is allowed to pick them up.
- Tell your neighbors and landlord that the other person no longer lives with you. Ask them to call the police if they see the other person near your home.
- Take care of yourself by asking for what you need and going to a support group.
- If you have to see the other person, meet in a public place and bring someone with you.
- If you are thinking of going back to the other person, talk to someone you trust first.
- Be safe at work by asking your co-workers to call the police if they see the other person at your job. Bring a picture of the other person to work.
- Take a different way home and to work. Go to different stores and places -- change your routine.
- If you drive, park where there is a lot of light.
- Have someone walk with you to your car or to the bus stop.

Be safe with a Protective Order

- Always keep your Protective Order with you and call the police if the other person violates it.
- Give copies of your Protective Order to your family, friends, neighbors, school, and daycare.
- If you need to get property from your home, you can request that a police officer go with you for safety.

LSC SJI

Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

Important things to take with you

Keep these papers in a safe place where the other person can't find them!

Identification --

- □ Driver's License or other government-issued ID
- □ Birth Certificate
- □ Social Security Card
- □ Children's Birth Certificate and Social Security Cards

Financial --

- □ Money and credit cards in your name
- □ Checking and savings account numbers

Legal Papers --

- □ Protective Order
- □ Lease or house papers
- □ Car registration and insurance
- □ Health and life insurance papers
- □ Medical records for you and your children
- □ School records
- □ Works permits/Green Cards/Visa
- □ Passport
- □ Divorce and custody papers
- □ Marriage license
- □ Mortgage and loan payment books and account numbers

Other --

- □ Medications
- □ House and car keys
- □ Valuable jewelry
- □ Address book
- □ Pictures
- □ Clothes for you and your children
- □ Diapers and formula
- □ Pets

Remember to keep these papers in a safe place where the other person can't find them!

Important resources

Police and Emergencies: 911

National Domestic Violence (DV) Hotline
1-800-799-SAFE (7233)
1-800-787-3224 (TTY) for the Deaf
Online chat: www.thehotline.org

Texas Council on Family Violence
1-800-525-1978
To find a legal advocate near you, go to: **www.tcfv.org**

2-2-1 Texas
221 or 877-541-7905

Child and Elderly Abuse/Neglect
1-800-252-5400

Rape Abuse & Incest National Network
1-800-656-HOPE (4673)

Texas Advocacy Project—Legal Line
1-800-374-HOPE (4673)

National Dating Violence Helpline
866-331-9474
www.loveisrespect.org

Lawyer Referral Service
1-877-9TEXASBAR or 1-800-252-9690

Child Support Office
1-800-252-8014

Crime Victim's Compensation
1-800-983-9933

Protective Order Application, Affidavit, and Declaration Forms

WITH INSTRUCTIONS

Sample Only — Do Not File

Cause No.: _____

Applicant: Your name here. You are the Applicant. _____ § In the _____ Court

§

§

§

§

§

§

Name of person you want protection from. This is the Respondent.

The clerk fills out this part

Respondent: _____ § _____ County, Texas

Application for Protective Order

1 Parties Your name here.

Name:

Applicant: _____ Name of person you want protection from

County of Residence: _____ County where each person lives

Respondent: _____

Respondent's address for service: _____ Best address to give the other person a copy of this form

Check all that apply:

The Applicant and Respondent are or were members of the same family or household.
The Applicant and Respondent are parents of the same child or children.
The Applicant and Respondent used to be married.
The Applicant and Respondent are or were dating.
The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	Yes	No	_____
b.	_____ Names of children needing protection	Yes	No	_____ County where each person lives
c.	_____	Yes	No	_____
d.	_____	Yes	No	_____

Check all that apply:

Other children are listed on a sheet attached to this Application.
The Children are or were members of the Applicant's family or household.
The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____ Names of other adults needing protection	_____ County where each person lives
b.	_____	_____

4a Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

Yes No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*):

A copy of the final order is attached.
A copy of the final order will be filed before the hearing on this Application.
The Texas Office of the Attorney General Child Support Division has been involved with a child support case. List the agency case number for each open case, if known.
Case Number: _____

4b Presumption of Family Violence: Has the Respondent been convicted or placed on community supervision for any crime under Title 5 or Title 6 of the Texas Penal Code (see kit)

The judge will assume family violence has occurred if any of these boxes are checked

Yes No

If "Yes," say what kind of case: _____

If the Respondent was convicted or placed on community supervision for a Title 5 crime, did the Court make a finding that the crime involved family violence?

Yes No

Was the crime against a child listed in this petition under Number 2 "Children"?

Yes No

Have the Respondent's parental rights to this child been terminated?

Yes No

Is the Respondent seeking or attempting to seek contact with this child?

Yes No

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

The Respondent committed family violence and is likely to commit family violence in the future.

The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): Attached, or

Not available now but will be filed before Application

Read and check one or both

The Applicant requests a PROTECTIVE ORDER and asks the Court to make the orders marked with a check ✔

Check all the orders you want the judge to make

6 ✔Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ✔ Not commit family violence against any person named on page 1 of this form.

b. Not communicate in a threatening or harassing manner with any person named on page 1 of this form.

c. Not communicate a threat through any person to any person named on page 1 of this form.

d. Not communicate or attempt to communicate in any manner with (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.

f. Not go within 200 yards of the residence, workplace, or school of the (*Check all that apply*):
Applicant Other Adults named on page 1 of this form.

g. Not go 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.

h. Not stalk, follow, or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ✔ Suspend any license to carry a handgun issued to the Respondent by the State of Texas.

j. Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.

k. Prohibit the Respondent from taking, harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

l. Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
_____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 Property Orders

The Residence located at: Your home address here, unless you want it to be confidential

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

The Applicant also asks the Court to make these orders (*Check all that apply*):

The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

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

The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:

List the property you want to use or control, like a car or furniture, even if the other person owns it with you.

The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 Spousal Support Order

Check here if you want spousal support.

...ondent or otherwise legally entitled to support from the Respondent and asks ... pay support in an amount set by the Court.

9 Orders Related to Removal, Possession, and Support of Children

The Res... ...ing of the Applicant's children: _____

Check here and fill out this section if you want the judge to make orders about who the children can stay with, restrictions on travel, and child support.

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.

The Respondent must not remove the children from the jurisdiction of the Court.

Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.

Require the Respondent to pay child support in an amount set by the Court.

10 ✔Temporary Ex Parte Protective Order

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children, or Other Adults named on page 1 of this form immediate and irreparable injury, loss, and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing.

11 Ex Parte Order: Vacate Residence Immediately

The A... ...with the Respondent at: Your home address here or has resided at this

Check here if you want the judge to order the other person to move out.

... filing this Application. The Respondent committed family violence against a ... the 30 days prior to the filing of this Application, as described in the attached

Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the 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 the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ✔ Keep Information Confidential

Check here if you want to keep your contact information private

keep addresses and telephone numbers for residences, workplaces, schools, and

WARNING: A copy of this court document will be served to the respondent with any information that you include available for public inspection. Marking the box on number 12 means that you are asking the judge to order the clerk to remove some addresses and telephone numbers from the final order in this case so that the public cannot see them. If you are requesting this, DO NOT INCLUDE this personal information in this form OR a temporary ex parte protective order form.

13 ✔ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____ Sign Here or Digitized Signature is acceptable _____
Applicant, *Pro se*

List your address/phone or another address/phone if you want yours kept confidential.

Address where Applicant may be contacted: _____
_____

Phone # where Applicant may be contacted: _____ Fax #: _____
(List another address/phone if you want yours kept confidential)

Sample Only — Do Not File

Use this form if YOU WANT your Date of Birth and Address to REMAIN CONFIDENTIAL.

You will need to have it SIGNED BY A NOTARY.

Do NOT use the Declaration form if you use this form.

AFFIDAVIT

County of ____ (Write the name of your county here) ____

State of Texas

My name is _____ (Your name here) _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____

_____

_____

(Answer every question on this form)

2. In which county did this happen?_____
3. What date did this happen? _____ / ____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened? _____
7. Did you get medical care? Yes No If yes, describe your injuries: _____

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

_____

_____

_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____

_____

_____

_____

_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

13. Has the Defendant ever been convicted of family violence? Yes No
If yes, list when and in which county and state the convictions occurred: _____

_____

_____

(Do NOT sign until the notary tells you to)

▶ _____
Applicant signs here

(Notary fills this part out)

On ____ / ____ / _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is 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 and to the best of her/his knowledge and belief. Subscribed and sworn before me on ____ / ____ / _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

Sample Only — Do Not File

Use this form if you want your Date of Birth and Address to be public information (not confidential).

You will NOT need to have it signed by a notary.

Do NOT use the Affidavit form if you use this form.

DECLARATION

County of ___ (Write the name of your county here) ___
State of Texas

My name is _____ (Your name here) _____ (First Middle Last), my date of birth is (Your date of birth here)
and my address is _____ (Your address here) _____ (Street), _____
(City), _____ (State), _____ (Zip Code) _____ (Country) _____.

I declare under penalty of perjury that the for[illegible]

Executed in _____ County, Stat[illegible] (Write your County, State, and the Date you signed here) day of _____ (Month), _____ (Year).

_____ (Sign your name here) _____ (Declarant Signature).

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____
_____
_____

Answer every question on this form

2. In which county did this happen? _____
3. What date did this happen? _____ / _____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened?
7. Did you get medical care? Yes No If yes, describe your inj

If it happened in the last 30 days, the judge can order the Respondent to move out.

_____
_____
_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____
_____
_____
_____
_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

13. Has the Defendant ever been convicted of family violence?
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

Sign Here

▶ _____
Applicant signs here

Sample Only — Do Not File

Protective Order Application, Affidavit, and Declaration Forms

FILL OUT AND FILE

Cause No.: _____

Applicant: _____ § In the _____ Court
§
v. § of
§
§
§
Respondent: _____ § _____ County, Texas

Application for Protective Order

1 Parties

Name: County of Residence:

Applicant: _____ _____

Respondent: _____ _____

Respondent's address for service: _____

Check all that apply:

The Applicant and Respondent are or were members of the same family or household.
The Applicant and Respondent are parents of the same child or children.
The Applicant and Respondent used to be married.
The Applicant and Respondent are or were dating.
The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	Yes	No	_____
b.	_____	Yes	No	_____
c.	_____	Yes	No	_____
d.	_____	Yes	No	_____

Check all that apply:

Other children are listed on a sheet attached to this Application.
The Children are or were members of the Applicant's family or household.
The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____	_____
b.	_____	_____

4a Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

Yes No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): A copy of the final order is attached.
A copy of the final order will be filed before the hearing on this Application.
The Texas Office of the Attorney General Child Support Division has been involved with a child support case. List the agency case number for each open case, if known.
Case Number: _____

4b Presumption of Family Violence: Has the Respondent ever been convicted of or placed on deferred adjudication community supervision for any crime under Title 5 or Title 6 of the Texas Penal Code? (see list of crimes at the end of the kit)

Yes No

If "Yes," say what kind of case:

_____

If the Respondent was convicted or placed on community supervision for a Title 5 crime, did the Court make a finding that the crime involved family violence?

Yes No

Was the crime against a child listed in this petition under Number 2 "Children"?

Yes No

Have the Respondent's parental rights to this child been terminated?

Yes No

Is the Respondent seeking or attempting to seek contact with this child?

Yes No

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

The Respondent committed family violence and is likely to commit family violence in the future.

The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): Attached, or

Not available now but will be filed before the hearing on this Application

The Applicant requests a PROTECTIVE ORDER and asks the Court to make all Orders marked with a check ✔

6 ✔Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ✔ Not commit family violence against any person named on page 1 of this form.

b. Not communicate in a threatening or harassing manner with any person named on page 1 of this form.

c. Not communicate a threat through any person to any person named on page 1 of this form.

d. Not communicate or attempt to communicate in any manner with (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the (*Check all that apply*):
Applicant Children Other Adults named on page 1 of this form.

f. Not go within 200 yards of the residence, workplace, or school of the (*Check all that apply*):
Applicant Other Adults named on page 1 of this form.

g. Not go 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.

h. Not stalk, follow, or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ✔ Suspend any license to carry a handgun issued to the Respondent by the State of Texas.

j. Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.

k. Prohibit the Respondent from taking, harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

l. Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
_____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 Property Orders

The Residence located at: _____

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

The Applicant also asks the Court to make these orders (*Check all that apply*):

The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

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

The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks the Court to order the Respondent to pay support in an amount set by the Court.

9 Orders Related to Removal, Possession, and Support of Children

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

_____

_____

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.

The Respondent must not remove the children from the jurisdiction of the Court.

Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.

Require the Respondent to pay child support in an amount set by the Court.

10 ✔Temporary Ex Parte PROTECTIVE ORDER

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children, or Other Adults named on page 1 of this form immediate and irreparable injury, loss, and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing.

11 Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: _____ or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence

against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the 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 the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ✔Keep Information Confidential

The Applicant asks the Court to keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

WARNING: A copy of this court document will be served to the respondent with any information that you include available for public inspection. Marking the box on number 12 means that you are asking the judge to order the clerk to remove some addresses and telephone numbers from the final order in this case so that the public cannot see them. If you are requesting this, DO NOT INCLUDE this personal information in this form OR a temporary ex parte protective order form.

13 ✔Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

_____

Phone # where Applicant may be contacted: _____ Fax #: _____

(List another address/phone if you want yours kept confidential)

AFFIDAVIT

County of _____

State of Texas

My name is _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the most **recent time** the Respondent hurt you or threatened to hurt you:

_____

_____

_____

2. In which county did this happen? _____

3. What date did this happen? _____ / _____ / _____

4. Was a weapon involved? Yes No If yes, what kind? _____

5. Were any children there? Yes No If yes, who? _____

6. Did anyone call the police? Yes No If yes, what happened? _____

7. Did you get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____

_____

_____

_____

_____

9. Were weapons ever involved? Yes No If yes, what kind? _____

10. Were any children there? Yes No If yes, who? _____

11. Have the police ever been called? Yes No

12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____

_____

_____

13. Has the Defendant ever been convicted of family violence? Yes No

If yes, list when and in which county and state the convictions occurred: _____

_____

_____

▶ _____

Applicant signs here

On ____ / ____ / _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is 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 and to the best of her/his knowledge and belief. Subscribed and sworn before me on ____ / ____ / _____.

▶ _____

Notary Public in and for the State of Texas

My Commission expires: _____

DECLARATION

County of _____
State of Texas

My name is _____ (First Middle Last), my date of birth is _____,
and my address is _____ (Street), _____
(City), _____ (State), _____ (Zip Code) _____ (Country) _____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of ___ day of _____ (Month), _____ (Year).

_____ (Declarant Signature).

1. Describe the **most recent** time the Respondent hurt you or threatened to hurt you:

_____
_____
_____

2. In which county did this happen? _____
3. What date did this happen? _____ / ____ / _____
4. Was a weapon involved? Yes No If yes, what kind? _____
5. Were any children there? Yes No If yes, who? _____
6. Did anyone call the police? Yes No If yes, what happened? _____
7. Did you get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

8. Has the Respondent ever threatened or hurt you ***before***? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

_____
_____
_____
_____
_____

9. Were weapons ever involved? Yes No If yes, what kind? _____
10. Were any children there? Yes No If yes, who? _____
11. Have the police ever been called? Yes No
12. Did you ever have to get medical care? Yes No If yes, describe your injuries: _____

_____
_____
_____

13. Has the Defendant ever been convicted of family violence?
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

▶ _____
Applicant signs here

Temporary Ex Parte Protective Order Form

WITH INSTRUCTIONS

Sample Only — Do Not File

Cause No.: _____

Applicant: _____ § In the _____ Court

v. Look at the top of your Application for Protective Order and copy the same information here. of

§

Respondent: _____ § _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: _____ a.m. The court fills out this part.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration 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 the Respondent or hearing. No bond is required.

1 Respondent: The person named below is ordered to follow all Orders marked with a ch

What county does s/he live in?

Name: _____ Who do you want protection from? _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
Applicant:	Your name here _____	_____ County where each person lives
Children:	_____ Names of the children you want protected by this order	_____
	_____	_____
	_____	_____
Other Adults:	_____ Names of the other adults needing protection	_____
	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ✔

The Respondent (person named in 1) must:

a. Not commit an act against any person named in **2** above that is intended injury, assault, or sexual assault or that is a threat that reasonably place physical harm, bodily injury, assault, or sexual assault.

The Court fills out the rest of this form. The judge may ask you questions before making the orders

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to any person named in **2** above.

Sample Only — Do Not File

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. (except to go to court hearings)

f. Not go within 200 yards of the Residence, workplace, or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____
Here you may give the name and mailing address of another person to receive documents on your behalf.

g. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. Not go 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. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. Not stalk, follow, or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. Not remove the Children from the jurisdiction of the Court.

l. Not take, harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. Not interfere with the 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.

n. Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____
(*Check one*):

is jointly owned or leased by the Applicant and Respondent;
is solely owned or leased by the Applicant; or
is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the 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 the 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 the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: ____ a.m. p.m. on: _____ (*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

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

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

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.

6 Duration of Order: This 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.

7 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 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.

This Ex Parte Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Temporary Ex Parte Protective Order Form

FILL OUT AND FILE

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: _____ a.m. p.m.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration 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 the Respondent or hearing. No bond is required.

1 Respondent: The person named below is ordered to follow all Orders marked with a check.

Name: _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this PROTECTIVE ORDER:

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

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ✔

The Respondent (person named in 1) must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to any person named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above. (except to go to court hearings)

f. Not go within 200 yards of the Residence, workplace, or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____
Here you may give the name and mailing address of another person to receive documents on your behalf.

g. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. Not go 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. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. Not stalk, follow, or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. Not remove the Children from the jurisdiction of the Court.

l. Not take, harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. Not interfere with the 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.

n. Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;
is solely owned or leased by the Applicant; or
is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the 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 the 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 the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: ____ a.m. p.m. on: _____ (*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

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

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

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.

6 Duration of Order: This 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.

7 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 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.

This Ex Parte Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Protective Order Form

WITH INSTRUCTIONS

Sample Only — Do Not File

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

Your name here

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

Names and birthdays of children needing protection

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

Names of other adults needing protection

_____

VS.

Respondent

Name of person you want protection from

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR			(last 3 #)
DRIVERS LICENSE NO.			STATE	EXP DATE

Fill out information describing the person you want protection from

Distinguishing F

For example: tattoos, piercings, scars, facial hair

A Court hearing was held on: Date: _____ Time: _____ a.m. p.m.

Write the actual date and time of the hearing

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been pr and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or

as otherwise provided for in Section 15 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Sample Only — Do Not File

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

The 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); *or* the applicant is dating or married to a person who was married to or dating the Respondent.

The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.

Under Texas Family Code Section 81.0015, there is a presumption that the Respondent has committed family violence and is likely to commit family violence in the future.

The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant Respondent

Appeared in person and announced ready.

Appeared in person and by attorney, _____, and announced ready.

Appeared by signature below evidencing agreement to the entry of this Protective Order.

Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
Applicant:	Your name here	County where each person lives
Children:	Names of children needing protection	
Other Adults:	Names of other adults needing protection	

3 A Record of Testimony (*Check one*): was made by: _____

was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ✔

The Respondent must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to anyone named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

Applicant Children Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)
Applicant Children Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
Applicant Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)
Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. Not stalk, follow, or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. Not take, harm, threaten, or interfere with the care, custody or control of the following pet, companion animal, or assistance animal: _____ (*describe the animal*).

j. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a handgun issued to the Respondent by the State of Texas is hereby SUSPENDED.

5 Family Violence Prevention Program

The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*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:

_____

The 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. The 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.

The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;

is solely owned or leased by the Applicant; or

is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ a.m. p.m. on: _____ (*date*).

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

7 Other Property Orders

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

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

8 Spousal Support Order

IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the 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 in **2** above.

Removal — *Check one or both*:

The Respondent must:

Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

Not remove the Children from the jurisdiction of the Court.

Possession — *Check one*:

The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

The Applicant is granted primary possession of the Children, and the 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 herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the 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 — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered. — *Check one*:

The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment 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.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 Confidentiality of Information

The Court Clerk is ordered to strike contact information for Protected People, including: addresses, mailing addresses, telephone numbers, places of employment, businesses, child-care facilities, and schools from the public records of the Court, and maintain a confidential record of this information. The Clerk of the Court is prohibited from releasing contact information of Protected People except to the Court or to law enforcement for the purpose of entering the information into the Department of Public Safety law enforcement information system. **It is ordered that all contact information for the Protected People is confidential.**

It is ordered that the following person is designated as a person to receive any notice or documents filed with the Court related to the application on behalf of the Applicant:

Name: _____

Address: _____

It is ordered that the Applicant's mailing address is confidential and shall only be disclosed to the Court.

11 Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $_____ + *all other Court fees and costs*: $_____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

12 Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $_____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

13 Service

This Protective Order (*Check all that apply*):

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

14 Copies Forwarded

Not later than the next business day, 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.
Police Chief of the City of _____.
Children's child-care facility/schools listed above.
The Title IV-D agency
The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned whose address is as follows: _____.

Any law enforcement agency receiving a copy of this Protective Order MUST immediately, but not later than the 3rd business day, enter all required information into the Department of Public Safety's statewide law enforcement information system.

15 Duration of Order

This Protective Order is in full force and effect until:

_____ (*this date must be no more than two years from the date this Order is signed.*)
_____ (*duration*) This date is more than two years from the date this Protective Order is signed.

The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or
The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.
The Court finds that the Respondent committed an act constituting a felony offense involving family violence against the Applicant or a member of the Applicant's family or household regardless of whether the Respondent has been charged with or convicted of the offense.

If the Protective Order is scheduled to expire while the Respondent is confined or imprisoned or within one year of Respondent's release, the Protective Order will expire one year after the Respondent's release if Respondent was sentenced for more than five years; or two years after the date of Respondent's release if Respondent was sentenced for five years or less.

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 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 the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

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

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Protective Order Form

FILL OUT AND FILE

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

_____

VS.

Respondent

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY NO. (Last 3 #)		
		_____ _____ _____		
DRIVERS LICENSE NO.			STATE	EXP DATE
_____				

Distinguishing Features: _____

_____

A Court hearing was held on: Date: _____ Time: _____ a.m. p.m.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or

as otherwise provided for in Section 15 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

The 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); *or* the applicant is dating or married to a person who was married to or dating the Respondent.

The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.

Under Texas Family Code Section 81.0015, there is a presumption that the Respondent has committed family violence and is likely to commit family violence in the future.

The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant Respondent

Appeared in person and announced ready.

Appeared in person and by attorney, _____, and announced ready.

Appeared by signature below evidencing agreement to the entry of this Protective Order.

Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

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

3 A Record of Testimony (*Check one*): was made by: _____

was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ✔

The Respondent must:

a. Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. Not communicate in a threatening or harassing manner with any person named in **2** above.

c. Not communicate a threat through any person to anyone named in **2** above.

d. Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

Applicant Children Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. Not go within 200 yards of the: (*Check all that apply*)

Applicant Children Other Adults named in **2** above.

(Except to go to court hearings or to exchange Children as authorized by a court order)

f. Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)

Applicant Other Adults named in **2** above.

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

Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

Disclosed as follows:

Applicant's Residence: _____

Applicant's Workplace/School: _____

Other: _____

g. Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)

Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

Disclosed as follows:

Children's Residence: _____

Children's Child-care/School: _____

Other: _____

h. Not stalk, follow, or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. Not take, harm, threaten, or interfere with the care, custody or control of the following pet, companion animal, or assistance animal: _____ (*describe the animal*).

j. ✔ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a handgun issued to the Respondent by the State of Texas is hereby SUSPENDED.

5 Family Violence Prevention Program

The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*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:

_____

The 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. The 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.

The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

The Court finds that the Residence located at: _____

(*Check one*):

is jointly owned or leased by the Applicant and Respondent;

is solely owned or leased by the Applicant; or

is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ a.m. p.m. on: _____ (*date*).

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

7 Other Property Orders

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

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, 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).

8 Spousal Support Order

IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the 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 in **2** above.

Removal — *Check one or both*:

The Respondent must:

Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

Not remove the Children from the jurisdiction of the Court.

Possession — *Check one*:

The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

The Applicant is granted primary possession of the Children, and the 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 herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the 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 — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered. — *Check one*:

The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment 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.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 Confidentiality of Information

The Court Clerk is ordered to strike contact information for Protected People, including: addresses, mailing addresses, telephone numbers, places of employment, businesses, child-care facilities, and schools from the public records of the Court, and maintain a confidential record of this information. The Clerk of the Court is prohibited from releasing contact information of Protected People except to the Court or to law enforcement for the purpose of entering the information into the Department of Public Safety law enforcement information system. **It is ordered that all contact information for the Protected People is confidential.**

It is ordered that the following person is designated as a person to receive any notice or documents filed with the Court related to the application on behalf of the Applicant:

Name: _____

Address: _____

It is ordered that the Applicant's mailing address is confidential and shall only be disclosed to the Court.

11 Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $_____ + *all other Court fees and costs*: $_____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

12 Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $_____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

13 Service

This Protective Order (*Check all that apply*):

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

14 Copies Forwarded

Not later than the next business day, 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.
Police Chief of the City of _____.
Children's child-care facility/schools listed above.
The Title IV-D agency
The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned whose address is as follows: _____.

Any law enforcement agency receiving a copy of this Protective Order MUST immediately, but not later than the 3rd business day, enter all required information into the Department of Public Safety's statewide law enforcement information system.

15 Duration of Order

This Protective Order is in full force and effect until:

_____ (*this date must be no more than two years from the date this Order is signed.*)
_____ (*duration*) This date is more than two years from the date this Protective Order is signed.

The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or
The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.
The Court finds that the Respondent committed an act constituting a felony offense involving family violence against the Applicant or a member of the Applicant's family or household regardless of whether the Respondent has been charged with or convicted of the offense.

If the Protective Order is scheduled to expire while the Respondent is confined or imprisoned or within one year of Respondent's release, the Protective Order will expire one year after the Respondent's release if Respondent was sentenced for more than five years; or two years after the date of Respondent's release if Respondent was sentenced for five years or less.

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 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 the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time: _____ a.m. p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

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

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Respondent Information for Protective Orders

If the Court grants you a Protective Order, then fill out this form and file it with the clerk. Unless otherwise noted, fill in information below for the Respondent. If you do not know the information requested, leave that section blank. Please try to provide, at a minimum, the Respondent's name, date of birth, sex, height, weight, eye color, hair color, and race. Law enforcement needs this information to serve (give) the Respondent with the Protective Order and enter the Respondent's information into the statewide law enforcement database.

If the Court does not grant you a Protective Order, then do not fill out this form.

Respondent's Name: _____

Alias (Nickname): _____

Respondent's Relationship to Applicant: _____

Respondent's Address: _____ City: _____ State: _____ Zip: _____

County: _____ Email Address: _____ Date of Birth: _____ Place of Birth: _____

SSN (*last 3#*) # ___ ___ ___ Identification Number/State: _____ /_____ Expiration Date: _____

Driver's License Number/State: _____ /_____ Expiration Date: _____

Other Identification Number: _____

Respondent is is not on active duty with the military

Sex: M F Height: ____ ft ____ in Weight: _____ lbs

Race

American Indian or Alaskan Native (I)
Asian Pacific Islander (A)
Black (B)
White (W)
Unknown (All other non-whites) (U)
Other: _____
_____

Ethnicity

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

Eye color

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

Hair color

Black (BLK)
Blond or Strawberry (BLN)
Brown (BRO)
Gray or partially gray (GRY)
Red or Auburn (RED)
White (WHI)
Sandy (SDY)
Completely Bald or Unknown (xxx)
Other (*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 _____

Other Identifying Information (*Check all that apply to the Respondent and describe)*

Glasses _____
Beard _____
Moustache _____
Missing front teeth _____
Bald _____

Tattoos _____
Scars _____
Markings _____
Piercings _____
Mental Health Condition _____

Drug/Alcohol Use _____
Weapons _____
Other _____
Other _____

Respondent's Vehicle Information: Vehicle ID # (VIN): _____ Year: ____ Make: _____ Model: _____

Color: _____ License Plate #: _____ State: _____ License Plate Year of Expiration: _____

Respondent's Employment Information (name of employer): _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Hours/Dept: _____ Supervisor: _____

Respondent's Attorney (*Name*): _____ Phone: _____ Address: _____

_____ City: _____ State: _____ Zip: _____

Other people who may have information to help find Respondent:

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

*****Protected Person Information*****

(Use additional pages if necessary)

Name of Protected Person: _____

Sex: M F Date of Birth: _____ SSN (*last 3#*) ____ ____ ____ County: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknown

Employment Information (*name of employer*): _____

Address: _____ City: _____ State: ____ Zip: _____

Employment Information (*name of employer*): _____

Address: _____ City: _____ State: ____ Zip: _____

*****Protected Child Information*****

(Use additional pages if necessary)

Name of Protected Child: _____

Sex: M F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknow

Name of Protected Child: _____

Sex: M F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: Indian Asian Black White Unknown **Ethnicity:** Hispanic Non-Hispanic Unknow

List of Crimes under Texas Penal Code Titles 5 and 6

When answering question 4b on the Application for Protective Order form, look at this list to see if Respondent has been convicted or received deferred adjudication community supervision for any of the following crimes.

Title 5 Crimes

- Unlawful Restraint
- Kidnapping
- Aggravated Kidnapping
- Smuggling of Persons
- Trafficking of Persons
- Continuous Trafficking of Persons
- Continuous Sexual Abuse of a Young Child or Children
- Public Lewdness
- Indecent Exposure
- Indecency with a Child
- Invasive Visual Recording
- Assault
- Sexual Assault
- Aggravated Assault
- Aggravated Sexual Assault
- Injury to a Child, Elderly Individual, or Disabled Individual
- Abandoning or Endangering a Child
- Deadly Conduct
- Terroristic Threat
- Leaving a Child in a Vehicle

Title 6 Crimes

- Prohibited Sexual Conduct
- Interference with Child Custody
- Agreement to Abduct from Custody
- Enticing a Child
- Criminal Nonsupport
- Harboring Runaway Child
- Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case
- Violation of Protective Order Preventing Offense Caused by Bias or Prejudice
- Repeated Violation of Certain Court Orders or Conditions of Bond in the Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case
- Sale or Purchase of Child
- Advertising for Placement of Child
- Interference with Rights of Guardian of the Person
- Continuous Violence Against the Family

Memorandum

To: Texas Supreme Court Advisory Committee

From: Social Media Subcommittee (TEX. R. CIV. P. 216-299a)
Professor Elaine A. Carlson, Chair
Judge David Peeples, Vice-Chair
Alistair Dawson
Bobby Meadows
Tom Riney
Kent Sullivan
Kennon Wooten

ATTORNEY USE OF SOCIAL MEDIA TO INVESTIGATE A JUROR

Issue:

To what extent may an attorney ethically use electronic social media (ESM) to investigate a prospective juror?[1]

Analysis:

Texas Disciplinary Rule of Professional Conduct 3.06 addresses communications with venire members and jurors and provides as follows:

> a) A lawyer shall not:
>
> (1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or
>
> (2) seek to influence a venireman or juror concerning the

[1] Throughout this comment, the term "social media" refers to "the wide array of Internet-based tools and platforms that increase and enhance the sharing of information," the "common goal [being] to maximize user accessibility and self-publication through a variety of different formats." *See Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees*, Committee on Codes of Conduct, Judicial Conference of the United States, Administrative Office of the United States Courts, April 2010, at 9, available at http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct. ESM includes, but is not limited to, Facebook, Myspace, LinkedIn, Twitter, blogs, etc.

merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

(g) As used in this Rule, the terms "matter" and "pending" have the meanings specified in Rule 3.05(c).

Comments:

1. To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to

communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is not prohibited by this Rule so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Contacts with discharged jurors, however, are governed by procedural rules the violation of which could subject a lawyer to discipline under Rule 3.04. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

2. Vexatious or harassing investigations of jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

3. Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

4. Because of the extremely serious nature of any actions that threaten the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct. If such improper actions were taken by or on behalf of a lawyer, either the reporting lawyer or the court normally should initiate appropriate disciplinary proceedings. See Rules 1.05, 8.03, 8.04.

On April 24, 2014, the American Bar Association (ABA) issued Formal Opinion 466 on *Lawyer Reviewing Jurors' Internet Presence.* The opinion addresses the following three levels of lawyer review of juror Internet presence:

1. passive lawyer review of a juror's website or electronic social media that is available without making an access request where the

juror is unaware that a website or electronic social media had been reviewed;
2. passive lawyer review where the juror becomes aware through a website or electronic social media feature of the identity of the viewer; and
3. active lawyer review where the lawyer requests access to the juror's electronic social media.

The ABA concluded that passive lawyer review of a juror's website or ESM without making an access request, where the juror is not aware of the review, is permissible. Specifically, such conduct does not constitute a prohibited "*ex parte* communication" with a juror or an improper attempt to influence a juror and thus does not violate ABA Model Rule 3.5(b). The ABA analogized this type of review to an attorney "driving down the street where the prospective juror lives to observe the environs in order to glean publicly available information that could inform the lawyer's jury-selection decisions."

Nor are ethical constraints violated by passive lawyer review when the juror becomes aware of the lawyer's identity through the social media provider, according to the ABA. *Accord* Pennsylvania State Bar Opinion, a. St. Bar Ass'n, Op. 2014-300 (2014) (concluding it is not a communication provided it is the website, not the attorney, that provides this information to the juror). The ABA reasoned that "the lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the ESM." This is akin to a neighbor's recognizing a lawyer's car driving down the juror's street and telling the juror that the lawyer had been seen driving down the street." This could occur, for example, when a person views another person's LinkedIn page, as the person whose page was reviewed is informed by LinkedIn of the identity of reviewers.

Several jurisdictions and ethic opinions have reached the contrary conclusion, determining that this conduct constitutes an improper *ex parte* communication with a juror. *See, e.g.*, Association of the Bar of the City of New York Committee on Professional Ethics, Formal Opinion 2012-2 (concluding that, if a juror discovers that an attorney has viewed their profile, this constitutes a communication *regardless of whether the attorney knew about it); accord* New York County Lawyers' Association Committee on Professional Ethics Formal Opinion 743; *see also* California, Rule 5-320:

Contact with Jurors (providing in subpart (A) that "[a] member connected with a case shall not communicate directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case").

As to the third scenario—active lawyer review where the lawyer requests access to the juror's ESM—nearly all jurisdictions that have addressed the issue have concluded that this constitutes an improper *ex parte* communication with a juror. In Formal Opinion 466, the ABA opinion suggested, "This would be akin to driving down the juror's street, stopping the car, getting out, and asking the juror for permission to look inside the juror's house because the lawyer cannot see enough when just driving past." *See also* N.Y. Cnty. Lawyers' Ass'n, Formal Op. 743 (2011); Ass'n of the Bar of the City of N.Y. Comm. on Prof'l Ethics, Formal Op. 2012-2; Or. St. Bar Ass'n, Formal Op. 2013-189 (Feb. 2013); Pa. St. Bar Ass'n, Op. 2014-300 (2014); N. Y. St. Bar Ass'n Comm. & Fed. Litig. Sec., *Social Media Ethics Guidelines* (updated June 9, 2015); Lawyer Disciplinary Board of W. Va., L.E.O. 2015-02, at 18 (Sept. 22, 2015); Colo. Bar Ass'n Ethics Comm., Formal Op. 127 (Sept. 2015); *see also* U.S. Dist. Ct. Rules D. Id. L. Civ. R. 47.2; U.S. Dist. Ct. Rules N.D.N.Y., L.R. 47.6.

Recommendations of Subcommittee:

The subcommittee believes the ABA approach is superior and suggests the following comment be added to current Texas Disciplinary Rule of Professional Conduct 3.6:

5. A lawyer's review of a venireman's or juror's website or electronic social media (ESM) that is available without making an access request, is not an improper ex parte communication

A lawyer's review of a venireman's [or juror's] ESM, when the lawyer or someone acting for the lawyer requests access to the venireman's or juror's ESM (e.g., by making a friend request or making a comment on the individual's social media page) [or otherwise communicates with the venire member or juror], is prohibited because it constitutes an improper ex parte communication.

Other Issues:

Other issues arising from counsel's use of ESM encountered but not addressed as outside the charge to subcommittee:

A. Should counsel, in undertaking the permissible review of a venire member's or juror's ESM, discover improper conduct by that individual, what is the obligation of counsel to advise the court? Example: A Facebook page of a venire member suggests prior service on a jury but voir dire response is inapposite. (See Texas Disciplinary Rule 3.03(a)(2) ("A lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act") and Texas Disciplinary Rule 3.06(f) "A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge" assuming jurors have been instructed not to discuss the case on social media.)

B. May attorneys ethically advise their client to delete or change content on the client's ESM or websites? See *Lester v. Allied Concrete Co*., 736 S.E.2d 699, 285 Va. 295 (2013), wherein the Virginia Supreme Court affirmed the lower court's sanctions requiring counsel to pay $544.000 for instructing his client to remove photographs from his Facebook page and also utilized a spoliation instruction to the jury. The client was suing for wrongful death of his spouse resulting from a car accident. One of the photos depicted the surviving husband holding a beer and wearing a tee shirt with "I (heart) hot moms."

C. May attorneys ethically advise their clients not to comment on pending litigation or otherwise restrict the use of their ESM?

D. May attorneys ethically advise their client to change their privacy settings, for example, from public to private, until litigation is concluded? For example, NYCLA Ethics Opinion 745 concludes that New York attorneys may advise clients as to what they should not post on social media; what existing postings they may or may not remove; the implication of social media posts; and to adjust privacy

settings to the highest level of security. The opinion also addresses penalties for spoliation and concludes it is permissible for counsel to review what a client plans to publish on a social media page to guide the client. However, according to the opinion, counsel may not participate in the creation of presentation of false or misleading information.

E. May attorneys ethically investigate the ESM of other parties or witnesses? Members of the petite jury during trial?

F. Does a lawyer's familiarity with and abilities relating to technology, including ESM, affect the lawyer's competence?

The ABA adopted Comment 8 to Model Rule 1.1, which pertains to competence, to read as follows:

> Maintaining Competence
>
> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Twenty-three states have adopted this approach. *See* http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html; *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010) (affirming grant of new trial as juror falsely denied that he had prior juror service; suggesting party should exert reasonable efforts, including internet research, to examine potential jurors' litigation history).

Memorandum

To: Texas Supreme Court Advisory Committee

From: Social Media Subcommittee (TEX. R. CIV. P. 216-299a)
Professor Elaine A. Carlson, Chair
Judge David Peeples, Vice-Chair
Alistair Dawson
Bobby Meadows
Tom Riney
Kent Sullivan
Kennon Wooten

REVISED PROPOSAL RE JUDICIAL USE OF SOCIAL MEDIA

In his letter of December 21, 2016, Chief Justice Hecht asked the SCAC to draft amendments to the Code of Judicial Conduct that give guidance on permissible social media use by judges. The Committee discussed the initial proposal at its August 11, 2017 meeting. In light of comments and suggestions made at that meeting, the Subcommittee presents the following new subsection to Canon 4 of the Texas Code of Judicial Conduct and a new comment regarding the use of social media by members of the judiciary. The Social Media Subcommittee also notes that the proposed new subsection and comment might necessitate changes to Canon 3B(10).

New Subsection J and New Comment to Canon 4

J. Judicial Use of Social Media

The provisions of this Code that govern a judge's communications in person, on paper, and by electronic methods also govern a judge's use of social media.

COMMENT

Social media has become a powerful communication device for persons holding public office, including judges.[1] The same features that make social media politically useful to judges, however, may threaten ethical standards that govern judges. The provisions of this Code that govern a judge's use of social media, along with the following guidelines, are intended to strike a constitutionally permissible balance between judges' First Amendment rights and the State's interest in safeguarding both the right to a fair trial[2] and public confidence in the integrity and impartiality of the judiciary.[3]

As provided in Canon 4J, the provisions of this Code that govern a judge's communications in person, on paper, and by electronic methods also govern a judge's use of social media. In all communications, including communications on social media, a judge shall[4] avoid conduct that undermines the judge's independence, integrity, impartiality, or the appearance of impartiality or that constitutes an *ex parte* communication. Judges should be cautious when posting or communicating on social media and should understand that their communications will likely be scrutinized by others.

Social media differs from traditional in-person and written communications. A statement, photograph, video, or other content can be disseminated to

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[1] Throughout this comment, the term "social media" refers to "the wide array of Internet-based tools and platforms that increase and enhance the sharing of information," the "common goal [being] to maximize user accessibility and self-publication through a variety of different formats." *See Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees*, Committee on Codes of Conduct, Judicial Conference of the United States, Administrative Office of the United States Courts, April 2010, at 9, available at http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct.

[2] *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) ("Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.").

[3] *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015) ("We have recognized the 'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.'" (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (internal quotation marks omitted)); *see also Republican Party of Minnesota v. White*, 536 U.S. 765, 775–77 (2002) (addressing judicial impartiality—as the lack of bias for or against either party to a proceeding—as a compelling state interest).

[4] While the subcommittee prefers the use of "must" instead of "shall", Canon 8B defines "shall" and does not define "must".

large audiences quickly and easily on social media, sometimes without the consent or knowledge of the person who posted the content (or any person mentioned or depicted in that content). Postings can also invite response and discussion, over which the original poster may have little or no control. Seemingly private remarks can quickly be taken out of context and broadcast in much wider circles than the original poster intended. Content on social media can lie dormant and then be recirculated long after the original posting. A judge using social media should be familiar with privacy settings and mindful of the extent public access is allowed. If public access is unrestricted, a judge shall use reasonable efforts to monitor the judge's social media. In all cases, a judge should take appropriate corrective action if others communicate improperly on the judge's social media.[5]

Social media also creates new and unique relationships, such as "friends" and "followers". Simple designation as a social-media connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person and is not, in and of itself, determinative of whether a judge's impartiality might reasonably be questioned. Social-media connections and any other communications on social media, however, may be a factor that can be considered in gauging the judge's relationship with a party, witness, or lawyer and whether recusal is mandated by Rule 18(b) of the Texas Rules of Civil Procedure. Moreover, if a social-media connection includes current and frequent communication, the judge shall carefully consider whether that connection shall be disclosed and whether recusal is appropriate. When a judge knows that a party, witness, or lawyer appearing before the judge has a social-media connection with the judge, the judge shall be mindful that such connection may give rise to a relationship, or the perception of a relationship, that requires disclosure or recusal. Careless statements may also be the basis for recusal motions or referral to the State Commission on Judicial Conduct and undermine public confidence in the judiciary.

Posts can be "liked" in an instant on social media, without pause for reflection or thought. "Liking" a post is tantamount to an endorsement [of any communication contained within the posting]. Similarly, "sharing", retweeting, and even selecting emoji responses to a post may suggest an endorsement. A judge should be mindful of this Code's prohibitions any time the judge makes a public endorsement on social media. The misuse of

[5] *Youkers v. State of Texas*, 400 S.W.3d 200, 205 (Tex. App.—Dallas 2013, no pet.),

social media can undermine public perceptions of judicial dignity, integrity, and impartiality.

Judges shall also take care that their use of social media satisfies this Code's prohibition of inappropriate political activity. When a judge or a judicial candidate uses social media as part of an election campaign, best practices suggest that a separate public social-media site be used. That site may be operated by the judge's or the judicial candidate's campaign committee. The judge and judicial candidate shall take care to ensure that any posting on their public site or any site operated by their campaign committee conforms to the restrictions of political activity and campaign conduct as outlined in this Code.

A judge shall use extreme caution in using social media to avoid statements, comments, and interactions that may be interpreted as *ex parte* communications concerning pending or impending proceedings in violation of Canon 3B(8), and avoid using social media to obtain information regarding a proceeding before the judge in violation of Canon 3B(8). Indeed, when communicating on social media, a judge should avoid comment about a pending or impending proceeding to comply with Canon 3B(10)[6] and take care not to offer legal advice in violation of Canon 4G.

[6] John G. Browning & Justice Don Willett, "Rules of Engagement," 79 Tex. Bar. J. 100, 102 (2016); *In re Slaughter*, 480 S.W.3d 842, 849 (Special Court of Review 2015).

From the CODE OF JUDICIAL CONDUCT

Pre-2002 Canon 5:

Canon 5. Refraining From Inappropriate Political Activity

(1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case.

(2) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office, but may state a position regarding the conduct of administrative duties;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

(3) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(4) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(5) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

Amended by orders of June 30, 1993, and Nov. 4, 1993, eff. March 1, 1994; order of Sept. 21, 1994, eff. Jan. 1, 1995; order of March 1, 1996; order of Oct. 30, 1997, eff. Jan. 1, 1999; order of June 21, 1999, eff. July 1, 1999.

Current Canon 5:

Canon 5. Refraining From Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

Amended by orders of June 30, 1993, and Nov. 4, 1993, eff. March 1, 1994; order of Sept. 21, 1994, eff. Jan. 1, 1995; order of March 1, 1996; order of Oct. 30, 1997, eff. Jan. 1, 1999; order of June 21, 1999, eff. July 1, 1999; order of Aug. 22, 2002.

CODE OF JUDICIAL CONDUCT, CANON 3-B (10) [current]

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

79 Tex. B.J. 100

Texas Bar Journal
February, 2016

Feature
The Judiciary

RULES OF ENGAGEMENT
Exploring Judicial Use of Social Media

John G. Browning[a1] Don Willett[a2]

We live in a wired world where Twitter processes more than one billion tweets every 48 hours. Harnessing technology has helped courts be more transparent than ever; witness, for example, the Texas Supreme Court's webcasting and archiving of oral arguments, providing free online access to court records, and, of course, enabling Texans to file documents electronically. Judges continue to use social networking in their personal and professional lives to greater extents than before, as they seek to not only stay connected to the community they serve but also to reap the practical benefits of raising funds and voter awareness in judicial elections.

Yet, not surprisingly, more judges using such platforms often translates to more judges using social media badly, despite the guidance available from judicial ethics opinions in 15 states, a 2013 American Bar Association formal ethics opinion that green-lighted judicial use of social media, and, for federal judges, Opinion 112 issued in 2014 by the Judicial Conference of the United States Committee on Codes of Conduct. For some jurists, the problems arise in the context of election campaigns, such as when District Judge Jan Satterfield of Kansas liked the Facebook page of a candidate for sheriff, which was viewed by the Kansas Commission on Judicial Qualifications as an impermissible endorsement.[1] For others, the problem is the unfortunate overlap between personal lives and professional personas, such as the resignation of Dianna Bennington, a former city court judge in Indiana whose personal Facebook posts during an acrimonious child support dispute with her children's father led to a finding of "injudicious behavior."[2]

Other judges have courted criticism and faced recusal motions and disciplinary actions for using social media sites in their judicial capacities. For example, in July 2015, Galveston County District Court Judge Michelle Slaughter faced a trial before a special court of review after appealing a public admonition from the State Commission on Judicial Conduct. The charges centered on Facebook posts she had made referencing cases pending in her court, including a criminal trial dubbed the "boy in the box" case by local media. The commission claimed that Slaughter's posts were inconsistent with her duties as a judge, cast doubt on her impartiality, and undermined public confidence in the judiciary. She maintained that her brief, factual statements (such as the post that a "big criminal trial" was starting) did not comment on the evidence or witnesses and did not indicate any learning toward one side or the other. Moreover, she argued that her Facebook posts were simply part of her fulfillment of a campaign promise to be transparent and to keep the public informed about the cases being tried in her court.

In a per curiam opinion issued September 30, 2015, the Special Court of Review of Texas dismissed the public admonition and found Slaughter not guilty of all charges.[3] Noting social media's "transformative effect on society" as well as the fact that "no rule, canon of ethics, or judicial ***101** ethics opinion in Texas prohibits Texas judges from using social media outlets like Facebook," the court found no evidence that Slaughter's online comments "would suggest to a reasonable person the judge's probable decision on any particular case or that would cause reasonable doubt on the judge's capacity to act impartially as a judge."[4] The court also rejected the notion that her postings or the fact that she was recused from the underlying case amounted to any misuse of her office or a violation of the Canons of the Code of Judicial Conduct, although it did caution that "comments made by judges about pending proceedings" may "detract from the public trust and confidence in the administration of justice."[5]

Recent episodes involving judges who went beyond innocuous factual statements illustrate the validity of the Texas Court of Special Review's concerns. In November 2015, Senior Judge Edward Bearse was publicly reprimanded by the Minnesota Board on Judicial Standards for his Facebook posts about cases he was presiding over--including one that resulted in a vacated verdict.[6] Bearse (who had served on the bench for 32 years, retired in 2006, and was sitting statewide by appointment) referred to Hennepin County District Court in one post as "a zoo."[7] In another, he reflected on a case in which the defense counsel had to be taken away by an ambulance mid-trial, likely to result "in chaos because defendant has to hire a new lawyer who will most likely want to start over and a very vulnerable woman will have to spend another day on the witness stand. ..."[8] During *State v. Weaver*, a sex trafficking trial, Bearse posted the following:

> Some things I guess will never change. I just love doing the stress of jury trials. In a Felony trial now State prosecuting a pimp. Cases are always difficult because the women (as in this case also) will not cooperate. We will see what the 12 citizens in the jury box do.[9]

After a guilty verdict, the prosecutor discovered Bearse's Facebook post and disclosed it to the defense, who successfully moved for a new trial because of the prejudgment implied by the post. Bearse explained that he was new to Facebook, was unaware of privacy settings, and didn't realize his posts were publicly viewable. The board concluded that he had put his "personal communication preferences above his judicial responsibilities," given at least the appearance of a lack of impartiality, and had engaged in "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."[10]

In Kentucky, Circuit Court Judge Olu Stevens ignited a firestorm of controversy with his Facebook posts. Early in 2015, Stevens went on Facebook to vent his frustration with a victim impact statement made by the mother of a white child who had witnessed a home invasion by two black men and was supposedly "in constant fear of black men." In his post, Stevens--who is African-American--condemned the statements and accused the mother of attributing "her own views to her child as a manner of sanitizing them."[11] And after he dismissed a nearly all-white jury panel--upon request from the public defender--in a case with an African-American defendant, Stevens posted about it on Facebook, prompting prosecutors to seek his recusal from all pending criminal cases. The situation reached the Kentucky Supreme Court, with Stevens's posts also denouncing Commonwealth's Attorney Thomas Wine for alleged racism and including the comment, "Going to the Kentucky Supreme Court to protect the right to impanel alt-white juries is not where we need to be in 2015. Do not sit silently. Stand up. Speak up."[12] Wine demanded Stevens's disqualification due to the "inflammatory" Facebook posts.[13]

Kentucky Supreme Court Chief Justice John D. Minton Jr. ordered the parties to mediate their differences. And although an agreement was reached in December, just days later Wine claimed that Stevens had violated the accord with yet another Facebook post in which he asserted that his critics' goal was "taking my position in order to silence me."[14]

Venturing onto Twitter can also be problematic for judges who neglect to diligently self-censor. The 9th Circuit is currently weighing a challenge to a ruling by U.S. District Court Judge William B. Shubb in the case of *U.S. v. Sierra Pacific Industries*.[15] The case arose out of a 2007 wildfire that devastated nearly 65,000 acres in California. The federal government, which blamed lumber producer Sierra Pacific, reached a settlement that the lumber company sought to vacate. Shubb denied Sierra Pacific's motion. In its appeal, the company pointed out that not only was Shubb a Twitter follower of the federal prosecutors on the case--and had purportedly received tweets about the merits of the case from the Eastern District of California's Twitter handle (@EDCAnews)--but also that he himself had tweeted about the case from his then-public Twitter account (@Nostalgist1). Shubb allegedly tweeted, "Sierra Pacific still liable for Moonlight Fire damages," and also linked to a news article about the case--all while the case was still pending.[16] As Sierra Pacific's lawyers pointed out, the tweet was inaccurate (no finding of liability was ever made) and it also increased the appearance of bias and "prejudices Sierra Pacific and all Defendants in the pending state court appeal regarding the Moonlight Fire."[17]

With judges elected in 39 states (including Texas), social media is a fruitful way to engage with the community as well as an invaluable means of raising visibility, building awareness, and leveraging the support of key influencers and opinion leaders. Texas--along with many courts and judicial ethics authorities across the country--has rejected the notion that a person's mere status as a Facebook "friend" or other social networking connection with a judge is enough to convey the appearance of a special relationship or position of influence with that judge.[18]

However, judges need to be mindful of the power, specific features, and limitations of sites like Facebook and Twitter. "Judge" need not be synonymous with humorless fuddy-duddy, but certain cardinal rules must be followed. Chief among

these is that the ethical restrictions applicable to every other means of communication are just as applicable ***102** to social media. For example, judges shouldn't discuss pending cases--period. And before posting, tweeting, or responding to what someone else has posted or tweeted, judges need to ask themselves whether their statement could be seen as inappropriate or conveying partiality or bias. Judges are free to use social media, a terrific, low-cost way to remove distance and demystify the judiciary. But they must exercise caution, taking care to honor the distinctive constitutional role they've taken on as well as the public's confidence in the judiciary. Whether they're crafting a 140-page opinion or a 140-character tweet, judges must always be judicious.

Footnotes

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a2 **JUSTICE DON WILLETT***has served on the Texas Supreme Court since 2005. A former drummer and rodeo bull rider, he is the grateful son of a heroic single mother, the blessed husband of a sainted wife, and the exhausted co-founder of three wee Willetts. You can find the Tweeter Laureate of Texas (@JusticeWillett) on Twitter, Facebook, and Instagram.*

1 *Kansas judge Causes* Stir *With Facebook 'Like*,' Real Cleat Politics (July 29, 2012), http://www.reatelearpolitics.com/news/ap/politics/2012/Jul/29/kansas_judge_causes_stir_with_facebook_like_html.

2 *In re the Honorable Dianna L. Bennington*, No. 18S00-1412-JD-733, (Ind. Feb. 10, 2015), http://caselaw.findlaw.com/in-supreme-court/1691967.html.

3 *In re Honorable Michelle Slaughter, Presiding Judge of the 405th Judicial District Court, Galveston County, Texas*, Docket No. 15-0001 (Special Court of Review of Texas, Sept. 30, 2015).

4 *Id.* (Citing John G. Browning, "Social Media and the Law: Symposium Keynote Address," 68 U Miami L. Rev. 353, 359 (2014).)

5 *Id.*

6 In the Matter of Senior Judge Edward W. Bearse, Amended Public Reprimand (Minnesota Board on judicial Standards, File No. 15-7, Nov, 20, 2015).

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 Andrew Wolfson, *Judge Slams Victims for Tot's 'Black Men' Fear*, Courier-Journal (April 15, 2015), http://www.courier-journal.com/story/news/local/2015/04/10/judge-slams-victimstots-black-men-fear/25581605/.

[12] Jacob Gershman, *Prosecutors Want Judge Off Criminal Casts Because of Facebook Posts*, Wall Street Journal Law Blog (Nov. 18, 2015), http://blogs.wsj.com/law/2015/11/18/prosecutors-want-judge-off-criminal-cases-because-of-facebook-posts/.

[13] Matthew Glowicki, *Judge Kicked Off Cases Over Online Comments*, Courier-Journal (Nov. 19, 2015), http://www.courier-journal.com/story/news/local/20**l**5/11/18/prosecutorwants-judge-off-cases-over-raciai-stand/75957606/.

[14] Matthew Glowicki and Andrew Wolfson, *Wine Renews Call to Take Olu Stevens Off Cases*, Courier-Journal (Dec. 14, 2015), http://www.courier-journal.com/story/news/crime/2015/12/14/prosecutors-say-judge-broke-mediation-agreement/77290214/.

[15] David Lat, *A Federal Judge and His Twitter Account: A Cautionary Tale*, Above the Law (Nov. 18, 2015). www.abovethelaw.com/2015/u/a-federal-judge-and-his-twitter-accounta-cautionary-tale/.

[16] *U.S. v. Sierra Pacific Industries, et al*, No. 15-15799, Appellants' Motion for Judicial Notice (9th Cir. Nov, 6, 2015).

[17] *Id.*

[18] *See Youkers v. State*, 400 S.W.3d 200 (Tex. App.--Dallas [5th Dist.] 2013).

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AMERICAN BAR ASSOCIATION

Formal Opinion 462 **February 21, 2013**
Judge's Use of Electronic Social Networking Media

A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create an appearance of impropriety.[1]

In this opinion, the Committee discusses a judge's participation in electronic social networking. The Committee will use the term "electronic social media" ("ESM") to refer to internet-based electronic social networking sites that require an individual to affirmatively join and accept or reject connection with particular persons. [2]

Judges and Electronic Social Media

In recent years, new and relatively easy-to-use technology and software have been introduced that allow users to share information about themselves and to post information on others' social networking sites. Such technology, which has become an everyday part of worldwide culture, is frequently updated, and different forms undoubtedly will emerge.

Social interactions of all kinds, including ESM, can be beneficial to judges to prevent them from being thought of as isolated or out of touch. This opinion examines to what extent a judge's participation in ESM raises concerns under the Model Code of Judicial Conduct.

Upon assuming the bench, judges accept a duty to "respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." [3] Although judges are full-fledged members of their communities, nevertheless, they "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens…." [4] All of a judge's social contacts, however made and in whatever context, including ESM, are governed by the requirement that judges must at all times act in a manner "that promotes public confidence in the independence, integrity, and impartiality of the judiciary," and must "avoid impropriety and the appearance of impropriety." [5] This requires that the judge be sensitive to the appearance of relationships with others.

The Model Code requires judges to "maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives." [6] Thus judges must be very thoughtful in their interactions with others, particularly when using ESM. Judges must assume that comments posted to an ESM site will not remain within the circle of the judge's connections. Comments, images, or profile information, some of which might prove embarrassing if publicly revealed, may be electronically transmitted without the judge's knowledge or permission to persons unknown to the judge or to other unintended recipients. Such dissemination has the potential to compromise or appear to

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[1] This opinion is based on the ABA Model Code of Judicial Conduct as amended by the ABA House of Delegates through August 2012. The laws, court rules, regulations, rules of professional and judicial conduct, and opinions promulgated in individual jurisdictions are controlling.

[2] This opinion does not address other activities such as blogging, participation on discussion boards or listserves, and interactive gaming.

[3] Model Code, Preamble [1].

[4] Model Code Rule 1.2 cmt. 2.

[5] Model Code Rule 1.2. *But see* Dahlia Lithwick and Graham Vyse, "Tweet Justice," SLATE (April 30, 2010), (describing how state judge circumvents ethical rules prohibiting ex parte communications between judges and lawyers by asking lawyers to "de-friend" her from their ESM page when they're trying cases before her; judge also used her ESM account to monitor status updates by lawyers who appeared before her), *article available at* http://www.slate.com/articles/news_and_politics/jurisprudence/2010/04/tweet_justice.html.

[6] Model Code, Preamble [2].

compromise the independence, integrity, and impartiality of the judge, as well as to undermine public confidence in the judiciary.[7]

There are obvious differences between in-person and digital social interactions. In contrast to fluid, face-to-face conversation that usually remains among the participants, messages, videos, or photographs posted to ESM may be disseminated to thousands of people without the consent or knowledge of the original poster. Such data have long, perhaps permanent, digital lives such that statements may be recovered, circulated or printed years after being sent. In addition, relations over the internet may be more difficult to manage because, devoid of in-person visual or vocal cues, messages may be taken out of context, misinterpreted, or relayed incorrectly.[8]

A judge who participates in ESM should be mindful of relevant provisions of the Model Code. For example, while sharing comments, photographs, and other information, a judge must keep in mind the requirements of Rule 1.2 that call upon the judge to act in a manner that promotes public confidence in the judiciary, as previously discussed. The judge should not form relationships with persons or organizations that may violate Rule 2.4(C) by conveying an impression that these persons or organizations are in a position to influence the judge. A judge must also take care to avoid comments and interactions that may be interpreted as *ex parte* communications concerning pending or impending matters in violation of Rule 2.9(A), and avoid using any ESM site to obtain information regarding a matter before the judge in violation of Rule 2.9(C). Indeed, a judge should avoid comment about a pending or impending matter in any court to comply with Rule 2.10, and take care not to offer legal advice in violation of Rule 3.10.

There also may be disclosure or disqualification concerns regarding judges participating on ESM sites used by lawyers and others who may appear before the judge.[9] These concerns have been addressed in judicial ethics advisory opinions in a number of states. The drafting committees have expressed a wide range of views as to whether a judge may "friend" lawyers and others who may appear before the judge, ranging from outright prohibition to permission with appropriate cautions.[10] A judge who has an ESM connection with a lawyer or party who has a pending or impending matter before the court must evaluate that ESM connection to determine whether the judge should disclose the relationship prior to, or at the initial appearance of the person before the court.[11] In this regard, context is significant.[12] Simple

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[7] *See* Model Code Rule 1.2 cmt. 3. *Cf.* New York Jud. Eth. Adv. Op. 08-176 (2009) (judge who uses ESM should exercise appropriate degree of discretion in how to use the social network and should stay abreast of features and new developments that may impact judicial duties). Regarding new ESM website developments, it should be noted that if judges do not log onto their ESM sites on a somewhat regular basis, they are at risk of not knowing the latest update in privacy settings or terms of service that affect how their personal information is shared. They can eliminate this risk by deactivating their accounts.

[8] Jeffrey Rosen, "The Web Means the End of Forgetting", N.Y. TIMES MAGAZINE (July 21, 2010) *accessible at* http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?pagewanted=all.

[9] *See, e.g.,* California Judges Ass'n Judicial Ethics Comm. Op. 66 (2010) (judges may not include in social network lawyers who have case pending before judge); Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2009-20 (2009) (judge may not include lawyers who may appear before judge in social network or permit such lawyers to add judge to their social network circle); Ethics Committee of the Ky. Jud. Formal Jud. Eth. Op. JE-119 (judges should be mindful of "whether on-line connections alone or in combination with other facts rise to the level of 'a close social relationship'" that should be disclosed and/or require recusal); Ohio Sup. Ct. Bd. of Comm'rs on Grievances and Discipline Op. 2010-7 (2010) (judge may have ESM relationship with lawyer who appears as counsel in case before judge as long as relationship comports with ethics rules); South Carolina Jud. Dep't Advisory Comm. on Standards of Jud. Conduct, Op. No. 17-2009 (magistrate judge may have ESM relationship with lawyers as long as they do not discuss anything related to judge's judicial position). *See also* John Schwartz, "For Judges on Facebook, Friendship Has Limits," N.Y. TIMES, Dec. 11, 2009, at A25. *Cf.* Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-04 (2010) (judge's judicial assistant may add lawyers who may appear before judge to social networking site as long as the activity is conducted entirely independent of judge and without reference to judge or judge's office).

[10] *See* discussion in Geyh, Alfini, Lubet and Shaman, JUDICIAL CONDUCT AND ETHICS (5th Edition, forthcoming), Section 10.05E.

[11] California Judges Assn. Judicial Ethics Comm. Op. 66 (need for disclosure arises from peculiar nature of online social networking sites, where evidence of connection between lawyer and judge is widespread but nature of connection may not be readily apparent). *See also* New York Jud. Eth. Adv. Op. 08-176 (judge must consider whether any online connections, alone or in combination with other facts, rise to level of close social relationship requiring disclosure and/or recusal); Ohio Opinion 2010-7 (same).

[12] Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-06 (2010) (judge who is member of voluntary bar association not required to drop lawyers who are also members of that organization from organization's ESM site; members use the site to communicate among themselves about organization and other non-legal matters). *See also* Raymond McKoski,

designation as an ESM connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person. [13]

Because of the open and casual nature of ESM communication, a judge will seldom have an affirmative duty to disclose an ESM connection. If that connection includes current and frequent communication, the judge must very carefully consider whether that connection must be disclosed. When a judge knows that a party, a witness, or a lawyer appearing before the judge has an ESM connection with the judge, the judge must be mindful that such connection may give rise to the level of social relationship or the perception of a relationship that requires disclosure or recusal. [14] The judge must remember that personal bias or prejudice concerning a party or lawyer is the sole basis for disqualification under Rule 2.11 that is not waivable by parties in a dispute being adjudicated by that judge. The judge should conduct the same analysis that must be made whenever matters before the court involve persons the judge knows or has a connection with professionally or personally. [15] A judge should disclose on the record information the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification even if the judge believes there is no basis for the disqualification. [16] For example, a judge may decide to disclose that the judge and a party, a party's lawyer or a witness have an ESM connection, but that the judge believes the connection has not resulted in a relationship requiring disqualification. However, nothing requires a judge to search all of the judge's ESM connections if a judge does not have specific knowledge of an ESM connection that rises to the level of an actual or perceived problematic relationship with any individual.

Judges' Use of Electronic Social Media in Election Campaigns

Canon 4 of the Model Code permits a judge or judicial candidate to, with certain enumerated exceptions, engage in political or campaign activity. Comment [1] to Rule 4.1 states that, although the Rule imposes "narrowly tailored restrictions" on judges' political activities, "to the greatest extent possible," judges and judicial candidates must "be free and appear to be free from political influence and political pressure."

Rule 4.1(A)(8) prohibits a judge from personally soliciting or accepting campaign contributions other than through a campaign committee authorized by Rule 4.4. The Code does not address or restrict a judge's or campaign committee's method of communication. In jurisdictions where judges are elected, ESM has become a campaign tool to raise campaign funds and to provide information about the candidate.[17] Websites and ESM promoting the candidacy of a judge or judicial candidate may be

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"Reestablishing Actual Impartiality as the Fundamental Value of Judicial Ethics: Lessons from 'Big Judge Davis'," 99 KY. L.J. 259, 291 (2010-11) (nineteenth century judge universally recognized as impartial despite off-bench alliances, especially with Abraham Lincoln); Schwartz, *supra* note 9 ("Judges do not drop out of society when they become judges…. The people who were their friends before they went on the bench remained their friends, and many of them were lawyers.") (quoting New York University Prof. Stephen Gillers).

[13] *See* Ethics Committee of the Ky. Jud. Formal Jud. Eth. Op. JE-119 (2010) (designation as an ESM follower does not, in and of itself, indicate the degree or intensity of judge's relationship with the person).

[14] *See, e.g.*, New York Judicial Ethics Advisory Opinion 08-176, *supra* n. 8. *See also* Ashby Jones, "Why You Shouldn't Take It Hard If a Judge Rejects Your Friend Request," WALL ST. J. LAW BLOG (Dec. 9, 2009) ("'friending' may be more than say an exchange of business cards but it is well short of any true friendship"); Jennifer Ellis, "Should Judges Recuse Themselves Because of a Facebook Friendship?" (Nov. 2011) (state attorney general requested that judge reverse decision to suppress evidence and recuse himself because he and defendant were ESM, but not actual, friends), *available at* http://www.jlellis.net/blog/should-judges-recuse-themselves-because-of-a-facebook-friendship/.

[15] *See* Jeremy M. Miller, "Judicial Recusal and Disqualification: The Need for a Per Se Rule on Friendship (Not Acquaintance)," 33 PEPPERDINE L. REV. 575, 578 (2012) ("Judges should not, and are not, expected to live isolated lives separate from all potential lawyers and litigants who may appear before them.... However, it is also axiomatic that justice, to be justice, must have the appearance of justice, and it appears unjust when the opposing side shares an intimate (but not necessarily sexual) relationship with the judge").

[16] Rule 2.11 cmt. 5.

[17] In a recent survey, for judges who stood for political election, 60.3% used social media sites. 2012 CCPIO New Media and Courts Survey: A Report of the New Media Committee of the Conference of Court Public Information Officers (July 31, 2012), *available at* http://ccpio.org/blog/2010/08/26/judges-and-courts-on-social-media-report-released-on-new-medias-impact-on-the-judiciary/.

established and maintained by campaign committees to obtain public statements of support for the judge's campaign so long as these sites are not started or maintained by the judge or judicial candidate personally.[18]

Sitting judges and judicial candidates are expressly prohibited from "publicly endorsing or opposing a candidate for any public office."[19] Some ESM sites allow users to indicate approval by applying "like" labels to shared messages, photos, and other content. Judges should be aware that clicking such buttons on others' political campaign ESM sites could be perceived as a violation of judicial ethics rules that prohibit judges from publicly endorsing or opposing another candidate for any public office.[20] On the other hand, it is unlikely to raise an ethics issue for a judge if someone "likes" or becomes a "fan" of the judge through the judge's ESM political campaign site if the campaign is not required to accept or reject a request in order for a name to appear on the campaign's page.

Judges may privately express their views on judicial or other candidates for political office, but must take appropriate steps to ensure that their views do not become public.[21] This may require managing privacy settings on ESM sites by restricting the circle of those having access to the judge's ESM page, limiting the ability of some connections to see others, limiting who can see the contact list, or blocking a connection altogether.

Conclusion

Judicious use of ESM can benefit judges in both their personal and professional lives. As their use of this technology increases, judges can take advantage of its utility and potential as a valuable tool for public outreach. When used with proper care, judges' use of ESM does not necessarily compromise their duties under the Model Code any more than use of traditional and less public forms of social connection such as U.S. Mail, telephone, email or texting.

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[18] Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-28 (July 23, 2010).
[19] Model Code Rule 4.1(A)(3).
[20] *See* "Kansas judge causes stir with Facebook `like'," The Associated Press, July 29, 2012, *available at* http://www.realclearpolitics.com/news/ap/politics/2012/Jul/29/kansas_judge_causes_stir_with_facebook__like_.html.
[21] *See* Nevada Comm'n on Jud. Disc. Op. JE98-006 (Oct. 20, 1998) ("In expressing his or her views about other candidates for judicial or other public office in letters or other recorded forms of communication, the judge should exercise reasonable caution and restraint to ensure that his private endorsement is not, in fact, used as a public endorsement.").

Instructions for Petition for a Cyberbullying Restraining Order

What is "cyberbullying"?

"Cyberbullying" is harassment of one student by another student (1) using, or threatening to use, a phone or the Internet, (2) the bullied student is a minor at the time of the harassment, and (3) the harassment is related to school or affects the bullied student's education.

A "student" is someone enrolled in public or private school or being home-schooled, and a "minor" is someone under 18 years of age. The Internet includes, for example, text messages, instant messages, email, postings on social media, and photographs posted on a web page. For anyone not covered by the cyberbullying law, there might be another law that offers some protection. You will have to consult a lawyer about that.

What is the Petition?

The Petition is a request for a court order to stop cyberbullying. It starts a civil lawsuit. Anytime a lawsuit is filed, the person sued might be able to use it to sue you back. Whether the judge grants or denies your request for a restraining order to stop cyberbullying, the lawsuit might continue because you ask for further orders or the person you sued wants to continue the suit.

The Petition is *not* a criminal complaint. It also cannot be used to sue an Internet service provider, such as Facebook, or a library or a school.

Who can complete and sign the Petition?

You do not have to hire a lawyer, but you should if you can. Whether you hire a lawyer or not, anyone you sue might hire a lawyer.

If the bullied student is a minor, only a parent of the minor or a person acting as a parent to the minor can complete and sign the Petition. A person acting as a parent may be a legal guardian or, for example, a grandparent who is raising the minor.

If the bullied student has reached the age of 18, he or she must complete and sign the Petition and Declaration.

Instructions for Petition for a Cyberbullying Restraining Order

Does the age of the *cyberbully* matter?

The law applies to a cyberbully of any age as long as he or she was a student *at the time of the cyberbullying*.

The Petition, however, differs based on the age of the cyberbully *at the time you file the Petition*. If the cyberbully is a minor when you file the Petition, you must sue one or both of his parents or a person acting as a parent to the cyberbully. If the cyberbully is 18 or older at the time you file your Petition, you must sue the cyberbully himself or herself. The Petition itself guides you in completing it for a cyberbully who is a minor and for a cyberbully who is 18 or older.

Completing and signing the Petition and Declaration

Fill in the information requested in the Petition for a Cyberbullying Restraining Order and sign it. Along with the Petition you must write a Declaration in your own words describing what the cyberbully did and how it hurt your child, or how it hurt you if you were the one bullied and are now 18 or older. You must sign "under penalty of perjury," which means you can be prosecuted for perjury if you purposely give false information.

The Petition and Declaration will be public

Before you file a Petition and Declaration, be aware that all documents filed with the clerk are public records available to anyone who requests them from the clerk. The documents may also be available through the clerk's web site. When you see a judge, you can ask the judge to make the document unavailable to the public. Even a judge cannot make some documents confidential, like orders of the court. And the courtroom is open to the public.

Where to file the Petition

You or someone acting on your behalf must deliver the Petition and Declaration to the clerk of the county or state district court where you live for filing. The court clerk can explain the next step in the process, but the clerk cannot give you legal advice or tell you what a judge might do in your case.

Is there a charge to file the Petition?

Instructions for Petition for a Cyberbullying Restraining Order

When you file the Application, you are required to pay the standard fee charged by the county in which you file. You should find out the amount of the fee and whether you can pay by cash, check or credit card by calling the clerk of the court. If you believe the filing fee should be waived because of your income, ask the clerk how you can get the paperwork you will need to file. A request for a waiver cannot be made over the phone. It must be made in writing and under oath.

What happens after you file the Petition and Declaration?

When you file your Application and Declaration ask the clerk to explain the next steps. Different courthouses have different procedures for these applications. In some courthouses at the time you file the clerk may tell you wait to see a judge or to return at another time. In others you may have to talk to other courthouse staff or the judge's staff. Whatever the procedure, in every courthouse a judge has the final word on when you will go before the judge.

Why you might have to wait to see a judge

Holding any type of court hearing without the other person even knowing about it is rare because in our system of justice every person is entitled to explain his or her side of the story. The judge has to consider whether your Application is so urgent that an exception should be made.

You may be required to testify under oath

You may be required to testify in court under oath, which means you can be prosecuted for perjury if you purposely give false information.

If the judge grants the order, when is it effective and how long does it last?

The order is effective as soon as the person restrained by the order receives a copy of it. If the judge grants you an order without notice to the other side, it will be in effect for only two weeks, and you will have to have another hearing with the other parent or person present if you want additional orders. At a second hearing, the court may issue an order that is effective until the case is

Instructions for Petition for a Cyberbullying Restraining Order

over. If the court grants an order after a final hearing, the judge decides whether it will be effective permanently or for the period of time stated in the order.

What if the judge denies my Application?

If the judge denies your application at the first hearing, you will have to decide whether to continue the case until a final hearing. These instructions cannot and do not provide any guidance on whether or how to do that.

THIS FORM IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY

NO. _____

In re _____	§ § § § § § §	IN THE _____ COURT OF _____ COUNTY, TEXAS

PETITION FOR A CYBERBULLYING RESTRAINING ORDER

ADULT APPLYING FOR THE ORDER

Name: _____

I am the parent or a person in a parental relationship* to _____ who is under 18 years of age.

Address: _____

_____

County: _____

**If you are not a parent but instead a person in a parental relationship to the child, you must describe that relationship in your Declaration.*

ADULT(S) THE ORDER WOULD RESTRAIN

Name: _____

CHECK THE APPROPRIATE BOX & FILL IN THE CHILD'S NAME IF YOU CHECK THE FIRST BOX

☐ This is a parent of, or a person in a parental relationship to, _____, who I believe is under 18 years old and has cyberbullied or threatened to cyberbully my child.

☐ This is an adult who has cyberbullied or threatened to cyberbully my child

Address: _____

_____ Zip code: _____

County: _____

THIS FORM IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY

If you want to ask for an order against another parent or other adult, add the information about the second adult below.

Name: _____

CHECK THE APPROPRIATE BOX & FILL IN THE CHILD'S NAME & AGE IF YOU CHECK THE FIRST BOX

☐This is a parent of, or a person in a parental relationship to, _____, who I believe is under 18 years old and has cyberbullied or threatened to cyberbully my child.

☐This is an adult who has cyberbullied or threatened to cyberbully my child

Address: _____

_____ Zip code: _____

County: _____

GROUNDS FOR A RESTRAINING ORDER

CHECK THE APPROPRIATE BOX

☐Based on the information I have provided in my attached Declaration Under Penalty of Perjury the child named above has committed or has threatened to commit cyberbullying of my child. I have reason to believe the adult named above is a parent or person in a parental relationship to the child named above. If I have filled in a second responsible adult, I have reason to believe the same of that person.

☐Based on the information I have provided in my attached Declaration Under Penalty of Perjury the adult I named above has committed or has threatened to commit cyberbullying of my child.

REQUEST FOR A RESTRAINING ORDER

I request that the Court issue a temporary restraining order as soon as possible without waiting for this Application and Declaration to be delivered to the parent or person in a parental relationship to the child or to the adult I say has committed or has threatened to commit cyberbullying of my child or ward. I also request that the Court issue a permanent restraining order after the Application and Declaration have been delivered, the parent or other person responsible for the child has had an opportunity to file a written response, a final hearing has been scheduled and notice of it given, and a final hearing has been held.

FEES AND COSTS

I request that the Court order the responsible adults listed above to pay all court fees and to reimburse me for any fees I have already paid.

REQUEST THAT RECORD BE SEALED

To protect the privacy of my child, I request that the Court issue an order sealing all documents filed with the clerk that legally may be sealed.

Respectfully Submitted,

_____

APPLICANT

Declaration Under Penalty of Perjury

I am seeking a Cyberbullying Protective Order because:

_____

_____

_____

_____

_____

_____

_____

_____

_____

My name is _____ _____ _____, my date of
(First) (Middle) (Last)

birth is _____, and my address is _____
(Number & Street)

_____, _____, _____, and _____.
(City) (State) (Zip code) (Country)

I declare under penalty of perjury that my declaration above is true and correct.

Signed in _____ County, State of _____, on _____.
Date

_____
Signature of Person Making Declaration

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December 1, 2017

Supreme Court Advisory Committee
c/o Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Discovery Subcommittee Proposed Amendments to Part II, Section 9 of the Rules of Civil Procedure

Dear Advisory Committee Members,

On behalf of the Discovery Subcommittee, we submit the enclosed updated recommended changes to Part II, Section 9 of the Rules of Civil Procedure, incorporating discussion from the SCAC meetings on these topics to date. The following information will guide your review of the materials:

- Changes discussed and approved by the SCAC September 2016-June 2017 are in yellow highlight.
- Previous Discovery Subcommittee suggestions that were rejected by the SCAC have been removed.
- Discovery Subcommittee suggested changes remain in redline. This includes previous recommendations that the SCAC did not specifically resolve, as well as new suggestions based on SCAC discussion.

With regard to Spoliation, a group of individuals is working on a proposed draft to be considered by the Discovery Subcommittee.

Regards,

Robert E. Meadows /mfo

Robert Meadows

Enclosure

Texas Supreme Court Advisory Committee
Discovery Subcommittee Proposed Amendments
December 2017

Key:

- Changes discussed and approved by SCAC September 2016-June 2017 are in yellow highlight in the draft.
- Deletions approved by SCAC have been removed from the draft.
- Previous suggestions that were rejected by the SCAC have been removed.
- Discovery Subcommittee suggested changes are underlined.

Index

General Rules and Disclosures, Stipulations about Discovery Procedure: Tex. R. Civ. P. 190-194

RULE 190. DISCOVERY LIMITATIONS **190.1 Discovery Control Plan Required.** Every case must be governed by a discovery control plan as provided in this Rule. (a) Initial Pleading. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule. (b) Change by Court Order. On motion and showing of good cause by a party, the court may change the level designated by the plaintiff. **190.2 Discovery Control Plan - Expedited Actions and Divorces Involving $100,000 or Less (Level 1)** (a) **Application.** This subdivision applies to: (1) any suit that is governed by the expedited actions process in Rule 169; and (2) unless the parties agree that rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $100,000. (b) **Limitations**. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations: (1) **Discovery period**. All discovery must be conducted during the discovery period, which begins when ~~the suit is filed~~initial disclosures are due and continues until 180 days after the date the initial disclosures are due.~~the first request for discovery of any kind is served on a party.~~ (2) **Total time for oral depositions.** Each party may have	Amended to clarify the method for changing the discovery level. Amended due to mandatory initial disclosures.

no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. If one side designates more than one expert, the opposing side may have an additional two hours of total deposition time for each additional expert designated. The court may modify the deposition hours so that no party is given unfair advantage.

(3) **Interrogatories.** Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) **Requests for Production.** Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) **Requests for Admissions.** Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(c) **Reopening Discovery**. If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

190.3 Discovery Control Plan – ~~By Rule~~ Level 2

(a) **Application**. ~~Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery~~ Discovery must be conducted in accordance with this subdivision for a level 2 suit.

(b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations: (1) **Discovery period**. All discovery must be conducted during the discovery period, which begins when ~~suit is filed~~initial disclosures are due and continues until: (A) 30 days before the date set for trial, in cases under the Family Code; or (B) in other cases, the earlier of (i) 30 days before the date set for trial, or (ii) nine months after the ~~earlier of the date of the first oral deposition or the due date of the first response to written discovery.~~initital disclosures are due; or (C) a docket control order sets a new date for the end of discovery.	Amended due to discussion about deadlines under Level 2.
(2) **Total time for oral depositions.** Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage. (3) **Interrogatories.** Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory. (4) **Requests for Production.** Any party may serve on any other party no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for	Amended due to discussion about limits on RFPs, particularly due to documents required by mandatory initial disclosures.

production.

190.4 Discovery Control Plan - ~~By Order (~~Level 3~~)~~

(a) **Application.** Discovery under level 3 is governed by this rule. ~~The court must, on a party's motion, and may, on its own initiative, order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of the specific suit.~~ After a conference required by this rule, t~~T~~he parties ~~may~~ must submit a~~n agreed~~ discovery control plan and proposed order(s) to the court for its consideration. ~~The court should act on a party's motion or agreed order under this subdivision as promptly as reasonably possible.~~

~~(b) **Limitations.** The discovery control plan ordered by the court may address any issue concerning discovery or the matters listed in Rule 166, and may change any limitation on the time for or amount of discovery set forth in these rules. The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless specifically changed in the discovery control plan ordered by the court.~~ The plan must include the items listed in 190.4(c)~~:~~

(b) Conference

(1) **Conference timing.** The parties must confer as soon as practicable.

(2) **Conference content; Parties' responsibilities.** In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 194; discuss any issues about preserving discoverable information; and develop a proposed discovery control plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery control plan, and for submitting to the court within 14 days after the conference a written report outlining the proposed discovery control plan.

Amended to clarify the conference process.

(3) **No discovery before conference. Unless otherwise ordered by the court,** a~~A~~ party may not seek discovery from any ~~source before the~~ party~~ies~~ before the parties have conferred as required by this rule. This does not include initial disclosures. (c~~d~~) **Discovery control plan.** The discovery control plan must state the parties' views and proposals on: (1) a date for trial or for a conference to determine a trial setting; (2) a discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it; (3) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses~~.~~; (4) what changes should be made in the timing, or form, of~~r~~ the initial ~~requirement for~~ disclosures under Rule 194, including a statement of when initial disclosures were made or will be made; (5) the subjects on which discovery may be needed, and whether discovery should be conducted in phases or be limited to or focused on particular issues; (6) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced; (7) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Texas Rule of Evidence 511; (8) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; (9) Dispositive Motion deadlines;	Amended due to discussion that having initial disclosures prior to conference could aid the process. Amended due to discussion about not wanting mandatory disclosure requirement to be modified (but allowing form and timing of initial disclosures modifications). TRCP 190.4(c)(9)-(11) are added due to the addition at 190.4(d).

(10) Expert challenges deadlines; and (11) proposed docket control order(s) **(d) Docket Control Order.** Upon receipt of the discovery control plan, the trial court must issue a docket control order. **190.5 Modification of Discovery Control Plan** The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, the court must allow additional discovery: (a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if: (1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and (2) the adverse party would be unfairly prejudiced without such additional discovery; (b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends. **190.6 Certain Types of Discovery Excepted** This rule's limitations on discovery do not apply to or include discovery conducted under Rule 202 ("Depositions Before Suit or to Investigate Claims"), or Rule 621a ("Discovery and Enforcement of Judgment"). But Rule 202 cannot be used to circumvent the limitations of this rule. **RULE 191. MODIFYING DISCOVERY PROCEDURES AND LIMITATIONS; CONFERENCE REQUIREMENT; SIGNING DISCLOSURES; DISCOVERY REQUESTS, RESPONSES, AND**	TRCP 190.4(d) is added due to the removal of 190.4(b) and to comport with FRCP 16(b).

OBJECTIONS; FILING REQUIREMENTS **191.1 Modification of Procedures** Except where specifically prohibited, the procedures and limitations set forth in the rules pertaining to discovery may be modified in any suit by the agreement of the parties or by court order. An agreement of the parties is enforceable if it complies with Rule 11 or, as it affects an oral deposition, if it is made a part of the record of the deposition. **191.2 Conference** Parties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions or requests for hearings relating to discovery must contain a certificate by the party filing the motion or request that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed. **191.3 Signing of Disclosures, Discovery Requests, Notices, Responses, and Objections** (a) **Signature required.** Every disclosure, discovery request, notice, response, and objection must be signed: (1) by an attorney, if the party is represented by an attorney, and must show the attorney's State Bar of Texas identification number, address, telephone number, and service e-mail address ~~and fax number, if any~~; or (2) by the party, if the party is not represented by an attorney, and must show the party's address, telephone number, and service email address, if any. (b) **Effect of signature on disclosure.** The signature of an attorney or party on a disclosure constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and	"Good cause" has been removed. Amended to eliminate fax.

correct as of the time it is made. (c) **Effect of signature on discovery request, notice, response, or objection.** The signature of an attorney or party on a discovery request, notice, response, or objection constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection: (1) is consistent with the rules of civil procedure and these discovery rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) has a good faith factual basis; (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) is not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.	No consensus on proposed change to TRCP 191.3(c)(1) to track FRCP 26(g)(1) (affects TRCP 13 and maybe various TRAPs).
(d) **Effect of failure to sign.** If a request, notice, response, or objection is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, notice, response, or objection. A party is not required to take any action with respect to a request or notice that is not signed. (e) **Sanctions.** If the certification is false without substantial justification, the court may, upon motion or its own initiative, impose on the person who made the certification, or the party on whose behalf the request, notice, response, or objection was made, or both, an appropriate sanction as for a frivolous pleading or motion under Chapter 10 of the Civil Practice and Remedies Code. **191.4 Filing of Discovery Materials.** (a) **Discovery materials not to be filed.** The following discovery	Rejected proposed change to TRCP 191.3(d) to track FRCP 26(g)(2).

materials must not be filed: (1) discovery requests, deposition notices, and subpoenas required to be served only on parties; (2) responses and objections to discovery requests and deposition notices, regardless on whom the requests or notices were served; (3) documents and tangible things produced in discovery; and (4) statements prepared in compliance with Rule 193.3(b) or (d). (b) **Discovery materials to be filed.** The following discovery materials must be filed: (1) discovery requests, deposition notices, and subpoenas required to be served on nonparties; (2) motions and responses to motions pertaining to discovery matters; and (3) agreements concerning discovery matters, to the extent necessary to comply with Rule 11. (c) **Exceptions.** Notwithstanding paragraph (a): (1) the court may order discovery materials to be filed; (2) a person may file discovery materials in support of or in opposition to a motion or for other use in a court proceeding; and (3) a person may file discovery materials necessary for a proceeding in an appellate court. (d) **Retention requirement for persons.** Any person required to serve discovery materials not required to be filed must retain the original or exact copy of the materials during the pendency of the case and any related appellate proceedings begun within six months after judgment is signed, unless otherwise provided by the trial court. (e) **Retention requirement for courts.** The clerk of the court shall retain and dispose of deposition transcripts and depositions	

upon written questions as directed by the Supreme Court. **191.5 Service of Discovery Materials.** Every disclosure, discovery request, notice, response, and objection required to be served on a party or person must be served on all parties of record. **RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS** **192.1 Forms of Discovery.** Permissible forms of discovery are: (a) required disclosures; (b) requests for production and inspection of documents and tangible things; (c) requests and motions for entry upon and examination of real property; (d) interrogatories to a party; (e) requests for admission; (f) oral or written depositions; and (g) motions for mental or physical examinations. **192.2 Timing and Sequence of Discovery.** (a) **Timing.** Unless otherwise agreed to by the parties, or ordered by the court a party may not serve discovery until after the initial disclosures. (b) **Sequence.** The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.	Amended to clarify discovery cannot be served with a petition, revised proposal in light of comments from 9/16-9/17 meeting.

192.3 Scope of Discovery. (a) **Generally.** Unless otherwise ordered by the court, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to the subject matter of the pending action and proportional to the needs of the case as set forth in 192.4(b). Information within this scope of discovery need not be admissible in evidence to be discoverable. (b) **Documents, information and tangible things.** A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of documents, information and tangible things (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations) that constitute or contain matters relevant to the subject matter of the action. A person is required to produce a document or tangible thing that is within the person's possession, custody, or control. (c) **Contentions.** A party may obtain discovery of any other party's legal contentions and the factual bases for those contentions.	Revised in light of discussion about relevancy at 9/16-9/17 meeting (keep "subject matter of the pending action"). Proportionality concept remains a proposed change to 192.3(a) due to mixed discussions at 9/16-9/17 and 2/3 meetings.
192.4 Limitations on Scope of Discovery. The discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that: (a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or (b) the discovery sought is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. ~~the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of~~	The Discovery Subcommittee recommends revising 192.4(b) to adopt some of the language in FRCP 26(b)(1) regarding proportionality. Also see companion revisions to TRCP 192.3(a) (above). Some SCAC members agree with this proposal, but want to make clear the burden is

~~the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.~~ **192.5 Work Product.** (a) **Work product defined.** Work product comprises: (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents. (b) **Protection of work product.** (1) **Protection of core work product--attorney mental processes**. Core work product - the work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories - is not discoverable. (2) **Protection of other work product**. Any other work product is discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means. (3) **Incidental disclosure of attorney mental processes**. It is not a violation of subparagraph (1) if disclosure ordered pursuant to subparagraph (2) incidentally discloses by inference attorney mental processes otherwise protected	on the party objecting to the discovery.

under subparagraph (1).

(4) **Limiting disclosure of mental processes.** If a court orders discovery of work product pursuant to subparagraph (2), the court must--insofar as possible--protect against disclosure of the mental impressions, opinions, conclusions, or legal theories not otherwise discoverable.

(c) **Exceptions.** Even if made or prepared in anticipation of litigation or for trial, the following is not work product protected from discovery:

(1) information discoverable under Rule 194 concerning experts, trial witnesses, witness statements, and contentions;

(2) trial exhibits ordered disclosed under Rule 166 or Rule 194;

(3) the name, address, and telephone number of any potential party or any person with knowledge of relevant facts;

(4) any photograph or electronic image of underlying facts (e.g., a photograph of the accident scene) or a photograph or electronic image of any sort that a party intends to offer into evidence; and

(5) any work product created under circumstances within an exception to the attorney-client privilege in Rule 503(d) of the Rules of Evidence.

(d) **Privilege.** For purposes of these rules, an assertion that material or information is work product is an assertion of privilege.

192.6 Protective Order.

(a) **Motion.** A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request

for an order protecting that person from the discovery sought. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion. (b) **Order.** To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may - among other things - order that: (1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court; (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a. **192.7 Definitions.** As used in these rules (a) *Written discovery* means requests for disclosure, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission.	The Discovery Subcommittee recommends including this language in TRCP 192.6(a) from FRCP 26(c)(1) (protective order provision).

(b) *Possession, custody, or control* of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item. (c) A *testifying expert* is an expert who may be called to testify as an expert witness at trial. (d) A *consulting expert* is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert. **RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY** **193.1 Responding to Written Discovery; Duty to Make Complete Response.** A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request to which they apply. **193.2 Objecting to Written Discovery** (a) **Form and time for objections.** A party must make any objection to written discovery in writing - either in the response or in a separate document - within the time for response. The party must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request. An objection must state whether any responsive materials are being withheld on the basis of that objection.	The Discovery Subcommittee recommends adding this sentence to TRCP 193.2(a). The language is from FRCP 34(b)(2)(C).

(b) **Duty to respond when partially objecting; objection to time or place of production.** A party must comply with as much of the request to which the party has made no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. If the responding party objects to the requested time or place of production, the responding party must state a reasonable time and place for complying with the request and must comply at that time and place without further request or order. (c) **Good faith basis for objection.** A party may object to written discovery only if a good faith factual and legal basis for the objection exists at the time the objection is made. (d) **Amendment.** An objection or response to written discovery may be amended or supplemented to state an objection or basis that, at the time the objection or response initially was made, either was inapplicable or was unknown after reasonable inquiry. (e) **Waiver of objection.** An objection that is not made within the time required, or that is obscured by numerous unfounded objections, is waived unless the court excuses the waiver for good cause shown. (f) **No objection to preserve privilege.** A party should not object to a request for written discovery on the grounds that it calls for production of material or information that is privileged but should instead comply with Rule 193.3. A party who objects to production of privileged material or information does not waive the privilege but must comply with Rule 193.3 when the error is pointed out. **193.3 Asserting a Privilege** A party may preserve a privilege from written discovery in accordance with this subdivision. (a) **Withholding privileged material or information.** A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state--in the response (or an amended or supplemental response) or in a	

separate document--that:

(1) information or material responsive to the request has been withheld,

(2) the request to which the information or material relates, and

(3) the privilege or privileges asserted.

(b) **Description of withheld material or information.** After receiving a response indicating that material or information has been withheld from production, the party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that:

(1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and

(2) asserts a specific privilege for each item or group of items withheld.

(c) **Exemption.** Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative

(1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested, and

(2) concerning the litigation in which the discovery is requested.

(d) **Privilege not waived by production**. A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if - within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made - the producing party amends the

response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, the requesting party must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege.

193.4 Hearing and Ruling on Objections and Assertions of Privilege.

(a) **Hearing.** Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

(b) **Ruling.** To the extent the court sustains the objection or claim of privilege, the responding party has no further duty to respond to that request. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.

(c) **Use of material or information withheld under claim of privilege.** A party may not use--at any hearing or trial--material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery.

193.5 Amending or Supplementing Responses to Written Discovery.

(a) **Duty to amend or supplement.** If a party learns that the party's response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct, the party must amend or supplement the response: (1) to the extent that the written discovery sought the identification of persons with knowledge of relevant facts, trial witnesses, or expert witnesses, and (2) to the extent that the written discovery sought other information, unless the additional or corrective information has been made known to the other parties in writing, on the record at a deposition, or through other discovery responses. (b) **Time and form of amended or supplemental response**. An amended or supplemental response must be made reasonably promptly after the party discovers the necessity for such a response. Except as otherwise provided by these rules, it is presumed that an amended or supplemental response made less than 30 days before trial was not made reasonably promptly. An amended or supplemental response must be in the same form as the initial response and must be verified by the party if the original response was required to be verified by the party, but the failure to comply with this requirement does not make the amended or supplemental response untimely unless the party making the response refuses to correct the defect within a reasonable time after it is pointed out. (c) **Use of Material or Information Withheld under other Objection.** A party may not use—at any hearing or trial—material or information withheld from discovery under any objection, including an objection sustained by the court, without timely amending or supplementing the party's response to include that discovery in accordance with these rules. **193.6 Failing to Timely Respond - Effect on Trial** (a) **Exclusion of evidence and exceptions.** A party who fails to	The Discovery Subcommittee recommends adding TRCP 193.5(c) to require parties to disclose information and documents used at hearing or trial.

make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:

(1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or

(2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

(b) **Burden of establishing exception.** The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record.

(c) **Continuance.** Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response.

193.7 Production of Documents Self-Authenticating

A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless - within ten days or a longer or shorter time ordered by the court, after the producing party has actual notice that the document will be used - the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the record or in writing and must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish

its authenticity.	
RULE 194. DUTY TO DISCLOSE	At the September SCAC meeting, adopting a mandatory disclosure requirement was approved.
194.1 Required Disclosures.	
(a) **In general**. Except as exempted by this Rule or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4. Unless the court orders otherwise, all disclosures under Rule 194 must be in writing, signed, and served. In ruling on an objection that initial disclosures are not appropriate in this action, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.	
(b) **Production.** Copies of documents and other tangible items required to be disclosed under this rule ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.	
194.2 Initial Disclosures.	At the September SCAC meeting, the mandatory disclosures timing requirement was approved.
(a) **Time for initial disclosures.** Both the plaintiff and the defendant must make the initial disclosures at or within 30 days after the filing of the defendant's answer unless a different time is set by agreement or court order. A party that is first served or otherwise joined after the filing of the first answer must make the initial disclosures within 30 days after the filing of the party's answer, unless a different time is set by agreement or court order.	
(b) **Content.** Without awaiting a discovery request, a party must provide the following:	
(1) the correct names of the parties to the lawsuit;	In February, some SCAC members suggested

	(2) the name, address, and telephone number of any potential parties; (3) the legal theories and~~, in general,~~ the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial); (4) a computation of each category of damages claimed by a party. Each disclosing party must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered~~the amount and any method of calculating economic damages~~; (5) the name, address, e-mail, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case. A person has knowledge of relevant facts when that person has or may have knowledge of any discoverable matter. The person need not have admissible information or personal knowledge of the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained firsthand or if it was not obtained in preparation for trial or in anticipation of litigation; (6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;	omitting this language from 194.2(b)(3), and potentially taking additional steps to narrow it. There was also discussion about making clear a disclosure response should be acceptable unless excepted to. In February, SCAC members suggested providing more direction on damages in (b)(4) by including FRCP 26(a)(1)(A)(iii)'s damages disclosure requirement, and by making it clear that a Defendant must also disclose its theory of Plaintiff's damages. Some SCAC members worried that moving items from 192.3 ("scope") to this rule could be seen as a bigger change than intended, and that all scope of discovery should be articulated in 192.3, with a simplified cross-reference included in Rule 194.2. Also note the potential effect of the change on JP court proceedings. The addition at TRCP 194.2(b)(6) is from FRCP 26(a)(1)(A)(ii). The TRCPs did not previously include this requirement. This was not specifically discussed by the SCAC.

~~(f) for any testifying expert:~~ ~~(1) the expert's name, address, and telephone number;~~ ~~(2) the subject matter on which the expert will testify;~~ ~~(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;~~ ~~(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:~~ ~~(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and~~ ~~(B) the expert's current resume and bibliography;~~	Expert disclosures are now addressed in Rule 195 and Rule 194.3. This was not specifically discussed by the SCAC.
(~~g~~7) except as otherwise provided by law, the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial~~any indemnity and insuring agreements described in Rule 192.3(f);~~ (~~h~~8) the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial~~any settlement agreements~~	The additions at 194.2(b)(7)-(9) are from TRCP 192.3 to remove cross-references. See comment above re: SCAC discussion on this proposal.

~~described in Rule 192.3(g)~~; (~~i~~9) the statement of any person with knowledge of relevant facts--a "witness statement"-regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.~~any witness statements described in Rule 192.3(h)~~; (10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills; (11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; (12) the name, address, and telephone number of any person who may be designated as a responsible third party.	
(c) **Proceedings exempt from initial disclosure**. The following proceedings are exempt from initial disclosure, but a court may order that the parties make particular disclosures as appropriate: (1) an action for review on an administrative record; (2) a forfeiture action arising from a state statute; (3) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;	The addition at TRCP 194.2(c) is from FRCP 26(a)(1)(B), modified to fit state rules and to clarify that all the listed initial disclosure topics are within the scope of discoverable information in all cases. This was not specifically discussed by the full SCAC.

(4) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision; (5) an action to enforce or quash an administrative summons or subpoena; (6) an action by the state to recover benefit payments; (7) an action by the state to collect on a student loan guaranteed by the state; (8) a proceeding ancillary to a proceeding in another court; and (9) an action to enforce an arbitration award. **194.2A Initial Disclosures Under Title I and V of the Texas Family Code** [TBD, but should include a requirement that have to state preclusive effect of failure to respond on pleadings].	Because the disclosure rule does not fit family law cases, there should be an additional disclosure rule for family law cases in line with the local orders of major counties as discussed by the SCAC on January 12, 2001, and March 30, 2001.
194.3 Expert Disclosure. In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties expert information as provided by Rule 195.	TRCP 194.3 is to clarify expert disclosure requirements exist, as described in TRCP 195. This was not specifically discussed by the full SCAC.
~~**194.4 Production.**~~ ~~Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~	Prior TRCP 194.4 is moved to TRCP 194.1(b).
194.4 Pretrial Disclosures. (a) **In General**. In addition to the disclosures required by Rules 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that	The proposals in TRCP 194.4 were not specifically discussed by the SCAC. The addition at TRCP 194.4 is from FRCP 26(a)(3). Note TRCP 166 touches on some

it may present at trial other than solely for impeachment: (1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises; (2) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises. (b) **Time for Pretrial Disclosures; Objections**. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. ~~194.6~~194.5 **No Objection or Assertion of Work Product**. No objection or assertion of work product is permitted to a disclosure under this rule. ~~194.7~~ 194.6 **Certain Responses Not Admissible.** A disclosure under Rule 194.2(b)(~~c~~3) and (~~d~~4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.	of these issues as well and may also need to be amended. TRCP 194.4(a)(1) incorporates the amendment to TRCP 192.3(d) proposed by the State Bar of Texas Committee on Court Rules. Note the following language from FRCP 26(a)(3) is not incorporated into TRCP 194.4(b) at this time: "Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of any objections, together with the grounds for the objections, that may be made to the admissibility of materials identified. An objection not so made—except for one under Texas Rule of Evidence 402 or 403—is waived unless excused by the court for good cause."

Experts: Tex. R. Civ. P. 195

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES **195.1 Permissible Discovery Tools.** A party may request another party to designate and disclose information concerning testifying expert witnesses only through disclosure under Rule 194 and through other discovery permitted by this rule. **195.2 Schedule for Designating Experts.** Unless otherwise ordered by the court, a party must designate experts - that is, furnish information ~~requested under Rule 194.2(f)~~described in Rule 195.5(b) - by the ~~later of the~~ following ~~two~~ dates: ~~30 days after the request is served, or~~ (a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; (b) with regard to all other experts, 60 days before the end of the discovery period. **195.3 Scheduling Depositions.** (a) **Experts for party seeking affirmative relief.** A party seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition as follows: (1) **If no report furnished.** If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is not produced when the expert is designated, then the party must make the expert available for deposition reasonably promptly after the expert is designated. If the deposition cannot--due to the actions of the tendering party--reasonably be concluded more than 15 days before the deadline for	These changes correspond with changes approved by the SCAC to TRCP 194 (above). The Discovery Subcommittee recommends revising TRCP 195.2 to correspond with changes to TRCPs 194 and 195.5. This was not specifically discussed by the full SCAC.

designating other experts, that deadline must be extended for other experts testifying on the same subject. (2) **If report furnished.** If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is produced when the expert is designated, then the party need not make the expert available for deposition until reasonably promptly after all other experts have been designated. (b) **Other experts.** A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition reasonably promptly after the expert is designated and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.	
195.4 Oral Deposition. In addition to ~~disclosure under Rule 194~~the information disclosed under Rule 195.5, a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.	The Discovery Subcommittee recommends revising TRCP 195.4 to correspond with changes to TRCPs 194 and 195.5. This was not specifically discussed by the full SCAC.
195.5 Expert Disclosures and Reports. (a) **Disclosures**. Pursuant to Rule 194.3, and without awaiting a discovery request, a party must provide the following for any testifying expert and for any expert who has been retained or specially employed in anticipation of litigation or to prepare for	In February, the SCAC voted in support of the Discovery Subcommittee's recommendation approximating FRCP 26 regarding testifying expert disclosure. Additionally, the

trial and whose mental impressions or opinions have been reviewed by a testifying expert: (1) the expert's name, address, and telephone number; (2) the subject matter on which the expert will testify; and (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information; (4) For any expert retained by, employed by, or otherwise subject to the control of the responding party, a party must provide the following: (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; (B) the expert's current resume and bibliography; (C) the witness's qualifications, including a list of all publications authored in the previous 10 years; (D) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (E) a statement of the compensation to be paid for the study and testimony in the case. (b) **Expert reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition. If the trial court orders an expert report for a witness retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, the report must contain: (1) a complete statement of all opinions the witness will express	Discovery Subcommittee recommends a new change to 195.5(a) that makes it clear that the same disclosures are required for consulting experts whose opinions have been reviewed by a testifying expert. TRCP 195.5(a)(1)-(4) is moved from prior TRCP 194 due to proposed amendments to TRCP 194. The addition of TRCP 195.5(a)(4)(C)-(E) is from FRCP 26(a)(2)(B)'s expert report requirements. The addition to TRCP 195.5(b) is based on FRCP 26(a)(2)(B).

and the basis and reasons for them; (2) the facts or data considered by the witness in forming them; and (3) any exhibits that will be used to summarize or support them. (c) **Expert communication exempt from disclosure.** Communications between the party's attorney and any testifying expert witness in the case are exempt from discovery regardless of the form of the communications, except to the extent that the communications: (1) relate to compensation for the expert's study or testimony; (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. (d) **Draft reports or disclosures.** Any draft of a report by an expert or disclosure required under this rule is protected from disclosure regardless of the form in which the draft is recorded. (e) **Expert employed for trial preparation.** A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial and whose mental impressions or opinions have not been reviewed by a testifying expert. But a party may do so as provided in Rule 204.2 (Report of Examining Physician or Psychologist) or on showing exceptional circumstances under which it is impracticable for the party to obtain facts on the same subject by other means. **195.6 Amendment and Supplementation.** A party's duty to amend and supplement written discovery	For 195.5(c)-(e), the SCAC primarily discussed: (1) whether there were concerns about an attorney writing the entire report if we make expert communications and draft reports exempt from disclosure; and (2) whether an expert can be a testifying expert on some topics and a consulting expert on other topics but not disclose the consulting topics' information or discussion. The SCAC vote, as explained above, was in support of "approximating the federal rule regarding testifying expert disclosure." The addition of TRCP 195.5(c) is based on FRCP 26(b)(4)(C). The addition of TRCP 195.5(d) is based on FRCP 26(b)(4)(B). The addition of TRCP 195.5(e) is based on FRCP 26(b)(4)(D), which expressly incorporates the consulting expert exemption referred to in the comments and TRCP 192.3(e) and provides for an exceptional circumstance exception to the exemption. The Discovery Subcommittee

regarding a testifying expert is governed by Rule 193.5. If an expert witness is retained by, employed by, or otherwise under the control of a party, that party must also amend or supplement any deposition testimony or written report by the expert, but only with regard to the expert's mental impressions or opinions and the basis for them. **195.7 Cost of Expert Witnesses.** When a party takes the oral deposition of an expert witness retained by the opposing party, all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition must be paid by the party that retained the expert.	recommends one revision to the "exceptional circumstances" exception to remove the ability to discover the opinions of consulting experts on a showing of exceptional circumstances. The Discovery Subcommittee does not recommend adopting FRCP 26(b)(4)(E), which requires the party deposing a testifying expert pay the expert a reasonable fee for time spent responding to discovery. The Discovery Subcommittee takes the position that this would invite abuse and hearings. Additionally, the TRCPs do not require expert reports like the FRCPs do, and the TRCPs impose limitations on depositions.

Production and Inspection: Tex. R. Civ. P. 196

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY **196.1 Request for Production and Inspection to Parties.** (a) **Request.** A party may serve on another party a request for production or for inspection within the scope of discovery, to inspect, sample, test, photograph and copy the following items in the responding party's possession, custody, or control: (1) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or (2) any designated tangible things. (b) **Timing of request.** The request must be served no later than 30 days before the end of the discovery period. (c) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 requests for production or for inspection in a Level 1 case or 25 requests for production or for inspection in Level 2 or Level 3 cases, including all discrete subparts. ~~(c)~~(d) **Contents of request.** The request (1) must describe with reasonable particularity each item or category of items to be inspected; (2) must specify a reasonable time (on or after the date on which the response is due), place, and manner for the production or inspection and for performing the related acts; and (3) If the requesting party will sample or test the	Suggested revision from April SCAC meeting.

requested items, the means, manner and procedure for testing or sampling must be described with sufficient specificity to inform the producing party of the means, manner, and procedure for testing or sampling.

~~(d)~~(e) **Requests for production of medical or mental health records regarding nonparties.**

(1) **Service of request on nonparty.** If a party requests another party to produce medical or mental health records regarding a nonparty, the requesting party must serve the nonparty with the request for production under Rule 21a.

(2) **Exceptions.** A party is not required to serve the request for production on a nonparty whose medical records are sought if:

(A) the nonparty signs a release of the records that is effective as to the requesting party;

(B) the identity of the nonparty whose records are sought will not directly or indirectly be disclosed by production of the records; or

(C) the court, upon a showing of good cause by the party seeking the records, orders that service is not required.

(3) **Confidentiality.** Nothing in this rule excuses compliance with laws concerning the confidentiality of medical or mental health records.

196.2 Response to Request for Production and Inspection.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request.

(b) **Content of response.** For each item or category of items, the response:

(1) must either state that inspection and related activities will be permitted as requested or state an

Suggested revision at April SCAC meeting to avoid

objection or privilege under Rule 193.; (2) may state that it will produce copies of documents or electronically stored information instead of permitting inspection; (3) state, as appropriate, that production, inspection, or other requested action will take place at a specified time and place, if the responding party is objecting to the time and place of production; or (4) state, as appropriate, that no items have been identified - after a diligent search - that are responsive to the request. **196.3 Production.** (a) **Time and place of production.** Subject to any objections stated in the response, the production must be completed no later than the time for the production or inspection specified in the request or another reasonable time specified in the response. Subject to any objections stated in the response, the responding party must produce the requested documents or tangible things within the person's possession, custody or control at the place requested or the place stated in the response, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. (b) **Copies.** The responding party may produce copies in lieu of originals unless a question is raised as to the authenticity of the original or in the circumstances it would be unfair to produce copies in lieu of originals. Copies must be produced on the same level of resolution as the originals. If originals are produced, the responding party is entitled to retain the originals while the requesting party inspects and copies them. (c) **Organization.** The responding party must produce documents and tangible things as they are kept in the usual course of business or organize and label them to correspond with the categories in the request.	repetition of TRCP 193 language. Change suggested at April SCAC meeting.

196.4 Electronically Stored Information. (a) **Request.** To obtain discovery of electronically stored information, the requesting party must specify the form in which the requesting party wants it produced. (b) **Responses and Objections.** The response: (1) must either state that production of the electronically stored information that is responsive to the request and is reasonably available to the responding party in its ordinary course of business will occur or state an objection or privilege under Rule 193; (2) may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use~~; and~~ ~~(3) must object to the production, if~~. The court must order a reasonable form of production, considering the scope and limitations of discovery. If the court orders the responding party to comply with the request that the responding party cannot—through reasonable efforts—retrieve or produce as requested, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.	Suggested revision at April SCAC meeting to avoid repetition of TRCP 193 language. There was discussion at the April SCAC meeting that 196.4(b)(3) as originally recommended by the Discovery Subcommittee might be duplicative of (b)(2). (See April 28, 2017 Mtg. Tr. at p. 28223-28224). However, this rule is also implicated by *In re State Farm Lloyds*, 520 S.W.3d 595 (Tex. 2017). This redraft is an attempt to coordinate the suggested revisions with that opinion.
(c) **Producing the Electronically Stored Information**. Unless otherwise stipulated or ordered by the court, if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and a party need not produce the same electronically	The Discovery Subcommittee recommends revising TRCP 196.4(c) based on FRCP 34(b)(2). This was not specifically discussed at SCAC meeting.

stored information in more than one form. **196.5 Destruction or Alteration.** Testing, sampling or examination of an item may not destroy or materially alter an item unless previously authorized by the court. **196.6 Expenses of Production.** Unless otherwise ordered by the court for good cause, the expense of producing items will be borne by the responding party and the expense of inspecting, sampling, testing, photographing, and copying items produced will be borne by the requesting party. **196.7 Request of Motion for Entry Upon Property.** (a) **Request or motion.** ~~A party may gain entry on designated land or other property to inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon by serving - no later than 30 days before the end of any applicable discovery period~~A party may serve on any other party a request within the scope of discovery to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. If ~~-~~ ~~(1) a request on all parties if~~ the land or property belongs to a ~~party~~non-party, ~~or~~ the party seeking entry onto designated land or other property possessed or controlled by the nonparty must file ~~(2)~~ a motion and notice of hearing on all parties and the nonparty ~~if the land or property belongs to a nonparty~~. If the identity or address of the nonparty is unknown and cannot be obtained through reasonable diligence, the court must permit service by means other than those specified in Rule 21a that are reasonably calculated to give the nonparty notice of the motion	The Discovery Subcommittee recommends revising TRCP 196.7(a) based on FRCP 34(a)(2). This was reviewed by the SCAC in April but the language was not specifically discussed.

and hearing. (b) **Timing of request.** The request for entry upon a party's property, or the order for entry upon a nonparty's property, must be filed no later than 30 days before the end of any applicable discovery period. (~~b~~c) ~~**Time**~~**Requested time, place, and other conditions of inspection.** ~~The request for entry upon a party's property, or the order for entry upon a nonparty's property,~~The request must state the time, place, manner, conditions, and scope of the inspection, and must specifically describe any desired means, manner, and procedure for testing or sampling, and the person or persons by whom the inspection, testing, or sampling is to be made. (d) **Response to request for entry.** (1) **Time to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request. (2) **Content of response.** The responding party must state an objection or privilege under Rule 193 ~~objections and assert privileges as required by these rules~~, and state, as appropriate, that: (A) entry or other requested action will be permitted as requested; (B) entry or other requested action will take place at a specified time and place, if the responding party is objecting to the time and place of production; or (C) entry or other requested action cannot be permitted for reasons stated in the response. (e) **Requirements for order for entry on nonparty's property.** An order for entry on a nonparty's property may issue only for good cause shown and only if the land, property, or object thereon as to which discovery is sought is relevant to the subject matter of the action.	The Discovery Subcommittee recommends setting out TRCP 196.7(b) for clarity. This was reviewed by the SCAC in April but the language was not specifically discussed. The Discovery Subcommittee recommends making these stylistic changes to TRCP 196.7(c) for clarity. This was reviewed by the SCAC in April but the language was not specifically discussed. Suggested revision at April SCAC meeting to avoid repetition of TRCP 193 language.

Interrogatories: Tex. R. Civ. P. 197

RULE 197. INTERROGATORIES TO PARTIES **197.1 Interrogatories – In General.~~.~~** (a) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 written interrogatories in a Level 1 case or 25 written interrogatories in Level 2 or Level 3 cases, including all discrete subparts, but excluding interrogatories asking a party only to identify or authenticate specific documents. (b) **Scope.** A written ~~interrogatories~~ interrogatory ~~to~~ may inquire about any matter within the scope of discovery except matters covered by Rule 195. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial. (c) **Timing of request.** A party may serve written interrogatories on another party –no later than 30 days before the end of the discovery period. **197.2 Response to Interrogatories.** (a) **Responding parties; verification.** A responding party - not an attorney of record as otherwise permitted by Rule 14 - must sign the answers under oath or a declaration except that: (1) when answers are based on information obtained from other persons, the party may so state, and (2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions.	The Discovery Subcommittee recommends revising TRCP 197 to follow some aspects of FRCP 33. These proposals were reviewed by the SCAC in April; aside from the number limit in TRCP 197.1(a) and the objection language in 197.2(c), the SCAC members did not specifically comment on the suggested changes. The Discovery Subcommittee rejected the following language from FRCP 33(a)(2) because parties do not need to be invited to do this: "the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time." The Discovery Subcommittee recommends moving the verification requirement to TRCP 197.2(a) from 197.2(d) to track the format of FRCP 33 and to indicate who must respond earlier in the rule. The Discovery Subcommittee also revised the verification requirement to: (1) remove confusing language indicating an agent could not

(b) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories. (c) **Content of response.** A response must include the party's answers to the interrogatories and may include objections and assertions of privilege ~~as required under these rules~~under Rule 193. (~~e~~d) **Option to produce records.** If the answer to an interrogatory may be derived or ascertained from public records, from the responding party's business records, or from an examination, auditing, ~~a~~ compilation, abstract or summary of the responding party's business records (including electronically stored information), and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party, the responding party may answer the interrogatory by (1) specifying the records that must be reviewed, in sufficient detail to enable the requesting party to locate and identify them as readily as the responding party could; and, (2) if applicable, producing the records or compilation, abstract or summary of the records; and. ~~The records from which the answer may be derived or ascertained must be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party.~~ (3) ~~If the responding party has specified business records, the responding party must state~~stating a reasonable time and place for examination of the documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.	respond, and (2) to add declaration language. Suggested revision at April SCAC meeting to avoid repetition of TRCP 193 language. The Discovery Subcommittee recommends revising TRCP 197.2(d) to correspond with language in FRCP 33(d).

197.3 Use. Answers to interrogatories may be used only against the responding party. An answer to an interrogatory inquiring about matters described in Rule 194.2(c) and (d) that has been amended or supplemented is not admissible and may not be used for impeachment.	

Admissions: Tex. R. Civ. P. 198

RULE 198. REQUESTS FOR ADMISSIONS	
198.1 Request for Admissions.	The Discovery Subcommittee recommends breaking down TRCP 198.1 into subsections for clarity. This was not specifically discussed by the SCAC.
(a) **Request.** A party may serve on another party ~~no later than 30 days before the end of the discovery period~~ written requests that the other party admit, for purposes of the pending action only, the truth of any matter within the scope of discovery, including:	Consider Mr. Kelly's comment that this rule should clarify an admission is a waiver of the obligation to disprove the truth of any matter ("waiver of proof" language) (See April 28, 2017 Mtg. Tr. at p. 28254-28255).
(1) ~~statements of opinion or of fact or of the application of law to fact~~facts, the application of law to fact, or opinions about either~~, or~~; and (2) the genuineness of any described documents~~served with the request or otherwise made available for inspection and copying.~~.	
(b) **Number**. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 written requests for admissions in a Level 1 case or 25 written requests for admissions in Level 2 or Level 3 cases, including all discrete subparts, but excluding requests asking a party only to identify or authenticate specific documents.	The revisions to TRCP 198.1(a)(1)-(2) are from FRCP 36(a)(1) and 36(b). This was not specifically discussed by the SCAC.
(c) **Timing of request.** The request must be served no later than 30 days before the end of the discovery period.	
(d) **Form; copy of a document**. Each matter for which an admission is requested must be stated separately. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.	The revisions to TRCP 198.1(d) are from FRCP 36(a)(2). This was not specifically discussed by the SCAC.
198.2 Response to Requests for Admissions.	
(a) **Time ~~for response~~to respond; effect of failure to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request. If a	The Discovery Subcommittee recommends adding this language to TRCP 198.2(a) from TRCP

response is not timely served, the request is considered admitted without the necessity of a court order. (b) ~~**Content of response**~~**Answer.** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. ~~Unless the responding party states an objection or asserts a privilege, the responding party must specifically admit or deny the request or explain in detail the reasons that the responding party cannot admit or deny the request. A response must fairly meet the substance of the request. The responding party may qualify an answer, or deny a request in part, only when good faith requires. Lack of information or knowledge is not a proper response unless the responding party states that a reasonable inquiry was made but that the information known or easily obtainable is insufficient to enable the responding party to admit or deny. An assertion that the request presents an issue for trial is not a proper response.~~ (c) **Motion regarding the sufficiency of an answer or objection.** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.	198.2(c) for clarity. This was not specifically discussed by the SCAC. The revisions to TRCP 198.2(b) are from FRCP 36(a)(4). This was not specifically discussed by the SCAC. The addition of TRCP 198.2(c) is from FRCP 36(a)(6). See K. Wooten's comment that this is already included at TRCP 215.4. (See April 28, 2017 Mtg. Tr. at p. 28256).
198.3 Effect of an Admission~~s~~; Withdrawal or Amendment. An~~y~~ admission made by a party under this rule ~~may be used solely in the pending action~~is not an admission for any other purpose and cannot be used against the party in any other proceeding. An admission made by a party under this rule may be used only against the responding party. A matter admitted	The revisions to TRCP 198.3 are from FRCP 36(b). It is also stylistically revised for clarity and parallelism. This was not specifically discussed by the SCAC.

under this rule is conclusively established ~~as to the party making the admission~~ unless the court, on motion, permits the party to withdraw or amend the admission. The court may permit the party to withdraw or amend the admission if: (a) the party shows good cause for the withdrawal or amendment; and (b) the court finds that ~~the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.~~the withdrawal or amendment would promote the presentation of the merits of the action and the court is not persuaded that the withdrawal or amendment would prejudice the requesting party in maintaining or defending the action on the merits.	Suggested revision to TRCP 198.3 from TRCP 197.3 at April SCAC meeting to make it clear it can only be used against the admitting party.

Depositions, Pre-Suit Depositions, and Depositions Pending Appeal:

Tex. R. Civ. P. 199-203

RULE 199. DEPOSITIONS UPON ORAL EXAMINATION **199.1 Oral Examination; Alternative Methods of Conducting or Recording.** (a) **Generally.** A party may take the testimony of any person or entity by deposition on oral examination before any officer authorized by law to take depositions. The testimony, objections, and any other statements during the deposition must be recorded at the time they are given or made. (b) **Number.** Unless otherwise stipulated or ordered by the court, each party may have no more than the hours in Rules 190.2 and 190.3 total for oral depositions. For Level 3 cases, each side may have no more than 60 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage. (~~b~~c) **Depositions by ~~telephone or other~~ remote ~~electronic~~ means.** ~~A party may take~~The parties may stipulate—or the court may on motion order—an oral deposition by telephone or other remote electronic means ~~if the party gives reasonable prior written notice of intent to do so~~. For the purposes of these rules, an oral deposition taken by telephone or other remote electronic means is considered as having been taken in the district and at the place where the witness is located when answering the questions. The officer taking the deposition may be located with the party noticing the deposition instead of with	In April the SCAC voted to include hour limits (rather than a number limit on oral depositions like in FRCP 30(a)(2). The SCAC also voted for an hour limit default for Level 3 cases of 60 hours. The Discovery Subcommittee should consider placement of the number limits; repetitive in rules and confusing. In April, this suggested change was not approved by the SCAC by a narrow vote (10-12) [Comment on change: The Discovery Subcommittee recommended revising TRCP 199.1(c) to be consistent with FRCP 30(b)(4), which requires agreement or leave of court for remote

the witness if the witness is placed under oath by a person who is present with the witness and authorized to administer oaths in that jurisdiction. (~~c~~d) **Non-stenographic recording.** Any party may cause a deposition upon oral examination to be recorded by other than stenographic means, including videotape recording. The party requesting the non-stenographic recording will be responsible for obtaining a person authorized by law to administer the oath and for assuring that the recording will be intelligible, accurate, and trustworthy. At least five days prior to the deposition, the party must serve on the witness and all parties a notice, either in the notice of deposition or separately, that the deposition will be recorded by other than stenographic means. This notice must state the method of non-stenographic recording to be used and whether the deposition will also be recorded stenographically. Any other party may then serve written notice designating another method of recording in addition to the method specified, at the expense of such other party unless the court orders otherwise. **199.2 Procedure for Noticing Oral Depositions.** (a) **Time to notice deposition.** A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court. (b) **Content of notice.** (1) **Identity of witness; organizations.** The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each	depositions.] The SCAC requested the Discovery Subcommittee review the rationale for the federal court rule.

individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules. (2) **Time and place.** The notice must state a reasonable time and place for the oral deposition. The place may be in: (A) the county of the witness's residence; (B) the county where the witness is employed or regularly transacts business in person; (C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1); (D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or (E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending. (3) **Alternative means of conducting and recording.** The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c). (4) **Additional attendees.** The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3). (5) **Request for production of documents.** A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the	

request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196. **199.3 Compelling Witness to Attend.** A party may compel the witness to attend the oral deposition by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the notice of oral deposition upon the party's attorney has the same effect as a subpoena served on the witness. **199.4 Objections to Time and Place of Oral Deposition.** A party or witness may object to the time and place designated for an oral deposition by motion for protective order or by motion to quash the notice of deposition. The motion must offer an alternative time and place for oral deposition. If the motion is filed by the third business day after service of the notice of deposition, an objection to the time and place of a deposition stays the oral deposition until the motion can be determined. **199.5 Examination, Objection, and Conduct During Oral Depositions.** (a) **Attendance.** (1) **Witness.** The witness must remain in attendance from day to day until the deposition is begun and completed. (2) **Attendance by party.** A party may attend an oral deposition in person, even if the deposition is taken by telephone or other remote electronic means. If a	Suggestion from June SCAC meeting.

deposition is taken by telephone or other remote electronic means, the party noticing the deposition must make arrangements for all persons to attend by the same means. If the party noticing the deposition appears in person, any other party may appear by telephone or other remote electronic means if that party makes the necessary arrangements with the deposition officer and the party noticing the deposition. (3) **Other attendees.** If any party intends to have in attendance any persons other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the oral deposition, that party must give reasonable notice to all parties, either in the notice of deposition or separately, of the identity of the other persons. (b) **Oath; examination.** Every person whose deposition is taken by oral examination must first be placed under oath. The parties may examine and cross-examine the witness. Any party, in lieu of participating in the examination, may serve written questions in a sealed envelope on the party noticing the oral deposition, who must deliver them to the deposition officer, who must open the envelope and propound them to the witness. An objection at the time of the examination to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. The record must state: (1) the officer's name and business address; (2) the date, time, and place of the deposition; (3) the deponent's name; (4) the administration of the oath or affirmation to the deponent; and (5) the identity of all persons present.	The recommended changes in TRCP 199.5(b) were reviewed by the SCAC in April and nobody commented. The Discovery Subcommittee recommends adopting a portion of FRCP 30(c)(2) at TRCP 199.5(b) to require objections to officer's qualifications and the manner of taking the deposition be noted on the record. The Discovery Subcommittee also recommends revising TRCP 199.5(b) to adopt FRCP 30(b)(5)(A), amended to require only that the record must state these items. The Discovery Subcommittee does not recommend requiring an officer begin the deposition with an on-the-record statement of these items like the FRCPs.

(c) **Qualifications and Objections to Translator** [Placeholder]	The Discovery Subcommittee recommends adding a rule on qualifications and objections to a translator at TRCP 199.5(c). This was not specifically discussed by the full SCAC.
(d) **Time limitation.** No side may examine or cross-examine an individual witness for more than six hours. Breaks during depositions do not count against this limitation. The court must allow additional time consistent with Rule 192.3 and Rule 192.4 if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.	The Discovery Subcommittee recommends revising TRCP 199.5(d) to adopt language from FRCP 30(d); the Discovery Subcommittee does not recommend adopting the FRCP's limit of "one day of 7 hours" for a deposition. This was not specifically discussed by the full SCAC.
(e) **Conduct during the oral deposition; conferences.** The oral deposition must be conducted in the same manner as if the testimony were being obtained in court during trial. If the deposition is recorded nonstenographically, the deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques. Counsel should cooperate with and be courteous to each other and to the witness. The witness should not be evasive and should not unduly delay the examination. Private conferences between the witness and the witness's attorney during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Private conferences may be held, however, during agreed recesses and adjournments. If the lawyers and witnesses do not comply with this rule, the court may allow in evidence at trial statements, objections, discussions, and other occurrences during the oral deposition that reflect upon the credibility of the witness or the testimony.	Should this rule also be amended to account for a split-screen deposition that the other side has not seen prior to trial? (See J. Christopher comment, April 28, 2017 Mtg. Tr. at p. 28300-28302)
(f) **Objections.** Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are	

limited to "Objection, non-responsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. The officer taking the oral deposition will not rule on objections but must record them for ruling by the court. The officer taking the oral deposition must not fail to record testimony because an objection has been made. (g) **Instructions not to answer.** An attorney may instruct a witness not to answer a question during an oral deposition only if necessary to preserve a privilege, comply with a court order or these rules, protect a witness from an abusive question or one for which any answer would be misleading, or secure a ruling pursuant to paragraph (g). The attorney instructing the witness not to answer must give a concise, non-argumentative, non-suggestive explanation of the grounds for the instruction if requested by the party who asked the question. (h) **Suspending the deposition.** If the time limitations for the deposition have expired or the deposition is being conducted or defended in violation of these rules, a party or witness may suspend the oral deposition for the time necessary to obtain a ruling. (i) **Good faith required.** An attorney must not ask a question at an oral deposition solely to harass or mislead the witness, for any other improper purpose, or without a good faith legal basis at the time. An attorney must not object to a question at an oral deposition, instruct the witness not to answer a question, or suspend the deposition unless there is a good faith factual and legal basis for doing so at the time. **199.6 Hearing on Objections.** Any party may, at any reasonable time, request a hearing on an	

objection or privilege asserted by an instruction not to answer or suspension of the deposition; provided the failure of a party to obtain a ruling prior to trial does not waive any objection or privilege. The party seeking to avoid discovery must present any evidence necessary to support the objection or privilege either by testimony at the hearing or by affidavits served on opposing parties at least seven days before the hearing. If the court determines that an *in camera* review of some or all of the requested discovery is necessary to rule, answers to the deposition questions may be made in camera, to be transcribed and sealed in the event the privilege is sustained, or made in an affidavit produced to the court in a sealed wrapper. **RULE 200. DEPOSITIONS UPON WRITTEN QUESTIONS** **200.1 Procedure for Noticing Deposition Upon Written Questions.** (a) **Who may be noticed; when.** A party may take the testimony of any person or entity by deposition on written questions before any person authorized by law to take depositions on written questions. A notice of intent to take the deposition must be served on the witness and all parties at least 20 days before the deposition is taken. A deposition on written questions may be taken outside the discovery period only by agreement of the parties or with leave of court. The party noticing the deposition must also deliver to the deposition officer a copy of the notice and of all written questions to be asked during the deposition. (b) **Content of notice.** The notice must comply with Rules 199.1(b), 199.2(b), and 199.5(a)(3). If the witness is an organization, the organization must comply with the requirements of that provision. The notice also may include a request for production of documents as permitted by Rule 199.2(b)(5), the provisions of which will govern the request, service, and response.	

200.2 Compelling Witness to Attend. A party may compel the witness to attend the deposition on written questions by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the deposition notice upon the party's attorney has the same effect as a subpoena served on the witness. **200.3 Questions and Objections.** (a) **Direct questions.** The direct questions to be propounded to the witness must be attached to the notice. (b) **Objections and additional questions.** Within ten days after the notice and direct questions are served, any party may object to the direct questions and serve cross-questions on all other parties. Within five days after cross-questions are served, any party may object to the cross-questions and serve redirect questions on all other parties. Within three days after redirect questions are served, any party may object to the redirect questions and serve re-cross questions on all other parties. Objections to re-cross questions must be served within five days after the earlier of when re-cross questions are served or the time of the deposition on written questions. (c) **Objections to form of questions.** Objections to the form of a question are waived unless asserted in accordance with this subdivision. **200.4 Conducting the Deposition Upon Written Questions.** The deposition officer must: take the deposition on written questions at the time and place designated; record the testimony of the witness under oath in response to the questions; and prepare, certify, and deliver the deposition transcript in accordance with Rule 203. The deposition officer has authority when necessary to summon and swear an interpreter to facilitate the taking of the deposition.	

RULE 201. DEPOSITIONS IN FOREIGN JURISDICTIONS FOR USE IN TEXAS PROCEEDINGS; DEPOSITIONS IN TEXAS FOR USE IN FOREIGN PROCEEDINGS

201.1 Depositions in Foreign Jurisdictions for Use in Texas Proceedings.

(a) **Generally.** A party may take a deposition on oral examination or written questions of any person or entity located in another state or a foreign country for use in proceedings in this State. The deposition may be taken by:

(1) notice;

(2) letter rogatory, letter of request, or other such device;

(3) agreement of the parties; or

(4) court order.

(b) **By notice.** A party may take the deposition by notice in accordance with these rules as if the deposition were taken in this State, except that the deposition officer may be a person authorized to administer oaths in the place where the deposition is taken.

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

(1) be addressed to the appropriate authority in the jurisdiction in which the deposition is to be taken;

(2) request and authorize that authority to summon the witness before the authority at a time and place stated in the letter for examination on oral or written questions; and

(3) request and authorize that authority to cause the witness's testimony to be reduced to writing and returned, together with any items marked as exhibits, to

the party requesting the letter rogatory. (d) **By letter of request or other such device.** On motion by a party, the court in which an action is pending, or the clerk of that court, must issue a letter of request or other such device in accordance with an applicable treaty or international convention on terms that are just and appropriate. The letter or other device must be issued regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter or other device must: (1) be in the form prescribed by the treaty or convention under which it is issued, as presented by the movant to the court or clerk; and (2) must state the time, place, and manner of the examination of the witness. (e) **Objections to form of letter rogatory, letter of request, or other such device.** In issuing a letter rogatory, letter of request, or other such device, the court must set a time for objecting to the form of the device. A party must make any objection to the form of the device in writing and serve it on all other parties by the time set by the court, or the objection is waived. (f) **Admissibility of evidence.** Evidence obtained in response to a letter rogatory, letter of request, or other such device is not inadmissible merely because it is not a verbatim transcript, or the testimony was not taken under oath, or for any similar departure from the requirements for depositions taken within this State under these rules. (g) **Deposition by electronic means.** A deposition in another jurisdiction may be taken by telephone, video conference, teleconference, or other electronic means under the provisions of Rule 199. **201.2 Depositions in Texas for Use in Proceedings in Foreign Jurisdictions.** If a court of record of any other state or foreign jurisdiction issues a mandate, writ, or commission that requires a witness's oral or written deposition testimony in this State, the witness	

may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this State.

RULE 202. DEPOSITIONS BEFORE SUIT OR TO INVESTIGATE CLAIMS

202.1 Generally.

A person may petition the court for an order authorizing the taking of a deposition on oral examination or written questions either:

(a) to perpetuate or obtain the person's own testimony or that of any other person for use in an anticipated suit; or

(b) to investigate a potential claim or suit.

202.2 Petition

The petition must:

(a) be verified;

(b) be filed in a proper court of any county:

(1) where venue of the anticipated suit may lie, if suit is anticipated; or

(2) where the witness resides, if no suit is yet anticipated;

(c) be in the name of the petitioner;

(d) state either:

(1) that the petitioner anticipates the institution of a suit in which the petitioner may be a party; or

(2) that the petitioner seeks to investigate a potential claim by or against petitioner;

(e) state the subject matter of the anticipated action, if any, and

the petitioner's interest therein; (f) if suit is anticipated, either: (1) state the names of the persons petitioner expects to have interests adverse to petitioner's in the anticipated suit, and the addresses and telephone numbers for such persons; or (2) state that the names, addresses, and telephone numbers of persons petitioner expects to have interests adverse to petitioner's in the anticipated suit cannot be ascertained through diligent inquiry, and describe those persons; (g) state the names, addresses and telephone numbers of the persons to be deposed, the substance of the testimony that the petitioner expects to elicit from each, and the petitioner's reasons for desiring to obtain the testimony of each; and (h) request an order authorizing the petitioner to take the depositions of the persons named in the petition. **202.3 Notice and Service.** (a) **Personal service on witnesses and persons named.** At least 15 days before the date of the hearing on the petition, the petitioner must serve the petition and a notice of the hearing – in accordance with Rule 21a - on all persons petitioner seeks to depose and, if suit is anticipated, on all persons petitioner expects to have interests adverse to petitioner's in the anticipated suit. (b) **Service by publication on persons not named.** (1) **Manner.** Unnamed persons described in the petition whom the petitioner expects to have interests adverse to petitioner's in the anticipated suit, if any, may be served by publication with the petition and notice of the hearing. The notice must state the place for the hearing and the time it will be held, which must be more than 14 days after the first publication of the notice. The petition and notice must be published once each week for two	

consecutive weeks in the newspaper of broadest circulation in the county in which the petition is filed, or if no such newspaper exists, in the newspaper of broadest circulation in the nearest county where a newspaper is published. (2) **Objection to depositions taken on notice by publication.** Any interested party may move, in the proceeding or by bill of review, to suppress any deposition, in whole or in part, taken on notice by publication, and may also attack or oppose the deposition by any other means available. (c) **Service in probate cases.** A petition to take a deposition in anticipation of an application for probate of a will, and notice of the hearing on the petition, may be served by posting as prescribed by Section 33(f)(2) of the Probate Code. The notice and petition must be directed to all parties interested in the testator's estate and must comply with the requirements of Section 33(c) of the Probate Code insofar as they may be applicable. (d) **Modification by order.** As justice or necessity may require, the court may shorten or lengthen the notice periods under this rule and may extend the notice period to permit service on any expected adverse party. **202.4 Order.** (a) **Required findings.** The court must order a deposition to be taken if, but only if, it finds that: (1) allowing the petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit; or (2) the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. (b) **Contents.** The order must state whether a deposition will be taken on oral examination or written questions. The order may also state the time and place at which a deposition will be	

taken. If the order does not state the time and place at which a deposition will be taken, the petitioner must notice the deposition as required by Rules 199 or 200. The order must contain any protections the court finds necessary or appropriate to protect the witness or any person who may be affected by the procedure. **202.5 Manner of Taking and Use.** Except as otherwise provided in this rule, depositions authorized by this rule are governed by the rules applicable to depositions of non-parties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed. A court may restrict or prohibit the use of a deposition taken under this rule in a subsequent suit to protect a person who was not served with notice of the deposition from any unfair prejudice or to prevent abuse of this rule. **RULE 203. SIGNING, CERTIFICATION AND USE OF ORAL** **AND WRITTEN DEPOSITIONS** **203.1 Signature and Changes.** (a) **Deposition transcript to be provided to witness.** The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness. (b) **Changes by witness; signature.** The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer.	

If the witness does not return the transcript to the deposition officer within 30 days of the date the transcript was provided to the witness or the witness's attorney, the witness may be deemed to have waived the right to make the changes. (c) **Exceptions.** The requirements of presentation and signature under this subdivision do not apply: (1) if the witness and all parties waive the signature requirement; (2) to depositions on written questions; or (3) to non-stenographic recordings of oral depositions. **203.2 Certification.** The deposition officer must file with the court, serve on all parties, and attach as part of the deposition transcript or non-stenographic recording of an oral deposition a certificate duly sworn by the officer stating: (a) that the witness was duly sworn by the officer and that the transcript or non-stenographic recording of the oral deposition is a true record of the testimony given by the witness; (b) that the deposition transcript, if any, was submitted to the witness or to the attorney for the witness for examination and signature, the date on which the transcript was submitted, whether the witness returned the transcript, and if so, the date on which it was returned. (c) that changes, if any, made by the witness are attached to the deposition transcript; (d) that the deposition officer delivered the deposition transcript or nonstenographic recording of an oral deposition in accordance with Rule 203.3; (e) the amount of time used by each party at the deposition; (f) the amount of the deposition officer's charges for preparing the original deposition transcript, which the clerk of the court	

must tax as costs; and

(g) that a copy of the certificate was served on all parties and the date of service.

203.3 Delivery.

(a) **Endorsement; to whom delivered.** The deposition officer must endorse the title of the action and "Deposition of (name of witness)" on the original deposition transcript (or a copy, if the original was not returned) or the original nonstenographic recording of an oral deposition, and must return:

(1) the transcript to the party who asked the first question appearing in the transcript, or

(2) the recording to the party who requested it.

(b) **Notice.** The deposition officer must serve notice of delivery on all other parties.

(c) **Inspection and copying; copies.** The party receiving the original deposition transcript or non-stenographic recording must make it available upon reasonable request for inspection and copying by any other party. Any party or the witness is entitled to obtain a copy of the deposition transcript or non-stenographic recording from the deposition officer upon payment of a reasonable fee.

203.4 Exhibits.

At the request of a party, the original documents and things produced for inspection during the examination of the witness must be marked for identification by the deposition officer and annexed to the deposition transcript or non-stenographic recording. The person producing the materials may produce copies instead of originals if the party gives all other parties fair opportunity at the deposition to compare the copies with the originals. If the person offers originals rather than copies, the deposition officer must, after the conclusion of the deposition, make copies to be attached to the original deposition transcript or non-stenographic recording, and then return the originals to

the person who produced them. The person who produced the originals must preserve them for hearing or trial and make them available for inspection or copying by any other party upon seven days' notice. Copies annexed to the original deposition transcript or non-stenographic recording may be used for all purposes. **203.5 Motion to Suppress.** A party may object to any errors and irregularities in the manner in which the testimony is transcribed, signed, delivered, or otherwise dealt with by the deposition officer by filing a motion to suppress all or part of the deposition. If the deposition officer complies with Rule 203.3 at least one day before the case is called to trial, with regard to a deposition transcript, or 30 days before the case is called to trial, with regard to a non-stenographic recording, the party must file and serve a motion to suppress before trial commences to preserve the objections. **203.6 Use.** (a) **Non-stenographic recording; transcription.** A non-stenographic recording of an oral deposition, or a written transcription of all or part of such a recording, may be used to the same extent as a deposition taken by stenographic means. However, the court, for good cause shown, may require that the party seeking to use a non-stenographic recording or written transcription first obtain a complete transcript of the deposition recording from a certified court reporter. The court reporter's transcription must be made from the original or a certified copy of the deposition recording. The court reporter must, to the extent applicable, comply with the provisions of this rule, except that the court reporter must deliver the original transcript to the attorney requesting the transcript, and the court reporter's certificate must include a statement that the transcript is a true record of the non-stenographic recording. The party to whom the court reporter delivers the original transcript must make the transcript available, upon reasonable	

request, for inspection and copying by the witness or any party. (b) **Same proceeding.** All or part of a deposition may be used for any purpose in the same proceeding in which it was taken. If the original is not filed, a certified copy may be used. "Same proceeding" includes a proceeding in a different court but involving the same subject matter and the same parties or their representatives or successors in interest. A deposition is admissible against a party joined after the deposition was taken if: (1) the deposition is admissible pursuant to Rule 804(b)(1) of the Rules of Evidence, or (2) that party has had a reasonable opportunity to redepose the witness and has failed to do so. (c) **Different proceeding.** Depositions taken in different proceedings may be used as permitted by the Rules of Evidence.	

Physical and Mental Examinations: Tex. R. Civ. P. 204

RULE 204. PHYSICAL AND MENTAL EXAMINATION **204.1 Motion and Order Required.** (a) **Motion.** A party may - no later than 30 days before the end of any applicable discovery period - move for an order compelling another party to: (1) submit to a physical or mental examination by a suitably licensed examiner; or (2) produce for such examination a person in the other party's custody, conservatorship or legal control. (b) **Service.** The motion and notice of hearing must be served on the person to be examined and all parties. (c) **Requirements for obtaining order.** The court may issue an order for examination only for good cause shown and only in the following circumstances: (1) when the mental or physical condition (including the blood group) of a party, or of a person in the custody, conservatorship or under the legal control of a party, is in controversy; or (2) except as provided in Rule 204.4, an examination by a psychologist may be ordered when the party responding to the motion has designated a psychologist as a testifying expert or has disclosed a psychologist's records for possible use at trial. (d) **Requirements of order.** The order must be in writing and must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom ~~it is to be made~~will perform it. **204.2 Examiner's Report ~~of Examining Physician or Psychologist~~.**	There was a lot of discussion on 204.1(a) by the full SCAC in June; the SCAC favored a change to make it expand beyond just physician and psychologist, but they were not in favor of the "or certified" proposition in the January Discovery Subcommittee recommendation. The Discovery Subcommittee recommends revising TRCP 204.1(d) to match FRCP 35(a)(2)(B) for clarity. This was not discussed by the full SCAC. The suggested changes to TRCP 204.2 were presented to the SCAC in June, but

(a) **Right to report by the party or person examined.** Upon request of the person ordered to be examined, the party causing the examination to be made must deliver to the person a copy of a detailed written report of the examining physician or psychologist. The court on motion may limit delivery of a report on such terms as are just. (b) **Contents of report.** The written report must set out in detail ~~setting out~~ the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. (c) **Request by the moving party.** ~~After delivery of the report, upon request of the party causing the examination, the party against whom the order is made must produce a like report of any examination made before or after the ordered examination of the same condition, unless the person examined is not a party and the party shows that the party is unable to obtain it. The court on motion may limit delivery of a report on such terms as are just.~~After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them. The court on motion may limit delivery of a report on such terms as are just. (d) **Waiver of privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition. (e) **Failure to deliver a report.** If ~~a physician or psychologist~~an examiner fails or refuses to make a report the court may exclude the testimony if offered at the trial. (f) **Agreements; relationship to other rules**. This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition	there were no specific comments on the suggestions. The Discovery Subcommittee recommends breaking up the provisions of TRCP 204.2 into separately numbered paragraphs like FRCP 35(b) for clarity. The Discovery Subcommittee recommends revising TRCP 204.2(b) to add the language "in detail" from FRCP 35(b)(2). The Discovery Subcommittee recommends revising TRCP 204.2(c) to use language from FRCP 35(b)(3) for clarity. The Discovery Subcommittee recommends adding TRCP 204.2(d) based on FRCP 35(b)(4). This change in TRCP 204.2(e) suggested by SCAC in June to conform with earlier changes.

of the physician or psychologist in accordance with the provisions of any other rule. **204.3 Effect of No Examination.** If no examination is sought either by agreement or under this subdivision, the party whose physical or mental condition is in controversy must not comment to the court or jury concerning the party's willingness to submit to an examination, or on the right or failure of any other party to seek an examination. **204.4 Cases Arising Under Titles II or V, Family Code.** In cases arising under Family Code Titles II or V, the court may - on its own initiative or on motion of a party - appoint: (a) one or more psychologists or psychiatrists to make any and all appropriate mental examinations of the children who are the subject of the suit or of any other parties, and may make such appointment irrespective of whether a psychologist or psychiatrist has been designated by any party as a testifying expert; (b) one or more experts who are qualified in paternity testing to take blood, body fluid, or tissue samples to conduct paternity tests as ordered by the court. **204.5 Definitions.** For the purpose of this rule, a psychologist is a person licensed or certified by a state or the District of Columbia as a psychologist.	

Discovery from Non-Parties: Tex. R. Civ. P. 205

RULE 205. DISCOVERY FROM NON-PARTIES **205.1 Forms of Discovery; Subpoena Requirement.** A party may compel discovery from a nonparty--that is, a person who is not a party or subject to a party's control--only by obtaining a court order under Rules 196.7, 202, or 204, or by serving a subpoena compelling: (a) an oral deposition; (b) a deposition on written questions; (c) a request for production of documents or tangible things, pursuant to Rule 199.2(b)(5) or Rule 200.1(b), served with a notice of deposition on oral examination or written questions; and (d) a request for production of documents and tangible things under this rule. **205.2 Notice.** A party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery. A notice of oral or written deposition must be served before or at the same time that a subpoena compelling attendance or production under the notice is served. A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served. **205.3 Production of Documents and Tangible Things Without Deposition.** (a) **Notice; subpoena.** A party may compel production of documents and tangible things from a nonparty by serving -	No recommendations at this time.

reasonable time before the response is due but no later than 30 days before the end of any applicable discovery period - the notice required in Rule 205.2 and a subpoena compelling production or inspection of documents or tangible things. (b) **Contents of notice.** The notice must state: (1) the name of the person from whom production or inspection is sought to be compelled; (2) a reasonable time and place for the production or inspection; and (3) the items to be produced or inspected, either by individual item or by category, describing each item and category with reasonable particularity, and, if applicable, describing the desired testing and sampling with sufficient specificity to inform the nonparty of the means, manner, and procedure for testing or sampling. (c) **Requests for production of medical or mental health records of other non-parties.** If a party requests a nonparty to produce medical or mental health records of another nonparty, the requesting party must serve the nonparty whose records are sought with the notice required under this rule. This requirement does not apply under the circumstances set forth in Rule 196.1(c)(2). (d) **Response.** The nonparty must respond to the notice and subpoena in accordance with Rule 176.6. (e) **Custody, inspection and copying.** The party obtaining the production must make all materials produced available for inspection by any other party on reasonable notice, and must furnish copies to any party who requests at that party's expense. (f) **Cost of production.** A party requiring production of documents by a nonparty must reimburse the nonparty's reasonable costs of production.	

Sanctions, including spoliation: Tex. R. Civ. P. 215

RULE 215. ~~ABUSE OF~~FAILURE TO MAKE DISCLOSURES OR TO COOPERATE IN DISCOVERY; SANCTIONS **215.1 Motion for ~~Sanctions or~~ Order Compelling Disclosure or Discovery.** (a) ***In General***. On notice to other parties and all affected persons, a~~A~~ party~~, upon reasonable notice to other parties and all other persons affected thereby,~~ may ~~apply for sanctions or~~move for an order compelling disclosure or discovery ~~as follows:~~. (~~a~~b) ***Appropriate court***. ~~On matters relating to a deposition, an application~~A motion for an order to a party ~~may~~ must be made ~~to the court in which~~in the court where the action is pending~~, or to any district court in the district where the deposition is being taken. An application~~. A motion for an order to a ~~deponent who is not a party shall~~nonparty must be made to ~~the~~ any district court in the district where the ~~deposition is being~~discovery is or will be taken. ~~As to all other discovery matters, an application for an order will be made to the court in which the action is pending.~~ (~~b~~c) ***Specific Motions***. (1) *To compel disclosure*. If a party fails to make a disclosure required by Rule 194, any other party may move to compel disclosure and for appropriate sanctions. (2) *To compel a discovery response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: (A) a deponent fails to answer a question asked under Rule 199 or 200; (B) ~~If a party or other deponent which is~~ a corporation or other entity fails to make a designation under Rules 199.2(b)(1) or 200.1(b); ~~or~~	In February, the SCAC reviewed the proposed changes to TRCP 215 based on FRCP 37. The specific changes were not discussed by the SCAC (because discussion focused on the spoliation rule). The revisions to TRCP 215.1 are based on FRCP 37(a). The revisions to TRCP 215.1(b) are based on FRCP 37(a)(2). The revisions to TRCP 215.1(c) are based on FRCP 37(a)(3)(A). The language in TRCP 215.1(c)(2) is moved from further below.

(C) a party fails to answer an interrogatory submitted under Rule 197;

(D)a party fails to serve a written response to a request, fails to produce documents, or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 196; or

(E) a party fails to comply with any person's written request for the person's own statement as provided in Rule 192.3(h).

~~(2) if a party, or other deponent, or a person designated to testify on behalf of a party or other deponent fails:~~

~~(A) to appear before the officer who is to take his deposition, after being served with a proper notice; or~~

~~(B) to answer a question propounded or submitted upon oral examination or upon written questions; or~~

~~(3) if a party fails:~~

~~(A) to serve answers or objections to interrogatories submitted under Rule 197, after proper service of the interrogatories; or~~

~~(B) to answer an interrogatory submitted under Rule 197; or~~

~~(C) to serve a written response to a request for inspection submitted under Rule 196, after proper service of the request; or~~

~~(D) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under Rule 196; the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the court in which the action~~

~~is pending for the imposition of any sanction authorized by Rule 215.2(b) without the necessity of first having obtained a court order compelling such discove~~ (3) *Related to a deposition.* When taking an oral deposition ~~on oral examination~~, ~~the proponent of the~~the party asking a question may complete or adjourn the examination before ~~he applies~~moving for an order. ~~If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 192.6.~~ (~~c~~d) ***Evasive or incomplete answer*.** For purposes of this Rule 215.1 ~~subdivision,~~ an evasive or incomplete disclosure, answer, or response must be ~~is to be~~ treated as a failure to disclose, ~~answer~~answer, or respond. (~~d~~e) ~~***Disposition of motion to compel: award of expenses***~~***Payment of expenses; protective orders*.** (1) *If the motion is granted (or disclosure or discovery is provided after filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court may~~, the court shall~~, after giving an opportunity ~~for hearing~~to be heard, require ~~a~~ the party or deponent whose conduct necessitated the motion, ~~or~~ the party or attorney advising ~~such~~ that conduct, or both, ~~of them~~ to pay, at such time as ordered by the court, the ~~moving party~~movant's ~~the~~ reasonable expenses incurred in ~~obtaining the order~~making the motion, including attorney fees. But the court must not order this payment if: (A) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (B) ~~, unless the court finds that the opposition to the motion~~the opposing party's nondisclosure, response, or objection was substantially justified;	This language is moved to below.

or (C) ~~or that~~ other circumstances make an award of expenses unjust. ~~Such an order shall be subject to review on appeal from the final judgment.~~ (2) *If the motion is denied.* If the motion is denied, the court may issue any protective order authorized under Rule 192.6 and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both, to pay to the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust. (3) *If the motion is granted in part and denied in part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 192.6 and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.	
~~If the motion is denied, the court may, after opportunity for hearing, require the moving party or attorney advising such motion to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.~~	This language is moved to above.
~~If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.~~	This language is moved to above.
(4) *Reasonable expenses.* In determining the amount of reasonable expenses, including attorney fees, to be awarded ~~in connection with a motion~~, the ~~trial~~ court ~~shall~~ must award expenses ~~which~~ that are reasonable in relation to the amount of work reasonably expended in ~~obtaining an order compelling compliance~~ making the	

motion or in opposing ~~a motion which is denied~~the denied motion. ~~(e) **Providing person's own statement.** If a party fails to comply with any person's written request for the person's own statement as provided in Rule 192.3(h), the person who made the request may move for an order compelling compliance. If the motion is granted, the movant may recover the expenses incurred in obtaining the order, including attorney fees, which are reasonable in relation to the amount of work reasonably expended in obtaining the order.~~	This language is moved to above.
215.2 Failure to Comply with ~~Order or with Discovery Request~~a Court Order. (a) ***Sanctions ~~by court in district where deposition is taken~~sought in the district where the deposition is taken.*** If the court where the discovery is taken orders a deponent ~~fails to appear or~~ to be sworn or to answer a question and the deponent fails to obey, ~~after being directed to do so by a district court in the district in which the deposition is being taken,~~ the failure may be ~~considered~~ treated as a contempt of that court. (b) ***Sanctions ~~by court in which action is pending~~sought in the court where the action is pending.*** (1) *For not obeying a discovery order.* If a party or a party's ~~an~~ officer, director, or managing agent—or a witness ~~of a party or a person~~ designated under Rules 199.2(b)(1) or 200.1(b)—~~to testify on behalf of a party fails to comply with proper discovery requests or~~ fails to obey an order to provide or permit discovery, including an order ~~made~~ under Rules 204 or 215.1, the court ~~in which~~where the action is pending may~~, after notice and hearing, make such orders in regard to the failure as are just, and among others the~~ issue further just orders. They may include the following: (~~1~~A) ~~an order~~ disallowing the disobedient party from requesting further discovery ~~any further discovery of any kind or of a particular kind by~~	The revisions to TRCP 215.2 are based on FRCP 37(b). The revisions to 215.2(a) are based on FRCP 37(b)(1). The revisions to TRCP 215.2(b) are based on FRCP 37(b)(2).

~~the disobedient party~~;

~~(2) an order charging all or any portion of the expenses of discovery or taxable court costs or both against the disobedient party or the attorney advising him;~~

(~~3~~B) ~~an order~~ directing that the matters ~~regarding which~~embraced in the order ~~was made~~ or ~~any~~ other designated facts ~~shall~~ be taken ~~to be~~as established for the purposes of the action ~~in accordance with the claim of the party obtaining the order~~as the prevailing party claims;

(~~4~~C) ~~an order refusing to allow~~prohibiting the disobedient party ~~to~~ from supporting or opposing ~~support or oppose~~ designated claims or defenses, or ~~prohibiting him~~ from introducing designated matters in evidence;

(~~5~~D) ~~an order striking out pleadings or parts thereof, or~~striking pleadings in whole or in part;

(E) staying further proceedings until the order is obeyed~~,~~;

(F) ~~or~~ dismissing with or without prejudice the action or proceedings ~~or any part thereof~~in whole or in part;

(G)~~, or~~ rendering a default judgment ~~by default~~ against the disobedient party; or

(~~6~~H) ~~in lieu of any of the foregoing orders or in addition thereto, an order~~ treating as a contempt of court the failure to obey any order~~s~~ except an order to submit to a physical or mental examination~~;~~.

(2) *For not producing a person for examination.* ~~when~~ If a party ~~has failed~~fails to comply with an order under Rule 204 requiring ~~him~~ it to appear or produce another for examination, the court may issue any of the orders listed in Rule 215.2(b)(1)(A)-(H), ~~such orders as are~~

~~listed in paragraphs (1), (2), (3), (4) or (5) of this subdivision,~~ unless the disobedient party ~~person failing to comply~~ shows that ~~he~~ it ~~is unable to appear or to produce such person for examination~~cannot appear or to produce the other person. (3) *Payment of expenses.* Instead of ~~In lieu of any of the foregoing orders~~ or in addition ~~thereto~~to the orders above, the court ~~shall~~ must require ~~the party failing to obey the order or~~the disobedient party, the attorney advising ~~him~~that party, or both, to pay~~, at such time as ordered by the court,~~ the reasonable expenses, including attorney fees, caused by the failure, unless the ~~court finds that the~~ failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust. ~~Such an~~The order ~~shall be subject to~~must be ~~-~~reviewed on appeal from the final judgment.	
~~(c) **Sanction against nonparty for violation of Rules 196.7 or 205.3.** If a nonparty fails to comply with an order under Rules 196.7 or 205.3, the court which made the order may treat the failure to obey as contempt of court.~~	This language is moved to above.
215.3 Abuse of Discovery Process in Seeking, Making, or Resisting Discovery. If ~~the court finds~~ a party ~~is abusing~~abuses the discovery process in seeking, making, or resisting discovery or if ~~the court finds that any~~the party serves an interrogatory or request for inspection or production that is unreasonably frivolous, oppressive, or harassing, or ~~that~~ serves a response ~~or answer~~that is unreasonably frivolous or made for purposes of delay, ~~then~~ the court ~~in which the action is pending~~ may, after notice and hearing, ~~impose any appropriate sanction authorized by paragraphs (1), (2), (3), (4), (5), and (8) of Rule 215.2(b)~~issue any of the orders listed in Rule 215.2(b)(1)(A)-(H). ~~Such order of sanction shall be subject to review.~~ The order must be reviewed on appeal from the final judgment.	TRCP 215.3 is revised for clarity. This rule is not in the FRCPs.
215.4 Failure to Comply with Rule 198 (a) ***Motion*.** A party who has requested an admission under Rule	The FRCP 37(c) (federal admission rule) is as follows:

198 may move to determine the sufficiency of the answer or objection. For purposes of this subdivision an evasive or incomplete answer may be treated as a failure to answer. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of Rule 198, it may order either that the matter is admitted or that an amended answer be served. The provisions of Rule 215.1(d) apply to the award of expenses incurred in relation to the motion. (b) ***Expenses on failure to admit*.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 198 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 193, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had a reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.	**(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.** **(1) *Failure to Disclose or Supplement*.** If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard: **(A)** may order payment of the reasonable expenses, including attorney's fees, caused by the failure; **(B)** may inform the jury of the party's failure; and **(C)** may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi). **(2) *Failure to Admit*.** If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

	(A) the request was held objectionable under Rule 36(a); **(B)** the admission sought was of no substantial importance; **(C)** the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or **(D)** there was other good reason for the failure to admit.
215.5 ~~Failure of Party or Witness to Attend to or Serve Subpoena; Expenses~~Party's Failure to Attend its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection. (a) ***Motion; grounds for sanctions.*** The court where the action is pending may, on motion, order sanctions if: (1) a party or a party's officer, director, or managing agent—or a person designated under Rule 199.2(b)(1) or Rule 200.1(b)—fails, after being served with proper notice, to appear for that person's deposition; ~~(~~2) ~~**Failure of party giving notice to attend.** If the party giving the notice of the taking of an oral deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.~~a party fails, after serving notice, to attend and proceed with a deposition, or the witness fails to attend and proceed with the deposition through the fault of the party that served notice; or (3) ~~(b) **Failure of witness to attend.** If a party gives notice of the taking of an oral deposition of a witness and the witness does not attend because of the fault of the party giving the notice, if another party attends in person or by attorney because he expects the deposition~~	TRCP 215.5 is based on FRCP 37(d).

~~of that witness to be taken, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.~~a party, after being properly served with interrogatories under Rule XX, fails to serve its answers, objections, or written response.

(b) ***Certification.*** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(c) ***Unacceptable excuse for failing to act.*** A failure described in Rule 215.5(a) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 192.6.

(d) ***Types of sanctions.*** Sanctions may include any of the orders listed in Rule 215.2(b)(1)(A)-(G). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

215.6 Exhibits to Motions and Responses.

Motions or responses made under this rule may have exhibits attached including affidavits, discovery pleadings, or any other documents.

215.7 Failure to Preserve Electronically Stored Information

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, and the trial court finds prejudice to another party from loss of the information:

The Discovery Subcommittee recommends the adoption of FRCP 37(e) as TRCP 215.7. The Subcommittee suggests revising subpart (a) to make it clear that in the case of unintentional spoliation of evidence the trial court may not comment on a party's failure to preserve records

(a) the party may present evidence concerning the loss of the evidence; (b) the court may order measures no greater than necessary to cure the prejudice but must not comment on the failure to preserve the evidence or instruct the jury that a duty to preserve the evidence existed or the consequences of the failure to produce the evidence ; and (c) only upon the trial court finding that the party acted with the intent to deprive another party of the information's use in the litigation, the trial court may: (1) presume that the lost information was unfavorable to the party; (2) instruct the jury that it may or must presume the information was unfavorable to the party; or (3) dismiss the action or enter a default judgment.	either by an oral comment or in the jury instructions. Federal trial courts are permitted to comment on the evidence but Texas trial courts are not. In February, the SCAC commented that there should be a showing of prejudice, even for intentional spoliation, and that there needs to be some penalty (i.e., called to the jury's attention) for unintentional. Further, the SCAC is interested in exploring a rule that addresses ESI and preservation obligations. This was discussed by the SCAC in February and June and a special group was formed.