

Deciphering SB 346: Understanding the New Criminal Court Cost Structure

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Why the Change?



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-0170-16

ORLANDO SALINAS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY

KELLER, P.J., delivered the opinion of the Court in which KEASLER, HERVEY, ALCALA, and WALKER, JJ., joined. HERVEY, J. filed a concurring opinion. YEARY, J., filed a dissenting opinion in which RICHARDSON and NEWELL, JJ., joined. NEWELL, J., filed a dissenting opinion in which RICHARDSON, J., joined. KEEL, J., did not participate.

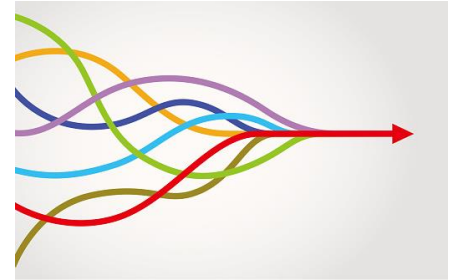
When a defendant is convicted in a criminal case, various statutes require the payment of fees as court costs. One of these statutes assesses a consolidated fee: the defendant pays a single fee, but the money from that fee is divided up among a variety of different state government accounts according to percentages dictated by the statute. Appellant challenges the assessment of the

- Salinas decision
- Complexity
- Interim Charges

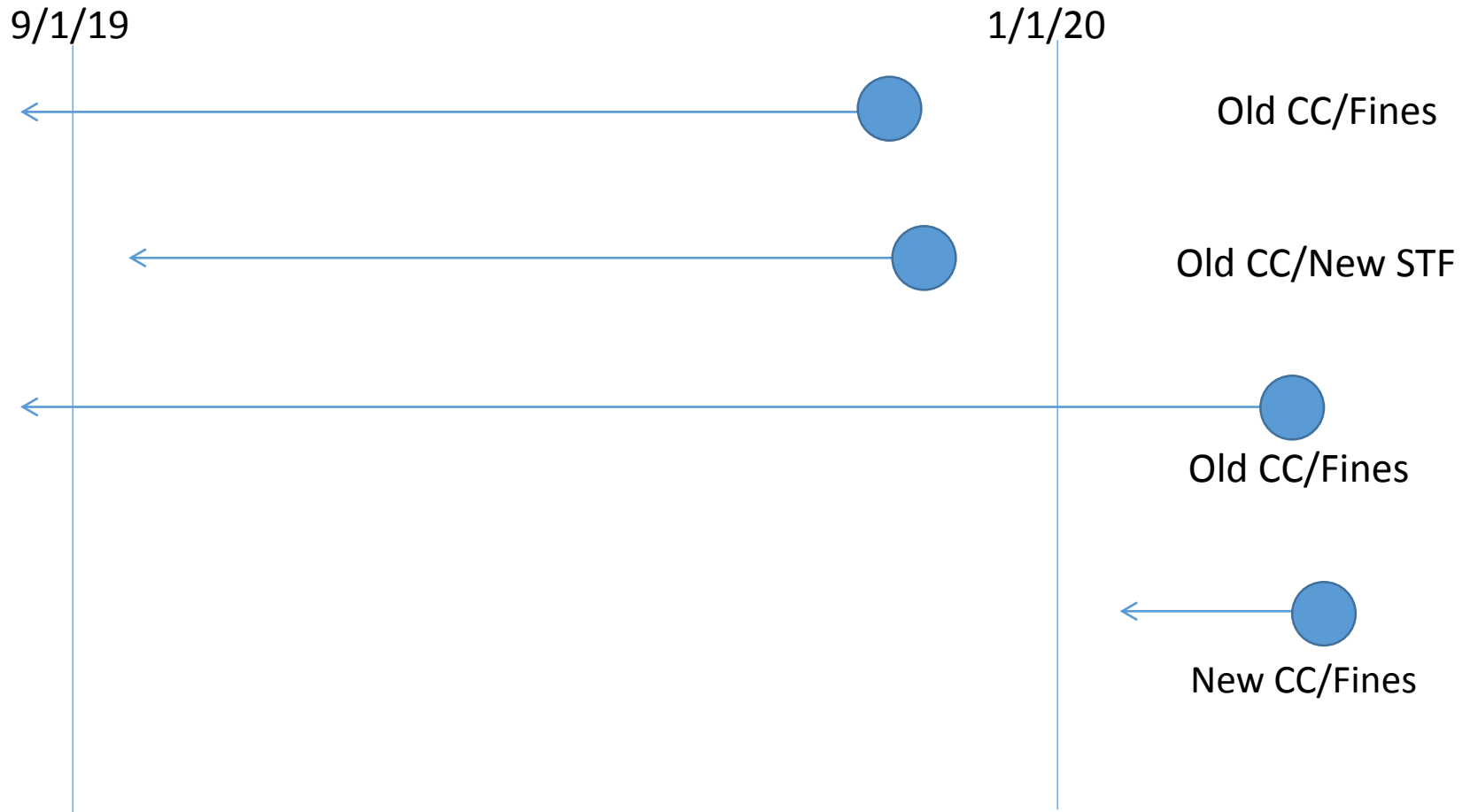


The Basics of SB 346

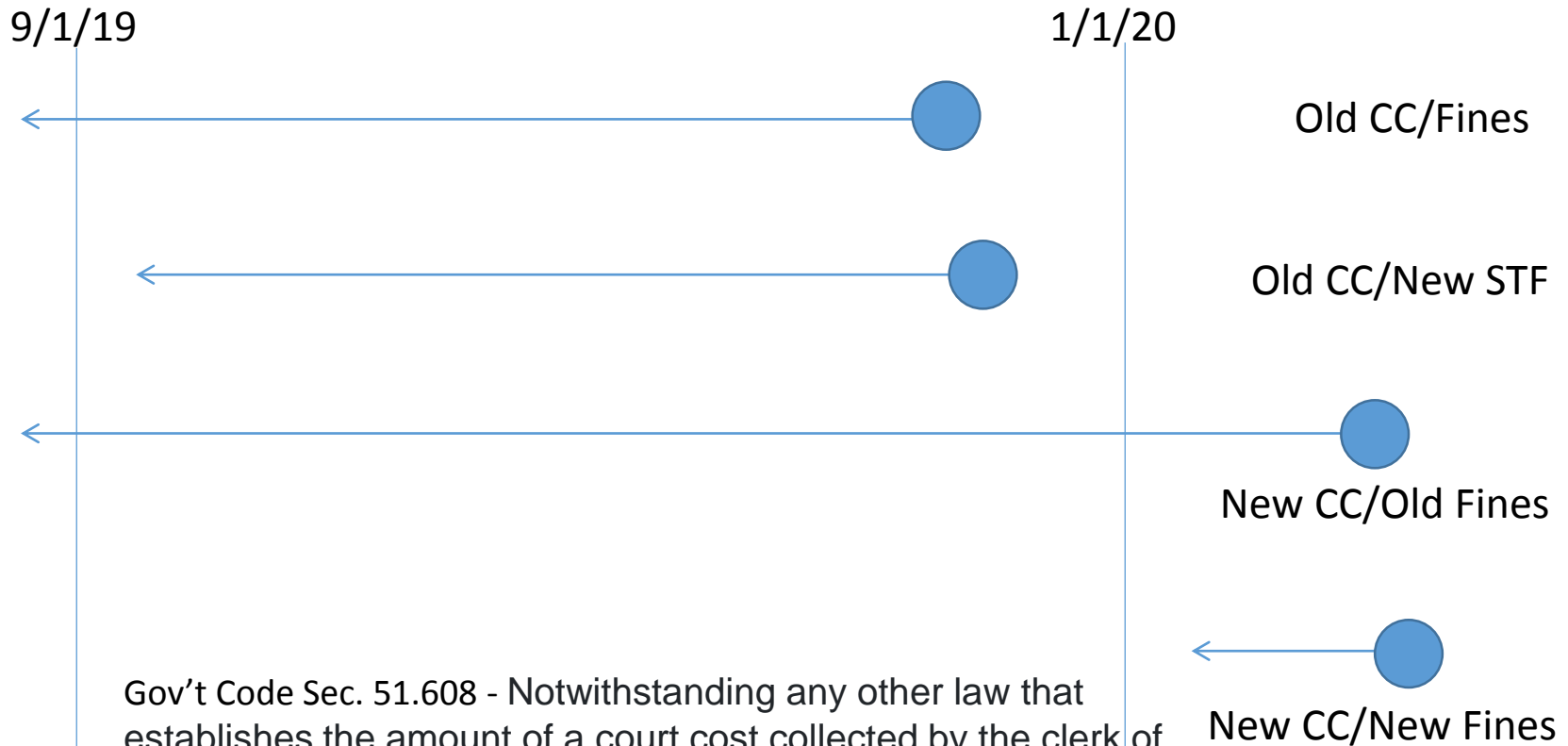
- 2 Consolidated Court Costs for each court level
 - State consolidated criminal court cost
 - Local consolidated criminal court cost
- Redesignation as Fines or Reimbursement Fees
 - Costs that are punitive are now designated as fines
 - Costs that are to recoup the cost of services provided during the course of the case are now designated as reimbursement fees
 - No change in whether they are mandatory or optional
- Redirection of funds to legitimate criminal justice purposes
 - Several costs are now placed into dedicated funds that can only be used for legitimate purposes



The Effective Date – JP/Municipal Courts



The Effective Date – County/District Crts



Gov't Code Sec. 51.608 - Notwithstanding any other law that establishes the amount of a court cost collected by the clerk of a **district, county, or statutory county court**... the amount of a court cost imposed must be the amount established under the **law in effect on the date the defendant is convicted of the offense.**



The Distribution of the Court Costs, Fine, & Reimbursement Fees

- Court Costs
 - Local Gov't Code Secs. 133 and 134 lay out the distribution of the consolidated court costs into specific funds by certain percentages
 - State allocates the state consolidated court cost
 - Auditor/treasurer allocates local consolidated court cost
- Fines
 - In the past, the only fine was the general fine that stayed with city/county.
 - Now, the statute for the fine will indicate where the fine goes.
- Reimbursement Fees
 - Used to reimburse city/county or third-party for service provided.
 - Statute will indicate where the funds should go.



HB 2048 – State Traffic Fine

- State traffic fine increased from \$30 to \$50
- Effective for offenses committed on or after 9/1/19
- Only assess this fine if the defendant was convicted of a rule of the road offense under Subtitle C, Title 7, Transp. Code (i.e., Chapters 541-600)
- “Conviction” includes deferred adjudication and deferred disposition.
- 4% to the county/city as a collection fee and 96% is directed to the state
 - Allocation used to be 5%/95%



What is a conviction?

- General definition of “conviction” does not include deferred adjudication or deferred disposition.
- Specific court cost/fine/reimbursement fee statute may alter the general definition of “conviction”
- Court costs/fines/reimbursement fees in **Local Government Code** use definition that includes deferred adjudication/disposition.
- Unless otherwise defined, court costs/fines/reimbursement fees in **Code of Criminal Procedure** do not include deferred adjudication/disposition.
- Time payment reimbursement fee was moved from LGC to CCP and no specific definition was included = no longer applies to deferred adjudication/disposition



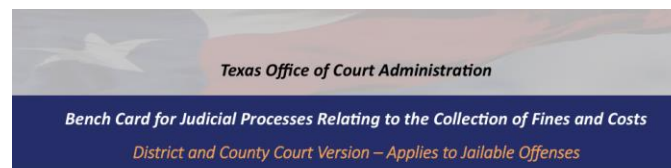
Imposing the court costs, fines, reimbursement fees at sentencing

- Court costs
 - Total in the judgment
 - Become payable once a bill of costs is produced (district/county/JP/municipal) or ready to be produced (JP/municipal)
- Fines
 - As part of punishment, should be pronounced at sentencing and made a part of the judgment
 - Detailed listing being added to felony judgment forms
- Reimbursement fees
 - Total in the judgment
 - Should be detailed in bill of costs



SB 346 in light of SB 1913 (85R)

- Last session, law amended to require judges to consider ability to pay at sentencing
- Nothing about SB 346 changes that
 - Several provisions of SB 346 reinforce last session's changes
- Judges can reduce or waive court costs, fines and/or reimbursement fees
 - Mandatory costs/fines/reimbursement fees can be assessed and then reduced or waived



The U.S. Supreme Court has held that courts may not incarcerate a person for nonpayment of fines or fees without first establishing that the person's failure to pay was willful.¹

There is new law in Texas which affects the imposition and collection of fines and court costs and impacts trial courts at all levels.² [Senate Bill 1913](#) and [House Bill 351](#) were passed by the 85th Legislature, Regular Session, and became effective on September 1, 2017.

Key procedural elements of the new law are as follows:³

⇒ **NEW REQUIREMENT FOR ASSESSING ABILITY TO PAY DURING OR IMMEDIATELY AFTER SENTENCING** (Art. 42.15)

- At the sentencing of a defendant who enters a plea in open court, when imposing a fine and costs **the judge is required to inquire whether the defendant has sufficient resources or income** to immediately pay all or part of the fine and costs.
- At this time, **the judge shall also consider** the defendant's financial history and other relevant ability to pay information.
- If the judge determines that the defendant does not have sufficient resources or income, **the judge is required** to determine whether the fine and costs should be:
 - required to be paid at some later date or in a specified portion at designated intervals;
 - discharged through the performance of community service;
 - waived in full or part; *or*
 - satisfied through any combination of these methods.

⇒ **NEW REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE** (Art. 43.09)

- Any **order requiring a defendant's performance of community service must**:
 - specify the number of hours to be performed;
 - designate which agency will perform the administrative duties associated with defendant's placement in a community service program; *and*
 - include the date by which a defendant must submit proof of completion of the community service hours to the court.
- **Community service options have been expanded** to include not only service provided to a governmental entity or certain nonprofit organizations, but also:
 - attending a work and job skills training program, a preparatory class for the GED, an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, or any similar activity; *or* performing community service for an educational institution or any organization that provides services to the general public that enhances social welfare and the well-being of the community.

¹ *Bearden v. Georgia*, 461 U.S. 650 (1983).

² Jurisdictions required to operate a collection improvement program must also follow [rules](#) promulgated by the Texas Judicial Council. See [1 Tex. Admin. Code § 175](#).

³ Statutory references are to the Texas Code of Criminal Procedure.



Available Resources

Municipal Court - Court Costs, Fines, & Reimbursement Fees on Conviction Chart (ORIGINAL JURISDICTION) – 01/01/2020 ¹ (red denotes an addition or change) for offenses committed on or after January 1, 2020 ² Existing law requires an ability to pay determination at sentencing. While a law may require assessment of a court cost, fine, or reimbursement fee, judges retain authority to reduce or waive those court costs, fines, or reimbursement fees.	
COURT COSTS <small>For purposes of assessment of court costs, "conviction" includes deferred adjudication and deferred disposition – Local Gov't Code §§ 133.101 and 134.002(b).</small>	
1	State Consolidated Court Cost – Local Gov't Code § 133.102(a)(3) – (Mandatory) - Assessed on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, but not if the offense related to a pedestrian or the parking of a motor vehicle \$62
2	Local Consolidated Court Cost – Local Gov't Code § 134.103(a) – (Mandatory) (NEW) - Assessed on conviction of a nonjailable misdemeanor offenses, including a criminal violation of a municipal ordinance, an offense related to a pedestrian, or the parking of a motor vehicle \$14
MANDATORY FINES <small>The following mandatory fines are in addition to other fines and costs authorized or required by law, the consolidated court costs, and any applicable reimbursement fees.</small>	
3	Compliance Dismissals Fines - Transp. Code § 502.473(d) – Failure to Display of Registration Dismissal - Transp. Code § 502.475(c) – Wrong, Altered, or Obscured Registration Dismissal - Transp. Code § 504.943(f) – Failure to Display Two License Plates Dismissal - Transp. Code § 504.945(d) – Wrong, Altered or Obscured License Plate Dismissal - Transp. Code § 521.221(i) – Violation of Driver's License Restriction Dismissal - Transp. Code § 547.004(c) – Operating Unsafe Vehicle Dismissal - Parks & Wildlife Code § 31.127(f) – Operating a Vessel w/ an Expired Certificate of Number Not to exceed \$10
4	Compliance Dismissals Fines - Transp. Code § 502.407(b) – Expired Registration Dismissal - Transp. Code § 521.054(d) – Failure to Change Address or Name Dismissal - Transp. Code § 548.605(e) – Operating Vehicle w/o Complying w/ Inspection Requirements as Certified Dismissal - Transp. Code § 681.013(b) – Displaying Expired Disabled Placard Dismissal Not to exceed \$20
5	Local Traffic Fine – Transp. Code § 542.403 - Apply to Rules of the Road convictions under Subtitle C, Title 7, Transp. Code (i.e., Chapters 541-600) - "Conviction" includes deferred adjudication and deferred disposition \$3
6	Municipal Parking Offense Court Cost >850k (larger cities) – Code Crim. Proc. art. 102.014(a) - The City must have: (1) an ordinance, regulation, or order regulating the stopping, standing, or parking of motor vehicles; and (2) a nonjailable offense than 850.000 \$2 - \$5
7	



County Court - Court Costs, Fines, & Reimbursement Fees on Conviction' Chart (ORIGINAL JURISDICTION) – 01/01/2020¹ (red denotes an addition or change)

Court costs apply to convictions on or after January 1, 2020, no matter the offense date.²
Fines and reimbursement fees apply to convictions for offenses committed on or after January 1, 2020.⁴
Existing law requires an ability to pay determination at sentencing. While a law may require assessment of a court cost, fine, or reimbursement fee, judges retain the authority to reduce or waive those court costs, fines, or reimbursement fees.

	A	B	C	D	E	F	G	H
MANDATORY COURT COSTS <small>For assessment of court costs, "conviction" includes deferred adjudication and deferred disposition – Local Gov't Code §§ 133.101 and 134.002(b).</small>								
1	State Consolidated Court Cost – LGC, § 133.102(a)(2)	147	147	147	147	147	147	147
2	Local Consolidated Court Cost – LGC, § 134.102(a)	123	123	123	123	123	123	123
MANDATORY FINES								
3	Add'l Monthly Fine for Certain Sex Offenders – CCP, art. 42A.653 <small>(NOTE: This fine is assessed for each month of community supervision)</small>	N/A	N/A	N/A	N/A	N/A	N/A	5 ⁵
4	EMS, Trauma Facilities and Trauma Care Systems Fine (For Intoxication Convictions) – CCP, art. 102.0185	100	100	100	N/A	N/A	N/A	N/A
5	Family Violence Fine – CCP, art. 42A.504(b) <small>(NOTE: Fine is limited to convictions under Title 5 of the Penal Code that the judge determines involved family violence)</small>	N/A	N/A	N/A	N/A	N/A	N/A	*
6	Juvenile Delinquency Prevention Fine – CCP, art. 102.0171(a)	N/A	N/A	N/A	N/A	50	N/A	N/A
7	State Traffic Fine – TC, § 542.4031	N/A	N/A	N/A	N/A	N/A	50	N/A
	TOTAL COSTS⁶	370	370	370	270	320	320	≥ 270
OPTIONAL FINES								
8	General Fine – PC, §§ 12.21 and 12.22	*	*	*	*	*	*	*
9	Repayment of Reward Fine as Cond CS – CCP, art. 42A.301(b)(20)	≤ 50*	≤ 50*	≤ 50*	≤ 50*	≤ 50*	≤ 50*	≤ 50*
MANDATORY REIMBURSEMENT FEES <small>Only assess to recover the cost for a service performed during the course of the case</small>								
10	Attorney's Fees – CCP, art. 26.05	*	*	*	*	*	*	*
11	Bail Bond Posting Fee – GC, § 41.258	15	15	15	15	15	15	15
12	Community Supervision Fee – CCP, art. 42A.652(a)*	25-60*	25-60*	25-60*	25-60*	25-60*	25-60*	25-60*
13	Drug or Alcohol Rehabilitation Evaluation Fee – CCP, art. 102.018(b)	X	N/A	N/A	N/A	N/A	N/A	N/A
14	Peace Officer: Attach Witness – CCP, art. 102.011(c)	10	10	10	10	10	10	10
15	Peace Officer: Commit or Release from Jail – CCP, art. 102.011(a)(6)	5	5	5	5	5	5	5



CAUSE NO. _____ COUNTY NO. _____ |
INCIDENT NO./TRN: _____

THE STATE OF TEXAS § IN THE _____ DISTRICT
§
§
§
§
§
§
§
§
STATE ID NO. TX _____ §

V. _____
_____ COUNTY, TEXAS

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding: _____ Date Sentence Imposed: _____
Attorney for State: _____ Attorney for Defendant: _____

Offense for which Defendant Convicted:

Charging Instrument: _____ Statute or Ordinance: _____
Date of Offense: _____ Plea to Offense: _____
Degree of Offense: _____ Punishment or Death: _____
Terms of Plea Bargain (if any): or Terms of Plea Bargain are attached and incorporated herein by this reference.

1st Enhancement Paragraph: N/A Finding on 1st Enhancement Paragraph: N/A
2nd Enhancement Paragraph: N/A Finding on 2nd Enhancement Paragraph: N/A

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR _____
(The defendant cannot be held in custody while on community supervision.)

Punishment and Place of Confinement: _____

DATE SENTENCE COMMENCES: _____ THIS SENTENCE SHALL BE: N/A

Fine: \$ _____ Restitution Payable to: _____
(See special finding or order of restitution which is incorporated herein by this reference.)

Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc. § _____
(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A.

Total Jail Time Credit: _____
If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
N/A DAYS NOTES: N/A

Was the victim impact statement returned to the attorney representing the State? N/A

(For sex offender registration purposes only) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 12A.559, Tex. Code Crim. Proc.? N/A

This cause was called and the parties appeared. The State appeared by her District Attorney as named above.
Counsel / Waiver of Counsel (select one)
 Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel.
 Defendant was tried in absentia.

CCJ Standard Judgment Form (Rev. 12/1/2018) Page 1 of 2



Questions?

For questions after the webinar, please reach out to Margie Johnson,
Assistant General Counsel for OCA, at 512-463-1625 or
Margie.johnson@txcourts.gov.

