



OFFICE OF COURT ADMINISTRATION

MEGAN LAVOIE
Administrative Director

MEMORANDUM

TO: Chief Justice Nathan Hecht
Presiding Judge Sharon Keller
Members, Texas Judicial Council

FROM: Megan LaVoie, Administrative Director

RE: Proposed Adoption of Amendments and New Rule – Title 1, Texas
Administrative Code Chapter 171

DATE: January 31, 2024

At its November 3, 2023 meeting, the Council proposed amendments to Chapter 171, Title 1, Texas Administrative Code, Sec. 171.9 and proposed a new rule for Chapter 171, Sec. 171.11.

The purpose of the proposed rules is to implement requirements and changes enacted by House Bill 1182 and House Bill 2384 (88th Legislature, Regular Session, 2023). The following is a brief description of the proposed amendment and new rule:

- Amend Sec. 171.9, Other Reports Required from the Courts, to add subsection (i) concerning additional reporting requirements for district and county clerks in counties with a population of one million or more.
- Add new Rule 171.11 concerning new statutorily required annual performance measure reporting to the OCA for district and county clerks of each county who maintain records for the district courts, statutory county courts (including probate courts), and constitutional county courts.

The proposed rules were published in the *Texas Register* on November 24, 2023 (48 TexReg 6811). A copy of the proposed rules for adoption are attached. OCA received comments to the proposed rules, which are discussed in the attached adoption preamble.

Action required: Adoption of attached proposed amendment and new rule.

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §171.9, §171.11

The Texas Judicial Council (Council) proposes amendments to 1 Texas Administrative Code §171.9, to comply with HB 1182's amendments to Texas Government Code § 71.035, concerning judicial statistics, enacted during the 88th Regular Session of the Texas Legislature (2023). The Council also proposes new rule §171.11 regarding the new performance measures reporting requirements for the Office of Court Administration (OCA), which is responsive to the amendments made to Texas Government Code § 72.083 by HB 2384. The instructions for complying with the new reporting requirements developed by OCA can be found on OCA's website at <https://txcourts.gov/reporting-to-oca/district-county-court-level-reporting/>.

Although the Council expects to adopt the rules by February of 2024, clerks will not be required to report the data required by the proposed rules until March 1, 2024, which will allow time to implement any required changes to their case management systems.

Background and Justification

HB 1182 requires that the Council gather monthly court activity statistics and case-level information on the amount and character of business transacted by each trial court in the state. For trial courts with counties with a population of at least one million, the Council must gather information including, but not limited to: (1) the number of cases assigned to the court; (2) the case clearance rate for the court; (3) the number of cases disposed of by the court; (4) the number of jury panels empaneled by the court; (5) the number of orders of continuance for an attorney before the court or by the court; (6) the number of pleas accepted by the court; (7) the number of cases tried by the judge of the court or before a jury; and (8) the number of cases tried before a visiting or associate judge of the court. The trial courts must provide the information in the form and manner prescribed by OCA, and OCA must publish the information for each court on OCA's website in a searchable format. For counties in excess of a population of one million, the court official for each court in the county must submit, to the appropriate county official, a copy of each required monthly report for publication on the county's public Internet website within a certain prescribed timeframe and in searchable format. HB 2384 requires that OCA annually report, as performance measures, the following information with respect to each district court, statutory county court, statutory probate court, and county court in Texas: (1) the court's clearance rate;

(2) the average time a case is before the court from filing to disposition; and (3) the age of the court's active pending caseload.

Fiscal Impact on State and Local Government

Jennifer Henry, Chief Financial Officer of OCA, has determined that for each year of the first five-year period the new rules are in effect, there will be no fiscal implications for the state as a result of enforcing or administering the rules as proposed. There may be a cost to local governments to provide the data required by HB 1182 and HB 2384 due to modification of court case management systems or office processing changes needed to provide data by court; however, the fiscal impact cannot be determined because it will vary depending on a county's staff level and the capability of existing technology to process and report the additional data.

Local Employment Impact Statement

Jennifer Henry has determined that the proposed rules will not affect the local economy, so the Council is not required to prepare a local employment impact statement under Texas Government Code § 2001.022.

Public Benefit/Cost Note

Alejandra Pena, Director of Data and Research with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be: (1) clarity in what is required by law for reporting case activity; and (2) information that more accurately reflects the workloads of each district court, statutory county court, statutory probate court, and county court in Texas that is more useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning.

Probable Economic Costs to Persons Required to Comply with Proposal

Jennifer Henry has determined that for each year of the first five-year period the proposed rules are in effect, there may be an indeterminate fiscal impact to counties to comply with the new statutory requirements.

Fiscal Impact on Small Businesses, Micro Businesses, and Rural Communities

There will be no adverse effect on small businesses, micro businesses, or rural communities as a result of the proposed rules. Since the Council has determined that there is no adverse effect, the preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code § 2006.002, is not required.

One-for-one Requirement for Rules with Fiscal Impact

While the proposed rules may fiscally impact local governments, the impact is indeterminate and may vary from county to county.

The proposed rules do not impose a cost on another state agency or special district.

Government Growth Impact Statement

Per Texas Government Code § 2001.0221, the Council provides the following government growth impact statement. For each year of the first five years the proposed rules are in effect, the Council has determined that:

The proposed rules do not create or eliminate a government program.

Implementation of the proposed rules do require the creation of new employee positions for OCA.

Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to OCA.

The proposed rules do not require an increase or decrease in fees paid to the OCA.

The proposed rules do create a new regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do expand an existing regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do not increase the number of individuals subject to the rules' applicability because the Council does not regulate individuals.

The proposed rules do not positively or adversely affect the state's economy.

Takings Impact Assessment

The Council has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a takings impact assessment under Texas Government Code § 2001.043.

Environmental Rule Analysis

The Council has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Council asserts the proposed rules are not a "major environmental rule," as defined by Texas Government Code § 2001.0225 and do not require the preparation of an environmental impact analysis.

Public Comment

Comments on the proposed rules and reporting instructions may be submitted to Alejandra Pena, Director of Data and Research, with OCA, at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to Data.division@txcourts.gov.

Statutory Authority and Sections Affected

The proposed rules are proposed pursuant to: (1) Texas Government Code § 71.019, the Council's general rulemaking authority; (2) section 71.031 of the Government Code, the Council's authority to study the procedures and practices, work accomplished, and results of state courts and methods for their improvement; (3) the Council's authority under Texas Government Code § 71.033 to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the administration of justice; and

(4) Texas Government Code § 71.035, the Council's authority to gather judicial statistics. The proposed rules implement the changes to Texas Government Code § 71.035 by HB 1182 and to Texas Government Code § 72.083 by HB 2384.

§171.9. Other Reports Required from the Courts.

(a) Judicial Appointments and Fees. The clerk of each court shall submit a monthly report to OCA in the format prescribed by OCA. The report must:

(1) pursuant to Section 36.004 of the Government Code, list every appointment made for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator and the compensation paid, if any. Appointments made by the court for positions exempted from reporting under Sec. 36.003, Tex. Gov't Code, are not required to be reported.

(2) The report shall include the case number and style, and the name of the judge and date of order approving compensation. The report is due no later than 15 days following the end of the month reported. If no appointments were made or fees were approved by the courts in the preceding month, the clerk shall file a report indicating that no appointments or payments were made in that month.

(b) Jury Charges and Sentences in Capital Cases. Pursuant to Section 72.087 of the Government Code, the judge or clerk of a court in which a capital case is heard must submit to OCA a written record of the case that includes the content of the trial court's charge to the jury and the sentence issued in the case. The information must be submitted no later than 30 days after the date of judgment of conviction or acquittal.

(c) Vexatious Litigants. Pursuant to Section 11.104 of the Civil Practice and Remedies Code, the clerk of each court shall submit to OCA within 30 days a copy of any order declaring a person a vexatious litigant and prohibiting the person from filing new litigation without the consent of the local administrative judge.

(d) Judicial Bypass. Pursuant to Section 33.003(1-1) of the Family Code, the district clerk or county clerk shall submit a report to OCA on a form prescribed by OCA the information required under Sec. 33.003(1-1) regarding a case in which a minor files an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator, or guardian.

(e) Court Security Incident. Pursuant to Article 102.017 of the Code of Criminal Procedure, the sheriff, constable or other law enforcement agency that provides security for a court is required to submit a report to OCA regarding any incident involving court security that occurs in or around a building housing a court for which the sheriff, constable, agency or entity provides security. The report is due no later than three business days after the date the incident occurred.

(f) Private Professional Guardians. Pursuant to Section 1104.306 of the Estates Code, the clerk of each county shall annually submit to the Judicial Branch Certification Commission the name and business address of each private professional guardian who has satisfied the registration requirements of Sec. 1104.303, Tex. Estates Code. The report is due no later than January 31 of each year.

(g) Writ of Attachment. Pursuant to Art. 2.212 of the Code of Criminal Procedure, not later than the 30th day after the court issues a writ of attachment, the clerk of a district, statutory county or county court shall report to OCA on a form prescribed by OCA the following regarding the issued writ of attachment:

- (1) the date the attachment was issued;
- (2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding;

(3) the names of the persons requesting and the judge issuing the attachment; and

(4) the statutory authority under which the attachment was issued.

(h) Regional Presiding Judges Report. Pursuant to Government Code Sec. 71.038, the presiding judges of the administrative judicial regions shall submit on a form approved by the Council information requested by the Council regarding the business transacted by the judges.

(i) Additional Reporting for Counties with a Population of 1 Million or More. Pursuant to Sec. 71.035 of the Government Code, for the reporting period beginning March 1, 2024, in addition to the other monthly reporting required under this chapter, the district and county clerks in counties with a population of 1 million or more as determined by the decennial census shall report to the OCA, in the form and manner prescribed by OCA, for each of the district and county courts the clerks support, the following:

- (1) the number of cases assigned;
- (2) the case clearance rate;
- (3) the number of cases disposed;
- (4) the number of jury panels empaneled;
- (5) the number of orders of continuance for an attorney before the court or by the court;
- (6) the number of pleas accepted;
- (7) the number of cases tried by the judge of the court or before a jury; and
- (8) the number of cases tried before a visiting or associate judge of the court.

§171.11. Annual Performance Measure Reporting.

(a) Pursuant to Sec. 72.083(b) of the Government Code, the district clerk and county clerk of each county who maintains the records for the district courts and county courts shall annually submit to OCA in the manner required by OCA the following activity for each district court, statutory county court, statutory probate court, and constitutional county court in the county:

- (1) the court's clearance rate defined as the number of cases disposed of by a court divided by the number of cases added to the docket of the court;
- (2) the average time a case is before the court from filing to disposition; and
- (3) the age of the court's active pending caseload.

(b) The reporting time period for the first annual report due to OCA under this section must, at a minimum, include the information collected from March 1, 2024 through August 31, 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304192

Maria Elena Ramon

General Counsel

Texas Judicial Council

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 936-7553



Preamble for *Texas Register* Submission

The Texas Judicial Council (Council) adopts amendments to 1 Texas Administrative Code § 171.9, concerning judicial statistics, and new rule § 171.11 regarding the new performance measures reporting requirements for the Office of Court Administration (OCA). The amendments to §171.9 and new rule §171.11 are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6811). These rules will not be republished.

Reasoned Justification for Rule Adoption. The adopted rules comply with the requirements of HB 1182 and HB 2384, enacted during the 88th Regular Session of the Texas Legislature (2023). HB 1182 requires that the Council gather monthly court activity statistics and case-level information on the amount and character of business transacted by each trial court in the state. For trial courts with counties with a population of at least one million, the Council must gather information including, but not limited to: (1) the number of cases assigned to the court; (2) the case clearance rate for the court; (3) the number of cases disposed of by the court; (4) the number of jury panels empaneled by the court; (5) the number of orders of continuance for an attorney before the court or by the court; (6) the number of pleas accepted by the court; (7) the number of cases tried by the judge of the court or before a jury; and (8) the number of cases tried before a visiting or associate judge of the court. The trial courts must provide the information in the form and manner prescribed by OCA, and OCA must publish the information for each court on OCA's website in a searchable format. For counties in excess of a population of one million, the court official for each court in the county must submit, to the appropriate county official, a copy of each required monthly report for publication on the county's public Internet website within a certain prescribed timeframe and in searchable format. HB 2384 requires that OCA annually report, as performance measures, the following information with respect to each district court, statutory county court, statutory probate court, and county court in Texas: (1) the court's clearance rate; (2) the average time a case is before the court from filing to disposition; and (3) the age of the court's active pending caseload.

Public Comment. Pursuant to §2001.029 of the Texas Government Code, the Council gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of these rules.

The comments received from seven clerks did not address the proposed rules but were questions about general implementation issues or about the proposed forms and instructions.

Four clerks asked whether the reporting requirements are in addition to reporting requirements the Council now requires. The Council responds that the new reporting requirements are in addition to existing reporting requirements in Chapter 171 of its administrative rules.

One clerk asked whether the new reports will be generated through their case management system, Local Government Solutions (LGS). The clerk asked whether LGS is aware of the changes or if the clerk's office must notify LGS. The Council responds that OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure successful implementation.

One clerk asked if OCA is creating a new form for the annual performance measure reporting and whether OCA is working with case management system vendors to add the available reports. The Council responds that this is a new report that will collect court level data and will be submitted once a year. The submission method will be an Excel spreadsheet that must be emailed to OCA. OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure successful implementation.

In reference to OCA's instructions for reporting requirements for counties with a population of one million and over concerning the number of cases tried before a visiting judge on long-term assignment, one judge asked how the activity of specialty courts and specialty dockets staffed by visiting judges should be reported. The Council responds that the data element in question captures information only on bench or jury trials held by a visiting judge working on cases for a specific district or county court. It does not capture any activity associated with specialty courts or dockets other than a trial. If a trial is held by the visiting judge and the case is associated with a specific district or county court, the trial would be reported for that district or county court. If a trial is held by the visiting judge and the case is not associated with a specific district or county court, the trial would not be reported.

One county's information technology employee asked about the process of facilitating implementation by Tyler Technologies and how counties will be able to ensure that their specific situations and needs are addressed to make implementation successful. The employee also asked whether each reporting rule will require a separate report. The Council responds that OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure successful implementation. Because each rule requires different reporting requirements, separate reports are necessary.

The Council received a comment from a Criminal Manager for a district clerk's office concerning the definition of "disposition" with respect to probate cases. In the instructions prepared as a reference for the additional monthly reporting requirements under § 171.9 for counties one million and over in population, OCA states that the dispositions to be reported for probate cases are those cases that were disposed of or in which a judgment or order was entered and states each order or judgment entered is counted as a disposition for each case or subsequent action filed. The instructions provide a link to an Excel file that lists different probate case subcategories and case types and provides more detailed information regarding when a case may be counted as a disposition.

Statutory Authority and Sections Affected. The proposed rules are adopted pursuant to: (1) Texas Government Code § 71.019, the Council's general rulemaking authority; (2) section 71.031 of the Government Code, the Council's authority to study the procedures and practices, work accomplished, and results of state courts and methods for their improvement; (3) the Council's authority under Texas Government Code § 71.033 to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the

administration of justice; and (4) Texas Government Code § 71.035, the Council's authority to gather judicial statistics. The adopted rules implement the changes to Texas Government Code § 71.035 by HB 1182 and to Texas Government Code § 72.083 by HB 2384.