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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

INTRODUCTION TO THE 2020 EDITION

To the County Clerks of Texas:

The *County Clerk Procedure Manual* is a reference guide covering the various duties, responsibilities and procedures of County Clerks in Texas. The 2020 edition contains up-to-date references to the Texas Constitution, relevant caselaw, rules and standards, and opinions of the Texas Attorney General.

The statutes and constitutional provisions found in the Manual can be accessed on the Texas Legislature's website at www.capitol.state.tx.us/. Opinions of the Texas Attorney General can be accessed on the Texas Attorney General's website at www.oag.state.tx.us/opin.

This manual is not published in hard copy, but can be found at <http://www.txcourts.gov/publications-training/training-materials/manuals-bench-books/>. Please feel free to contact Brandon Bellows by telephone at 512-463-1625 or by e-mail at brandon.bellows@txcourts.gov with any questions concerning the Manual.

A handwritten signature in blue ink that reads "David Slayton".

David Slayton, Administrative Director

LEGAL SOURCE LEGEND

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

ABBREVIATION

REFERENCE

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

ABBREVIATION

Parks & Wild. Code

Penal Code

Prop. Code

TRAP

TRCP

TAC

Tax Code

Transp. Code

VTCA

VTCS

USCA

REFERENCE

Texas Parks and Wildlife Code

Texas Penal Code

Texas Property Code

Texas Rules of Appellate Procedure

Texas Rules of Civil Procedure

Texas Administrative Code

Texas Tax Code

Texas Transportation Code

Vernon's Texas Codes Annotated

Vernon's Annotated Texas Civil Statutes

United States Code Annotated

CHAPTER 1

OFFICE OF THE COUNTY CLERK

A. HISTORY AND GENERAL DUTIES OF THE COUNTY CLERK

The office of County Clerk has been in existence in Texas since 1836, superseding the *escribano* (secretary) of Spanish-Mexican rule. Article V, Section 20 of the Texas Constitution provides:

There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be Clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

*Const. Art. V
Sec. 20*

The County Clerk:

- serves as Clerk for the county court, county courts at law, and the county;
- keeps records pertaining to the county courts, real and personal property, and personal records;
- records vital statistics;
- issues marriage licenses;
- administers other licensing and recording requirements; and
- conducts countywide special and general elections and handles early voting.

*Loc. Gov't Code
Sec. 81.003
Ch. 191*

CCP Art. 2.21

*TRCP
Part II, Sec.2*

*Gov't Code
51.402*

Fam. Code Ch.2

*Health & Safety
Code Ch. 2*

*Election Code
Ch.31*

B. THE OFFICE OF THE COUNTY CLERK

1. Oath and Affirmation of Office

County Clerks often assist other elected officials in executing the required statements and oaths before entering upon the duties of office. An elected/appointed officer (including the County Clerk), before entering upon the duties of office, must first subscribe to a statement of elected/appointed officer and then take the Oath or Affirmation of Office.

*Const.
Art. XVI, Sec. 1*

The statement. The Statement of Elected/Appointed Officer, sometimes referred to as the “anti-bribery statement,” must be subscribed before the Oath or Affirmation of Office is taken. The Statement of Elected/Appointed Officer is as follows:

Art. XVI, Sec. 1(c)

“I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or

Art. XVI, Sec. 1(b)

withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.”

The form and instructions concerning the execution of the Statement are available from the Secretary of State's website at <https://www.sos.state.tx.us/statdoc/forms/2201.pdf>. Please note that this Statement need not be executed in front of an officer authorized to administer oaths. *1 TAC § 73.44*

The Texas Constitution requires all elected and appointed state-level and district-level officers and certain judicial officers and appointees (such as an officer appointed by the Supreme Court, the Court of Criminal Appeals, or the State Bar of Texas, or an associate judge appointed under Family Code Chapter 201, Subchapters B or C) to file the Statement with the Secretary of State prior to taking the Oath or Affirmation of Office (described below). County, precinct, and municipal officials must retain this signed statement with the official records of their office. *Gov't Code Sec. 602.007*
Const. Art. XVI, Sec. 1(c)

The required Statement of Officer is considered filed once it has been received by the Office of the Secretary of State. The Statement can be mailed, hand-delivered, faxed, or emailed to the Office. See Form 2201, *Statement of Officer*, for delivery information. *SOS Form 2201*
SOS Form 2204

Oath and affirmation. After subscribing to (and, for certain officials, filing) the statement of elected/appointed official, elected/appointed officials (including the County Clerk) are to take the following Oath or Affirmation of office:

“I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.” *Const. Art. XVI, Sec. 1(a)*

The form and instructions for completion of the Oath are available from the Secretary of State's website at <http://www.sos.state.tx.us/statdoc/forms/2204.pdf>. *SOS Form 2204*

Some elected officials (including county commissioners, the county judge, and the county auditor) must also swear in writing to additional language that is often added to the Oath or Affirmation above. *Loc. Gov't Code Sec. 81.002(a)*
Sec. 84.007

The County Clerk records his or her Oath in the County Clerk's office and then deposits the oath in the District Clerk's office. The oath is generally printed on the bond the County Clerk must execute. *Sec. 82.001(d)*

The County Clerk is required to record the oaths of certain other elected officials such as the tax assessor-collector. *Tax Code Sec. 6.28(e)*

For more information on oaths or affirmations of office, please see the Texas Association of Counties' *Oath and Bond Requirements for County Officials*, available at [https://www.county.org/TAC/media/TACMedia/Legal/Legal%20Publications%20Documents/2018 Oath Bond for Web.pdf](https://www.county.org/TAC/media/TACMedia/Legal/Legal%20Publications%20Documents/2018%20Oath%20Bond%20for%20Web.pdf).

2. Surety Bond Requirements

The County Clerk must, before beginning to perform the duties of office, execute a bond either with four or more good and sufficient sureties or with a surety company authorized to do business in the state as a surety. The bond must be:

*Loc. Gov't Code
Sec. 82.001*

- a. Approved by the commissioners court;
- b. Made payable to the county;
- c. Conditioned that the Clerk will faithfully perform the duties of office; and
- d. In an amount equal to at least 20% of the maximum amount of the fees collected in any year during the term of office preceding the term for which the bond is to be given, but not less than \$5,000 or more than \$500,000.

After the official oath is taken and subscribed, it is endorsed on the bond. The bond and oath must be recorded in the County Clerk's office and deposited in the office of the Clerk of the district court.

Surety bonds for Deputy Clerks and other employees. The County Clerk must execute one or more surety bonds to cover each Deputy Clerk or other employee. The County Clerk must execute either an individual bond for each Deputy Clerk and other employee in an amount for each bond that is equal to the Clerk's bond, or a schedule surety bond or a blanket surety bond to cover all Deputy Clerks and other employees in a total amount that is equal to the Clerk's bond.

Sec. 82.002

The bond covering a Deputy Clerk or other employee must be conditioned in the same manner and must be for the same amount as the County Clerk's bond. The bond covering the Deputy Clerk or other employee must be made payable to the county for the use and benefit of the County Clerk.

Self-insurance. In lieu of a Clerk obtaining a bond to cover the Clerk or a Deputy Clerk, the county may self-insure against losses that would have been covered by the bond.

*Sec. 82.001(b)
Sec. 82.002(b)*

3. Errors and Omissions Insurance and Indemnification

The County Clerk must obtain an insurance policy or similar coverage from a governmental pool operating under Local Government Code Chapter 119 covering the Clerk and each Deputy Clerk against liability incurred through errors and omissions in the performance of their official duties.

Sec. 82.003

The policy or other coverage must be in an amount equal to the amount of fees collected in the year before the policy is obtained. The policy or other coverage must be in an amount of at least \$10,000 but is not required to exceed \$500,000. If the policy or other coverage also covers other county officials, the policy or other coverage must be in an amount of at least \$1 million.

Contingency fee and fund if required coverage unavailable. The commissioners court may establish a contingency fund to provide the coverage required if the Clerk determines that insurance coverage is unavailable at a reasonable cost. The commissioners court may set an additional filing fee in an amount not to exceed \$5 for each suit filed to be

collected by the County Clerk. The fee will be paid into the fund. When the contingency fund reaches an amount equal to that required for a bond, the Clerk must stop collecting the additional fee.

The commissioners court of a county is directed by law to pay out of the general fund of the county the premiums for a required bond or insurance policy.

*Loc. Gov't Code
Sec. 82.004*

NOTE: *AG Op. JM-1092 (1989) overrules the statements in AG Op. Nos. M-441 (1969) and MW-156 (1980) that the purchase of errors and omissions insurance coverage for a public officer or employee violates the Constitution unless it is part of compensation.*

*AG Op.
JM-1092 (1989)*

Indemnification of County Clerks. The commissioners court by order may indemnify the County Clerk and Deputy County Clerks against personal liability for the loss of county funds, or loss or damage to personal property, incurred by them in the performance of official duties if the loss was not the result of the Clerk's or Deputy Clerk's gross negligence or criminal action.

*Loc. Gov't Code
Sec. 157.903*

4. Continuing Education Requirements

Before the first anniversary of the date the County Clerk assumes the duties of office, the County Clerk must complete 20 hours of instruction regarding the performance of the clerk's duties of office. During each calendar year after that first anniversary, the County Clerk must complete 20 hours of instruction regarding the performance of the Clerk's duties of office.

*Gov't Code
Sec. 51.605*

The principal continuing education courses currently offered in Texas include, among others:

1. County and District Clerks' Seminar, College Station-Texas A&M Extension Service, V. G. Young Seminar (January)
2. University of Texas School of Law Program, Austin (April)
3. County and District Clerks' Association of Texas Conferences (Annual, Fall, Winter) (location varies) (dates vary)
4. Elections Seminar, Austin (dates vary)
5. Vital Statistics Seminar, Austin (December)
6. Probate Seminar, sponsored by the Texas College of Probate Judges (location varies) (dates vary)
7. Regional Meetings, County and District Clerks' Association (check with Regional Directors in each Region for locations and dates)

The County and District Clerks' Association of Texas is composed of County and District Clerks as regular members and Clerks' office employees, former Clerks, and election administrators as associate members (*see* <https://www.cdcatexas.com>). The Association holds an annual conference and area meetings and publishes a monthly newsletter.

5. Authentication by Seal

The County Clerk is required to "authenticate" the official acts of:

Gov't Code
Sec. 26.005

1. County-level courts
2. The county commissioners court
3. The County Clerk as the county recorder

Loc. Gov't Code
Sec. 81.004(a)

Sec. 191.001

According to Black's Law Dictionary (*10th Ed.*), the term "authenticate" means to render authoritative or authentic by attestation or through some legal formality. County Clerks authenticate a particular act by the legal formality of applying a seal to a written document that describes the act. The County Clerk must use the county court seal to authenticate all of the Clerk's official acts as county recorder. The Clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

Sec. 191.001(b)

a. Seals for County-Level Courts

The County Clerk is required to use the seal of the particular county-level court to authenticate the official acts of the County Clerk and the judge of the county-level court. The impress of the seal is to be attached to all processes other than subpoenas that are issued in the name of the county-level court.

Gov't Code
Sec. 26.005(a), (b)

The seal may be created using electronic means, including by using an optical disk or another electronic reproduction technique, if the means by which the seal is impressed on an original document created using the same type of electronic means does not allow for changes, additions, or deletions to be made to the document.

The constitutional county court seal must contain a star with five points engraved in the seal's center. The words "County Court of _____ County, Texas" must be engraved on the seal.

Sec. 26.005(a)



The Clerk should not use the constitutional county court seal to authenticate the acts of statutory county courts and judges or statutory probate courts and judges.

Sec. 25.0011
Sec. 25.0031

Each statutory county-level court has its own seal. For example, a county with four statutory county courts must have a separate seal for each of the four statutory county courts.

Sec. 25.0011

The seal must have the five-pointed star engraved in the seal's center as well as the name of the statutory county court (*e.g.*, "County Court at Law No. ____ of

_____ County, Texas").



b. Separate Seal for the County Commissioners Court

Each county is required to have a commissioners court seal that is separate and distinct from the seal of the constitutional county court. The words "Commissioners Court, _____ County, Texas" must be engraved on the seal. The seal must also be engraved with a five-pointed star or a design selected by the commissioners court and approved by the Secretary of State.

*Loc. Gov't Code
Sec. 81.004(a)*

The County Clerk keeps the commissioners court seal and uses the seal "to authenticate official acts of the court or its presiding officer or Clerk that requires a seal for authentication." The County Clerk serves as the Clerk of the county commissioners court.

Sec. 81.004(b)



c. Seal for the County Clerk's Acts as County Recorder

The County Clerk is to use the constitutional county court seal to authenticate all of the Clerk's official acts as county recorder. The County Clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

Sec. 191.001(b)



C. APPOINTMENT OF DEPUTY CLERKS

Deputy County Clerks must be appointed in writing by the County Clerk. A Deputy Clerk acts in the name of the County Clerk and may perform all official acts that the County Clerk may perform. The appointment must be signed by the County Clerk and must bear the seal of the county court. The County Clerk must record the appointment in the County Clerk's office and must deposit the appointment in the office of the District Clerk.

*Loc. Gov't Code
Sec. 82.005*

Upon appointment, Deputy County Clerks must subscribe to the statement of elected/appointed officer and must take the official oath or affirmation of office. The executed statement of elected/appointed official should be retained with the official records of the County Clerk's office. The executed official oath or affirmation of office should be recorded in the County Clerk's office and deposited in the office of the District Clerk.

Sec. 82.005(c)

A Deputy Clerk acts in the name of the County Clerk and may perform all official acts that the County Clerk may perform. Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy.

*CCP
Art. 2.22*

CHAPTER 2

RECORDING AND FILING OF INSTRUMENTS

A. DOCUMENTS THAT ARE RECORDABLE “INSTRUMENTS”

Two types of documents are filed with the County Clerk: instruments and court documents.

- Instruments are filed for recording and are generally public records such as deeds, liens, and judgments. Many of these instruments deal with the conveyance of ownership in real property.
- Court documents are generally judicial records of the courts. They are usually filed, but not recorded. However, the law does provide that the County Clerk “shall record each act and proceeding of the county court” (and statutory county courts at law). Thus, court documents that are signed by a judge should be file stamped and recorded.

*Loc. Gov't Code
Sec. 192.006*

Instruments filed in the County Clerk’s office are primarily real property records and can be divided into four categories:

1. Deed records;
2. Deeds of trust;
3. Liens and abstracts; and
4. Miscellaneous records.

The County Clerk’s office is also responsible for recording some birth certificates and death certificates, issuing marriage licenses, and for issuing subsequent copies of such documents. This topic is addressed in Chapter 8 (Vital Statistics). Additionally, the County Clerk is required to file and create a record for certain financing statements. Chapter 7 (UCC Financing Statements) deals with this subject.

B. COUNTY CLERK'S DUTY AS COUNTY RECORDER

The Texas Constitution provides that a County Clerk is the "recorder of the county." Various statutes, court opinions, and attorney general opinions detail the County Clerk's duty to serve as the county's recorder. As the county's recorder, the County Clerk performs four tasks with respect to each instrument that is presented for recording. The Clerk:

*Const.
Art. V, Sec. 20*

1. Determines whether the instrument will be accepted for filing;
2. Files the instrument;
3. Records/scans the instrument; and
4. Indexes the instrument.

1. Determining Whether the Instrument Will Be Accepted for Filing

a. General Provisions

The County Clerk's first task as recorder is to determine whether the instrument presented for filing and recording should be accepted. County Clerks have a ministerial

*AG L.O.
98-016 (1998)*

duty to accept documents for filing and recording if a statute authorizes, requires or permits the document to be filed or recorded.

*Loc. Gov't Code
Sec. 192.001*

If no statute authorizes, requires or permits a document to be filed or recorded, the Clerk may not accept such a document. For example, unusual papers such as a "Refusal to Pay Property Taxes," a "Declaration of Person Being a Sovereign," a "Surrender of Social Security Card" and a "Declaration of Domestic Partnership" are not to be filed or recorded.

*AG Op.
JC-0156 (1999)*

If a Clerk is unsure regarding whether an unusual paper should be filed or recorded, the Clerk should consult the County Attorney and request a written opinion. Government Code §41.007 requires that a written answer be provided.

*Gov't Code
Sec. 41.007*

Certain instruments may be recorded only if they are properly acknowledged or proved. If the instrument in question is not properly acknowledged or proved, the Clerk should not accept the instrument for filing and recording. County Clerks should be familiar with the rules regarding which instruments are required to be acknowledged or proved and what constitutes a proper acknowledgment or proof.

*Civ. Prac. & Rem.
Code
Ch. 121*

b. Real Property Documents

Instrument conveying real property. A County Clerk may not record an "instrument conveying real property" unless the instrument is (1) signed; and (2) acknowledged or sworn to by the grantor in the presence of two or more subscribing witnesses or (3) acknowledged or sworn to before and certified by an officer authorized to take acknowledgments or oaths. A notary public is the officer most often thought of as authorized to take acknowledgments, but other officers who may do so include County Clerks, District Clerks, and judges of county courts.

*Prop. Code
Sec. 12.001(b)*

*Civ. Prac. & Rem.
Code
Sec. 121.001(a)*

To acknowledge a written instrument before one of the officers listed above, the grantor must appear before the officer and state that he or she executed the instrument for the purposes and consideration expressed therein. The officer must then (1) make a certificate of the acknowledgment; (2) sign the certificate; and (3) seal the certificate with the certificate of office. [Form II-1](#) sets out the language of an ordinary Certificate of Acknowledgment. Shorter alternatives to the ordinary Certificate of Acknowledgments also exist.

Sec. 121.007

Sec. 121.008

Instrument concerning real property. An "instrument concerning real or personal property" may be recorded only if the instrument has been (1) acknowledged (in the manner described in the two foregoing paragraphs), (2) sworn to with a proper jurat, or (3) proved according to law. [Form II-2](#) is the proper form for a jurat.

*Prop. Code
Sec. 12.001(a)
Sec. 12.001(b)*

An acknowledgment and a jurat are not the same thing. "A jurat is a certificate added to an affidavit stating when, before whom, and where it was made, while an acknowledgment is a declaration of fact to give it legal validity."

*AG Op.
JM-883 (1988)*

A county clerk must record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the copy (1) contains an image of an electronic signature that is acknowledged, sworn to with a jurat, or proved according to law and (2) has been declared by a notary or other officer who may take acknowledgment or proof to be a true and correct copy of the electronic record.

*Prop. Code
Sec. 12.0013(b)*

Electronic signature acceptable. When the law requires that a signature on a real property document be witnessed, acknowledged, notarized, verified, or made under oath, that requirement is satisfied if the electronic signature of a person authorized to perform the act is attached to or associated with the electronic document. (See Part C below).

*Prop. Code
Sec. 15.004(c)*

Note also that an instrument relating to real or personal property may not be recorded unless the instrument is in English or it complies with Property Code §11.002.

Sec. 11.002(a)

Confidential information in real property documents. A deed, mortgage, or deed of trust that transfers an interest in real property to or from an individual must include a confidentiality notice. The notice must appear at the top of the first page of the instrument, in 12-point boldfaced type or 12-point uppercase letters, and read substantially as follows:

Sec. 11.008(c)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Despite this requirement, the Clerk may not reject the instrument for recording solely because it does not contain the confidentiality notice. The Clerk is required to post a notice in his or her office informing the public that instruments recorded in the real property or official public records do not need to contain a social security number or driver's license number, and that all such records are available for review by the public.

*Sec. 11.008(d)
Sec. 11.008(e)
Sec. 11.008(f)*

On receipt of a written request from a federal judge, a state judge as defined by Government Code §572.002, or the spouse of a federal judge or a state judge, the County Clerk must omit or redact the social security number, the driver's license number, and residence of the judge and/or the judge's spouse from real property instruments made publicly available online by the Clerk. This omission/redaction requirement covers instruments available in an online database made public by the County Clerk as well as by a provider with which the County contracts to provide the online database.

Sec. 11.008(j)

c. Specifications for Paper Documents to Be Filed

The Legislature has set forth specifications for legal papers that are presented to a County Clerk for filing and recording. For example, a page of a legal paper must be no wider than 8.5 inches and no longer than 14 inches, must have a heading clearly identifying the type of document, and must be in at least 8-point type. If these specifications are not met, the County Clerk should accept the document. However, a filing fee of twice the regular filing fee can be charged for any page which does not meet the specifications. It is also possible that pages which are illegible, do not have names typed or printed under the signature, or are not suitable for reproduction may be rejected for insufficient recording fees. No fee is charged if the specifications for type size or headings are not met, provided the instrument complies with Property Code §11.008(b) and (c). A missing grantee's

*Loc. Gov't Code
Sec. 191.007*

*Prop. Code
Sec. 11.003*

mailing address must also be on the document or an additional \$25 may be charged.

Except as provided above, the Clerk may not impose additional requirements or fees for filing or recording.

2. Filing the Instrument

Upon determining that an instrument should be accepted for filing, the County Clerk is to actually accept the instrument by taking physical possession of the instrument. At this point, the instrument is considered "conditionally filed." The Clerk should then collect the requisite filing fee for the Clerk's services regarding the instrument (see below for list of fees). The Clerk should also provide the filer with a receipt for the amount collected.

Jamar v. Patterson,
868 S.W.2d 318
(Tex. 1993)

Loc. Gov't Code
Sec. 118.011

AG Op.
JC-0323 (2001)

Loc. Gov't Code
Sec. 191.010

NOTE CONCERNING REAL PROPERTY FILINGS IN HARRIS COUNTY: A County Clerk in a county with a population of 3.3 million or more may require a person presenting a document in person for filing in the real property records of the county to present "photo identification" to the Clerk. Local Government Code §191.010(a) controls what qualifies as "photo identification."

Time of filing. Once the Clerk has actually accepted the instrument and the appropriate filing fee has been collected, the instrument is considered to be filed.

Evidence of the fact that the instrument was filed at a certain date and time is created by the County Clerk's statutorily required act of noting the date and time of filing "at the foot of the record" (*i.e.*, at the end of the instrument). This is generally done by placing what is known as a "file stamp" or a "file mark" on the last page of the instrument. If the document was electronically filed, the Clerk may note on the first page of the instrument the recording information, including the date and time. The County Clerk should file stamp the instrument immediately upon the filing of the instrument. Each instrument is assigned a unique number which is stamped or written on the original instrument for the purpose of identification.

Sec. 193.001(b)

AG Op.
JC-0323 (2001)

An instrument is considered to be a public record at the time the instrument is filed, not the later time at which the instrument is actually recorded and/or scanned and indexed.

Brooks Texas Practice, §10.9

The County Clerk must make a record of (1) the names of the parties to the instrument in alphabetical order; (2) the date of the instrument; (3) the nature of the instrument; and (4) the time that the instrument was filed. This record will also usually contain the unique number assigned to the instrument and a notation as to who filed the instrument. Generally, the Clerk must provide the filer a receipt containing the same information. The Clerk then maintains physical possession of the instrument.

Loc. Gov't Code
Sec. 193.001(c)

File register book. After the instrument is recorded and indexed (see below) the County Clerk shall return the instrument to the filer. The date of the instrument's return as well as the identity of the person to whom the instrument is returned is usually added to the record at the time the instrument is returned. This record is generally made part of a Clerk's "file register book" that contains all such records in the order in which they were filed for recording. The file register book thus serves as the Clerk's master list of all instruments that

have been filed for recording.

3. Recording the Instrument

The County Clerk should record, exactly, without delay, the contents of each instrument that is filed for recording, including any acknowledgment, proof, affidavit, or certificate that is attached to it. The Clerk must record instruments in the order that the instruments are filed.

*Loc. Gov't Code
Sec. 191.001(c)
Sec. 193.001(a)*

Time of recording. An instrument is deemed to be recorded at the time the instrument is filed even though the instrument is actually recorded/scanned and indexed at some time after the instrument is filed.

Sec. 191.003

There are three steps to the actual recording of an instrument:

1. The instrument (and any acknowledgment, proof, affidavit or certificate attached thereto) may be copied or scanned. Instruments are copied so that the original instrument may be returned to the person who filed the instrument.
2. The copy of the instrument must be placed in some sort of storage medium. Traditionally, this storage medium has been a "suitable well-bound book." With the advance of technology, however, there are two additional storage media of which County Clerks may take advantage. One of these alternative storage mediums is microfilm. For some time now, Texas law has provided that any local government record may be maintained on microfilm in addition to or instead of being maintained on paper. The other alternative storage medium is electronic storage. Any local government record data may be stored electronically in addition to or instead of being stored on paper.
3. Upon placing the copy of the instrument in the chosen storage medium, the County Clerk must certify, under the Clerk's signature and county court seal, the date and time that the instrument is recorded as well as the specific location in the records where the instrument is recorded. This certification (see [Form II-3](#)) is usually located in the storage medium following the relevant document. If the storage medium is a book, the Clerk will generally specify the volume number of the book in which the instrument is filed as well as the page number (or numbers) of the volume in which the instrument is recorded. Historically, the Clerk will have separate books for different types of instruments (e.g., one book for deeds and another book for deeds of trust) but may have combined the records into the county's Official Public Records.

*AG Op.
O-637 (1939)*

*Loc. Gov't Code
Sec. 193.012*

*Sec. 191.002
Sec. 204.002
Sec. 205.002*

*Sec. 193.001(d)
Sec. 191.001(b)*

Sec. 193.008(d)

Note: Electronically recorded and stored instruments may only have the one unique instrument number with the recording date, time, clerk's name and signature and with the name of the database where it is recorded such as Official Public Records.

4. Indexing the Instrument

For every type of instrument that the County Clerk records, he or she must maintain

an index so that copies of individual instruments may be located. The index must include “correction instruments,” which are instruments correcting an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property as described by Property Code §5.028 or §5.029. The index entry for a correction instrument must contain the names of the grantors and grantees as stated in the correction instrument. The index entry for a paper document that is a tangible copy of an electronic document declared to be a true and correct copy of the electronic record must contain the names of the grantors and grantees.

*Loc. Gov't Code
Sec. 193.003
Sec. 193.005*

Unless the Clerk is maintaining instruments on microfilm (*see* Government Code §198.008 for special rules regarding the indexing of microfilmed instruments) or in a digital format, or the documents have been scanned, the Clerk must maintain at least one index for real property instruments and another index for all other instruments. Individual instruments are indexed alphabetically by the last name of the parties. The index must state the specific location in the records at which the instrument is stored. Many clerks have combined all of their records into one database, such as Official Public Records, from which any filed instrument may be retrieved.

*Bus. & Com. Code
Sec. 71.154(a)*

Many instruments are known as two-party instruments (*e.g.* a deed that reflects both a grantor and a grantee). These instruments must be indexed in two ways: alphabetically by grantor name, and alphabetically by grantee name. This second index is known as a cross-index. With these two indices, a recorded deed can be located where only the name of the grantor or the grantee is known.

Generally, the County Clerk shall return the original instrument (along with a copy of the Clerk’s certification) to the filer after the recorded instrument has been indexed. In the case of certain instruments (*e.g.*, official oaths and bonds), the Clerk is to record and keep the original instrument instead of a copy.

*Loc. Gov't Code
Sec. 193.001(d)
Sec. 88.001
Sec. 193.012*

If records are maintained only on microfilm for use by the public, they must be indexed and must conform to the following seven categories:

1. Records relating to real property known as "Official Public Records of Real Property";
2. Records relating to receivables, chattels, and personal property known as "Official Public Records of Personal Property and Chattels";
3. Records relating to probate matters, known as "Official Public Records of Probate Courts";
4. Records relating to county civil court matters, known as "Official Public Records of County Civil Courts";
5. Records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";
6. Records relating to matters in the commissioners court, known as "Official Public Records of Commissioners Court"; and
7. Records relating to an individual, a business entity, or a governmental agency, other than a property record or a court record, known as "Official

Sec. 193.008

Sec. 193.009

Public Records of Governmental Business and Personal Matters."

The Clerk may consolidate categories 1 and 7 into a single class known as Official Public Records. *Loc. Gov't Code Sec. 193.008(d)*

If the County Clerk does not choose to maintain records on microfilm, the Clerk may still divide instruments received for filing, registering, and recording into these seven classes of records. *Sec. 193.002(a)*

C. ELECTRONIC FILING OF REAL PROPERTY RECORDS

Documents eligible to be recorded in the real property records may now be filed for recording electronically under the provisions of the Uniform Real Property Electronic Recording Act. (The Act appears to overrule AG Op. GA-228 (2004).) *Prop. Code Chapter 15*

The requirement that a document must be an original and/or be in writing is satisfied by an electronic document. An electronic signature satisfies a requirement that a document must be signed. *Sec. 15.004(a)
Sec. 15.004(b)*

A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform such act is attached to or logically associated with the document. It is not necessary for the authorized person's stamp, impression or seal to be part of the electronic document. *Sec. 15.004(c)*

A County Clerk who accepts documents electronically shall continue to accept paper documents. The Clerk may receive, index, store, archive, and transmit electronic documents. He or she may provide access to and search of documents by electronic means and may convert paper documents to electronic documents. *Sec. 15.005*

The Texas State Library & Archives Commission adopted rules governing electronic filing in 2000, as required under Local Government Code §195.002. These rules remain in force and govern the implementation of Property Code Chapter 15. *13 TAC §7.141 - §7.145*

Only those persons authorized under Local Government Code Chapter 195 may file documents electronically for recording. These are: *Loc. Gov't Code Sec. 195.003(a)*

- Attorney licensed in Texas;
- Bank, savings and loan association, or credit union;
- Federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;
- Person licensed to make regulated loans in Texas;
- Title insurance company or agent licensed to do business in Texas;
- Municipal clerk;
- State agency; or
- In a county with a population of 500,000 or more, the county may authorize a person to file documents electronically for recording with a county clerk

Loc. Gov't Code Sec. 195.003(a-1)

if the county enters into a memorandum of understanding with the person for that purpose.

The fee to file or record an electronic document or other instrument electronically is the same as the fee for filing or recording the instrument by other means, and a County Clerk may not charge an additional fee for filing or recording an instrument electronically under Local Government Code Chapter 195. *Sec. 195.003(b)*
Sec. 195.006
13 TAC §7.142

D. TYPES OF INSTRUMENTS FILED IN THE COUNTY CLERK'S OFFICE

The primary types of instruments filed in the Clerk's office are deed records, deeds of trust, liens and abstracts and miscellaneous instruments.

1. Deed Records

More instruments can be categorized as deed records than as anything else. Any instrument affecting title to real estate can be categorized as a deed record.

Some instruments (such as a deed) are clearly related to real property. Other instruments (such as a power of attorney) are not so clearly related to real property. The connection between a power of attorney and real property, for example, is that a power of attorney may include the right to take an action in regard to real property.

Instruments that can be categorized as deed records include the following:

- | | |
|--|----------------------------------|
| Trustee's deed | Right-of-way deed |
| Cemetery deed | Royalty deed |
| General warranty deed | Special warranty deed |
| Quitclaim deed | Sheriff's deed |
| Tax deed | Affidavit (various types) |
| Homestead designation | Agreement (various types) |
| Power of attorney | Revocation of power of attorney |
| Removal of the disabilities of a minor | Appointment of trustee |
| Resignation of trustee | Conveyance of lien |
| Subordination of lien | Release of lien |
| Release (various types) | Partial release (various types) |
| Lease | Easement |
| Contract of sale | Bill of sale |
| Trust indenture | Certified copy of divorce decree |
| Certified copy of probate proceedings | Gas lease |
| Oil lease | Option (various types) |
| Extension (various types) | Deed restrictions |
| Rental division | |

Because deed records are related to real property, they are to be filed and recorded in the county where the real property is located.

2. Deeds of Trust

A deed of trust is a deed conveying title to real property to a trustee as security until the grantor repays a loan. In Texas, deeds of trust are used as mortgages on real estate. Traditionally, deeds of trust have been recorded separately from deeds, but the law no longer requires such a separation.

Black's Law Dictionary, 7th Ed., p. 423

If a County Clerk divides instruments into the seven classes of records used by Clerks who maintain records on microfilm, then deeds of trust should be recorded in the Official Public Records of Real Property (see Part B.4, above)

If the borrower under the deed of trust fails to repay the loan, the real estate on which the loan was made may be sold under the powers conferred by a deed of trust. These real estate sales are to be made in the county where the real estate is situated.

Prop. Code Sec. 51.002

Notice of each sale must be given at least 21 days before the date of the sale. These notices are to be posted at the courthouse door and are to be filed in the office of the County Clerk. The Property Code requires a county that maintains an Internet website to post notice of a public foreclosure sale on the website. County Clerks are required to keep all notices of sale in a convenient file that is available to the public for examination during normal business hours. The Clerk may dispose of the notices after the date of sale specified in the notice has passed. The Clerk is to receive a fee of \$2.00 for each notice that is filed. Notice must also be sent to each debtor by the mortgage servicer of the debt.

Sec. 51.002(f-1)

Notice served under Property Code §51.002(b)(3) or §51.002(d), or upon a debtor under §51.002, must contain a statement that is conspicuous, printed in boldface or underlined type, similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the Nation Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

Sec. 51.002(i)

Property Code §51.002 designates the proper day and the proper time of the sale. The commissioners court is to designate the area at the courthouse where the sales are to take place. The commissioners may designate a sale area other than an area at the courthouse, provided it is within reasonable proximity to the courthouse and is accessible to the public. Sales must occur in the designated area. This designation is to be recorded in the county's real property records. Notices must still be posted at the courthouse door.

*Sec. 51.002(a)
Sec. 51.002(a-1)
Sec. 51.002(h)*

3. Liens and Abstracts

a. Liens in General

A lien is an instrument evidencing a legal interest that a creditor has in a debtor's property. A lien generally lasts until a debt that the lien secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained. Traditionally, liens have been filed separately from the deed records. This is no longer required but is still the practice. If a Clerk divides instruments into the seven classes of records used by Clerks who maintain records on microfilm, then liens on real property

Black's Law Dictionary, 7th Ed., p. 933

should be recorded in the Official Public Records of Real Property while liens on personal property should be recorded in the Official Public Records of Personal Property and Chattels.

Types of liens. There are many different types of liens. Some of the more common types of liens are listed below:

- Mechanic's lien (Contractor's Lien, Materialman's Lien)
- Landlord's lien
- Hospital lien
- Mineral Contractor's lien
- Broker's and appraiser's lien on commercial real estate
- State tax lien
- Federal lien
- Child support lien

Prop. Code
Ch. 53 – 56, 62

Tax Code
Ch. 113

Prop. Code
Ch. 14

Family Code
Secs. 157.314-331

Sometimes, the statutory provisions associated with each type of lien provide specific direction to County Clerks on how to handle the particular type of lien. More detail on some of these liens and corresponding County Clerk procedures is set forth below (*Liens - Specific Direction to County Clerks*).

Release of lien. A common instrument filed and recorded in County Clerk's offices is the "Release of Lien." These releases are to be recorded in the deed records. Property Code §§53.281 – 53.287 deals with waivers and releases of liens or payment bond claims. These provisions make any waiver and release of a lien or payment bond claim under Chapter 53 unenforceable unless a waiver and release is executed and delivered in accordance with the provisions.

Prop. Code
Secs. 53.281
- 53.287

b. Liens – Specific Direction to County Clerk

Mechanic's Lien. A mechanic's lien is a statutory lien (*i.e.*, a lien arising by the force of statute and not by an agreement of the parties) that secures payment for labor or materials supplied in constructing and repairing real property. Property Code §53.021 lists the persons who may have a lien on property under Chapter 53. To perfect the lien, a person must file an affidavit with the County Clerk of the county in which the property is located not later than the 15th day after the fourth calendar month after the day on which the indebtedness accrues. The County Clerk is to record the lien and cross-index the affidavit in the names of the claimant, the original contractor and the owner.

Sec. 53.021

Sec. 53.051
Sec. 53.052

A mechanic's lien does not affect any lien, encumbrance or mortgage on the land or improvement at the "time of inception" of the mechanic's lien. Often, to establish the time of inception of a mechanic's lien, an owner and original contractor will file an "affidavit of commencement" with the County Clerk. There is no requirement to record this affidavit.

Sec. 53.123
Sec. 53.124

If a lien is fixed by the recording of an instrument, any person may file a bond with the County Clerk to indemnify against the lien. Specific bond requirements (including the necessary amount of the bond) are detailed in Property Code §53.172. After the bond is

Prop. Code
Secs. 53.171
- 53.174

filed, the County Clerk shall issue notice of the bond (with a copy of the bond attached) to each obligee via certified mail. The County Clerk is then required to record the bond, the notice, and a certificate of mailing in the real property records. The certificate of mailing is essentially an affidavit stating that the Clerk mailed the notice of the bond (along with the attached bond) to the recipient stated on the notice on a particular date via certified mail return receipt requested. The notice of the bond and the bond itself should be attached to the certificate. Ideally, a copy of the return receipt should be attached as well.

Please note that the Clerk is to record two separate documents. First, the Clerk is to record the bond itself. Second, the Clerk is to record the certificate of mailing with the notice of the bond and the bond itself attached. The return receipt should be attached to this second document.

An original contractor who has a written contract with the owner may furnish a bond for the benefit of claimants. If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of certain obligations. The bond and the contract (or a copy of the contract) between the original contractor and the owner must be filed with the County Clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. The County Clerk shall record the bond and place the contract on file in the Clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose. On request and payment of a reasonable fee, the County Clerk shall furnish a copy of the bond and contract to any person.

Sec. 53.021
Sec. 53.203

Any waiver and release of a lien or payment bond claim under Property Code Chapter 53 is unenforceable unless a waiver and release is executed and delivered in accordance with Property Code §§53.281 – 53.287 (Waiver and Release of Lien or Payment Bond Claim).

Sec. 53.281
– 53.287

A mechanic's lien may be discharged of record by:

Sec. 53.157

- Recording a lien release signed by the claimant;
- Failing to institute suit to foreclose the lien in the county in which the property is located within the legally prescribed period;
- Recording the original or a certified copy of a final judgment or decree of a court providing for the discharge;
- Filing the bond, notice and return in compliance with Chapter 53, Subchapter H; or
- Filing the bond in compliance with Property Code Chapter 53, Subchapter I.

Landlord's Lien. A person who leases or rents all or part of a building for nonresidential use has a preference lien on the property of the tenant for rent that is due and for rent that is to become due during the 12-month period succeeding the date of the beginning of the rental agreement or the anniversary of that date. The lien is unenforceable for rent on commercial buildings that is more than six months past due, however, unless the landlord files a lien statement with the County Clerk of the county in which the building is located. The County Clerk must index alphabetically and record the rental lien statements filed in the Clerk's office.

*Prop. Code
Sec. 54.021
Sec. 54.022*

Hospital Liens. A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. To secure the lien, the hospital must file written notice of the lien with the County Clerk of the county in which the injury occurred and must provide notice to the injured individual in accordance with §55.005(d). The County Clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital. The County Clerk shall index the record in the name of the injured individual. An emergency medical services provider has a lien on a cause of action or claim of an individual who receives emergency medical services in a county with a population of 800,000 or less for injuries cause by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must receive the emergency medical services not later than 72 hours after the accident.

*Sec. 55.002
Sec. 55.005*

*Sec. 55.005(a),
(d), (e), (f), (g)*

Sec. 55.002(c)

Mineral Contractor's Lien. A mineral contractor has a lien to secure payment for labor or services related to mineral activities. The lien is secured when the person claiming the lien files an affidavit with the Clerk not later than six months after the day the indebtedness accrues.

Sec. 56.002

Broker's and Appraiser's Liens on Commercial Real Estate. A broker has a lien on a seller's or lessor's commercial real estate interest in the amount specified by the commission agreement if the broker has earned a commission under a signed commission agreement and a notice of lien is recorded and indexed as provided by Property Code §62.024. That section requires a broker claiming a lien to file a notice of lien with the County Clerk of the county in which the commercial real estate is located. The County Clerk shall record the notice of lien in the records kept for that purpose and shall index and cross-index the notice of lien in the names of the broker, each person obligated to pay the commission under the commission agreement, and each person who owns an interest in the commercial real estate if the broker claims a lien on that interest.

Sec. 62.021

Sec. 62.024

If a lien is fixed or is attempted to be fixed by a recorded instrument, any person may file a bond to indemnify against the lien. The bond must be filed with the County Clerk. After the bond is filed, the County Clerk shall issue notice of the bond (with a copy of the bond attached to the notice) to all obligees. The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond for the obligee. The County Clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

Sec. 62.123

State Tax Liens. All taxes, fines, interest and penalties due by a person to the state are secured by a state tax lien on all of the person's property that is subject to execution. The comptroller issues and files a state tax lien notice with the County Clerk. This tax lien notice may be issued by the comptroller with a facsimile signature and seal. Upon receipt of a tax lien notice, the County Clerk must immediately:

Tax Code
Sec. 113.001
Sec. 113.002
Sec. 113.003

- Record the notice in what is known as the state tax lien book;
- Note on the notice the date and hour of its recording;
- Enter in an alphabetical index the name of each person to whom the notice applies, along with the volume and page number of the state tax lien book where the notice is required;
- Furnish to the comptroller, on a form prescribed by the comptroller, a notice showing that the tax lien notice is recorded and filed, the date and hour of its recording and filing, and the volume and page number of the state tax lien book where the lien is recorded; and
- After receiving the form, the Comptroller sends a check through the Texas Workforce Commission for payment.

Sec. 113.004
Sec. 113.005

A state tax lien release should be filed in the County Clerk's office in the same manner that other releases are filed. Upon the filing of a release, the County Clerk is to release the state tax lien in accordance with the regulations of the Clerk's office. The County Clerk may send the comptroller a statement of the customary fee due for the filing and indexing of the release of the tax lien notice.

Sec. 113.009

Federal Tax Lien. Notices of liens on real property for obligations payable to the United States are filed by the federal government in the office of the County Clerk in the county in which the real property subject to the liens is situated. Notices of liens on personal property for obligations payable to the United States are also filed in the County Clerk's office of the county in which the person against whose interest the lien applies resides at the time of the filing of the notice of lien. However, in the case of personal property, if the "person" in question is a corporation or a partnership, then the notice of lien is filed with the Secretary of State and not with the County Clerk.

Prop. Code
Sec. 14.002

Certification of a notice of lien by an official or entity of the United States entitles the notice of lien to be filed and no other attestation, certification or acknowledgment is necessary.

Sec. 14.003

Upon receipt of a federal tax lien notice, a County Clerk should:

1. Endorse his or her identification on the notice;
2. Note the date and time the notice was received; and
3. File the notice alphabetically in the real property records (if the lien is on real property) or the personal property records (if the lien is on personal property).

Sec. 14.004(a)(2)

As an alternative to the three-step procedure set out above, the Clerk may enter the notice in an alphabetical index for real property (if the lien is on real property) or for personal property (if the lien is on personal property) where the index shows:

- the name and address of the person named in the notice;
- the date and time the notice was received;
- the title and address of the official or entity certifying the lien; and
- the total amount appearing on the notice of lien.

Although the Clerk has implied authority to file a federal tax lien notice without first receiving the appropriate filing fees, the IRS now sends payment for recording the Notice of Federal Tax Lien Notices by direct deposit to all clerks so that the documents are matched up with the payment and recorded when payment is received.

*AG Op.
MW-396 (1981)*

Upon request and within a certain timeframe dictated by statute, the County Clerk must issue a certificate showing whether any federal tax lien notice naming a particular person is on file. The amount of the fee for a certificate is the same as the amount of the fee provided by Business & Commerce Code §9.525(d). Upon request, the filing officer must furnish a copy of any notice of federal lien. The fee for a copy furnished under this Property Code §14.004 is in the amount provided by Government Code §405.031.

*Prop. Code
Sec. 14.004*

Sec. 14.004(d)

Child Support Liens. A child support lien arises by operation of law against the real property and personal property of a child support obligor (a person who is required to pay child support). The lien is for all amounts of child support due and owing.

*Family Code
Sec. 157.312*

A child support lien notice may be filed by the claimant with the County Clerk of:

1. any county in which the obligor is believed to own nonexempt real or personal property;
2. the county in which the obligor resides; or
3. the county in which the court having continuing jurisdiction has venue of the suit affecting the parent-child relationship. Upon receipt of a child support lien notice, the County Clerk must immediately record the notice in the county judgment records. The County Clerk may not charge a fee for recording a child support lien notice or for recording the release of a child support lien.

*Sec. 157.314
Sec. 157.315*

c. Abstracts of Judgment

An abstract of judgment is a public notice that a legal judgment has been rendered against a person. An appropriately recorded and indexed abstract of judgment constitutes a lien (known as a "judgment lien") on the real property of the defendant located in the county in which the abstract is recorded and indexed. The lien covers real property owned by the defendant before the judgment is recorded and indexed as well as real property acquired after the recording and indexing of the judgment. Judgment liens do not attach to personal property.

*Prop. Code
Sec. 52.001*

Donley v. Youngstown Sheet & Tube Co., 328 S.W.2d 192 (1959)

The County Clerk records abstracts of judgment in the county real property records immediately upon the presentation for recording of an abstract of judgment that is properly authenticated. If a County Clerk divides papers into the seven classes of records used by Clerks who maintain records on microfilm (*see* Part B.4, above), the Clerk should record abstracts of judgment in the Official Public Records of Real Property. The Clerk should

*Prop. Code
Sec. 52.004*

note the date and hour that an abstract of judgment is received.

When the Clerk records an abstract of judgment, the Clerk should also enter the abstract on the alphabetical index to the real property records, showing: (1) the name of each plaintiff in the judgment; (2) the name of each defendant in the judgment; and (3) the volume and page or instrument number in the records in which the abstract is recorded.

The Clerk is also required, upon request, to prepare, certify and deliver abstracts of judgment. A person in whose favor a judgment is rendered or that person's agent, attorney or assignee, may prepare the abstract of judgment himself or herself, however. If the Clerk prepares the abstract of judgment, the applicant for the abstract of judgment must pay the Clerk the fee authorized by law for providing the abstract.

*Prop. Code
Sec. 52.002*

An abstract of judgment must show:

Sec. 52.003

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

An abstract of judgment may not be recorded unless: (1) a mailing address for each plaintiff or judgment creditor appears on the abstract of judgment; or (2) a penalty filing fee equal to the greater of \$25 or twice the statutory recording fee for the abstract is paid. The validity of an abstracted judgment as between the parties is not affected by a failure to include an address for each plaintiff or judgment creditor in the abstract of judgment.

Sec. 52.0041

The Clerk also records the satisfaction of a judgment.

Sec. 52.005

NOTE: The requirement of Property Code §12.013 that a judgment be attested under the signature and seal of the Clerk of the court that rendered judgment prior to recordation does not apply to abstracts of judgment.

*AG Op.
JM-1029 (1989)*

4. Miscellaneous Records

a. Official Bonds

Most county officials are required to execute a bond before undertaking the duties of office. County officers who are required to execute a bond that must be approved by the commissioners court must, except as required by other law, have their bond kept and recorded by the County Clerk. The Clerk may not assess a charge for recording official

*Loc. Gov't Code
Sec. 88.001
Loc. Gov't Code
Sec. 193.005*

bonds. The County Clerk must maintain an index of the records of official bonds.

The appointment of a Deputy Clerk by the County Clerk must be in writing, be signed by the County Clerk, and bear the seal of the county court. The County Clerk shall record the appointment in the County Clerk's office but shall deposit the deputation in the office of the District Clerk.

Sec. 82.005

b. Occupational Bonds

Some statutes require that persons who engage in certain occupations file a bond with the County Clerk:

- *Stevedores*, persons employed to load and unload ships, are required to have a \$5,000 bond filed and recorded with the County Clerk.
- *Commission merchants*, persons selling any goods on consignment and for commission, are required to have a \$3,000 bond filed in each county for which the merchant maintains an office.
- *Public Weighers*, persons who are elected or appointed to issue an official certificate declaring the accurate weight or measure of a commodity, are required to have a bond in accordance with rules adopted by the department. The bond must be conditioned on the accurate weight or measure of a commodity being reflected on the certificate issued by the public weigher, on the protection of a commodity that the public weigher is requested to weigh or measure, and on compliance with all laws and rules governing public weighers. The bond is not void on first recovery. A person injured by the public weigher may sue on the bond. **These bonds are no longer filed with the County Clerk but must be filed with the Texas Department of Agriculture.**
- *Public Warehouse Operators*, persons who store cotton, wheat, rye, oats, rice, or any kind of produce, are required to file a minimum of a \$5,000 bond.

Occ. Code
Sec. 2351.051
- .053

Sec.1801.051
- .054

Agric. Code
Sec. 13.256

Secs. 14A.002
- 14A.004

c. Plats

Plats are maps showing legal descriptions and boundaries of subdivided land. Recording fees for plat vary by county. There may also be a review fee collected by the county engineer for plats approved by the commissioners court.

Loc. Gov't Code
Sec. 118.011(c)

Plats for Tracts Within a City's Limits. Generally, the owner of a tract of land who wishes to divide the tract into two or more parts must have a plat of the subdivision prepared. The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds. The plat must be filed and recorded with the County Clerk of the county in which the tract is located. To be recorded, the plat must:

Sec. 212.004

- Describe the subdivision by metes and bounds;
- Locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is part; and

- State the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use of for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park or other part.

The County Clerk may not record a plat unless it has been approved by the appropriate municipal authority and has certain required documents attached to it. The plat must have an original tax certificate from each relevant taxing unit, indicating that there are no delinquent property taxes. If the plat or re-plat is filed after September 1, a tax receipt showing that taxes have been paid or a statement from the taxing unit indicating that taxes have not been calculated must also be attached. These tax provisions do not apply to certain property acquired for public use or through inheritance.

*Prop. Code
Sec. 12.002*

*Loc. Gov't Code
Sec. 212.005
Sec. 212.006*

There are special requirements for the filing of plats in counties in which a political subdivision had applied for financial assistance to economically distressed areas under Water Code Chapter 17, Subchapter K.

Sec. 212.0105

Plats for Tracts Outside a City's Limits and Outside a City's Extraterritorial Jurisdiction (ETJ). Generally, the owner of a tract of land who wishes to divide the tract into two or more parts must have a plat of the subdivision prepared, but there are exceptions set out in Local Government Code §232.0015. The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds. The plat must be filed and recorded with the County Clerk of the county in which the tract is located. To be recorded, the plat must:

*Sec. 232.001
Sec. 232.0015*

- Describe the subdivision by metes and bounds;
- Locate the subdivision with respect to an original corner of the original survey of which it is a part; and
- State the dimensions of the subdivision and each lot, street, alley, square, park or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

The commissioners court of the county in which the land is located must approve the plat by means of an order entered in the minutes of the court. The commissioners court may require a plat application submitted for approval to include a digital map that is compatible with other mapping systems used by the county and that georeferences the subdivision plat and related public infrastructure using the Texas Coordinate Systems adopted under Natural Resources Code §21.071.

*Sec. 232.001
Sec. 232.023
Sec. 232.072*

The County Clerk may not record a plat unless it has been approved by the county commissioners court and the commissioners court order is entered into the minutes of the court. The commissioners court (or a person designated by the commissioners court) issues a written list of the documentation and any other information that must be submitted with a plat application. If a plat application does not include all of the required documentation or information, then the commissioners court (or its designee) has 10 business days to notify the applicant of the missing items. The commissioners court must allow applicants to timely submit the missing documents or information.

*Prop. Code
Sec. 12.002*

*Loc. Gov't Code
Sec. 232.002
Sec. 232.0025*

An application is complete when all the required documentation and other information is received. The commissioners court (or its designee) shall take final action on a plat application within 60 days after receipt of a completed plat application. If the plat application is disapproved, the commissioners court must provide the applicant with a complete list of the reasons for disapproval. If commissioners do not act within 60 days, the plat application is granted by operation of law.

*Loc. Gov't Code
Sec. 232.096*

As with plats for tracts within a city's limits, the County Clerk may not record a plat located outside a city's limits and the city's ETJ unless the plat is accompanied by original tax certificates from each relevant taxing unit indicating that no delinquent property taxes are owed and the required recording fee.

*Prop. Code
Sec. 12.002*

If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the commissioners court may require the plat application to have attached to it a statement prepared by a licensed engineer or geoscientist certifying that adequate groundwater is available for the subdivision.

*Loc. Gov't Code
Sec. 232.0032*

Plats for Tracts Outside a City's Limits but Within the City's ETJ: A county and a municipality are required to enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats for tracts located outside a city's limits but within a city's ETJ. There are four ways in which the agreement can work:

Sec. 242.001

1. The city may be granted exclusive control over the plat approval case in which case the law concerning plats for tracts within a city's limits should be followed.
2. The county may be granted exclusive control over the plat approval process in which case the law concerning plats outside a city's limits and outside a city's ETJ should be followed.
3. The city and county may apportion the area within the ETJ so that the city controls the plat approval process in one designated area of the ETJ while the county controls the plat approval process in the other portion of the ETJ; and
4. The city and the county enter into an interlocal agreement establishing a single office that handles the plat approval process using a set of regulations established by the city and county.

d. Military Discharge Records

The County Clerk records, without charging a fee, the official discharge of persons who, after 1915, served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary. If the military discharge record was recorded with the County Clerk prior to September 1, 2003, then the veteran who is the subject of the record (or the veteran's legal guardian) may direct, in writing, that the County Clerk destroy all copies of the record that the County Clerk makes available to the public as required by Local Government Code §191.006. The County Clerk must comply with the request within 15 business days after the date the direction is received.

Sec. 192.002

If the military discharge record is recorded on or after September 1, 2003, then the

Gov't Code

record is confidential for 75 years following the date of recordation. During the 75-year period, the Clerk may permit the inspection of the record only in accordance with Government Code §552.140.

Sec. 552.140

e. Lis Pendens

A lis pendens (Latin for "a pending lawsuit") is a notice that certain real property is the subject of litigation and that any interests acquired during the pendency of the suit are subject to its outcome. A party to an action who is seeking affirmative relief may file a notice that the action is pending for recording with the County Clerk of the county where the property is located. The party filing the lis pendens (or the party's agent or attorney) must sign the lis pendens, which must state:

Black's Law Dictionary, 7th Ed., p. 942-943

Prop. Code Sec. 12.007

- Style and number, if any, of the proceeding;
- Court in which the proceeding is pending;
- Names of the parties;
- Kind of proceeding; and
- Description of the property affected.

The County Clerk may record the notice in a lis pendens record or in the official public records and shall index the record in a direct and reverse index under the name of each party to the proceeding.

f. Writ of Attachment

An "attachment" is the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. A "writ of attachment" is a court order providing for an attachment. A writ of attachment may be issued in a proper case at the initiation of a suit or at any time during the progress of a suit, but not before a suit has been initiated. Writs of attachment are levied (*i.e.*, the court orders are carried out) by law enforcement officers such as the sheriff or constable.

Black's Law Dictionary, 7th Ed., p. 123

Civ. Prac. & Rem. Code Sec. 61.003

When an officer levies a writ of attachment on real property, the officer must file a copy of the writ and the applicable part of the return with the County Clerk of the county in which the property is located. The Clerk records the name of each plaintiff and defendant, the amount of the debt, and the officer's return in full.

Sec. 61.043

Prop. Code Sec. 12.012

Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached. If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the County Clerk of the county in which the property is located. The County Clerk shall record the order and the name of each plaintiff and defendant.

Civ. Prac. & Rem. Code Sec. 61.061 Sec. 61.043

Prop. Code Sec. 12.012

g. Earmarks, Brands, Tattoos and Electronic Devices

Each person who has cattle, hogs, sheep, or goats shall have and may use one or more earmarks, brands, tattoos or electronic devices differing from those of the person's neighbors. The earmarks, brands, tattoos and electronic devices must be recorded with the County Clerk of the county in which the animals are located. A County Clerk may accept

Agric. Code Sec. 144.001

Sec. 144.041

electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under Agriculture Code Chapter 144 or other law. *Sec. 141.041(h)*

A person may record any earmark, brand, tattoo or electronic device that the person desires to use if no other person has recorded it. A person may record his or her earmarks, brands, tattoos and electronic devices in as many counties as necessary. *Sec. 141.041(d), (e)*

In recording an earmark, brand, tattoo or electronic device, the County Clerk shall note the date on which the mark or brand is recorded. Additionally, the person recording a brand shall designate the part of the animal on which the brand is to be placed and the Clerk shall include that information in the records. *Sec. 144.042*

Not later than the 30th day after the date a County Clerk receives a record relating to cattle or horses under Agriculture Code §144.041, the Clerk shall forward a copy of the record to the association authorized to inspect livestock under 7 U.S.C. §217a. *Sec. 144.041*

Marks and brands must be re-recorded every 10 years. If marks and brands are not re-recorded within six months after they are due, then the marks and brands that are not re-recorded have no force and effect. Only the records made after each recording time may be examined or considered in recording marks and brands in the county. *Sec. 144.044*

h. Estrays

An estray is a valuable tame animal found wandering and ownerless. In Texas, "estrays" means stray livestock, stray exotic livestock, stray bison, or stray exotic fowl. *Black's Law Dictionary, 7th Ed., p. 572*

In some circumstances, the sheriff will impound a reported estray and hold it for disposition. However, a sheriff or a sheriff's designee is not required to impound an estray if a perilous condition exists. If a perilous condition exists, Agriculture Code §142.015 authorizes a sheriff or a sheriff's designee to immediately dispose of the estray by any means without notifying the owner of the estray and requires the sheriff to make a written report of the disposition. After impounding an estray, the sheriff must prepare a notice of estray that is to be filed in the estray records in the County Clerk's office. *Agric. Code Sec. 142.001(1)*
Sec. 142.009
Sec. 142.015

The owner of an estray may recover possession of the estray by following the procedures outlined in Agriculture Code §142.010. These procedures include providing the sheriff with an affidavit of ownership and an affidavit of receipt of estray. Upon approving the affidavit of ownership, the sheriff is to file the affidavit of ownership in the County Clerk's estray records. The sheriff is also required to file the affidavit of receipt of estray in the County Clerk's estray records. *Sec. 142.010*

In some cases, the estray will not be claimed, and the county will obtain title to the estray. Generally, the sheriff will sell the estray at a sheriff's sale or public auction. The sheriff must execute a report of sale of impounded livestock and file the report in the estray records of the County Clerk. *Sec. 142.013*

i. Other Animal Records

A person may dispose of livestock on the range by selling and delivering the marks and brands, but to acquire title, the purchaser must have the bill of sale recorded in the County Clerk's office. The County Clerk records the transfer in records maintained for that *Agric. Code Sec. 146.001(c)*

purpose and notes the transfer on records of marks and brands in the name of the purchaser.

A "slaughterer" (a person engaged in the business of slaughtering livestock for profit) is required to keep a record of all livestock purchased or slaughtered. At each regular meeting of the county commissioners court, each slaughterer shall make a sworn report relating to the animals slaughtered since the last regular meeting of the court. The slaughterer shall file the report with the County Clerk on the first day of each month. The County Clerk must copy the report and return the original report to the slaughterer.

Sec. 148.001

Sec. 148.011

Sec. 148.001(2)

Loc. Gov't Code

Sec. 234.032

j. Assumed Name Certificates

Each person who regularly conducts business or renders professional services other than as a corporation, limited partnership, registered limited partnership, or limited liability company in a particular county must file an assumed name certificate with the County Clerk so that a record is available as to the business. The Clerk may waive all certificate filing fees required under Business and Commerce Code §71.155(a), for a "military veteran" as defined by Occupations Code §55.001.

Bus. & Com. Code

Sec. 71.051

Sec. 71.155(a-1)

The County Clerk must keep an alphabetical index of all assumed names (*i.e.*, business names) and an alphabetical index of all persons filing the assumed name certificates (*i.e.*, owners). A copy of a certificate or statement is presumptive evidence in any court in the state of the facts contained in the copy if the copy is certified to by either the County Clerk in whose office the certificate or statement was filed or the Secretary of State. An assumed name certificate is effective for 10 years from the date of the filing of the certificate. At the end of the 10-year time period, the certificate becomes null and void unless within six months prior to the expiration date, a renewal certificate is filed with the County Clerk.

Sec. 71.154

Sec. 71.151

A registrant who has filed an assumed name certificate which ceases to transact business or render professional services under the assumed name stated in the certificate may file a statement of abandonment with the County Clerk.

Sec. 71.153

k. Condominium Records

A condominium may be created by the recording of a "declaration." A County Clerk shall record declarations in the real property records. Additionally, a County Clerk shall record condominium plats or plans in the real property records. Plats or plans are part of a declaration and may be recorded as part of the declaration or separately. The book for condominium plats is to be the same size and type as the book for recording subdivision plats.

Prop. Code

Sec. 82.051

An agreement to terminate a condominium and all ratifications of the agreement must be recorded in each county in which a portion of the condominium is located.

Prop. Code

Sec. 82.068

l. County Surveyor's Records

If a county does not have a county surveyor, the County Clerk acts as the custodian of the county surveyor's records. The Clerk also records appropriate documents in the county surveyor's records.

Nat. Res. Code

Sec. 23.057

Sec. 23.060

m. Unknown or Abandoned Cemeteries

A person who discovers an unknown or abandoned cemetery is supposed to file a notice of the cemetery with the County Clerk of the county in which the cemetery is located. The Clerk may not charge a filing fee for filing such a notice. The Clerk must send a copy of the notice to the Texas Historical Commission and file the notice in the county's deed records, with an index entry referencing the land on which the cemetery was discovered. If the Commission determines that a cemetery does not exist, the Commission must correct the notice filed with the County Clerk.

*Health & Safety
Code
Sec. 711.011*

Sec. 711.0111

n. Others

Many Clerks maintain a "miscellaneous" volume in which they record rarely filed instruments such as:

- Grazing permits;
- State water permits;
- Tubercular commitments;
- Tax receipts (filed as county taxes are paid);
- Land patent records;
- Stud horse fees;
- Notices of intent to marry;
- Affidavits to swear off drinking; and
- Patent applications.

E. CERTIFIED COPIES

The County Clerk is often called upon to provide a certified copy, also known as an "attested copy," of an instrument as proof that the instrument is part of the public record. These certified copies are often used to prove ownership of property, personal identity, and other important matters. The Clerk, by affixing his or her seal and signature, swears that the copy is a true and exact replica of the recorded instrument in its entirety. The following format is often used in certifying a copy:

*Loc. Gov't Code
Sec. 191.004
Sec. 191.005*

I _____, County Clerk do hereby certify that the above and foregoing is a true and correct copy of _____ as placed on file in my office on _____ and of record in Volume _____, page _____ of the _____ records of _____ County. Witness my hand and seal of office this _____ day of _____, 20__.

NOTE: Most Clerks who scan instruments do not designate the location of documents by a particular volume and page. Thus, in certifying a copy of an instrument, the Clerk will generally make reference to an instrument number.

NOTE: A County Clerk has discretion to determine whether the

A.G. Op.

seal placed on every page of the document must be raised. A document that bears a Clerk's certificate is a certified document.

GA-0404 (2006)

NOTE: Placing a stamp on each page helps to prevent fraudulent pages from being inserted into the document.

F. FRAUDULENT RECORDS AND DOCUMENTS

If a County Clerk has a reasonable basis to believe in good faith that a paper previously filed or recorded or offered for filing and recording is fraudulent, the Clerk must provide notice as follows:

*Gov't Code
Sec. 51.901*

- If the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, the Clerk must provide written notice to the stated or last known address of the person against whom the purported judgment, act, order, directive or process is rendered.
- If the document or instrument purports to create a lien or asset a claim on real or personal property or an interest in real or personal property, the Clerk must provide written notice to the stated or last known address of the person named in the document or instrument as obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

The County Clerk is required to give this notice no later than the second business day after the date the paper is offered for filing. If the paper has been previously filed, then the County Clerk is to give notice no later than the second business day after the date the Clerk becomes aware that the paper may be fraudulent.

A document or instrument is presumed to be fraudulent if:

1. The document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:
 - A. A purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or
 - B. A purported judicial officer of a purported court or purported judicial entity described by Paragraph A; or
2. The document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property; and
 - A. Is not a document or instrument provided for by the constitution or laws of this state or of the United States;
 - B. Is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or

other representative of that person; or

C. Is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or the United States; or

3. The document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is filed by an inmate or on behalf of an inmate.

In addition, if the Clerk believes in good faith that a document filed with the Clerk to create a lien is fraudulent, the Clerk shall request the assistance of the County or District Attorney to determine if the document is fraudulent before proceeding with filing or recording the document. The Clerk should also request additional documentation from the filer to prove the existence of the lien and provide the documents to the County or District Attorney.

*Gov't Code
Sec. 51.901(d)*

The County Clerk is required to post a sign, in letters at least one inch in height that is clearly visible to the general public, in or near the Clerk's office, stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the Clerk.

Sec. 51.904

A motion for judicial review of fraudulent judgment liens and liens on property may be filed with the District Clerk by:

*Sec. 51.902
Sec. 51.903*

- Persons against whom a purported judgment was rendered who have reason to believe that the document previously filed or recorded or submitted for filing or for filing and recording is fraudulent; or
- Persons who are purported debtors or obligors or who own real or personal property or an interest in real or personal property and who have reason to believe that a document purporting to create a lien or claim against their property or their interest in the property previously filed or submitted for filing and recording is fraudulent.

After reviewing the documentation attached to a motion for judicial review of a fraudulent judgment lien or lien on property, the district judge enters an appropriate finding of fact and conclusion of law which must be filed and indexed in the same class of records in which the relevant paper was originally filed. The County Clerk may not collect a filing fee for filing a district judge's findings of fact and conclusions of law.

G. COUNTY CLERK'S RECORDING FEES

1. Real and Personal Property

*Loc. Gov't Code
Sec. 118.013
Sec. 118.012*

Real property records filing fees and personal property record filing fees:

First page	\$5.00
Each additional page or part of page or attachment	\$4.00
Each name in excess of five that has to be indexed in real property records	\$0.25

Real property recording fees cover filing and recording, including indexing, a

document that may or must be filed in the real property records. The real property recording fee does not apply to: Sec. 118.013

- Map records;
- Condominium records;
- Notary public records;
- Marriage records;
- Vital statistics records;
- Documents filed in the records of county civil or criminal courts or probate courts; or
- Personal property, chattels, and personal records in the County Clerk's office. Sec. 118.0131

Optional real property recording fees for Hidalgo and Cameron counties: *The County Clerk of Hidalgo County and the County Clerk of Cameron County may assess an additional fee up to \$10 for real property records filing to fund the construction, renovation, or improvement of court facilities, if authorized to do so by their respective county commissioners court.*

Waiver of real property recording fees. The commissioners court may direct the County Clerk to waive fees for filing real property records for a person buying or improving their home with assistance from certain federal or state grant programs. Sec. 118.0135

Personal property recording fees cover filing and recording, including indexing, a document that may or must be filed in the personal property, chattels or personal records in the Clerk's office. The personal property fee does not apply to: Sec. 118.012

- Notary public records;
- Marriage records;
- Vital statistics records;
- Documents filed in the records of county civil or criminal courts or probate courts;
- Documents filed and recorded in the real property records in the office of the County Clerk; or
- Instruments for which the filing fee is fixed by the Business and Commerce Code.

Both the real property and personal property recording fees are in addition to any other fees that may be prescribed by law. *Loc. Gov't Code*
Sec. 118.012
Sec. 118.013

Restitution lien on real or personal property in a criminal case. The victim of a crime or the state may file a restitution lien with a County Clerk against the defendant's real or personal property. The fee for the filing is \$5.00. *CCP*
Art. 42.22, Sec. 7

2. Federal Liens Recording Fee

Prop. Code
Sec. 14.004
Sec. 14.005

Federal lien filing fee	\$10.00
Federal lien certificate fee	\$10.00
Copy of notice of federal lien fee	\$10.00

Federal lien filing. This fee is for filing and indexing a federal lien or certificate or notice affecting a federal lien. The filing of the same lien in both real and personal property is two filings.

Sec. 14.004
Sec. 14.005

A County Clerk may charge a records management and preservation fee of not more than \$10 after the filing and recording of a federal lien.

Loc. Gov't Code
Sec. 118.0216
Sec. 118.011(b)

If the commissioners court has set a courthouse security fee, the Clerk should charge this fee of \$1.00 for the filing and recording of a federal lien.

Sec. 291.008

Federal lien certificate. This fee is for issuing a certificate showing whether a federal lien or certificate or notice is on file.

Prop. Code
Sec. 14.004

Copy of notice of federal lien. This fee is for furnishing a copy of a federal lien or certificate or notice affecting a lien.

3. Oath Administration Fee

Oath administration fee	\$1.00
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Loc. Gov't Code
Sec. 118.011(a)(10)

This fee is for administering an oath with or without the Clerk's seal. It does not apply to oaths administered in performing a duty as Clerk of the county civil, criminal or probate court.

Sec. 118.021

4. Bond Approval Fee

Bond approval fee	\$3.00
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Sec. 118.011(a)(6)

The bond approval fee is for approving bonds other than notarial bonds and bonds required to be approved in a county civil, criminal, or probate court.

Sec. 118.016

5. Brand Registration Fee

Brand registration fee	\$5.00
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Loc. Gov't Code
Sec. 118.011(a)(9)

The brand registration fee covers registering a brand, including indexing, searching the records and issuing a certificate.

Sec. 118.020

6. Plat Application Fee

The commissioners court may impose an application fee to cover the cost of the county's review of a subdivision plat and inspection of street, road, and drainage improvement describe by the plat. This fee may be collected by the County Engineer's Office and not the County Clerk. The County Clerk can set a fee to record a plat.

Sec. 232.0021

Sec. 118.011(c)

7. Assumed Name Certificate Fee

Assumed name certificate fee	\$2.00	<i>Bus. & Com. Code Sec. 71.155</i>
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The assumed name certificate fee is \$2.00 for filing each certificate, plus a fee of \$.50 for each name to be indexed in addition to the name of the business and one owner's name. The County Clerk may waive these fees for a registrant who is "military veteran" as defined by Occupations Code §55.001. *Sec. 71.155(a-1)*

8. Mental Health Background Check Fee

Mental health background check fee	Not more than \$2.00	<i>Loc. Gov't Code Sec. 118.011(b)(3)</i>
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This mental health background check for license to carry a weapon fee is for a check, conducted by the County Clerk at the request of the Texas Department of Public Safety, of the county records involving the mental condition of a person who applies for a license to carry a handgun. The fee is paid from the application fee submitted to the Department of Public Safety under Government Code §411.174(a)(6). The fee provisions do not affect the procedures for access to court records prescribed by Health and Safety Code §571.015. *Sec. 118.0217*

9. Certified or Non-certified Papers Copy Fee

Certified and non-certified papers		<i>Sec. 118.011(b)(3) - (b)(4)</i>
For each page or part of page	\$1.00	
For Clerk's certificate per document	\$5.00	

Certified copy fees cover placing the Clerk's certificate on each page or part of page and copying each page or part of page. Fees must be paid when the order is placed. These fees do not apply to: *Sec. 118.014*

- A certified document for which Local Government Code Chapter 118, Subchapter A sets out another fee;
- A certified copy of map/plat records or condominium records; or
- A license for which the fee is set out in another statute.

Non-certified copy fees cover issuing each page or part of a page of a document. Fees must be paid when the order is placed. The Clerk may waive or reduce the fee for a noncertified copy of a document if the document involves a matter relating to family law or is the record of a judgment in a misdemeanor case. *Loc. Gov't Code
Sec. 118.0145*

10. Records Management and Preservation Fee and Records Archive Fee

Records management and preservation fee	not more than \$10	<i>Sec. 118.011</i>
Records archive fee	not more than \$10	
Records technology and infrastructure fee	\$2.00	

Records management and preservation. The fee for "Records Management and Preservation" under Local Government Code §118.011 is for the records management and preservation services performed by the County Clerk after the filing and recording of a *Sec. 118.0216*

document in the records of the office of the Clerk. It must be paid at the time of the filing of the document and does not apply to a state agency.

The fee may be used only to provide funds for specific records management and preservation, including for automation purposes.

All expenditures from the records management and preservation account shall comply with the purchasing practices required by Local Government Code Chapter 262, Subchapter C.

NOTE: Counties Adjacent to an International Boundary. *The 81st Legislature, in SB 1574, amended Local Government Code §118.0216 to eliminate the requirement that the County Clerk in a county adjacent to an international boundary prepare an annual written plan for funding the automation projects and records management and preservation services performed by the Clerk. The change also eliminated the public hearing and requirement for approval of the plan by the commissioners court and removed the requirement that funds from the records management and preservation account may only be expended as provided by the plan. However, the changes apply only to an annual written plan that would have been required on or after the effective date of the amended statute. A plan adopted before the effective date and expenditures under that plan are subject to the requirements of the prior version of the statute that existed on the date the plan was adopted, and that former law is continued in effect for that purpose.*

Sec. 118.0216(e)

Neither the commissioners court nor the County Clerk controls the use of the records management and preservation fees. As a practical matter, both must agree on the use of the funds. Funds collected under Local Government Code §118.0216 may be used to pay for the costs of initially recording documents by microfilm, but only if the commissioners court determines that this process is part of a specific records preservation and automation project within §118.0216. The records management and preservation fee must be spent for specific records preservation and automation projects, subject to the commissioners court's advance approval, and may not be diverted from its statutorily assigned purposes to pay other expenses of the Clerk's office.

*A.G. Op.
DM-492 (1998)*

A County Clerk may collect the records management and preservation fee only on documents filed with the County Clerk in his or her capacity as County Clerk. The County Clerk may not collect the records management and preservation fee on birth, death, and fetal death records filed with the County Clerk in his or her capacity as local registrar.

*A.G. Op.
DM-371 (1995)*

Attorney General Opinion GA-0118 (2003) provides additional direction on how counties may use records management and preservation fees.

GA-0118 (2003)

Records archive fee. The fee is established at the discretion of the commissioners court. It must be set and itemized in the county's budget as part of the budget preparation process. The fee is for the preservation and restoration services performed by the County Clerk in connection with maintaining a County Clerk's record archive.

*Loc. Gov't Code
Sec. 118.025*

The fee must be paid at the time a person, excluding a state agency, presents a

"public document" to the County Clerk for recording or filing. A public document is defined as any instrument, document, paper or other record that the County Clerk is authorized to accept for filing or maintaining in the Official Public Records of the county. Accrued interest remains with the account and the Clerk must prepare the annual written plan before collecting the fee.

If the county chooses to charge a County Clerk's records archive fee, then the following notice must be posted in a conspicuous place in the County Clerk's office:

"THE COMMISSIONERS COURT OF _____
COUNTY HAS DETERMINED THAT A RECORDS ARCHIVE
FEE OF \$_____ IS NEEDED TO PRESERVE AND
RESTORE COUNTY RECORDS."

Sec. 118.025(h)

11. Courthouse Security Fee

Courthouse security fee for filing of documents \$1.00

Sec. 291.008(d)

The commissioners court may set a fee not to exceed \$5.00 for courthouse security to be collected by the Clerk at the time of filing in each civil case.

Sec. 291.008(a)

If a commissioners court sets a courthouse security fee, the County Clerk must collect a fee of \$1.00 for filing any documents not subject to the security fee. Accordingly, the County Clerk must charge the \$1.00 security fee on the filing of documents such as leases, wills, and deeds. However, the \$1.00 security fee is not to be charged upon the filing of birth and death records or military discharge records.

*AG Op.
DM-283 (1994)
DM-371 (1995)
Loc. Gov't Code
Sec. 192.002*

12. Returned Check Fee

Sec. 118.011

Returned check fee: not less than \$15 or more than \$30

The returned check fee is set and collected by the County Clerk.

The fee is for a check presented to the Clerk for payment of taxes or any other payment owed to the county that is returned by the bank or other financial institution because of:

Sec. 118.0215

- Insufficient funds to cover the check;
- A closed account;
- An unauthorized signature;
- A check drawn on uncollected funds; and
- Any other reason considered to be the fault of the drawer.

13. Other Fee Provisions

*Loc. Gov't Code
Sec. 118.011(c)*

a. Reasonable fee

The Clerk must charge reasonable fees for performing other prescribed or authorized by statute for which a fee is not prescribed (*e.g.*, filing a plat).

b. Ex officio services

If the County Clerk receives fees for ex officio services or for other public services not otherwise provided for, the commissioners court sets the fees. The fees are paid quarterly out of the county treasury on the order of the commissioners court. Local Government Code §118.023(c) lists the matters which qualify as ex officio services. *Sec. 118.023*

c. Fees must be paid

A County Clerk may not be compelled to file or record any instrument or writing until payment for all fees has been tendered. This does not apply to documents recorded in suits pending in a county court. *Sec. 118.023(b)*

d. Penalty for Clerk's failure to collect a fee

If a commissioners court finds, following a hearing, that a County Clerk failed, through neglect, to collect a fee or commission the he or she was required to collect, the commissioners court must deduct the amount of the fee or commission from the Clerk's salary. *Sec. 154.009*

e. No charge for certain filings

The County Clerk may not charge the U.S. Immigration and Naturalization Service for a copy of a document related to an individual's criminal history. *Sec. 118.011(d)*

There is no charge for filing deputation records or discharge papers of veterans. There is also no charge to record a district judge's findings of fact and conclusions of law under Government Code §§51.902 and 51.903 regarding an action on a fraudulent judgment lien or lien on property. *Sec. 192.002*

f. Free access to records

The fee provisions in Local Government Code Chapter 118 do not limit or deny any person full and free access to any document referred to in the subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents. *Sec. 118.024*

While a County Clerk may provide microfilm copies of real estate and deed records to the public, the law does not impose a duty to do so. The Open Records Act requires the County Clerk to provide suitable copies. Attorney General Opinion JM-95 is overruled to the extent of any conflict herewith. *AG Op. DM- 30 (1991)*

g. Payment by credit

In response to an inquiry about whether a County Clerk may deliver the services of his office on credit, the Attorney General opined that county officers are not authorized and cannot be authorized to deliver county services to individuals, associations, or corporations on credit unless some provision of the Texas Constitution authorizes it. *JM-533 (1986)*
JM-1229 (1990)

AG Op. JM-533 was overruled, in part, by AG Op. JM-1229 (1990): a lending of credit that accomplishes a public purpose and is accompanied *JM-1229 (1990)*
DM-382 (1996)

by controls that ensure the use of public credit for a public purpose does not violate Texas Constitution Article III, Section 3. The determination that a particular extension of credit meets the constitutional requirements is in the first instance within the sound discretion of the governing body, subject to judicial review.

CHAPTER 3

SUPPORTING THE CRIMINAL COURTS

A. INTRODUCTION TO THE CRIMINAL COURTS

The Clerk's role as supporter of the criminal courts is vital. Thousands of criminal cases are disposed of at the county level each year. The Clerk's duties in criminal cases are varied and include filing cases, issuing processes, maintaining minutes of proceedings, collecting costs and fines, and arranging for commitments and appeals. Criminal trial courts in Texas are organized on three levels:

1. The justice and municipal courts are the lowest level. These courts try crimes designated as misdemeanors where the maximum punishment for the offense is a fine not to exceed \$500.
2. County courts are the middle level of state criminal trial courts and are the ones supported by the County Clerk. County courts have original jurisdiction in Class A and B misdemeanors. County courts serve as appellate courts in cases originally tried in justice and municipal courts.
 - a. Constitutional County Courts. Traditionally, criminal cases are heard by the county judge sitting as the judge of the constitutional county court. This is still true for many of the smaller counties.
 - b. Statutory County Courts. In high population areas, the caseload of both civil and criminal proceedings has grown so large that the legislature has created special statutory county courts. Courts established by the legislature are called county courts at law, county criminal courts, or some other name to distinguish between them and the constitutional county court. These statutory county courts generally have the same jurisdiction and powers as the constitutional county court, but in many counties jurisdiction has been limited or expanded.
3. The highest level of trial court is the district court, which hears felonies, the most serious of criminal cases. The County Clerk normally has no official duties in regard to district court cases.

B. THE CLERK'S ROLE IN A CRIMINAL CASE

*CCP
Art. 42.21*

In a criminal proceeding, the role of the County Clerk is to:

- receive and file all papers;
- receive all exhibits at the conclusion of the proceeding;
- issue all process; and
- perform all other duties imposed on the Clerk by law.

C. FILING A CRIMINAL CASE

1. Introduction

The typical misdemeanor case. A misdemeanor case for the county court will usually

originate in the office of the County Attorney. There, a citizen or peace officer will swear out a complaint alleging that a misdemeanor has been committed. If the County Attorney decides that there is probable cause for prosecution and that jurisdiction in the matter lies within the county court, the attorney will have the complaint issued from the attorney's office and filed with the County Clerk. The Clerk will also receive a document called the information, which is the County Attorney's formal charge against the defendant. The information serves the same purpose in county court as an indictment does in district court. The Clerk should have both the complaint and the information before filing the case.

Criminal cases transferred from district court. Occasionally, a district judge will decide that jurisdiction of a case before him or her belongs with the county court and will transfer proceedings to the county court. In such cases, the County Clerk should receive an order transferring the case and all instruments and papers concerning the case that were previously filed with the District Clerk. The County Clerk should then file the case in the normal manner (without a complaint and information) and proceed as if the case originated in the county court.

Criminal cases on appeal from justice or municipal court. Cases may also be heard in county court on appeal from justice or municipal courts. The Clerk of the lower court forwards all instruments previously filed in the case along with an appeal bond to the County Clerk. The County Clerk then files the appeal exactly like a new criminal case except for the absence of a complaint and information. (*See also*, "Appeals from Lower Courts" in this chapter.)

2. E-Filing and Initial Filing Procedures in Criminal Cases

Before a criminal case may be heard in county court, it must be filed for record in the Clerk's office. Criminal electronic filing (e-filing) in criminal cases is mandatory in all constitutional and statutory county courts. Non-attorney filers are **not** required to e-file.

a. Statewide Rules Governing Electronic Filings in Criminal Cases

Clerks should familiarize themselves with the Statewide Rules Governing Electronic Filing (SRGEF) in Criminal Cases, available at <http://www.txcourts.gov/media/1438082/179039.pdf>, which govern e-filing of documents with the County Clerk in criminal cases.

NOTE: *The Statewide Rules Governing Electronic Filing in Criminal Cases **DO NOT**:*

- *Apply to court reporters, charging instruments, exhibits filed, or documents filed directly with a judge (such as plea paperwork); nor*
- *Authorize a clerk to require e-filing by a person not represented by an attorney.*

**SRGEF Crim.
Cases
Rule 1.1**

Comment to Part 1

b. Non-Conforming Documents

The clerk may not refuse a document that fails to conform to the SRGEF in Criminal Cases.

SRGEF Crim. Cases Rule 2.6 Rule 4.5

NOTE: The intent of Rule 2.6 is to establish that a clerk may not refuse a document for any perceived violation of the rules; however, the rules do permit a clerk the limited authority to identify information errors the clerk perceives to be “sensitive data” or to identify errors the clerk perceives with whether a filing complies with the JCIT Standards currently in effect. When a clerk notifies a filer of non-conformance, the clerk should permit only a reasonable amount of time to allow the filing to be conformed to the rules, and in general a deadline for correction should not exceed 72 hours.

Comment to Rule 2.6, Rule 4.5

c. Electronic Filing

Attorneys must e-file all documents, pleadings, and materials, unless excepted. Unrepresented parties may e-file documents, but it is NOT required. Clerks should maintain a process for filing paper submissions from such filers.

Rule 1.2

A County Clerk cannot:

- Offer to attorneys in criminal cases any alternative electronic document filing transmission system except in the event of an emergency; or
- Accept, file, or docket any document filed by an attorney in a criminal case that is not filed in compliance with e-file rules except in the event of an emergency.

The following documents **CANNOT be e-filed**:

- Documents filed under seal or presented to the court in camera; and
- Documents to which access is otherwise restricted by rule, law, or order.

Rule 1.3

d. Timely Filing

Rule 2.3

Unless a statute, rule, or order requires that a document be filed by a certain time of day, an e-filed document is considered timely filed if it is e-filed at any time before midnight (in the court’s time zone) on the day of the filing deadline. An e-filed document is deemed filed when transmitted to the filing party’s e-filing service provider, except:

- If a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
- If a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.

If a document is untimely filed due to a technical failure or system outage, the filing party may seek appropriate relief from the court.

e. Filings with “Sensitive Data”

Unless specifically required by statute, rule, or administrative regulation, an electronic or paper document containing “*sensitive data*” cannot be filed with a court unless the sensitive data is redacted by placing the letter “X” in place of each omitted digit or character or removing the data in a manner indicating redaction. If an electronic or paper document must contain “*sensitive data*,” the filing party MUST state on the upper left-hand side of the first page: “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.” Documents that contain “sensitive data” restricted by the Rules, Texas law, or Federal cannot be posted on the internet.

*SRGEF Crim.
Cases
Rule 4.2
Rule 4.3
Rule 4.4
Rule 4.6*

“*Sensitive data*,” as defined by SRGEF in Criminal Cases Rule 4.1, consists of:

- A driver’s license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- a bank account number, credit card number, or other financial account number;
- a birth date, home address, or personal phone number; and
- the name of any person who was a minor when the underlying suit was filed unless, under Texas Family Code §54.02, a juvenile court has waived its exclusive original jurisdiction and transferred the individual to a district court.

Rule 4.1

f. Additional Initial Filing Proceedings

The following initial procedures, some of which are detailed more fully in the “Dockets” and “Index to the Criminal Minutes” sections of this chapter, must be executed before proceedings can begin:

- Upon receipt of the complaint and information from the County Attorney, the Clerk should file-mark the documents showing the date and time received. Some Clerks will file-mark the information a few minutes later than the complaint because the complaint is supposed to be issued first.
- In appeals from lower courts or transfers from district court, there will be no complaint or information, but all instruments present should be file-marked to show that they have been received.
- The case should be assigned a unique and sequential case number for file identification. This number should be stamped or written on all instruments, records, file folders, and indexes.
- Capias (sometimes referred to as a warrant) is issued by the court or under a court order.
- The case should be entered in the criminal file docket (also called the fee docket, fee book, and Clerk’s docket).
- A judge’s docket sheet should be prepared and placed in the judge’s pending docket book.

- The case must be indexed in the index to criminal minutes.
- A permanent case jacket or flat folder should be prepared in which to store all instruments filed. Some Clerks choose to note each instrument stored within the folder on the outside of the jacket, and the jacket or folder should be placed in the pending case file.

The case is now officially filed in the county court and is ready for further prosecution. The Clerk's role is now passive, awaiting further action by the prosecutor, defense attorney, and judge. Some cases will be filed and disposed of in the same day, while others stay pending for indefinite periods of time.

If a defendant pleads not guilty to a misdemeanor punishable by confinement in jail, a county judge who is not a licensed attorney may transfer the case from the county court to a district court or county court at law.

*CCP
Art. 4.17*

NOTE: There are many references to items that must be placed in a book. As a practical matter, most Clerks now use computers instead of books.

3. Subsequent Filing Procedures

As a case moves toward disposition, numerous and varied documents will be filed as a part of the permanent record. Some of these include:

- | | |
|-----------------|---------------------------|
| • Capias Return | • Magistrate Warning Form |
| • Judgments | • Petitions |
| • Bail Bonds | • Waivers |
| • Sentences | • Warrants |
| • Motions | • Subpoenas |
| • Verdicts | • Dismissals |
| • Applications | • Orders |
| | • Commitments |

*NOTE: In a criminal case, a judge may "sign" a document by allowing another person to place a mark on a document that constitutes the judge's approval of the document **only if** the other person does so in the presence of and under the direction of the judge.*

*AG Op.
JM-373 (1985)*

*AG L.O.
97-082 (1997)*

NOTE: A judge may "sign" an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in the computer system.

*AG Op.
JC-0259 (2000)*

NOTE: A Clerk has the authority to prepare a judgment under the supervision of an attorney.

*CCP
Art. 42.01, Sec. 2*

Proper filing of these documents would include the following procedures as the document is presented to the Clerk:

- File-mark the document to show the date and time received.

- Note the case number on the document if it is not already shown.
- Enter the type and date of the document in the criminal file docket.
- If the document is an order, or other paper signed by the judge, record it in the criminal minutes and note the volume and page number(s) in the index, file docket, and judge's docket sheet.
- Place the document in the permanent file folder and note the type of document and date filed on the outside of the jacket or folder.

D. FILING AND DISPOSING OF EXHIBITS

The Clerk of the county court is required to receive and file all exhibits in a criminal case.

*CCP
Art. 2.21(a), (b),
and (c)*

Disposing of firearm or contraband as exhibit. A Clerk has a limited role in disposing of firearms or other contraband used as exhibits in a criminal case. Any firearm or contraband received by a court as an exhibit in a criminal case is to be placed in the hands of the sheriff or, in a county with a population of 500,000 or more, the law enforcement agency that collected, seized, or took possession of the firearm or contraband, or produced the firearm or contraband at the proceeding, for safekeeping at any time the proceeding is pending or thereafter.

The sheriff or the law enforcement agency is required to receive and hold exhibits consisting of firearms or contraband and release them only to persons authorized by the court in which such exhibits have been received or dispose of them as provided by Code of Criminal Procedure Chapter 18.

Disposing of other exhibits. The Clerk has a role in providing notice and disposing of exhibits that are *not*:

Art. 2.21(d)

- firearms or contraband
- ordered by the court to be returned to its owner
- exhibits in another pending criminal action

These exhibits are termed “eligible exhibits” in the statute, and may be disposed of:

Art. 2.21(e)

- For misdemeanors or felonies for which the sentence imposed by the court is 5 year or less: on or after the first anniversary of the date on which a conviction becomes final in the case.
- For non-capital felonies for which the sentence imposed by the court is greater than 5 years: on or after the second anniversary of the date on which a conviction becomes final in the case.
- On or after the first anniversary of the date of the acquittal of a defendant.
- On or after the first anniversary of the date of the death of a defendant.

A Clerk may dispose of an eligible exhibit or may deliver the eligible exhibit to the county purchasing agent for disposal as surplus or salvage property under Local Government Code §263.152 if on the date provided by Subsection (e) the Clerk has not received a request

Art. 2.21(f)

for the exhibit from either the attorney representing the state in the case or the attorney representing the defendant.

Notwithstanding Local Government Code §263.156, or any other law, the commissioners court shall remit 50% of any proceeds of the disposal of an eligible exhibit as surplus or salvage property as described by Subsection (f), less the reasonable expense of keeping the exhibit before disposal and the costs of that disposal, to each of the following: *CCP Art. 2.21(f-1)*

1. The county treasury, to be used only to defray the costs incurred by the District Clerk of the county for the management, maintenance, or destruction of eligible exhibits in the county; and
2. The state treasury to the credit of the compensation to victims of crime fund established under Chapter 56, Subchapter B [**beginning 1/1/2021, Chapter 56B, Subchapter J**].

A Clerk in a county with a population of less than 2 million must provide written notice by mail to the attorney representing the state in the case and the attorney representing the defendant before disposing of an eligible exhibit. *Art. 2.21(g)*

The notice must:

- Describe the eligible exhibit;
- Give the name and address of the court holding the exhibit; and
- State that the eligible exhibit will be disposed of unless a written request is received by the Clerk before the 31st day after the date of the notice. *Art. 2.21(h)*

If a request is not received by the Clerk before the 31st day after the date of notice, the Clerk may dispose of the eligible exhibit. If a request is timely received, the Clerk must deliver the eligible exhibit to the person making the request if the court determines the requestor is the owner of the eligible exhibit. *Art. 2.21(i)*
Art. 2.21(j)

E. ISSUING PROCESSES

The County Clerk, as an officer of the court, is authorized to issue a variety of processes in the name of the court. Most of the processes are for the purpose of bringing persons or things before the court.

1. Capias

The capias is the most common of processes and is found in almost all criminal cases filed in county court. The capias serves the same purpose as a warrant and commands the sheriff to arrest the defendant and bring him or her before the court.

Code of Criminal Procedure Article 23.04 states that a capias or summons in a misdemeanor case must issue from a court having jurisdiction of the case. A United States District Court has held that the judge must issue, or sign, the capias in a misdemeanor case. *Crane v. Texas, 534 F. Supp. 1237 (N.D. Tex.1982)*

Some counties use an affidavit of facts showing and proving probable cause along with a signed written order from the judge for the Clerk to issue the capias. If this method is used, a copy of the order of issuance should be attached to the capias as proof of instruction

for the Clerk to issue.

2. Alias Capias

Should the defendant need to be arrested a second time (after the original capias has been executed and returned), an alias capias will be issued. This usually occurs in cases of release of surety (where the surety wants the defendant picked up so the bond can be cancelled) or bond forfeiture (when the defendant skips bond). There is no difference between an alias capias and a capias, either in content or procedure, except for the title.

3. Capias Pro Fine

The capias pro fine is issued with the judge's signature in cases where a convicted defendant has not paid the assessed fine and court costs.

4. Bill of Costs

At the termination of a case in which the defendant has been found guilty, the defendant becomes liable to pay all court costs and any fine that may have been assessed. The Clerk prepares a bill of costs containing the case number, style, judgment, and itemization of all costs due from the defendant. The Clerk signs the instrument, affixes the seal of the court, and presents the bill of costs to the defendant or to the sheriff for service.

5. Subpoena

A subpoena commands an individual to appear before the court on a particular date to give testimony as a witness in a case. Either the prosecution or the defense may request that the Clerk issue subpoenas at any time during the course of the trial. Clerks may request that the application or request be in writing before issuing subpoenas. A written application is always needed for an out-of-county witness.

*CCP
Art. 24.01*

Either attorney begins the subpoena process by filing an application for a subpoena with the Clerk. The application must show the following information:

- Case number
- Style of case
- Court in which to appear
- Attorney's name
- Date of requested appearance
- Exact name and address (including county) of each witness to be subpoenaed.

The application, which must be signed by the attorney, is file-marked, signed, and sealed by the Clerk taking the application.

The Clerk issues a subpoena in duplicate for each witness listed in the application. The Clerk gives the original and the copy of each subpoena to the sheriff for his execution and return. The officer makes his or her return on each original subpoena and returns the

original(s) to be filed in the office of the Clerk. The application is filed in the case folder.

If the application asks for an out-of-county witness, the subpoena should be made in duplicate on a form prepared for this purpose. The Clerk sends the original and the copy to the sheriff of the county in which the witness resides. The sheriff makes a return on the original. Out-of-county sheriffs will charge a fee for serving the subpoena.

6. Subpoena Duces Tecum

The subpoena duces tecum is similar to the subpoena except that it commands the witness to bring evidence to court to be used in the case. This evidence usually consists of documents or records. The subpoena duces tecum is issued in duplicate with the original and copy going to the sheriff for service, and the sheriff makes a return on the original. An application stating the exact evidence requested should be filed with the Clerk.

CCP
Art. 24.02

7. Witness Expense Payments

Witnesses subpoenaed from out of the county are entitled to reimbursement for transportation, meal, and lodging expenses while testifying in a case. The Clerk is not responsible for actually paying the witness; instead, the Clerk issues a witness account form drawn on the State of Texas to the witness. The Clerk, the witness, or anyone acting on behalf of the witness may present the voucher to the state comptroller of public accounts for payment.

Art. 35.27

AG Op.
C-637 (1966)

The Clerk fills out a witness account form in duplicate. The form shows days served and miles traveled. It must be attested to by the witness, the Clerk, and the judge in the trial.

The original witness account form goes to the witness, and the copy is filed in the appropriate case folder.

8. Commitments

All commitments to jail in criminal cases are processes of the court and are prepared by the Clerk. They may be issued only after the judge has signed and handed down an order of commitment to the Clerk.

Orders of commitment may come as primary punishment for a misdemeanor, secondary punishment for not paying a fine, or secondary punishment as a result of revocation of probation. Except in rare cases, commitments from county courts will be to the county jail.

NOTE: *A certified copy of the judgment ordering a defendant to jail may be used in place of an official order of commitment form.*

Procedurally, commitments are issued as follows:

- The Clerk receives the judge's docket sheet and order of commitment.
- The Clerk prepares the commitment form detailing the defendant's name, charge, and term of commitment.

- The form must be signed and sealed by the Clerk.
- Even when the defendant is jailed, he is responsible for paying the fine and court costs. The defendant may be serving time in lieu of payment.
- The date of commitment is noted in the criminal file docket.
- The commitment form and the defendant are turned over to the sheriff. The order of commitment is filed. Although it is not usually required, the Clerk may wish to send a copy of the order of commitment to the sheriff along with the commitment form.
- After the defendant serves the required time, the sheriff returns the commitment form showing the release of the prisoner. The date of release is noted in the criminal file docket, and the commitment form is filed.

F. DOCKETS

To maintain an accurate record of cases in progress, most Clerks use three different dockets:

*CCP
Art. 33.07*

1. the judge's docket;
2. the criminal file docket; and
3. the case file.

1. Judge's Docket

The judge's docket is prepared by the Clerk at the time a case is filed. It performs two essential functions.

First, the docket is official notification to the judge that a case has been filed within his or her jurisdiction and is to be decided in his or her court. It gives the judge preliminary information as to the nature of the offense, the parties, and the attorneys who will be pleading the case. Once the judge has possession of the docket, proceedings in the case can be scheduled.

Second, the docket is a record of important events that happen in the courtroom. For each case, all orders, judgments, verdicts, sentences, and fines are to be noted.

The exact format of the judge's docket may vary but should contain at least the following:

- Case number
- Date of filing
- Names of parties (the style of the case is always "The State of Texas v. Defendant")
- Attorney of record (for prosecution and defense)
- Nature of the offense
- Orders of the court

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

2. Criminal File Docket

This book is called various names in the different offices and may be referred to as the fee book, file docket, or Clerk's docket. When maintained properly, it becomes a master reference guide to all aspects of a case.

A separate entry is created for each case at the time of filing. Initial docket information should include:

- Case number
- Style of the case
- Attorneys of record
- Date of filing

As the case progresses, each item or occurrence of importance should be noted in the file docket. This would include:

- All processes issued by the Clerk and date of issuance
- All returns of processes and date of return
- All instruments filed for record and date of filing
- All orders, judgments, and verdicts, and date given
- All commitments and releases, and date of action

A portion of the file docket should be devoted to the itemization of court costs and fines as they are incurred. Records should also be kept of the receipt of payments and disbursement of costs and fines to various county offices. A complete accounting record is thereby established for each case.

By maintaining the file docket in such manner, the Clerk will, at any time, be able to report on the procedural or financial aspects of any case.

3. Case Jacket

The principal use of the case jacket is as a depository for all instruments filed with the Clerk for each case. Most Clerks maintain separate storage areas for the case jackets of pending cases and disposed cases. This facilitates access to active cases on the part of attorneys, judges, and the Clerk.

For the convenience of judges and attorneys, most Clerks duplicate, on the outside of the case jacket, every entry made in the criminal file docket concerning docket information, processes issued, and instruments filed for record. Thus, as the case jacket is delivered to the courtroom for each hearing in the case, a complete record of all activities to date is available for all parties.

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

4. Fingerprint on Docket Sheet, Judgment, or Probation Order

If a defendant is convicted of a felony or misdemeanor, the Clerk or bailiff of the court must fingerprint the defendant's right thumb on the judgment. Also, if the adjudication of guilt of a defendant is deferred and a defendant is placed on deferred adjudication community supervision (Code of Criminal Procedure Chapter 42A, Subchapter C), the Clerk or bailiff of the court must fingerprint the defendant's right thumb on the order placing the defendant on deferred adjudication community supervision.

*CCP
Art. 42.01, Sec. 1*

Art. 38.33, Sec. 1

A fingerprint must be taken either by use of the ink-rolled print method or by use of a live-scanning device that prints the fingerprint image on the judgment, probation order, or docket sheet.

5. Notice of Criminal Court Docket Settings

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

Art. 17.085

G. INDEX TO THE CRIMINAL MINUTES

A vital part of the processing of each case is its indexing. The index is the key to access to the criminal minutes.

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

The form of the index is not set by statute but has been standardized to contain the:

- **Case Number** – Inclusion of the case number is essential because all of the Clerk's case records will be filed in numerical sequence, not alphabetically.
- **Surname and Given Name of Defendant** – Many cases are originally filed using the defendant's alias. The case will be prosecuted using the defendant's real name when that becomes known, and the Clerk must re-index the case at that time.
- **Volume and Page of Minutes** – Make an entry each time a minute is recorded. When a minute mentions more than one defendant, cross-index the minute for each defendant concerned.
- **Date Convicted** – Entered at time of conviction.

H. PREPARATION AND RECORDING OF MINUTES

1. Preparation of Minutes

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

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

2. Recording of Minutes

As in all of the Clerk's processes, the objective is to transcribe or copy essential instruments into a permanent record book. A set of criminal minutes should be kept for each county court that hears criminal cases. Most courts are considered to be in continuous session, hearing cases year-round. It may be, however, that some courts will be divided into terms and that minutes for each term will be so certified to by the judge and Clerk. The Clerk should check local procedure on this matter.

To record minutes, the Clerk should receive the instrument and see that all blanks are properly filled out and that the judge's signature is present.

Determine what volume will be used and assign the next unused page number to the instrument. Write or stamp the volume and page number on the instrument. Follow usual procedures for recording. Note the volume and page number in the index to criminal minutes, judge's docket sheet, criminal file docket, and case jacket.

File the instrument (or the copy) in the case jacket.

I. COLLECTION OF FINES, FEES, AND COURT COSTS

Upon conviction of most misdemeanors, the punishment will be the levying of a fine and court costs upon the defendant. While not required by statute, in many counties the Clerk will collect the fine and costs for all county offices at the termination of each case. This only applies, however, to cases in which the defendant either pleads guilty or is found guilty upon final judgment. When cases are dismissed or when the defendant is not found guilty, no court costs are assessed.

***NOTE:** Code of Criminal Procedure Article 103.003 authorizes the following to collect court costs and fees:*

- 1. District and County Attorneys*
- 2. County Clerks and District Clerks*

3. *Sheriffs*
4. *Constables*
5. *Justices of the peace*
6. *Community supervision and corrections departments*

When the defendant appears before the Clerk to pay the fine, the Clerk should have available the judge's docket sheet, the criminal file docket (fee book), and a bill of costs with all necessary information. The Clerk will then do the following:

- Check the judge's docket to see that judgment and sentence have been rendered and that the defendant has accepted sentence.
- Fill out the bill of costs as to case number, style of case, court designation, and judgment rendered.
- Transfer from the criminal file docket to the bill of costs each item of court costs charged by all county offices.
- Enter the amount of fine shown in the judge's docket on the bill of costs.
- In some cases, the judge will order the defendant to pay to the Clerk restitution to parties damaged as a result of the crime. If so, note that fact and the amount on the bill of costs.
- Sign the bill of costs, affix the Clerk's seal, and give the bill to the defendant.
- Issue a detailed receipt to the defendant for payment received and note payment in the criminal file docket.

CCP
Art. 103.010
Art. 103.009

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

J. CURRENT FEES AND COURT COSTS

The Office of Court Administration has developed and made available on its website charts which set out the fees and costs that are to be assessed upon a defendant's conviction. The charts, as well as historical criminal court costs charts, can be found here: <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/>.

K. INDIGENT DEFENDANTS AND DEFENDANTS WHO REFUSE TO PAY

Incarceration of an indigent person for failure to immediately pay a fine or court cost violates the United States Constitution and is therefore impermissible. However, persons able but unwilling to pay fines and court may be incarcerated for their failure to pay.

Tate v. Short,
401 U.S. 395 (1971)

When a defendant fails to pay fines and court costs (which includes any fee imposed on a defendant by the court at the time a judgment is entered), a judge may issue a *capias pro fine* which commands law enforcement to arrest the defendant and bring him or her before the court immediately. The court is required to hold a hearing at which the defendant can offer an explanation as to why he or she did not pay. The court may order the defendant to discharge the fines and costs in any manner provided by Code of Criminal Procedure Article 43.09 (including community service), may order the defendant confined to "sit out" the fines

CCP
Art. 43.015
Art. 43.03
Art. 43.05
Art. 43.09
Art. 43.091

and costs, or may waive all or part of the payment owed if the court determines that:

- the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs, or was – at the time the defendant committed the offense – a child as defined by Article 45.058(h); and
- Alternative methods of discharging the fine or costs would impose an undue hardship on the defendant.

If a defendant notifies the court that the defendant has difficulty paying the fine and costs in compliance with the judgment, the court shall hold a hearing to determine whether that portion of the judgment imposes an undue hardship on the defendant. A defendant may notify the court by (1) voluntarily appearing and informing the court or the clerk of the court in the manner established by the court for that purpose, (2) filing a motion with the court, (3) mailing a letter to the court, or (4) any other method established by the court for that purpose.

*CCP
43.035*

Time that the defendant spends in jail in lieu of payment should be noted by the Clerk in the criminal file docket so that the defendant is not billed again at a later date. The Clerk will obtain a written receipt from the sheriff detailing the total jail time credit given and the total cash credit.

L. BONDS

At the time a criminal case is filed with the Clerk, the defendant will frequently already have been arrested, jailed, and released on bond under the authority of a magistrate. In such cases, the Clerk should receive the bond and file the charging instrument in the case folder.

*CCP
Art. 17.01*

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

1. Personal or Surety Bond

If the judge grants a personal or surety bond, no cash is actually posted as the judge accepts the word of the parties that the amount of the bond will be paid to the state if the defendant does not appear in court at the proper time. The entire proceeding takes place before the judge, and the Clerk has no responsibility in the matter except to file the bond after its execution. If the defendant is released on a personal bond on the recommendation of a personal bond office, a reimbursement fee of \$20.00 or 3% of the amount of bail, whichever is greater, will be assessed. Personal bond offices do not exist in all counties. The reimbursement fee should never be assessed in counties that do not have personal bond offices. In counties that do have personal bond offices, the reimbursement fee should be assessed only if the personal bond office recommended the personal bond. The court may waive the reimbursement fee or assess a lesser reimbursement fee if good cause is shown. A court that requires a defendant to give a personal bond under Code of Criminal Procedure Article 45.016 cannot assess a personal bond fee.

*Art. 17.03
Art. 17.031
Art. 17.04
Art. 17.42*

A personal bond pretrial release office must prepare a record containing information about any accused person identified by case number only who, after review by the office, is

Art. 17.42

released by a court on a personal bond before sentencing in a pending case; must update the record on a monthly basis; and must file a copy of the record in the office of the Clerk of the county court in any county served by the office.

2. Cash Bond

If the judge requires that cash in the amount of the bond be posted, the Clerk receives and holds the money in most counties.

CCP
Art. 17.02

NOTE: *In counties where the sheriff retains both cash and surety bonds, the procedures will differ from those stated below and should comply with Attorney General Opinion JC-0163.*

AG Op.
JC-0163 (1999)

- The defendant will be brought before the Clerk, and the Clerk will fill out the bond form according to the judge's instructions.
- The Clerk collects the money, issues a receipt, and posts the amount in the criminal file docket in the same manner as other court costs.
- The judge signs the bond, and it is processed as any other instrument in the case and filed in the case folder. (Some Clerks prefer to keep a separate file for all bonds.)

After the defendant complies with the cash bond's conditions, a refund for the cash deposited can be sought. The judge must enter an order to the Clerk authorizing the transaction. Any cash bond funds deposited will be refunded in the amount shown on the receipt, less the administrative fee authorized by Local Government Code §117.055, to any person who posted the money and was given a receipt, or, to the defendant, if no other person is able to produce a receipt.

3. Payment by Surety when Posting Bond

When a surety posts a bond, the surety must pay a \$15 reimbursement fee to the officer taking the bond. The reimbursement fee cannot exceed \$30 for all bonds posted at that time for a particular individual. The fee is not required on the posting of a personal bond or a cash bond.

Gov't Code
Sec. 41.258

M. BOND FORFEITURE

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

CCP
Art. 22.01

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

Art. 22.02

The judge's signing of the judgment nisi effectively serves to initiate a criminal action (governed by the rules of civil procedure) in which the State attempts to obtain a final judgment forfeiting the defendant's bond to the State.

AG Op.
GA-0486 (2006)

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

CCP
Art. 22.03
Art. 22.04

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

Art. 22.05

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

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

AG Op.
JM-779 (1987)

1. Release of Surety

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

CCP
Art. 17.19

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

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

N. APPEALS FROM LOWER COURTS

Clerks of justice or municipal courts will direct appeals from those courts to the County Clerk once the appeal is perfected in the lower court. The County Clerk should:

- File-mark all instruments.
- Assign a county court case number.
- Enter the case in the criminal file docket (noting on the docket the court

CCP
Art. 45.042

AG Op.
JM-318 (1985)

from which the case is appealed)

- Create the judge’s docket.
- File all instruments in the case jacket.
- Process the appeal from the lower court as any other criminal case.

If the defendant is found not guilty the case is dismissed. No fines or costs are assessed. If the defendant is found guilty and the appeal is from a municipal court, then the Clerk is to collect and return the fine to the municipal court but retain the costs. If the defendant is found guilty and the appeal is from a justice court, the Clerk is to retain both the costs and the fine.

O. WRIT OF HABEAS CORPUS

1. Introduction

A writ of habeas corpus is a special type of order issued by a judge. The writ is directed to a person (such as a county sheriff) who is holding another person in custody. The writ directs the sheriff (or other similarly situated person) to produce the person who is confined (usually someone in jail or in prison) at a certain place and time to show the reason the confined person is in custody.

CCP
Art. 11.01
Art. 11.02

The writ of habeas corpus is generally sought by an individual who is in jail or prison and wishes to be released. In order to have a writ of habeas corpus issued, the prisoner must first present an application (sometimes termed a motion or petition) to an appropriate judge for the purpose of having the judge issue a writ of habeas corpus. Usually, the prisoner (or a person on the prisoner’s behalf) will present the application to the Clerk. The Clerk cannot require a filing fee.

Art. 11.12
Art. 11.05
Art. 11.13
Art. 11.051

Upon the presentation of a proper application, the judge is duty-bound to issue a writ of habeas corpus without delay.

Art. 11.05
Art. 11.15

When a County Clerk is presented with an application for a writ of habeas corpus, the Clerk must determine whether the writ application is being made “pre-” or “post-” conviction, and whether the judgment imposes the penalty of death. The distinguishing factor between types of applications for writs of habeas corpus is whether there has been a conviction entered. While the practice has traditionally been to distinguish between “pre-trial” and “post-conviction” writs, the Code of Criminal Procedure distinguishes primarily between writ applications in cases in which no conviction is entered and applications in cases where there is a final felony conviction without the death penalty. This manual covers the procedure for pre-conviction writs.

2. Pre-Conviction Application for Writ of Habeas Corpus

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

- a. Determine in which case to file the application (*i.e.*, deciding which case number to assign to the application). Ideally, the County Clerk will maintain

a separate “writ” docket for the purpose of assigning case numbers to applications which pertain to confinement for an offense which has not yet been charged in court.

- If the applicant (defendant) is being confined pursuant to a charging instrument which is already filed in court, the application may be filed either in the pending case or as a new case on the writ docket (each County Clerk’s office should formulate its own policy in conformity with state law).
 - If the applicant is **not** being confined pursuant to a charging instrument which is already filed in court, the application should be filed as a new case on the writ docket. If a separate writ docket is not maintained, the application should be filed as a new case.
- b. File the original application and file-mark two copies of the application.
- When the applicant or his attorney files the original application, the applicant or his attorney should also furnish the Clerk with two copies of the application. The Clerk will file-mark the two copies. If the application is made *pro se*, copies may not be demanded; however, if the applicant is not confined and presents the application in person, the County Clerk may require that an original and two copies be presented. (The Code of Criminal Procedure neither authorizes nor forbids this; each Clerk's office should formulate its own policy.) If the application is made *pro se* and the applicant is confined, the Clerk should make two copies of the application and file-mark them.
- c. Mail or deliver some form of acknowledgment of filing to the applicant. A postcard or a file-marked copy noting the date of the filing of the application should suffice.
- d. Mail or deliver a file-marked copy of the application to the County Attorney's office.
- e. Mail or deliver a file-marked copy of the application to the judge's office.
- f. After the writ application has been filed, the applicant has been delivered an acknowledgment, and the County Attorney and judge have received copies, there are no further requirements of the Clerk unless the trial court acts upon the writ, and then **only** in the event that notice of appeal is given.

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

TRAP 31.1

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

TRAP 34.5
TRAP 34.6

P. APPEALS OF CRIMINAL CASES

1. Jurisdiction

The jurisdiction for appeals of all criminal cases from the district or county courts is with the court of appeals within the particular district, except in those cases in which the death penalty has been assessed. Jurisdiction of cases in which the death penalty has been assessed is with the Court of Criminal Appeals. It is the responsibility of the Clerk in all appeal cases to prepare the Clerk's record and forward it to the court of appeals or the Court of Criminal Appeals.

2. Perfecting Appeal in a Criminal Case

In a criminal case, appeal is perfected by timely filing a sufficient notice of appeal. *TRAP 25.2(b)*
In a death penalty case, however, it is unnecessary to file a notice of appeal, but, in every death-penalty case, the clerk of the trial court shall file a notice of conviction with the Court of Criminal Appeals within thirty days after the defendant is sentenced to death.

a. Notice of Appeal

Notice must be given in writing and filed with the trial court Clerk. *TRAP 25.2(c)*

Notice is sufficient if it shows the party's desire to appeal from the judgment or other appealable order, and, if the State is the appellant, the notice complies with Code of Criminal Procedure Article 44.01. *TRAP 25.2(c)*

b. Certification of Defendant's Right of Appeal

If the defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal under TRAP 25.2(a)(2). An appeal must be dismissed if such a certification is not made part of the record. *TRAP 25.2(d)*

c. Clerk's Responsibility

The trial court clerk must note on the copies of the notice of appeal and the trial court's certification of the defendant's right of appeal the case number and the date when each was filed. The clerk must then immediately deliver one copy of each to the clerk of the appropriate court of appeals, to the trial judge, to each court reporter responsible for preparing the reporter's record, and, if the defendant is the appellant, one copy of each to the State's attorney *TRAP 25.2(e)*

d. Effect of Appeal

Once the record has been filed in the appellate court, all further proceedings in the trial court will generally be suspended until the trial court receives the appellate court mandate. *TRAP 25.2(g)*

3. The Appellate Record

There are two primary components of an appellate record: the Clerk's record and the *TRAP 34.1*

reporter's record.

a. The Clerk's Record (formerly called the "transcript")

The Clerk's record must include copies of the following:

TRAP 34.5(a)

- The indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea
- The court's docket sheet
- The court's charge and the jury's verdict, or the court's findings of fact and conclusions of law
- The court's judgment or other order that is being appealed
- Any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion
- The notice of appeal
- Any formal bill of exception
- Any request for a reporter's record, including any statement of points or issues provided for under TRAP Rule 34.6(c)
- Any request for preparation of the Clerk's record
- The trial court's certification of the defendant's right of appeal under TRAP 25.2
- Any filing that a party designates to have included in the record

At any time before the Clerk's record is prepared, any party may file with the trial court clerk a written designation specifying matters for inclusion in the Clerk's record; the designation must be specific and the Clerk will disregard any general designation such as one for "all papers filed in the cause." A copy of the designation should be included in the Clerk's record. If a relevant item has been omitted from the Clerk's record, the trial court, the appellate court, or any party may, by letter, direct the Clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item. An appellate court cannot refuse to file the Clerk's record or a supplemental Clerk's record because of failure to timely request items to be included in the Clerk's record.

TRAP 34.5(b), (c)

If the appellate court in a criminal case orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by the Rules of Appellate Procedure, the trial court clerk must prepare, certify, and file in the appellate court a supplemental Clerk's record containing those findings of fact and conclusions of law.

TRAP 34.5(c)

The Clerk may consult with the parties to determine the contents of the Clerk's record.

TRAP 34.5(h)

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee.

To prepare the record, the Clerk must:

- Gather the documents required by TRAP Rule 34.5(a) and those requested by a party under TRAP Rule 34.5(b).
- Make a legible copy of the documents on opaque, white, 8.5 x 11-inch paper, if practicable.
- Arrange the documents in ascending chronological order, by date of filing or occurrence.
- Consecutively number the pages in the bottom right-hand corner.
- Bind the documents in ascending chronological order, by date of filing or occurrence.
- Prepare, label and certify the Clerk's record as required by the Court of Criminal Appeals Order Directing the Form of the Appellate Record in Criminal Cases.

NOTE: *Many appellate courts now require the Clerk's record to be uploaded via their website rather than being delivery of a paper file.*

c. Indigent Criminal Defendants

An appellant who is unable to pay for the appellate record may file a motion and affidavit within the time required to perfect an appeal asking the court to have the appellate record furnished without charge. If after hearing the motion the court finds that the appellant cannot pay or give security for the appellate record, the court must order the reporter to transcribe the proceedings without charge to the appellant. *TRAP 20.2*

4. Criminal Appellate Process and Timelines

The Clerk's responsibility in appeals is not only to prepare the Clerk's record but to coordinate the efforts of the attorneys, the judge, and the court reporter. Therefore, the Clerk must be aware of the entire appellate process.

In criminal appellate matters, the beginning of the periods of time prescribed in the various rules, statutes, and orders of court is determined by the date sentence is imposed or suspended in open court. In computing any such period of time, the date of sentencing is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. *TRAP 4.1(a)*

A motion for new trial is not a prerequisite to presenting a point of error on appeal. *TRAP 21.2*
TRAP 21.4

However, if a motion for new trial is filed, it may be filed prior to, or must be filed within 30 days after, the date sentence is imposed or suspended in open court. Amended motions may be filed before any preceding motion for new trial is overruled and within 30 days after sentence. In the event an original or amended motion for new trial is not granted or denied by written order of the court within 75 days after the date of sentence, it will be considered overruled by operation of law. *TRAP 21.8*

A motion in arrest of judgment may also be filed within 30 days of sentence and will be overruled by operation of law if not ruled on by oral or written order within 75 days of sentencing. An order overruling a motion in arrest of judgment will be considered an order overruling a motion for new trial for the purpose of giving notice of appeal. *TRAP 22*

Notice of appeal must be given in writing and filed with the Clerk of the trial court. Appeal is perfected when notice of appeal is filed within 30 (20 by the State) days after the day sentence is imposed or suspended in open court, or the day an appealable order is signed by the trial judge; except, if a motion for new trial has been timely filed, notice of appeal must be filed within 90 days after the day sentence is imposed or suspended in open court. The Clerk must note upon the copies of the notice the number of the cause and the date that notice was filed and immediately send one copy to the Clerk of the appropriate court of appeals and one copy to the attorney for the State. *TRAP 26.2*

A notice of appeal may be withdrawn at any time prior to the decision of the court of appeals. The withdrawal must be in writing, signed by the defendant and his or her attorney and filed in duplicate with the Clerk of the court of appeals, who must immediately forward the duplicate copy to the Clerk of the trial court. *TRAP 42.2*

Formal bills of exception must be filed in the trial court within 60 days after the sentence is pronounced or suspended in open court or if a timely motion for new trial has been filed, within 90 days after sentence is pronounced or suspended in open court. When formal bills of exception are filed, they should be included in the Clerk's record or in a supplemental Clerk's record. *TRAP 33.2(e)*

When a mandate is returned on the appeal, the Clerk must file it with the papers of the case and note it upon the docket. The Clerk must also send an acknowledgment of the mandate's receipt to the appellate Clerk. *TRAP 18.1*
TRAP 18.4

If the defendant in a case on appeal has been on bail, upon receipt of the mandate affirming the judgment, the Clerk must issue a capias for the arrest of the defendant for the execution of the sentence of the court. The capias (commitment) must include a recitation of the conviction, which sets forth the offense and judgment and sentence of the court, the appeal and affirmation of the judgment and the filing of the capias. The capias commands the sheriff to arrest the defendant. The sheriff must notify the Clerk when the mandate has been carried out. *TRAP 51.2*

5. Format of the Clerk's Record

The format and the contents of the Clerk's record are critical. The form of the Clerk's record in criminal cases is prescribed by the Court of Criminal Appeals in its "Order Directing the Form of the Appellate Record in Criminal Cases." (See [Form III-1](#)). A copy of

the order is set out in Appendix C of the Texas Rules of Appellate Procedure.

Q. EXPUNCTION OF CRIMINAL RECORDS

1. Right to Expunction

Code of Criminal Procedure Chapter 55 contains the provisions relating to expunction of criminal records. Expunction proceedings are not filed with the County Clerk. If a County Clerk receives an Order regarding an expunction, the Clerk must obey and comply with the Order.

R. ORDER OF NONDISCLOSURE

An order of nondisclosure is a court order prohibiting public entities, including courts, clerks of the court, law enforcement, and prosecutorial offices from disclosing certain criminal records. Whether a person may file a “petition for nondisclosure” is governed primarily by Government Code Chapter 411, Subchapter E-1. Model Petition of Nondisclosure and Model Order of Nondisclosure forms are available at <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure/>.

*Gov’t Code
Ch. 411, Sub. E-1*

There are several types of nondisclosure. At a minimum, however, a person must satisfy three basic requirements to be eligible for an order of nondisclosure. A person is NOT eligible for an order of nondisclosure if:

Sec. 411.074

- The offense for which the order of nondisclosure is requested, or any other offense for which the person has ever been convicted of or placed on deferred adjudication for, is one of the following:
 - an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62;
 - an offense under Texas Penal Code §20.04 (aggravated kidnapping), regardless of whether the offense is a reportable conviction or adjudication for purposes of Code of Criminal Procedure Chapter 62;
 - an offense under any of the following:
 - Penal Code §19.02 (murder);
 - Penal Code §19.03 (capital murder);
 - Penal Code §20A.02 (trafficking of persons);
 - Penal Code §20A.03 (continuous trafficking of persons);
 - Penal Code §22.04 (injury to a child, elderly individual, or disabled individual);
 - Penal Code §22.041 (abandoning or endangering a child);
 - Penal Code §25.07 (violation of court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case);

- Penal Code §25.072 (repeated violation of certain court orders or conditions of bond in family violence, sexual assault or abuse, stalking, or trafficking case); or
 - Penal Code §42.072 (stalking); or
 - Any other offense involving family violence, as defined by Family Code §71.004;
- The court made an affirmative finding that the offense for which the order of nondisclosure is requested involved family violence, as defined by Family Code §71.004; or
- During the period after the person was convicted or placed on probation or deferred adjudication for the offense for which the order of nondisclosure is requested, and during any applicable waiting period following completion of the sentence, probation, or deferred adjudication, the person was convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only.

Note: *There are waiting periods for some of the orders of nondisclosure.*

When a person seeks an order of nondisclosure of criminal history record information, the person must file a petition for nondisclosure with the clerk of the court that sentenced the person or placed the person on community supervision or deferred adjudication community supervision. The clerk will send the petition to the judge, and either the judge or the clerk will send a copy of the petition to the attorney representing the state. The petitioner is required to pay the filing fees for a regular civil lawsuit, as well as a special \$28 fee at the time the petition is filed. The clerk must remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected. Within 15 business days after the date an order of nondisclosure of criminal history record information is issued by the judge, the Clerk must send all relevant criminal history record information contained in the order or a copy of the order by secure electronic mail, electronic transmission, facsimile transmission, or otherwise by certified mail (return receipt requested) to:

*Gov't Code
Sec. 411.0745*

Sec. 411.077

Department of Public Safety
Crime Records Service
5805 N. Lamar Blvd.
P.O. Box 4087
Austin, Texas 78773-0252

Sec. 411.075

No additional charge should be assessed for sending a copy of the order to DPS. The \$28 fee covers this charge.

The clerk of the court issuing an order of nondisclosure of criminal history record information must seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk sends all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety.

Sec. 411.076

CHAPTER 4

SUPPORTING THE CIVIL COURTS

A. INTRODUCTION TO THE CIVIL COURTS

Civil cases do not deal with criminal actions, but rather with disputes between private parties. A *civil case* can be defined as a personal action instituted to compel payment or the performance of some other act. The end purpose of most civil cases is to obtain a judgment for money, but judgment is sometimes sought to either compel or enjoin some action. The various courts in Texas have overlapping jurisdiction in civil cases. The exact jurisdictional parameters of a given type of court may vary widely from one location to another.

Where exclusive jurisdiction is not in the district or county court, the justice of the peace courts have original jurisdiction of civil cases in which the amount in controversy is not more than \$20,000. *Gov't Code*
Sec. 27.031(a)(1)

Constitutional county courts have concurrent jurisdiction with justice courts in civil cases where the amount in controversy is greater than \$200 but no more than \$20,000. *Sec. 26.042(a)*

Constitutional county courts have concurrent jurisdiction with the district court in civil cases where the amount in controversy is between \$500 and \$5,000. *Sec. 26.042(d)*

Clerks should be familiar with the statutory provisions in Government Code Chapter 25, which create the various statutory county courts and delineate their jurisdiction. Statutory county courts generally exercise the same civil jurisdiction as county courts, except that a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court also has concurrent jurisdiction with the district court in civil cases where the amount in controversy is between \$500 and \$250,000. Statutory county courts also exercise jurisdiction over appeals of final rulings of the Texas Workers' Compensation Commission, regardless of the amount in controversy. *Ch. 25*
Sec. 25.0003

District courts and statutory county courts generally share concurrent jurisdiction over civil cases when the amount in controversy is more than \$500 and less than \$250,000 but these jurisdictional boundaries are not as clear as they might seem. *Sec. 24.007(b)*

In certain instances, specific enabling provisions in Government Code Chapter 25 set county court at law jurisdiction above the general \$250,000 ceiling. (See, for example, Government Code §25.0332(a)(2), where the Cameron County Courts at Law have concurrent jurisdiction with the district court in civil cases where the amount in controversy is between \$500 and \$1 million, excluding interest.) And even though the jurisdictional amount-in-controversy floor for district courts is \$500, questions linger over whether the jurisdictional floor is \$200 or \$500. Some courts, pointing to Article 5, Section 8 of the Texas Constitution, set the district court floor at \$200. Other courts follow the \$500 district court floor laid out by Government Code §24.007(b). *Chapa v. Spivey,*
999 S.W.2d 833
(Tex.App.—Tyler
1999, no pet.)

Tex. Constitution
Art. 5, Sec. 8

Where district court and statutory county civil jurisdiction overlap, the plaintiff has the option to file in any court with jurisdiction.

A statutory county court has — concurrent with the county court — the probate jurisdiction provided by general law for county courts; however, in a county that has a statutory probate court, that statutory probate court is the only county court created by statute with probate jurisdiction.

*Gov't Code
Sec. 25.0003(d), (e)*

A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Texas Estates Code.

Sec. 25.0003(f)

NOTE: Regarding county courts, the term "amount in controversy" encompasses attorney fees but not court costs or interest.

*AG Op.
JM-409 (1985)*

Constitutional county courts do not have jurisdiction in civil cases of the following types no matter what the dollar amount in controversy:

*Gov't Code
Sec. 26.043*

- Damages for slander or defamation of character
- Suits for the enforcement of a lien on land
- Suits in behalf of the state for escheat
- Suits for divorce
- Suits for the forfeiture of the charters of corporations
- Suits for the trial of the right to property valued at \$500 or more and levied under a writ of execution, sequestration, or attachment
- Eminent domain cases
- Suits for recovery of land

Conversely, some statutory county courts do have jurisdiction over some of the above-listed matters. (For example, the Bee County Court at Law has concurrent jurisdiction with the district court in family law cases.)

Sec. 25.0152

Both constitutional county courts and statutory county courts have appellate jurisdiction over civil cases originally heard in justice courts in which the judgment appealed from or the amount in controversy exceeds \$250.

Sec. 26.042(e)

B. COSTS ON APPEAL TO COUNTY COURT

If the appellant fails to pay the costs on appeal from a judgment of a justice of the peace or small claims court within 20 days after being notified to do so by the County Clerk, the appeal shall be deemed not perfected and the County Clerk shall return all papers in the cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted. See [Form IV-1](#).

TRCP 143a

NOTE: Two appellate courts have held that the method of service of the notice of costs is governed by Texas Rules of Civil Procedure (TRCP), which provides that notice is to be sent to an appellant or his attorney in person or by registered or certified mail, unless the court directs the County Clerk to send notice by regular mail. See DePue v. Henderson, 801 SW2d 178 (Tex. App. – Houston [14th

Dist. J 1990, no writ); Farmer v. McGee Serv., 704 SW2d 927 (Tex. App. – Tyler 1986, no writ).

When an appeal has been perfected from the justice court, the judge must immediately send a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case to the County Clerk. *TRCP 506.2*

C. FEES

1. Fees Generally

The statutes generally specifying the fees of the County Clerk are set out below.

SUBCHAPTER C. FEES OF CLERK OF COUNTY COURT

Sec. 118.051. CLERICAL DUTIES. Except as provided by §118.067, the fees listed in this subchapter for county civil court dockets under §118.052(1) and county probate court dockets under §118.052(2) are fees for all clerical duties performed in connection with the docket, including: *Loc. Gov't Code Sec. 118.051*

1. filing, registering or recording, docketing, and taxing costs for an application, will, complaint, petition, return, document, or proceeding;
2. issuing and recording the return of a citation, notice, subpoena, commission to take depositions, execution while the docket is still open (civil docket), garnishment before judgment (civil docket), order, writ, process, or any other document authorized or required to be issued by the Clerk on which a return must be recorded;
3. attendances in court as Clerk of the court;
4. impaneling a jury (civil docket);
5. swearing witnesses;
6. approving bonds involved in court action; and
7. administering oaths.

Sec. 118.052. FEE SCHEDULE. Each Clerk of a county court shall collect the following fees for services rendered to any person: *Sec. 118.052*

(1) CIVIL COURT ACTIONS

(a) Filing of Original Action:

- (i) Garnishment after judgment..... \$15.00
- (ii) All others..... \$40.00

Sec. 118.053

NOTE: A County Clerk is authorized to assess a fee of \$40 for condemnation proceedings filed in county court, but such fee is not due until either an objection is filed to the condemnation or a judgment is entered.

AG Op. DM-26 (1991)

NOTE: *The State is exempt from advance payment of filing fees. However, the State must ultimately pay filing fees and other court costs if the State is liable for costs of court. If the state prevails in a lawsuit, the opposing party shall pay the entire amount of any filing fee attributed to the state, including any amount exempted under Civil Practice & Remedies Code §8.01.*

*Civ. Prac. & Rem Code
Sec. 6.001
Sec. 8.02*

*AG Op.
DM-459 (1997)*

(b) Filing of Action Other Than Original.....\$30.00

*Loc. Gov't Code
Sec. 118.054*

(c) Services Rendered After Judgment in the Original Action:

Sec. 118.0545

(i) Abstract of Judgment\$5.00

(ii) Execution, order of sale, writ, or other process..... \$5.00

(2) PROBATE COURT ACTIONS

(a) Probate Original Action:

Sec. 118.055

(i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title\$40.00

(ii) Community survivors\$40.00

(iii) Small estates\$40.00

(iv) Declarations of heirship.....\$40.00

(v) Mental Health or chemical dependency services\$40.00

(vi) Additional, special fee\$5.00

NOTE: *The additional, special fee mentioned directly above is to be paid for each original action filed in a probate court and is in addition to all other fees.*

Sec. 118.064

The fee is deposited in the county's general fund and is usually used for the continuing education of the judge and staff of the probate courts.

(b) Services in Pending Probate Action:

Sec. 118.056

(i) Filing an inventory and appraisal as provided by §118.056(d)\$25.00

(ii) Approving and recording bond.....\$3.00

(iii) Administering Oath\$2.00

(iv) Filing annual or final account of estate.....	\$25.00	
(v) Filing application for sale of real or personal property \$25.00		
(vi) Filing annual or final report of guardian of a person \$10.00		
(vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages	\$25.00	
(c) Adverse Probate Action	\$40.00	<i>Loc. Gov't Code Sec. 118.057</i>
(d) Claim Against Estate.....	\$10.00	<i>Sec. 118.058</i>
<i>NOTE: The fees for "Services in Pending Probate Action" under Local Government Code §118.052(2) for services in an action in an open probate docket rendered after the filing of an order approving the inventory and appraisement or after the 120th day after the initial filing of the action, whichever occurs first.</i>		<i>Sec. 118.056</i>
(e) Supplemental Court-Initiated Guardianship Fee.....	\$20.00	<i>Sec. 118.067</i>
(f) Supplemental Public Probate Admin. Fee for Counties with an Appointed a Public Probate Administrator	\$10.00	<i>Sec. 118.068</i>
(3) OTHER FEES		
(a) Issuing Document:		
original document and one copy	\$4.00	
each additional set of an original and one copy	\$4.00	
(b) Certified Papers:		
for the Clerk's certificate.....	\$5.00	<i>Sec. 118.060</i>
plus a fee per page or part of a page of	\$1.00	
(c) Noncertified Papers:		
for each page or part of a page.....	\$1.00	<i>Sec. 118.0605</i>
(d) Letters Testamentary, Letter of Guardianship, Letter of Admin- istration, or Abstract of Judgment		
	\$2.00	<i>Sec. 118.061</i>
(e) Deposit and Safekeeping of Wills.....		
	\$5.00	<i>Sec. 118.062</i>
(f) Mail Service of Process		
	same as sheriff	<i>Sec. 118.063</i>
(g) Records Management and Preservation Fee		
	\$5.00	<i>Sec. 118.0546</i>

(h) Records Technology and Infrastructure Fee if authorized by the Commissioners Court of the County \$2.00

*Loc. Gov't Code
Sec. 118.026*

Sec. 118.053. FILING OF ORIGINAL ACTION.

Sec. 118.053

- (a) The fee for "Filing of Original Action" under §118.052(1) is for all clerical duties in connection with an original action filed in a county civil court.
- (b) The fee is charged of the plaintiff or appellant and is due at the time the cause is filed. Only one fee is due in each action.
- (c) The fee does not apply to actions for which another fee is prescribed by §118.052(2) or 118.052(3).
- (d) "Original action" includes an appeal from a justice of the peace or a corporation court and a transfer of an action from another jurisdiction.

NOTE: The \$40 initial filing fee covers all clerical services involved in handling the case. These clerical services include the receiving, filing, indexing, and recording of all instruments and the issuing, including the recording of the return thereon, of all citations, notices, subpoenas, etc.

*AG Op.
JM-533 (1986)
JM-727 (1987)
JM-1229 (1990)*

NOTE: A county or district attorney is not exempted from filing a bond to take out an extraordinary writ unless the commissioners court of the county approves the exemption in an action brought in behalf of the county or unless the attorney general approves the exemption in an action brought in behalf of the state.

*Civ. Prac. & Rem.
Code
Sec. 6.001(c)*

Sec. 118.054. FILING OF ACTION OTHER THAN ORIGINAL.

*Loc. Gov't Code
Sec. 118.054*

- (a) The fee for "Filing of Action Other than Original" under §118.052(1) is for filing of each interpleading, cross action, or action other than the original action.
- (b) The fee is charged of the party initiating the action and is due at the time the action is initiated. Only one fee is due for each such action.
- (c) The fee does not apply to actions for which another fee is prescribed by §§118.052(2) or 118.052(3).

Sec. 118.0545. SERVICES RENDERED AFTER JUDGMENT IN ORIGINAL ACTION.

Sec. 118.0545

- (a) The fees for "Services Rendered After Judgment in Original Action" under §118.052(1) are for services rendered after judgment in an original action filed in a county civil court.
- (b) The fee for an "Abstract of judgment" under §118.052(1) is for issuing an abstract of judgment.

- (c) The fee for an "Execution, order of sale, writ, or other process" under §118.052(a) is for issuing and recording the return on any of those documents. The fee applies only to a writ or process for the issuance of which another fee is no provided by this subchapter.
- (d) The fee is charged of the party requesting the service and is due at the time the service is requested.
- (e) In this section, "original action" has the meaning assigned by §118.053.

Sec. 118.0546. RECORDS MANAGEMENT AND PRESERVATION FEE - CIVIL CASES. *Loc. Gov't Code
Sec. 118.0546*

- (a) The fee for Records Management and Preservation under §118.052 is for the records management and preservation services performed by the county as required by Chapter 203.
- (b) The fee shall be assessed as cost and must be paid at the time of filing any civil case or ancillary pleading thereto.
- (c) The fee shall be placed in a special fund to be called the records management and preservation fund.
- (d) The fee shall be used only for records management and preservation purposes in the county. No expenditure may be made from this fund without prior approval of the commissioners court.

NOTE: Local Government Code §118.0645(b) also requires the assessment of a records management and preservation fee at the time of filing any probate case (as opposed to other civil cases) and adverse probate action.

Sec. 118.059. ISSUING DOCUMENT.

Sec. 118.059

- (a) The fee for "Issuing Document" under §118.052(3) is for issuing an original document and one copy and includes recording the return of the document.
- (b) The fee for issuing for the same action at the same time more than one set of an original and one copy of the same document includes recording the return of the document. The fee must be paid at the time the order is placed.
- (c) In this section, "document" includes a citation, notice, commission to take depositions, execution, order, writ, process, or other instrument or paper authorized or required to be issued by the Clerk.

Sec. 118.060. CERTIFIED PAPERS, NO RETURN REQUIRED.

Sec. 118.060

- (a) The fees for "Certified Papers" under §118.052(3) are for the County Clerk's certificate that shall be placed on each page or part of a page, and a fee for copying each page or part of a page, of a notice, statement, transcript, or

other document authorized or required to be issued by the Clerk.

- (b) The fee must be paid at the time the order is placed.

NOTE: The fee generally includes all costs associated with locating and providing copies.

*AG Op.
JC-0292 (2000)*

Sec. 118.0605. NONCERTIFIED PAPERS.

*Loc. Gov't Code
Sec. 118.0605*

- (a) The fee for "Noncertified Papers" under §118.052(3) is for issuing a noncertified copy of each page or part of a page of a document.
- (b) The fee must be paid at the time the order is placed.

Sec. 118.061. LETTERS AND ABSTRACTS. The fee for Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment under §118.052(3) is for the issuing of any of those documents.

Sec. 118.061

Sec. 118.062. DEPOSIT AND SAFEKEEPING OF WILLS. The fee for "Deposit and Safekeeping of Wills" under §118.052(3) is for receiving and keeping wills deposited for safekeeping. The fee must be paid at the time the will is deposited with the county clerk.

Sec. 118.062

Sec. 118.063. MAIL SERVICE OF PROCESS. The fee for "Mail Service of Process" under §118.052(3) is for the Clerk's service of process by certified or registered mail. The fee is the same amount that sheriffs and constables are authorized to charge under §118.131.

Sec. 118.063

Sec. 118.065. FREE ACCESS TO RECORDS.

Sec. 118.065

- (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.
- (b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

*AG Op.
DM-30 (1991)*

Sec. 118.066. PROHIBITED FEES. A County Clerk is not entitled to a fee for:

*Loc. Gov't Code
Sec. 118.066*

1. the examination of a paper or record in the Clerk's office;
2. filing any process or document the Clerk issues that is returned to court;
3. a motion or judgment on a motion for security for costs; or,
4. taking or approving a bond for costs.

2. Fees Collected in Some Cases, Depending on the Governing Body of the County

Alternative Dispute Resolution System n.t.e. \$15.00 *Civ. Prac. & Rem. Code Sec. 152.004*
(not collected in suits for delinquent taxes, condemnation proceedings, and mental health cases)

Appellate Judicial System Fund: *Gov't Code Ch. 22, Subch. C*
for counties in the 1st, 4th, 5th, 13th, & 14th Districts n.t.e. \$5.00
for counties in 2d, 3d, 6th, 7th, 8th, 9th, 11th, & 12th Districts \$5.00

Law Library n.t.e. \$35.00 *Loc. Gov't. Code Sec. 323.023*

Contingency Fund for Self-Insurance n.t.e. \$5.00 *Sec. 82.003(c)*

Additional Filing Fee for Judicial Fund:

Statutory County Court Fee \$40.00 *Gov't Code Sec. 51.702(a)*

Constitutional County Court Fee \$40.00 *Sec. 51.703(a)*
(in counties where the judge is entitled to a state salary supplement)

Statutory Probate Court Fee \$40.00 *Sec. 51.704(a)*

Clerks cannot collect both a statutory county court fee and a constitutional county court fee. Clerks also may not collect both a probate fee and the statutory county court fee. *Sec. 51.703(f) Sec. 51.704(i)*

NOTE: Additional filing fees are allowed in Dallas, Bexar, and Hays Counties *Sec. 51.705 - Sec. 51.707*

Fees for Services by Offices of Sheriff and Constable reasonable *Loc. Gov't Code Sec. 118.131(a)*

Courthouse Security Fee n.t.e. \$5.00 *Sec. 291.008(a)*

The commissioners court may set a fee not to exceed \$5.00 for courthouse security to be collected by the Clerk at the time of filing in each civil case filed in a county court or a county court at law, as well as in a statutory probate court or another statutory court exercising the jurisdiction of a probate court. *AG Op. DM-283 (1994)*

In any civil case brought by the state or a political subdivision of the state in a county court or a county court at law in a county in which the commissioners court has adopted a courthouse security fee in which the state or political subdivision is the prevailing party, the amount of that fee shall be taxed and collected as a cost of court against each nonprevailing party. *Loc. Gov't. Code Sec. 291.008(b)*

NOTE: The not-to-exceed \$5.00 security fee is cumulative of other filing fees that the Clerk collects as costs of court. If the commissioners court chooses to impose a security fee, it may not delegate to the Clerk of the court the responsibility of setting the amount of the fee. *AG Op. DM-283 (1994)*

If a commissioners court sets a courthouse security fee not to exceed \$5.00 under Local Government Code §291.008(a), the County Clerk must collect a fee of \$1.00 for filing any document not subject to the security fee. The county is not liable for the costs. The County Clerk must collect this fee. *Loc. Gov't Code Sec. 291.008(d)*

NOTE: The \$1.00 security fee levied on a document not subject to the not-to-exceed \$5.00 security fee is cumulative of any other fees that a Clerk collects upon the filing of the document *AG Op. DM-283 (1994)*

NOTE: A County Clerk may collect the \$1.00 security fee only on documents filed with the County Clerk as County Clerk. Local registrars cannot collect the \$1.00 security fee, and thus the County Clerk may not collect the \$1.00 security fee on birth, death, or fetal death records filed with the County Clerk in his or her capacity as local registrar. To the extent that Attorney General Opinion DM-283 is inconsistent with DM-371, it is modified. *DM-371 (1995)*

3. Electronic Filing Fee

In addition to other fees authorized or required by law, the Clerk of a county court, statutory county court, or statutory probate court must collect a \$30 fee on the filing of *any civil action or proceeding requiring a filing fee*, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee. A court may waive payment of the fee for an individual determined indigent by the court. *Gov't Code Sec. 51.851*

This fee must be collected in the same manner as other fees in the case, and the clerk collecting the fee must deposit the appropriate local treasury and remit the fee to the comptroller, who will deposit the fee to the credit of the statewide electronic filing system fund described in Local Government Code §51.852.

4. Additional Filing Fee for Basic Civil Legal Services for Indigents

The Clerk of a statutory or constitutional county court shall collect a fee of \$10.00 on the filing of any civil action or proceeding requiring a filing fee. *Loc. Gov't Code Sec. 133.153*

5. Family Protection Fee

The commissioners court shall adopt a family protection fee in an amount not to exceed \$15.00. The Clerk must collect the fee at the time a suit for dissolution of marriage is filed. The fee cannot be collected from a person protected by a protective order. The family protection fee must be deposited the county family protection account, which may be used only to support local service providers offering family violence-related services. *Gov't Code Sec. 51.961*

6. Jury Fees

The Clerk of a county court or statutory county court shall collect a \$40 jury fee for each civil case in which a person requests a jury trial. The \$40 fee includes the \$5 jury fee required by TRCP Rule 216. At least \$5 of the fee must be paid not less than 30 days before the date set for trial; the remaining \$35 must be paid no later than 10 days before trial is *Sec. 51.604 TRCP 216*

scheduled. See also: *Universal Printing Co. v. Premier Victorian Homes, Inc.*, 73 S.W.3d 283 (Tex. App.—Houston [1st Dist. 2001], pet. denied).

7. Fee for Support of the Judiciary

The Clerk of a county court or constitutional court must collect a \$42 fee on the filing of a civil suit to be used to court-related purposes for the support of the judiciary. *Loc. Gov't Code Sec. 133.154*

8. Court Reporter Fee

The Clerk of a court that has an official court reporter must collect a court reporter service fee of \$15 as a court cost in each civil case filed with the Clerk to maintain a court reporter who is available for assignment in the court. This fee is not to be collected in suits for delinquent taxes. *Gov't Code Sec. 51.601(a), (e)*

9. Expungement Suit Reimbursement Fee

The court Clerk shall charge the applicant for an expungement a reimbursement fee of \$30 when the offense sought to be expunged is (a) a violation of the Alcoholic Beverage Code by a minor or (b) a violation of the law prohibiting tobacco or e-cigarette possession by a minor. *Alc. Bev. Code Sec. 106.12(e)*
Health & Safety Code Sec. 161.255(b)

10. Fees for Administration of Registry Funds

To compensate the county for expenses incurred in handling registry funds that have not earned interest, including funds in a special or separate account, the Clerk must, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed \$50. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction provided by this section. *Loc. Gov't. Code Sec. 117.055*

To compensate the county for expenses incurred in handling registry funds that have been invested the Clerk shall, at the time of withdrawal, deduct an amount equal to 10% of total interest earned on the account. *Sec. 117.054*

NOTE: Interest earned on trust funds is owned by the owner of the principal. See Sellers v. Harris Co., 483 S.W.2d 242 (Tex. 1972).

11. Interpreter Fee

The Clerk shall collect a \$3.00 fee as a court cost in each civil case in which an interpreter is used. The fee is to be deposited to the credit of the county's general fund. *Civ. Prac. & Rem. Code Sec. 21.051*

12. Supplemental Court-Initiated Guardianship Fee

This \$20.00 fee, collected under Local Government Code §118.052(2)(E), supports the judiciary in guardianships initiated under Estates Code Chapter 1102. The fees must be deposited in a court-initiated guardianship fund. Fees are in addition to any other fees due and are charged for all original and adverse probate actions described by §§118.055 or 118.057 for which a fee is already due under §118.052. *Loc. Gov't Code Sec. 118.067*

13. Judicial and Court Personnel Training Fee

In addition to other fees authorized or required by law, the clerk of a county court, statutory county court, statutory probate court, or justice court must collect a \$5 fee on the filing of any civil action or proceedings requiring a fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee. A court may waive this fee for an individual determined indigent by the court.

*Gov't Code
Sec. 51.971*

This fee must be collected in the same manner as other fees in the case, and the clerk collecting the fee must deposit the appropriate local treasury and remit the fee to the comptroller, who will deposit the fee to the credit of the judicial and court personnel training fund established under Local Government Code §56.001.

14. How Fees and Costs May be Paid

Payment of fines, fees, or court costs may be made by cash, check, credit card or electronic means, as authorized by the commissioners court. The Clerk may collect a reimbursement fee for processing a payment by electronic means if such a fee has been authorized by the commissioners court. The commissioners court may also authorize acceptance of payment by electronic means without requiring collection of a reimbursement fee. The reimbursement fee for payment by electronic means is limited to not more than 5% of the amount of the transaction or at a flat rate of \$5 for each transaction

*Loc. Gov't Code
Sec. 132.002(d)*

Sec. 132.002(e)

Sec. 132.003(c)

In addition to the reimbursement fee, the Clerk may also collect a reimbursement fee equal to the amount of the transaction fee charged to the county by the credit card vendor providing the services. The limitation on the reimbursement fee for processing a payment by credit card does not apply to a reimbursement fee collected in connection with vendor services.

Sec. 132.003(d)

Fees, fines, and court costs may also be paid through the Internet. A reasonable handling fee may be charged for this service, only if the commissioners court determines that providing such service would not be feasible without the imposition of a charge. If a handling fee is assessed, it may be in an amount designed to recover actual costs of providing the service.

Sec. 132.007

15. When Payment of Costs Not Required

A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided in Texas Rules of Civil Procedure Rule (TRCP) Rule 145. The Statement, which must either use the form approved by the Supreme Court or include the information required by the Court-approved form, must say that the declarant cannot afford to pay costs.

TRCP 145

NOTE: The commentary to the 2016 change to TRCP Rule 145 stresses that “the issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food.”

“Costs” mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record. The Statement must be either sworn before a notary or made under penalty of perjury.

The court may order the party filing the Statement to pay costs notwithstanding the Statement on the motion by the Clerk or a party, but only if the motion contains sworn evidence (not merely on information or belief) (1) that the Statement was materially false when made or (2) that because of changed circumstances, the Statement is no longer true in material aspects. A similar motion can be made by the court reporter or on the court’s own motion.

The judgment cannot require the party filing the Statement to pay costs and a provision in the judgment to do so is void unless the court has issued an order under TRCP Rule 145(f), or the party filing the Statement has obtained a monetary recovery and the court orders the recovery be applied toward payment of costs.

16. Uncollectible Fees

The Clerk may request the court in which a court cost or fee was imposed on a party in a civil case to make a finding that the cost or fee is uncollectible if the cost or fee has been unpaid for at least 15 years. This provision does not apply to a court cost or fee imposed by the Supreme Court, the Court of Criminal Appeals, or a court of appeals. *Gov’t Code Sec. 51.609*

On a finding by the court that the cost of fee is uncollectible, the court may order the Clerk to designate the cost or fee as uncollectible in the fee record, and the Clerk must attach a copy of the order to the fee record.

D. FILING A CIVIL CASE

The initiation of a civil suit is always at the option of the plaintiff. There are no indictments or complaints in civil cases. The plaintiff merely files an original petition with the Clerk. The petition sets out exactly who the defendant(s) is and what actions have allegedly been performed by the defendant(s) which caused damage to the plaintiff. *TRCP 45*

The attorneys for the parties prepare all documents in a civil case except for the Clerk’s processes. The role of the Clerk is to file these documents, make them available to the court as requested, and inform the parties of important actions in the case by issuing appropriate processes. *TRCP 99*

1. Initial Filing Procedures

A civil case may not be heard in county court unless it has been officially filed in the County Clerk’s office. In constitutional county courts, statutory county courts, and statutory probate courts, attorneys must electronically file (“e-file”) all civil case documents. Unrepresented parties may e-file civil case documents but are not required to do so. For more information on the e-file process, see below. For more information on eFileTexas (the statewide e-filing system), please visit efiletexas.gov. *TRCP 22 TRCP 21(f)*

The following initial procedures must be executed before proceedings can begin:

- The plaintiff's attorney must file the plaintiff's original petition with the Clerk. There should be one copy of the petition for the Clerk and one for each defendant named who is to receive notice of the suit. *TRCP 21(a)*

- The original petition is file-marked by the Clerk showing the date and time of filing. Some Clerks also file-mark all copies. *TRCP 24*

- All fees for the Clerk and other county officials are collected and a receipt is issued.

- The petition is assigned a unique and sequential identifying number for filing purposes. This number is stamped or written on the petition and on all subsequent instruments as well. *TRCP 23*

- Next, the Clerk prepares the court docket sheet which is placed in the pending docket of the court assigned to hear the case (see "Dockets," below). *TRCP 26*

- The case is now entered into the civil file docket (also called Clerk's file docket, fee docket, or fee book (see "Dockets," below). *TRCP 25*

- Both plaintiff's name(s) and defendant's name(s) are indexed in the index to civil minutes (see "Index to the Civil Minutes," below).

- A permanent case folder should be prepared in which to store all instruments filed (see "Dockets," below).

- A citation is issued to each defendant as requested by the plaintiff. One copy of the original petition accompanies each citation (see "Issuance of Processes," below). The citations are either given to the sheriff for his execution and return or returned to the attorney, depending on the attorney's instructions. In accordance with TRCP Rule 103, service may be made by certified mail by the County Clerk. *TRCP 103*

- The file number of the case is marked on the case folder, the original petition is put into the jacket, and the jacket is filed in numerical sequence with the other civil cases.

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

Each party who has appeared or answered in a civil action must provide the Clerk with written notice of the party's name and current residence or business address. The notice must be provided at the time the initial proceeding is filed, or not later than the 7th day after the Clerk requests the information. If the address changes during the course of the action, the party must provide written notice to the Clerk. Any party who fails to comply may be

*Civ. Prac. & Rem.
Code
Sec.30.015*

assessed a fine of \$50 by the trial court.

2. E-Filing: Filing and Service

Unless an exception exists, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required. For good cause, a court may permit a party to file other documents in paper form in a particular case.

TRCP 21(f)(1)

TRCP 21(f)(4)(C)

There are several exceptions to the e-filing mandate:

- Juvenile cases under Family Code Title 3, as well as truancy cases under Family Code Title 3A, are not subject to the e-filing mandate.
- Wills are not required to be filed electronically.
- Documents filed under seal or presented to the court in camera, and documents to which access is otherwise restricted by law or court order, **CANNOT** be e-filed.

TRCP 21(f)(1)

TRCP 21(f)(4)(A)

TRCP 21(f)(4)(B)

TRCP 21(f)(3)

Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

TRCP 21(f)(2)

TRCP 21(f)(5)

Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except: (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and (B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

TRCP 21(f)(6)

If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes: (A) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or (B) an electronic image or scanned image of the signature.

TRCP 21(f)(7)

An electronically filed document must: (A) be in text-searchable portable document format (PDF); (B) be directly converted to PDF rather than scanned, if possible; (C) not be locked; and (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

TRCP 21(f)(8)

TRCP 21(f)(9)

The clerk may send notices, orders, or other communications about the case to the

party electronically. A court seal may be electronic.

TRCP 21(f)(10)

The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

TRCP 21(f)(11)

When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.

TRCP 21(f)(12)

TRCP 21(f)(13)

The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

3. E-Filing: Method of Service

A document filed electronically under TRCP Rule 21 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

TRCP 21a(a)

Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

TRCP 21a(b)(3)

E. SERVICE OF PROCESS - MAIL - COSTS AND FEES

1. Assessment of Cost of Postage for Service of Process by Mail

If a public official is required or permitted by law to serve any legal process by mail, including process in suits for delinquent taxes, the official may collect advance payment for the actual cost of the postage required to serve or deliver the process, or the official may assess the expense of postage as costs. The authorized charges are in addition to the fees allowed by law for other services performed by the official.

Civ. Prac. & Rem. Code
Sec. 17.025

For such other duties prescribed or authorized by statute for which a fee is not prescribed by Local Government Code Chapter 118, Subchapter B, reasonable fees must be charged by the Clerk.

Loc. Gov't. Code
Sec. 118.011(c)

F. FOREIGN JUDGMENTS

1. Uniform Enforcement of Foreign Judgments Act (Enforcement of Judgments of Other States)

Civ. Prac. & Rem. Code
Ch. 35

A foreign judgment is an order of a court of the United States or of another state which is entitled to full faith and credit in the courts of this state.

Sec. 35.001

The Clerk shall file a foreign judgment, which has been **authenticated**, in the same manner as a judgment rendered by a court of competent jurisdiction of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings as a judgment of a comparable court of this state. *Civ. Prac. & Rem. Code*
Sec. 35.003

At the time a foreign judgment is filed, the judgment creditor (or the creditor's attorney) must file with the Clerk an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. The judgment creditor (or the creditor's attorney) must promptly mail a notice of the filing to the judgment debtor at the address provided for the judgment debtor under §35.004(a) and file proof of mailing of the notice with the Clerk. On receipt of proof of mailing under §35.004(b), the Clerk must note the mailing in the docket. *See* [Form IV-2](#). *Sec. 35.004(a)*
Sec. 35.004(b)
Sec. 35.004(d)

Upon a showing by the judgment debtor that (1) an appeal is pending or that the time for taking an appeal has not expired; and (2) that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the foreign jurisdiction, the court will stay enforcement of the foreign judgment. *Sec. 35.006*

The Clerk shall collect the same amount as required for filing suit and for other enforcement proceedings in this state from the person filing the foreign judgment. *Sec. 35.007*

2. Uniform Foreign-Country Money Judgments Recognition Act (Enforcement of Judgments of Other Countries)

Ch. 36A

A "foreign-country judgment" means a judgment of a foreign country granting or denying a sum of money other than a judgment for: 1) taxes, a fine, or other penalty; or, 2) support in a matrimonial or family matter. A "foreign country" means a government other than the United States, a state, district, commonwealth, territory, or insular possess of the United States, or any other government initially subject to determination under the US Constitution's Full Faith and Credit Clause (Article IV, Section 1). *Sec. 36A.002*
Sec. 36A.003

If recognition of a foreign-country judgement is sought as an original matter, the issuance of recognition may be raised by filing an action seeking recognition of the judgment. If recognition is sought in a pending action, the issue of recognition may be raised by counterclaim, crossclaim, or affirmative defense. The party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment. *Sec. 36A.006*
Sec. 36A.003(c)

If the court in a proceeding under §36A.006 finds that the foreign-country judgment is entitled to recognition under Chapter 36A, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the judgment is (1) conclusive between the parties to the same extent as the judgement of a sister state entitled to full faith and credit in Texas would be conclusive, and (2) enforceable in the same manner and to the same extent as a judgment rendered in Texas. *Sec. 36A.007*

***NOTE:** Many foreign judgments are authenticated by apostilles issued under the 1961 Hague Convention. The United States became a subscriber to the treaty in 1981. An apostille certifies the authenticity of the signature, the capacity in which the person*

signing the document has acted, and identifies the seal/stamp which the document bears. Clerks with questions concerning the validity of an apostille from a foreign country may call the U.S. State Department's Authentication Office in Washington D.C. at 202-485-8000.

Upon a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay the proceedings.

*Civ. Prac. & Rem.
Code
Sec. 36A.008*

NOTE: *It is a good practice for Clerks to list on an abstract of judgment for a foreign judgment the foreign court where the judgment came from and the date it was filed in the Texas court.*

G. SUBSEQUENT FILING PROCEDURES

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

- Citations (of various types)
- Defendant's Answers
- Amended Petitions
- Amended Answers
- Injunctions
- Interventions
- Motions
- Exhibits
- Writs
- Orders
- Judgments
- Subpoenas
- Affidavits
- Verdicts
- Dismissals
- Medical Records

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

NOTE: *The \$40.00 fee for filing an original action under Local Government Code §118.053 of the is for all clerical duties, including the issuance of citations, notices, and subpoenas, performed in connection with a civil action filed in a county court. The fee is charged of the plaintiff or appellant and is due at the time the cause is filed. Only one fee is due in each action. The \$40.00 fee, however, does not apply to certain other actions, including the issuance of abstracts of judgment and the issuance and recording of returns for writs of execution, for which another fee is prescribed by Local Government Code §§118.0545, 118.052(2), and 118.052(3).*

Loc. Gov't. Code
*Sec. 118.053
Sec. 118.0545
Sec. 118.052*

Similarly, the \$30.00 fee for filing an action other than an original action under Local Government Code §118.054 is for all clerical duties, including the issuance of citations, notices and subpoenas, performed in connection with an interpleading, cross action, or action other than the original action filed in county court. The fee

*Sec. 118.054
Sec. 118.052*

is charged of the party initiating the action and is due at the time the action is initiated. The \$30.00 fee, however, does not apply to certain other actions for which another fee is prescribed by Local Government Code §§118.052(2) or 118.052(3).

Proper filing of these records should include the following procedures as the instruments are presented to the Clerk:

- File-mark the instrument to show the date and time received. *TRCP 24*
- Collect the appropriate fee and issue a receipt. *TRCP 25*
- Enter the instrument's type, date of receipt, and fee collected into the civil file docket.
- If the instrument is an order or judgment, record it in the civil minutes, and index it in the court minutes under the defendant's name (direct) and plaintiff's name (reverse). Also, make an entry in the civil file docket and judge's docket sheet.
- Place the instrument in the file folder and note the type of instrument and date filed on the outside of the folder.

H. SPECIAL FILING PROCEDURES

Certain types of cases and instruments require special processing at the time of filing. The following paragraphs explain some of these procedures.

1. Answers and Amended Petitions

The defendant's original answer is similar to the original petition in that it is the defendant's first explanation to the court of his side of the case. The defendant's answer may include several matters, such as a special appearance, motion to transfer venue, or a cross action. Quite often, a judge will ask to be notified at the time an answer is filed so that the allegations of both parties may be examined. The Clerk should examine the answer closely to determine whether the defendant is requesting a citation or other process to be issued.

Amended petitions (and also amended answers) may be filed several times in the course of a case. This occurs as new facts or parties to the case arise. Service by the Clerk is usually requested so the instrument should be examined carefully.

2. Cross Actions and Interventions

A cross action is heard as a part of the original suit and is not given a new case number. Some process will usually be requested of the Clerk in such cases. *TRCP 97*

An intervention is the entry into the case by a third party, or intervenor. The intervenor will file a petition with the Clerk and will request some sort of service. Again, the intervention is a part of the original suit. *TRCP 60*

In either case, the Clerk is entitled to a \$30 filing fee and the full cost of whatever service is requested. *Loc. Gov't Code Sec. 118.054*

3. Appeal from Department of Public Safety Ruling

Under the provisions of Transportation Code §521.308, a person may appeal an order of suspension, probated suspension, revocation, or cancellation of his or her driver's license entered by the Department of Public Safety. The proper filing of a petition of appeal will abate such an order until the trial has been completed and a final judgment has been entered. A citation is usually not issued, but the appellant must send a certified copy of the petition by certified mail to the Department of Public Safety.

*Transp. Code
Sec. 521.308*

4. Bond Forfeitures

Bond forfeiture suits are civil suits that stem from criminal cases. This suit seeks to recover the amount of the bond from the sureties when a criminal defendant fails to appear in court as promised. Bond forfeitures are filed as any other civil case except that the judgment nisi accompanies the original petition. A copy of the judgment nisi and forfeited bond, and any power of attorney attached to the forfeited bond, are attached to the citation issued to each surety. It is not necessary to give notice to the defendant unless he has furnished his address on the bond, in which event he shall be notified by mail to the address shown on the bond.

*CCP
Art. 22.01*

5. Motion to Transfer Venue

A motion to transfer venue is a request for change of venue in a case from one court to another. Clerical procedures in such a case (providing that the judge grants the plea) are as follows:

TRCP 89

- The judge issues an order for change of venue.
- The Clerk prepares (in duplicate) a certificate (or letter) of order which is a list of the titles of all instruments filed for record in the court of first jurisdiction.
- The Clerk makes a certified copy of all orders granted in the court having first jurisdiction.
- Copies of these orders plus the original of all other instruments, a bill of costs, and both copies of the certificate of order are sent to the Clerk of the court of new jurisdiction.
- The Clerk of the new court of jurisdiction should sign and return a copy of the certificate of order which is filed in the case folder. Additionally, the Clerk of the new jurisdiction should mail notification to the plaintiff or the plaintiff's attorney that transfer of the case has been completed and that the filing fee in the proper court is due and payable within thirty days after mailing of the notification.

NOTE: If a case is transferred from a county court to a district court, the County Clerk may send the documents in electronic or paper form.

*Gov't Code
Sec. 51.403*

6. Depositions and Exhibits

In the absence of local rules to the contrary, Clerks are not required to file depositions. *TRCP 191.4*

The deposition officer is required to file with the court in which the case is pending a copy of the court reporter's deposition certificate described in TRCP Rule 203.2. The Clerk of the court where the certification is filed must tax as costs the charges for preparing the original deposition transcript and making and attaching copies of all exhibits to the original deposition. *TRCP 203.2*

7. Multidistrict Litigation

Under certain circumstances, the judicial panel on multidistrict litigation (MDL Panel) may transfer civil actions involving one or more common questions of fact that are pending in the same or different county courts or district courts for consolidated pretrial proceedings (such as summary judgment) but not for trial on the merits. The MDL panel cannot transfer (1) an action brought under the Deceptive Trade Practices and Consumer Protection Act except as specifically authorized by Business and Commerce Code §17.50, or (2) an action brought under Human Resources Code Chapter 36 (Medicaid Fraud Prevention). *Gov't Code Sec. 74.162*
Sec. 74.1625

A transfer may be (1) in response to a motion by a party in a case; (2) in response to a request by a trial court or by the presiding judge of an administrative judicial region; or (3) on the MDL Panel's own initiative. Any motions, requests, responses to the motions or requests, and replies to the responses are to be filed with the MDL Panel Clerk. The MDL Panel Clerk is the Clerk of the Supreme Court of Texas. *Rules of Jud. Adm. 13.3(a)-(c)*
13.3(f)
13.2

County Clerks become involved in this process in that any party filing a motion for a case to be transferred is required to file a notice in the trial court where the motion for transfer has been filed. When a request for a transfer has been filed with the MDL Clerk by a judge, the MDL Clerk must cause a notice of this event to be filed with the trial court. *13.3(i)*

If the MDL Panel decides to transfer a case, the MDL Panel will file a notice of transfer with both the trial court and the pretrial court (*i.e.*, the court that will hear the consolidated pretrial proceedings). After notice of transfer is filed in the trial court, the trial court is generally to take no further action in the transferred case. *13.5(a)*
13.5(b)

If the trial court and the pretrial court are in the same county, then the trial court must transfer the case file to the pretrial court in accordance with the local rules governing the courts of that county. If the trial court and the pretrial court are not in the same county, then the trial court Clerk must transmit the case file to the pretrial court Clerk. *13.5(c)*

At the conclusion of the pretrial court's work, cases may or may not be remanded to the trial court. If the pretrial court has rendered a final and appealable judgment (such as a summary judgment) in a case, the case will not be remanded to the trial court. On the other hand, the pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply. When a case is remanded to the trial *13.7(c)*

court, the Clerk of the pretrial court will send the case file to the trial court. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The Clerk of the trial court must reopen the trial court file under the cause number of the trial court without assessing any new filing fees.

I. ISSUANCE OF PROCESSES

The County Clerk, as an officer of the court, issues all processes necessary for proper disposition of each civil case. Most processes will be requested or prepared by the parties to the suit and, in some cases, approval of the judge is necessary. All processes must carry the date, the signature of the Clerk, and the seal of the court to be official.

*Civ. Prac. & Rem.
Code
Sec. 17.027*

TRCP 15

1. Citation

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

*TRCP 15
TRCP 99
TRCP 38
TRCP 97*

Procedurally, the citation is issued in the following manner:

- On a blank citation form, enter the defendant's name, court of jurisdiction, date original petition was filed, case file number, style of the case, name and address of the attorney for the plaintiff (otherwise the address of the plaintiff), address of the Clerk, and the date of issuance of citation. The defendant's name is obtained from the petition. The citation must:
 - be styled "The State of Texas,"
 - be signed by the Clerk under seal of court,
 - contain the name and location of the court,
 - show the date of filing of the petition,
 - show the date of issuance of citation,
 - show the file number,
 - show the names of the parties,
 - be directed to the defendant,
 - show the name and address of attorney for plaintiff, otherwise the address of plaintiff,
 - contain the time within which these rules require the defendant to file a written answer with the Clerk who issued citation,
 - contain the address of the Clerk, and
 - notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition.

TRCP 99(b)

- The citation must include the following notice to the defendant:

TRCP 99(c)

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

- On the outside of the citation, enter the case file number, court of jurisdiction, and style of the case.
- A copy of the original petition, answer, or intervention is attached to the citation.
- Affix the seal of the court and sign the citation both inside and out.
- A separate citation is issued to each defendant named in the petition.
- The citations are given to the sheriff or a constable or other person authorized by law for service and return of the original.
- Both the issuance of the citation and its return are noted in the civil file docket and on the case jacket. After the return, the citation is sorted and filed in the case jacket.

2. Return of Service

TRCP 107

The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.

The return, together with any documents to which it is attached, must include the following information:

1. the cause number and case name;
2. the court in which the case is filed;
3. a description of what was served;
4. the date and time the process was received for service;
5. the person or entity served;
6. the address served;
7. the date of service or attempted service;
8. the manner of delivery of service or attempted service;
9. the name of the person who served or attempted to serve the process;
10. if the person named in (9) is a process server certified under order of the Supreme Court, his or her identification number and the expiration date of his or her certification; and
11. any other information required by rule or law.

When the citation was served by registered or certified mail as authorized by TRCP Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.

3. Citations for Delinquent Taxes

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

TRCP 117a

4. Citation by Publication (Newspaper and Website)

When the defendant in a case cannot be located for personal service, a citation by publication may be substituted. The plaintiff should submit an affidavit swearing that the defendant's whereabouts are unknown and that the plaintiff has attempted to obtain personal service but has been unable to do so. The citation should contain the names of the parties, a brief statement of the nature of the suit, a description of any property involved, and the interest of the named or unknown defendant(s). Several defendants can be named in one citation. The citation should command the defendant(s) to appear in court before 10:00 a.m. of the first Monday after the expiration of 42 days from the date of issuance. This is in contrast to the 20 days appearance period for a regular citation.

*TRCP 109
TRCP 114
TRCP 116*

a. Where to Publish

Except in certain circumstances (see below), the citation must be served by both publication in a newspaper and on the Office of Court Administration's "public information internet website" (referred to in this subdivision as "the website"). Clerks may access the website directly at <https://courtal.txcourts.gov/>. Clerks may also access the website at <https://www.txcourts.gov/judicial-data/citation-by-publication/> under the "Clerk Information & Instructions" tab.

TRCP 116(b)

*Gov't Code
Sec. 72.034*

The citation need not be published in a newspaper if:

- the party requesting the citation files an affidavit of indigency under TRCP Rule 145; or
- Publishing in the local paper would exceed \$200 per week; or
- No newspaper publication exists in the county.

*Civ. Prac. & Rem.
Code
Sec. 17.032*

b. Newspaper Publication

For newspaper publication, the citation must be served by the sheriff or constable or by the Clerk by having it published in the newspaper once a week for at least 28 days. In suits that involve the title to land or partition of real estate, the citation must be published in a newspaper in the county where the land or a portion thereof is situated. In all other suits, citation must be published in a newspaper in the county where suit is pending.

TRCP 116(c)

c. Website Publication

For citations published on the website, the citation must be served by the clerk of the court in which the case is pending and the citation must be published for at least 28 days before the return is filed. *TRCP 116(d)*

NOTE: Additional information on the Office of Court Administration's citation by publication website, including instructional guides, relevant laws and rules, general and technical FAQs, and website support contact information can be located at <https://www.txcourts.gov/judicial-data/citation-by-publication/>. Clerks are strongly encouraged to refer to the instructional guide and FAQs when troubleshooting citation by publication website questions.

d. Return of Citation

If the citation was served by newspaper, the return must state how the citation was published, specify the dates of publication, be signed by the officer who served the citation, and be accompanied by an image of the publication. *TRCP 117*

If the citation was served by website publication, the return must specify the dates of publication and be generated by the Office of Court Administration.

NOTE: The Office of Court Administration suggests that clerks both send a copy of the return to the filer and place a copy of the return in the case file.

5. Subpoenas

Civil subpoenas must be issued in duplicate with only one party's name on each subpoena. It is suggested that a local rule of court be adopted by the court(s) in the Clerk's county which requires that a sworn, written application for the issuance of a civil subpoena be filed with the Clerk, as is required for a criminal subpoena. *TRCP 176.1*

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

a. Witness Fees

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

The party who summons the witness must pay that witness's fee for one day at the time the subpoena is served on the witness. The witness fee must be taxed in the bill of costs as other costs.

b. Fees for Witnesses Summoned by State Agency

A witness summoned by a state agency is entitled to receive witness fees from the agency as detailed in Civil Practice and Remedies Code §22.003(b).

*Civ. Prac. & Rem.
Code
Sec. 22.003*

After receiving an affidavit concerning these witness fees, the Clerk shall issue a certificate showing the fees incurred. The witness fees are to be taxed in the bill of costs as other costs.

6. Bill of Costs

A bill of costs is not normally needed in a civil suit. In some cases, however, the instrument may be required. First, when the final judgment states that any party responsible for costs fails or refuses to pay them within 10 days of demand for payment, the Clerk may make a certified copy of the bill of costs and give them to the sheriff or constable for collection. Second, on motion to transfer venue, the Clerk prepares a bill of costs showing that costs have been collected in the original court.

TRCP 129

*TRCP 89
TRCP 502.4(d)(1)*

7. Writ of Sequestration

When the plaintiff files a suit on note and sequestration, the plaintiff also files an affidavit describing the property sued for and the plaintiff's interest in the property. The affidavit asks the court to grant a writ of sequestration which authorizes the sheriff to attach the property pending judgment in the suit. No writ shall be issued except upon written order of the court after a hearing, which may be ex parte. The Clerk will issue the writ and attach it to the citation and copy of the original petition that goes to the defendant. The writ must list the exact property being sued for. All instruments are given to the sheriff for his return. The plaintiff must post a bond payable to the defendant with the Clerk in the amount fixed by court order. Clerical errors may be amended.

*TRCP 696
TRCP 698
TRCP 699
TRCP 700*

8. Notice of Default Judgment

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

*TRCP 239
TRCP 239a
TRCP 107*

The notice contains the case number, case style, court in which the case is pending, names of the parties, and the date the judgment was signed. The Clerk must note on the docket sheet the date of mailing or file a copy of the notice mailed in the file. Like notice is to be mailed to all other parties upon the signing of a final judgment or other appealable order. For the Clerk's own protection, the Clerk should have proof of mailing.

TRCP 239a

J. SPECIAL TYPES OF SERVICE

The processes issued by the Clerk are commonly delivered by the sheriff or constable, but this is not always the case.

TRCP 15

1. Service by Registered or Certified Mail

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

TRCP 103
TRCP 106(a)
TRCP 107

2. Service by Authorized Persons other than Sheriffs or Constables

Courts are permitted to authorize persons (who are not less than 18 years of age) other than sheriffs or constables to serve citations as well as other processes. The Supreme Court also certifies process servers who may effect service instead of a sheriff or constable. No person who is a party to or interested in the outcome of a suit shall serve any process. The order authorizing a person to serve processes may be made without written motion and no fee shall be imposed for issuance of such an order.

TRCP 103

3. Substitute Service Generally

Upon motion supported by a sworn statement listing any location where the defendant can probably be found, and stating specifically the facts showing that service has been attempted under TRCP 106(a) at a location named in the statement but has not been successful, the court may authorize substitute service by leaving a copy of the citation and of the petition with anyone older than 16 at the location specified in the statement. This action is authorized by the judge when the party to be sued cannot be found for regular service. A copy of the court's order is attached to the process and the process is given to the sheriff for his service and return.

TRCP 106(b)(1)

4. Substitute Service Through Social Media

Effective December 31, 2020, a court may, in proper circumstances, permit substituted service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology.

Civ. Prac. & Rem. Code
Sec. 17.033

TRCP 106(b)(2)

5. Serving the Secretary of State

When the need arises to serve process on a business concern having no registered representative in the State of Texas, the Secretary of State is served instead. The original and 2 copies of the process may be forwarded to the sheriff of Travis County who in turn gives them to the Secretary of State for final service. Service may also be made on the Secretary of State by the Clerk of the court or by the party or the representative of the party.

Civ. Prac. & Rem. Code
Sec. 17.026
Secs. 17.041-17.045

The Secretary of State's address is:

Office of the Secretary of State
Citations Unit
P.O. Box 12079
Austin, Texas 78711-2079

The telephone number is 512-463-5560. Information is also available at www.sos.state.tx.us/statdoc/index.shtml (select “Service of Process”).

The secretary of state charges a \$40.00 fee for maintaining a record of service of any process, notice, or demand authorized to be made upon the secretary of state as agent, and for forwarding the process.

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

When there is substituted service on the Secretary of State, two copies of the process are delivered to the Secretary of State. The plaintiff must provide a correct home, home office or principal place of business address for the defendant.

Civ. Prac. & Rem. Code
Sec. 17.045

1 TAC §71.21

The Texas Supreme Court has held that for a valid default judgment to be entered against a defendant, there must be a showing in the record that the Secretary of State served the defendant. The Supreme Court of Texas also held that service on an employee of the Secretary of State is sufficient to effect service on the Secretary of State. *See, e.g., Whitney v. L & L Realty Corp.*, 500 SW 2d 94 (Tex. 1973); *Capitol Brick, Inc. v. Fleming Mfg.*, 722 S.W.2d 399 (Tex. 1986).

Upon request, the Secretary of State, for a fee of \$15.00, will return a certificate of service stating that the process was forwarded to the defendant.

Gov't. Code
Sec. 405.031(a)(1)

6. Out-of-State Service

The form of notice to a defendant who is absent from the state, or is a nonresident of the state, is the same as for citation to a resident defendant and may be served by any disinterested person competent to serve a resident defendant, in the same manner as provided by TRCP 106. The return of service should be endorsed on or attached to the original notice and shall be in the same form as the return of service for a resident defendant. It should be signed and sworn to by the party making such service before some officer authorized by laws of this state to take affidavits.

TRCP 106
TRCP 108

To serve nonresident motor vehicle operators, the Chairman of the Texas Transportation Commission may be served. The original and 2 copies of the petition and citation are forwarded to the sheriff of Travis County who delivers the process to the State Department of Highways and Public Transportation. The department, upon payment of a \$25 fee, will then make the return.

Civ. Prac. & Rem. Code
Sec. 17.062
Sec. 17.069

The address for service is:

Texas Transportation Commission, Chair
125 E. 11th Street
Austin, Texas 78701-2483

Additional information is available at: www.txdot.gov or by phone at 512-463-8588.

7. Out-of-County Service

Service by sheriffs and constables is no longer restricted to service in their county;

TRCP 103

therefore, the sheriff or constable may serve process in a neighboring county or elsewhere that is economically feasible. TRCP Rule 103 states that citations may be served “anywhere.” Process may still be mailed to a sheriff or constable in the county in which service is required.

8. Service of Process in Foreign Countries

Effective December 31, 2020, service may be effected on a party in a foreign country if the citation and petition is served: as prescribed by the foreign country's laws; as the foreign authority directs in response to a letter rogatory or letter of request; as provided by TRCP Rule 106(a); pursuant to the terms and provisions of any applicable international agreement; by diplomatic or consular officials when authorized by the U.S. State Department; or by other means not prohibited by international agreement or the foreign country's law, as the court orders. *TRCP 108a*

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

Proof of service may be made as prescribed by the foreign country's law, by order of the court, by TRCP 107, or by a method provided in any applicable international agreement.

K. DOCKETS

The Clerk is required to maintain two dockets for each civil case filed: the file docket and the court docket. Most Clerks find it convenient to duplicate most of the file docket on the file folder so that, in essence, three dockets are maintained for each case. Proper maintenance of each docket will facilitate the record keeping for each case. *TRCP 25*
TRCP 26

1. Civil File Docket

This book is referred to as the Clerk's file docket and is also called the fee docket or file docket. It is the Clerk's master reference to all instruments filed for record in the individual case. The fee docket book contains a "direct" and "reverse" index in the front of the volume. The Clerk must index all entries made in the fee docket book. *TRCP 25*

A separate docket sheet is created for each case at the time a suit is filed. Initial docket information should include

- The file number of the case
- Date of filing
- The court of jurisdiction (if there is more than one county court)
- The style of the case (which should read "*Plaintiff's name v. Defendant's name*")
- The names of the attorneys of record
- The nature of the suit

As the case progresses, the Clerk must keep a record all instruments filed for record. These would include:

- All processes issued by the Clerk and date of issuance
- All returns of processes and date of return
- All instruments filed for record and date of filing
- All orders and judgments and dates rendered

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

2. Court Docket

The court docket (also known as the judge's docket) is also prepared at the time a case is filed. The court docket officially places the case in the jurisdiction of the court that is to hear the case. Some judges prefer to keep their own docket, even though the law provides that the Clerk shall keep the docket. *TRCP 26*

This docket provides the judge with all the basic information of the case and should be in the judge's possession whenever proceedings of the case are being heard. The court docket becomes the official record of all pleas, motions, and rulings in the case. The judge should note all these actions on the docket as they occur.

Information recorded on the court docket should include the following:

- The file number of the case
- Date of filing
- Court of jurisdiction
- The style of the case
- The names of the attorneys of record
- The nature of the suit
- All pleas, motions, and rulings in the case
- The volume and page number of the permanent record of all rulings, orders, and judgments
- A notation of the payment of the jury fee, including the date and by whom paid

3. Case File Folder

The case file folder serves as the permanent depository for all instruments filed in a case. The folders are filed in numerical sequence according to file number.

The folder is normally made available to the judge and attorneys each time some

proceeding is being heard in court. For their convenience, the Clerk should note all processes and instruments filed for record on the outside of the folder or docket sheet. The folder can then be used as a file docket in the courtroom. It is a good practice for the Clerk to have a "check-out" sheet or on computer. For any file that is taken from the office, the file must be signed "out" and "in" by the person taking the file from the office. The sheet should show who has the file, when it was checked out, and when it was checked in.

At the termination of each case, the Clerk should examine the contents of the case folder to ensure that all instruments that have been filed for record are present. The Clerk should also check to be certain that all orders and judgments have been recorded, scanned and indexed.

L. INDEX TO THE CIVIL MINUTES

There should be an entry in the index to civil minutes for every party to a civil case when the judgment is filed and made a part of the civil minutes. Separate index books are maintained for the names of plaintiffs and the names of defendants or the book may have a "direct" and "reverse" section in the same book. In cases where there is no defendant (ex parte suits), the case is indexed in the plaintiff's book or, if the index is contained within one book, section, or data indexed on computer.

*Loc. Gov't. Code
Sec. 192.006*

*TRCP 25
TRCP 26
TRCP 27*

Each index is created at the time of recording the minutes (judgments and orders). The sequence of the index is alphabetical by the party's last name. The index should also cross reference other parties to the suit. The county has more than one court that hears civil cases, a separate set of indexes should be kept for the minutes of each court.

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

- The name of the party (whether an individual or a business firm). The name should be exactly as stated on the original petition. The names of additional parties to the suit should be indexed as they enter the case.
- The name of the opposing party
- The date of filing
- The nature of the case
- The volume and page number, or other location information if records are microfilmed or stored electronically, of all minutes of the case.

M. RECORDING OF CIVIL MINUTES

The minutes of civil cases include all motions, orders, and judgments signed by the judge. The attorneys in the case prepare all such documents for the judge's signature, and the judge in turn forwards the documents to the Clerk for recording.

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

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

recorded.

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

NOTE: Scanning Civil Documents into Minutes or the Case History

Once a document is received, the Clerk file stamps the document and scans into the case history.

When a civil judgment is received, the Clerk sends the judgment to the Judge for signature. (The Clerk checks the file out to the Judge's office for tracking purposes). After it is signed and returned back to the Clerk, he/she enters the Judgment information which closes out the disposition of the file and then scans the Judgment into that Event so it will appear in the case history.

After data entry of all documents, they should be scanned into the case history.

N. VEXATIOUS LITIGANTS

Black's Law Dictionary defines vexatious lawsuits as suits "instituted maliciously and without good grounds, meant to create trouble and expense for the party being sued." Civil Practice and Remedies Code Chapter 11 outlines the processes by which a defendant may seek a court order determining a plaintiff is a vexatious litigant. **Chapter 11 does not apply to municipal courts and Chapter 11 does not apply to an attorney licensed to practice law in Texas unless the attorney proceeds pro se.**

Black's Law Dictionary, 10th Ed., p.1796

Civ. Prac. & Rem. Code Ch. 11 Sec 11.002

1. Motion For Order Determining Plaintiff a Vexatious Litigant

A defendant who wishes to move the court for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish security for the defendant's litigation expenses **must file the motion on or before the 90th day after the date the defendant files the original answer or makes a special appearance.** Note that if there is more than one defendant, defendants other than the one who files the motion are not automatically included.

Sec. 11.051

If the motion is filed before the trial starts, the litigation is stayed and the moving defendant is not required to plead:

*Civ. Prac. &
Rem. Code
Sec. 11.052*

- If the motion is denied, before the 10th day after the date the motion is denied; or
- If the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

If the motion is filed on or after the date the trial starts, the litigation is stayed and the moving defendant is not required to plead for a period the court determines.

The court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion. The court may consider any evidence material to the ground of the motion, including written or oral evidence and evidence presented by witnesses or by affidavit.

Sec. 11.053

2. Criteria for Finding Plaintiff a Vexatious Litigant

For the court to enter an order determining that a plaintiff is a vexatious litigant, the moving defendant must first show that there is not a reasonable probability that the plaintiff will prevail in the litigation and:

Sec. 11.054

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

3. Order for Security; Prefiling Order

If the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant, the court shall order the plaintiff to furnish security for the benefit of the moving defendant. The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant’s reasonable

Sec. 11.055

expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court. *Civ. Prac. & Rem. Code Sec. 11.056*
Sec. 11.057

If the court makes a finding that a person is a vexatious litigant, the court may enter a prefiling order requiring the vexatious litigant to obtain permission from the appropriate local administrative judge before the vexatious litigant can file new litigation pro se in the court covered by the prefiling order. A person who disobeys the prefiling order is subject to contempt of court. A litigant may appeal a prefiling order entered under Subsection (a) designating the person a vexatious litigant. *Sec. 11.101*

NOTE: a vexatious litigant prefiling order entered by a justice or constitutional county court applies only to the court that entered the order. *Sec. 11.101(d)*

NOTE: A vexatious litigant prefiling order entered by a district or statutory county court applies to each court in Texas. *Sec. 11.101(e)*

4. Requesting Permission to File Litigation with Local Administrative Judge

If a vexatious litigant intends to file: *Sec. 11.102(a)*

- *In a justice or constitutional county court:*
 - Permission must be sought from the local administrative district judge of the county in which the vexatious litigant intends to file;
- *In a court other than a justice or constitutional county court:*
 - Permission must be sought from the local administrative judge of the type of court in which the vexatious litigant intends to file.

The vexatious litigant must provide a copy of the request to all defendants named in the proposed litigation. *Sec. 11.102(b)*

The local administrative judge may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant provide notice of the hearing to all defendants named in the proposed litigation. *Sec. 11.102(c)*

The local administrative judge may grant the vexatious litigant permission to file the litigation only if it appears to the judge that the litigation has merit and has not been filed for the purposes of harassment or delay. The local administrative judge may condition permission to file on the furnishing of security for the benefit of the defendant. *Sec. 11.102(d)*
Sec. 11.102(e)

A decision by the appropriate local administrative judge denying a vexatious litigant permission to file new litigation or conditioning permission to file litigation on the furnishing of security is not grounds for appeal, except that the litigant may apply for a writ *Sec. 11.102(f)*

of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

5. Mistaken Filings

If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order without an order from the appropriate local administrative judge, any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission to file litigation.

*Civ. Prac. &
Rem. Code
Sec. 11.1035(a)*

No later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge, the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge permitting the filing of the litigation. An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Sec. 11.1035(b)

Sec. 11.1035(c)

6. Notice to Office of Court Administration and List of Vexatious Litigants Subject to Prefiling Order on Office of Court Administration Website

A clerk of a court must provide the Office of Court Administration a copy of any prefiling order not later than the 30th day after the date the order is signed. The Office of Court Administration must post on its website a list of vexatious litigants subject to prefiling orders. Upon the request of a person designated a vexatious litigant, the list must indicate whether that person has filed an appeal of the designation. The list can be found here: <http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx>.

*Sec. 11.104(a)
Sec. 11.104(b)*

The Office of Court Administration may not remove the name of a vexatious litigant subject to a prefiling order from the agency's website unless the Office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under §11.101 by the same court. A court of appeal decision reversing a prefiling order entered under §11.101 affects only the validity of an order entered by the reversing court.

Sec. 11.104(c)

Clerks may email a copy of a prefiling order to OCA at JudInfo@txcourts.gov. Clerks may fax a prefiling order to OCA at (512)-436-1865. Clerks may mail a prefiling order to OCA at Office of Court Administration, Attn: Judicial Information, P. O. Box 12066, Austin, Texas 78711-2066.

Questions concerning the list should be submitted to: Margie Johnson, Assistant General Counsel, Office of Court Administration at Margie.Johnson@txcourt.gov or (512)-463-1625.

O. APPEALS OF CIVIL CASES

The courts of appeals have jurisdiction over appeals in civil cases from county courts in which the judgment or amount in controversy exceeds \$250. A party may appeal from a final county court judgment to the relevant court of appeals. *Civ. Prac. & Rem. Code Sec. 51.012*

There are 14 intermediate courts of appeals in Texas. Each court of appeals has jurisdiction over a particular geographical district, consisting of certain counties.

1. Appeals Procedures

The Clerk, the judge, the parties, and their attorneys all have roles in the process of appeals. The primary responsibility for preparing the appeal, however, falls upon the Clerk. There are specific rules relating to both the time periods for perfecting appeals and the procedures for doing so. The Clerk should become thoroughly familiar with these procedures so that the appeals process is not interrupted. In determining the period within which the various steps of an appeal must be taken, the date when the trial judge signs the order or judgment shall determine the beginning of the time periods prescribed for filing an appeal. *TRCP 306a TRAP 26.1*

2. Timetables for Civil Cases

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

<u>Days</u>	<u>Event</u>	
0	Judgment Signed	<i>TRCP 306a</i>
30	File written notice of appeal	<i>TRAP 26.1</i>
60	File Clerk’s record and reporter’s record with court of appeals	<i>TRAP 35.1</i>

b. Ordinary Appeal WITH Motion for New Trial, Motion to Modify Judgment, Motion to Reinstate under TRCP 165a, or Request for Findings of Fact and Conclusions of Law

<u>Days</u>	<u>Event</u>	
0	Judgment Signed	<i>TRCP 306a</i>
20	Request for Findings of Fact and Conclusions of Law	<i>TRCP 296</i>
30	Motion for new trial or to modify judgment	<i>TRCP 329b(a) TRCP 329b(g)</i>

(Trial court’s action or inaction on motion does not affect time for appeal unless motion is granted, and then time runs from new judgment. Does not apply if judgment modified to correct clerical errors under TRCP Rule 316.) *TRCP 329b(h)*

<u>Days</u>	<u>Event</u>	
90	File written notice of appeal	<i>TRAP 26.1(a)</i>

120	File Clerk’s record and reporter’s record with court of appeals	<i>TRAP 35.1(a)</i>
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c. Accelerated Appeal (Quo Warranto and Interlocutory Appeals)

<u>Days</u>	<u>Event</u>	
0	Order or judgment signed	<i>TRCP 306a</i>
20	File written notice of appeal	<i>TRAP 26.1(b)</i>
30	File Clerk’s record and reporter’s record with court of appeals (must be within 10 days after notice of appeal is filed)	<i>TRAP 35.1(b)</i>

d. Restricted Appeal

<u>Days</u>	<u>Event</u>	
0	Judgment signed	<i>TRCP 306a</i>
180	File written notice of appeal (6 months)	<i>TRAP 26.1</i>
194	Another party may file written notice of appeal within 14 days of first filing, or 180 days (six months), whichever is later	<i>TRAP 26.1(d)</i>
210	File Clerk’s record and reporter’s record with court of appeals (within 30 days of filing of first notice of appeal)	<i>TRAP 35.1(c)</i>

e. Interlocutory Appeal

Unlike the other appeals listed above, an interlocutory appeal is one that appeals an order of the court that is not a final judgment. The party filing an interlocutory appeal usually does so to prevent some court-ordered action from taking place. *Civ. Prac. & Rem. Code Sec. 51.014(b)*

3. Notice of Appeal

A written notice of appeal, filed with the trial court Clerk, is a prerequisite to an appeal in a civil case. Any party seeking to alter the trial court’s judgment or an appealable order must file a notice of appeal, (although parties whose interests are aligned may file a joint notice of appeal). If a notice is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court Clerk. The appellate Clerk must immediately send the trial court Clerk a copy of the notice. The filing of a notice of appeal immediately invokes the appellate court’s jurisdiction. *TRAP 25.1(a), (c)*

The trial court clerk must immediately deliver a copy of the notice of appeal to the appellate court clerk, to the trial judge, and to each court reporter responsible for preparing the reporter’s record. *TRAP 25.1(f)*

a. Contents of Notice

The notice of appeal must:

TRAP 25.1(d)

- Identify the trial court and state the case's trial court number and style;
- state the date of the judgment or order appealed from;
- state that the party desires to appeal;
- state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- state the name of each party filing the notice;
- in an accelerated appeal, state that the appeal is accelerated;
- in a restricted appeal:
 - state that the appellant is a party affected by the trial court's judgment but did not participate — either in person or through counsel — in the hearing that resulted in the judgment complained of;
 - state that the appellant did not timely file either a post judgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
 - be verified by the appellant if the appellant does not have counsel.

b. Notice of Notice

TRAP 25.1(e)

The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. At or before the time of the notice of appeal's filing, the filing party must also deliver a copy of the notice of appeal to each court reporter responsible for preparing the reporter's record.

4. Motion for New Trial

Generally, a motion for new trial is not a prerequisite to an appeal. However, one must file a motion for new trial in order to preserve certain complaints for appeal. These five specific complaints are listed in TRCP Rule 324(b). A motion for new trial may be filed by any party.

TRCP 324

A motion for new trial, if filed, shall be filed within 30 days after the judgment or other order complained of is signed. One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial is overruled and within 30 days after the judgment is signed.

TRCP 329b(a)
TRCP 329b(b)

If the original or amended motion for new trial is not determined by written order of the court signed within 75 days after the judgment is signed, the motion for new trial shall be considered to be overruled by operation of law.

TRCP 329b(c)

5. Request for Findings of Fact and Conclusions of Law

In any case tried in the district or county court without a jury, any party may request

TRCP 296

the court to state in writing its findings of fact and conclusions of law. Such request must be filed within twenty days after judgment is signed with the Clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve the request on all other parties.

The court must file its findings of fact and conclusions of law within twenty days after a timely request is filed. A copy of the findings and conclusions is to be mailed to each party in the suit. *TRCP 297*

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the Clerk a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the Clerk. Such notice must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed. The notice must also be served on all parties to the lawsuit. *TRCP 297*
TRCP 21a

After the court files original findings of fact and conclusions of law, any party may file with the Clerk a request for specified additional or amended findings or conclusions. The request for these findings must be made within ten days after the filing of the original findings and conclusions by the court. The court must file any additional or amended findings and conclusions within ten days after such request is filed. No findings or conclusions are to be deemed or presumed by any failure of the court to make any additional findings or conclusions. *TRCP 298*

6. Restricted Appeal

A party who did not participate, either in person or through counsel, in the hearing that resulted in the judgment complained of and who did not timely file a post judgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the 90 days provided by Texas Rules of Appellate Procedure (TRAP) Rule 26.1(a), may file a notice of appeal within six months after the judgment or order is signed as provided by TRAP Rule 26.1(c). *TRAP 30*

Restricted appeals replace "writ of error" appeals to the court of appeals. Statutes pertaining to writ of error appeals apply equally to restricted appeals.

7. Effect of Appeal on Judgment or Court Action

The appellant judgment debtor may supersede a judgment pending appeal by doing any one of the following: *TRAP 24.1*

- filing with the Clerk a written agreement with the judgment creditor for suspending enforcement;
- filing with the Clerk a good and sufficient bond (called a supersedeas bond);
- making a deposit with the Clerk in lieu of a bond; or

- providing alternate security ordered by the court.

The Clerk must review and approve all bonds, ensuring they meet the requirements set forth in TRAP Rule 24.2. If cash is deposited in lieu of a bond, the Clerk follows the appropriate procedures for depositing the funds into the registry of court. *TRAP 24.1(c)(3)*

Enforcement of a judgment must be suspended when the judgment has been superseded. If any enforcement actions have begun, they must cease when the judgment is superseded. If execution has been issued, the Clerk will promptly issue a writ of supersedeas when the judgment is superseded. *TRAP 24.1(f)*

An interlocutory appeal generally stays the commencement of a trial pending resolution of the appeal. An exception to this stay is an appeal of an order granting or refusing a temporary injunction or granting or overruling a motion to dissolve a temporary injunction. *Civ. Prac. & Rem. Code Sec. 51.014(b) Sec. 51.014(a)(4)*

An interlocutory appeal of an order certifying or refusing to certify a class, or a denial of a motion for summary judgment based on immunity asserted by a government employee or officer, or of an order granting or denying a plea to the jurisdiction by a governmental agency also stays all other proceedings in the trial court pending resolution of that appeal.

An interlocutory appeal of an order (1) denying certain motions for summary judgment, (2) granting or denying a special appearance; and (3) granting or denying a plea to the jurisdiction by a governmental unit is not subject to the stay UNLESS the appellant files the appeal by certain times set out in Civil Practice and Remedies Code §51.014(c). *Sec. 51.014(c) Sec. 51.014(e)*

A trial court in a civil action, on a party’s motion or on its own initiative, and by written order, may permit an appeal from an order that is not otherwise appealable if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Agreement of the parties is no longer necessary. This appeal mechanism DOES NOT apply to an action brought under the Family Code, and the appeal does not stay proceedings in the trial court unless the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal. *Sec. 51.014(d), (d-1), (e), (f)*

An appellate court may accept an appeal permitted by Civil Practice & Remedies Code §51.014(d), if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under §51.014(d). Then, if the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal. *Sec. 51.014(f)*

8. Filing the Record

The Clerk’s record (formerly known as the “transcript”) and, if necessary to the appeal, the reporter’s record (formerly known as the “statement of facts”) comprise the *TRAP 34.1 TRAP 35.3*

record on appeal. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

The party filing the appeal must file the following documents with the District Clerk or County Clerk:

- Notice of appeal;
- Affidavit of indigence, if applicable; and
- A written designation specifying items to be included in the Clerk's record.

TRAP 25.1(a)
TRAP 9.2
TRAP 20.1(c)
TRAP 34.5

A party who filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence. To establish the right to proceed without payment of costs, a party must communicate to the appellate court clerk in writing that the party is presumed indigent under TRAP 20.1. In any appeal from a trial court's judgment or orders, the applicability of the presumption should be stated in the notice of appeal and in the docketing statement.

TRAP 20.1(b)
TRCP 145

a. The Clerk's Record

An order of the Supreme Court, adopted pursuant to TRAP Rule 34.4, sets out the form of the Clerk's record in civil cases. The order, entitled "Order Directing the Form of the Appellate Record in Civil Cases" is set out in the TRAP appendix. A copy of the order is included in this manual as [Form IV-3](#).

The parties may, by written stipulation filed with the trial court, agree on the contents of the record on appeal. Unless the parties have so designated the contents of the Clerk's record pursuant to TRAP Rule 34.2, the Clerk's record must include copies of the following:

TRAP 34.2
TRAP 34.5

- all pleadings on which the trial was held;
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;
- any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under TRAP Rule 34.6(c);

- any request for preparation of the Clerk's record;
- a certified bill of costs including the cost of preparing the Clerk's record, showing credits for payments made; and
- any filing that a party designates to have included in the record.

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee. *TRAP 35.3(a)*

c. The Reporter's Record

Unlike the Clerk's record, the reporter's record is not always required in order to file an appeal, but may be in some cases. However, it is common practice to file both records in order to have as complete a record as possible before the court of appeals. *TRAP 34.1*

At or before the time for perfecting the appeal, the appellant must make a request in writing to the official court reporter to prepare the reporter's record. The request must designate the exhibits to be included, and which portion of the proceedings are to be included. The appellant must file a copy of the request with the trial court Clerk. *TRAP 34.6(b)*

If the court proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of the proceedings and any exhibits, as designated. If the proceedings were electronically recorded, then the reporter's record consists of certified copies of the tapes, the exhibits designated, and certified copies of the logs prepared by the court reporter under TRAP 13.2. *TRAP 34.6(a)*

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals to the Clerk after copying them for inclusion in the record. *TRAP 34.6(g)*

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits. *TRAP 34.6(g)(2)*

d. The Reporter's Responsibility

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if: *TRAP 35.3(b)*

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

9. Mandate Received

When a mandate is returned on the appeal, it is recorded as part of the case minutes in the lower court. *TRAP 18.1*

P. ANCILLARY PROCEEDINGS

Certain instruments are issued by the Clerk after a judgment has been rendered in a civil case. Since these proceedings are subsequent to the case itself, they are called ancillary. The four most common ancillary proceedings are described in the following paragraphs

1. Abstract of Judgment

For a description of abstracts of judgment, please see Chapter II, Part D.3.c (Abstracts of Judgment) of this manual.

2. Execution

An execution is a process issued by the Clerk which orders the sheriff or constable to collect a judgment against the defendant. The sheriff either collects money or sells property belonging to the defendant for as much of the judgment as possible. *TRCP 622*
TRCP 629 - 633

The Clerk issues the execution after the expiration of 30 days from the time the court signs the final judgment. Exceptions are: *TRCP 627*

- If a supersedeas bond or notice of appeal has been filed by a party appealing the judgment and has been approved, no execution is issued. *TRCP 634*
- If a timely motion for new trial or in arrest of judgment is filed, the Clerk issues the execution after the expiration of 30 days from the time the order is overruled.
- If the plaintiff files an affidavit that the defendant is about to remove or dispose of property subject to execution, then execution may be issued before the 30th day after final judgment. *TRCP 628*

An execution can be issued only if the judgment on which it is based is a valid final judgment. A judgment is not final unless it disposes of all the parties and issues in a suit. *TRCP 627*

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

The process for issuing an execution is as follows:

- The plaintiff or his attorney submits a request for the execution. *TRCP 627*
- The Clerk collects the fee and posts the request and fee in the file docket (the amount of the fee charged for issuance is \$5.00). *Loc. Gov't. Code*
Sec.118.052(1)(C)
- From the case minutes, the Clerk enters the amount of the judgment, the interest rate, and any court costs due on the execution form. From the registry of the court and the file docket, the Clerk notes any payments made on the judgment and subtracts these payments from the amount to be *TRCP 629*

collected.

- The execution form is completed by entering the case number, style of case, and date of issuance.
- The execution is now recorded in the execution docket, and the volume and page number of the docket record is noted on the execution. *TRCP 656*
- The Clerk signs and seals the execution and sends it to the sheriff or any constable of the county where the defendant's property is located. *TRCP 629*
- When the sheriff makes his return, it is recorded in the execution docket along with the amount collected. *TRCP 629*

3. Order of Sale

An order of sale is a special type of execution which lists specific items of the defendant's property which may be sold to satisfy the judgment. The items to be sold to satisfy the judgment must be set out in the final judgment. The rules and procedures for issuing an order of sale are the same as those for issuing an execution, with the exception that the property ordered to be sold in the judgment is listed on the order of sale form. *TRCP 631*

4. Writ of Garnishment After Judgment

This writ is issued after judgment and after an original attachment has been issued when the plaintiff has found no property of the defendant to execute upon. The writ is actually issued to a third party who holds assets or credits of the defendant which could be used to satisfy judgment. *Civ. Prac. & Rem. Code Sec. 63.001*
TRCP 657 - 658

- The plaintiff files application for writ of garnishment with the Clerk supported by an affidavit stating who holds property of the defendant and the grounds for the writ.
- The Clerk files and docket this application and affidavit as if an entirely new case was being filed with the garnishee (the third party) as defendant. *TRCP 659*
- The Clerk addresses the garnishment form to the garnishee stating the names of the plaintiff and the judgment defendant, the amount of judgment, the time to answer, the contents of the answer, and commanding the garnishee not to pay any money or deliver any property to the defendant. It is a good practice to include a copy of the judgment with the writ to be served on the garnishee. *TRCP 661*
- The Clerk signs and seals the writ and gives it to the sheriff or constable for his execution and return. *TRCP 662*
- As soon as practicable after service on garnishee, the judgment defendant also is served with a copy of the writ. *TRCP 663a*
- There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To _____, Defendant

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

- The Clerk collects \$15 for filing the writ of garnishment after judgment plus other fees that would normally be charged for filing a new case. *Loc. Gov't Code Sec. 118.052(1)(A)*

Q. DRIVERS LICENSE - ESSENTIAL NEED (Occupational Driver's License)

Any person whose driver's license has been suspended for causes other than physical or mental disability or impairment, or a conviction of an offense under Penal Code §§49.04 – 49.08 (Intoxicated Driver), may apply for an occupational license by filing a verified petition with the clerk file of a justice, county, or district court with jurisdiction that includes the precinct or county in which (1) the person resides or (2) the offense occurred for which the license was suspended. *Transp. Code Sec.521.242(a)*

NOTE: A person may apply for an occupational license by filing a verified petition ONLY with the clerk of the court in which the person was convicted IF: *Sec. 521.242(b)*

1. *The person's license has been automatically suspended or canceled under Chapter 521 for a conviction of an offense under the laws of Texas; and*
2. *The person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of Texas.*

If the petitioner's license was suspended following a conviction for an offense under Penal Code §§19.05 or 49.04 – 49.08, or an offense to which Transportation Code §521.342 applies, the Clerk of the court shall send by certified mail a copy of the verified petition and notice of the hearing to the attorney representing the state. *Sec. 521.243*

The judge hearing the petition shall enter an order either finding that no essential need exists or an order finding an essential need for operating a motor vehicle. If the judge finds there is an essential need, the judge also, as part of the order, will determine the actual need of the petitioner to operate a motor vehicle and require the petitioner to provide evidence of financial responsibility in accordance with Transportation Code Chapter 601. A person convicted of an offense under Penal Code §§49.04 – 49.08 who is restricted to the operation of a motor vehicle equipped with an ignition interlock device, is entitled to receive an occupational license without a finding that an essential need exists for that person, provided that the person shows: (1) evidence of financial responsibility under Chapter 601; *Sec. 521.244*
Sec. 521.244(e)

and (2) proof the person has had an ignition interlock device installed on each motor vehicle owned or operated by the person.

A certified copy of petition and the court order setting out the judge's findings and restrictions shall be forwarded to the Department of Public Safety. The petitioner may use a copy of the order as a restricted license until the 45th day after the date the order is entered at which time he should have received from the Department of Public Safety a license listing on its face the restrictions and expiration date set out in the order.

Transp. Code
Sec. 521.249

CHAPTER 5

PROBATE

A. INTRODUCTION

The term *probate* translates from Latin literally as "proof" and has come to mean the act or process of proving a will in Texas legal procedures. Jurisdiction of probate courts in Texas includes matters involving the probate of wills and other testamentary documents and the guardianship of incapacitated persons and minors.

B. PROBATE

1. Jurisdiction

Sec. 32.001. GENERAL PROBATE COURT JURISDICTION; APPEALS

Estates Code
Sec. 32.001

- (a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in §31.002 for that type of court.
- (b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.
- (c) A final order issued by a probate court is appealable to the court of appeals.
- (d) The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

In counties that lack a county court at law or statutory probate court, the constitutional county court has original jurisdiction over probate matters. If a matter becomes contested, upon motion the matter may be transferred to either a statutory probate court or to the district court. Once the contested matter is resolved, the statutory probate court or district court returns the proceeding to the county court.

Sec. 32.003

If a county has a county court at law exercising probate jurisdiction but does not have a statutory probate court, the constitutional county court, and the county court at law have concurrent jurisdiction over probate matters in that county.

Sec. 32.002(b)

Statutory probate courts have exclusive jurisdiction over all probate proceedings in the counties where they are located. A statutory probate court also has concurrent jurisdiction with the district court over the following: an action by or against a trustee; an action involving an inter vivos, testamentary, or charitable trust; an action concerning a power of attorney; and a personal injury, survival, or wrongful death action brought against a personal representative.

Sec. 32.005
Sec. 32.006
Sec. 32.007

2. Venue

Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

*Estates Code
Sec. 33.001*

- (1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or
- (2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:
 - (A) if the decedent died in this state, in the county in which:
 - (i) the decedent's principal estate was located at the time of the decedent's death; or
 - (ii) the decedent died; or
 - (B) if the decedent died outside of this state:
 - (i) in any county in this state in which the decedent's nearest of kin reside; or
 - (ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

Notwithstanding any other provision of Estates Code Chapter 33, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Civil Practice and Remedies Code §15.007. Venue for any other cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 33.003

Sec. 33.002

Venue for a proceeding to determine a decedent's heirs generally lies in the court where the decedent's will was admitted to probate, or the court where the will would have been probated if the decedent had left a will, or in the court where guardianship proceedings regarding the decedent's estate was pending if the decedent was the ward in a guardianship.

Sec. 33.004

Provisions governing transfer of probate proceedings are found in Estates Code §§33.101 - 33.104.

3. The County Clerk's Probate Records

a. Judge's Probate Docket

At the start of each probate proceeding, the Clerk must create a docket sheet for the probate judge and maintain the docket until the case is finished. The County Clerk must keep a record book to be styled "Judge's Probate Docket," which contains the docket sheets for probate proceedings.

Sec. 52.001

Information contained on the docket sheet includes all the following:

- Name of the person upon whose estate proceedings are to be initiated (*i.e.*, the deceased);
- Name of the executor or administrator or of the applicant for letters to be appointed (this is usually the petitioner in the case) (although not required by statute, if the applicant has an attorney, it is a good idea to note the attorney's name, address, telephone number, and state bar number.);
- Date of the filing of the original application for probate proceedings;
- Notation of every order, judgment, decree, and proceeding had in each estate and the date each occurred;
- The docket number of each estate in the order proceedings are commenced.

b. Claim Docket

Some estates will have outstanding debts or claims filed against them. The Clerk is responsible for recording these claims for the judge and the executor or administrator. A claim may be presented to the executor or administrator directly, bypassing the Clerk. But other claims will be presented to the Clerk instead. The Clerk, upon receiving a claim, must advise the personal representative, or his or her attorney, by letter mailed to the last known address, of the deposit of the claim and enter it on the claim docket. *See* [Form V-1](#).

Estates Code
Sec. 355.001
Sec. 355.002
Sec. 355.060
Sec. 355.061

After a claim against the estate of a decedent has been presented to and allowed or rejected by the executor or administrator, the claim must then be filed with the County Clerk, who must enter it on the claim docket.

Sec. 355.053

The County Clerk must keep a record book to be styled "Claim Docket" and must enter all claims presented against an estate for court approval. The claim docket must be ruled in 16 intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages must be assigned to each estate. The columns, beginning with the first or marginal column, are as follows:

Sec. 52.002

- Name of claimants in the order in which their claims are filed
- Amount of claim
- Date of claim
- Date claim filed with Clerk
- Claim due date
- Date from which claim bears interest
- Rate of interest on claim
- Date claim was allowed by executor or administrator
- Amount allowed

- Date claim rejected by executor or administrator
- Date claim approved by the court
- Amount of claim approved by the court
- Date claim was disapproved by the court
- Class to which the claim belongs
- Date of court judgment, if claim was established in this manner
- Amount of court judgment

NOTE: Not every claim will contain information in each column.

NOTE: When a claim, or any part of it, has been rejected by a personal representative, the claimant has 90 days to file suit to have the claim allowed, or the claim will be barred. The suit is filed in the court in which the estate is pending. When a rejected claim has been established by suit, no execution will issue, but the judgment must be filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved.

*Estates Code
Sec. 355.064
Sec. 355.066*

c. Case Files

The County Clerk must maintain a case file for each decedent's estate in which a probate proceeding has been filed. The recommended way to keep the case files is in case number order. The case file must contain all orders, judgments, and proceedings of the court, and any other probate filing with the court. Examples of documents in the case file include, but are not limited to, applications for probate, bonds and official oaths, citations and notices, inventories or affidavits in lieu of inventory and the decedent's will. If a document is filed with the Clerk, it is included in the probate case file.

Sec. 52.052

The exception to the rule is deposition testimony. The Estates Code states that "only the substance" of a deposition must be included in a case file. "Substance only of depositions" means a synopsis or an abstract of the material or essential facts, unless under the circumstances it is necessary to quote portions of the depositions or exhibits.

*AG Op.
M-547 (1970)*

d. Probate Fee Book

The County Clerk must keep a record book styled "Probate Fee Book." The Clerk must set up a fee ledger for each case and enter each item of court costs, date and type of each service, and date of payment for each item of service.

*Estates Code
Sec. 52.003*

e. Maintaining Records in Lieu of Record Books

In lieu of keeping the record books described by Estates Code §§52.001, 52.002, and 52.003, the County Clerk may maintain the information relating to probate proceedings on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Sec. 52.004

The County Clerk must properly index the records and keep the index open for public inspection but may not release the index from the Clerk's custody.

*Estates Code
Sec. 52.053*

A probate index should contain the following:

- Name of the decedent upon whose estate proceedings are being initiated
- Case number
- Type of case
- Name of the executor or administrator
- Date case was filed
- Volume and page number of all minutes

4. Notification of Voter Registrar of Death

It is the County Clerk’s responsibility to notify the voter registrar of deaths.

*Election Code
Sec. 16.001(b)*

Each month the Clerk prepares an abstract of each application for probate of a will, administration of a decedent's estate, and affidavit of small intestate estate filed under Estates Code Chapter 205 that is filed in the month with a court served by the Clerk. The Clerk must file the abstract with the voter registrar and the Secretary of State no later than the 10th day of the month following the month in which the abstract is prepared. See [Form V-2](#).

C. PROBATE FEES

1. Basic Probate Fees

(A) Probate Original Action (Local Gov’t Code §118.055):

*Loc. Gov't Code
Sec. 118.055*

- Probate of a will with independent executor,
administration with will attached, administration of an
estate, guardianship or receivership of an estate, or
muniment of title \$ 40.00
- Community survivors..... \$ 40.00
- Small estates..... \$ 40.00
- Declarations of heirship \$ 40.00
- (i) Mental Health or chemical dependency
services..... \$ 40.00
- (ii) Additional, special fee (§118.064) \$ 5.00

NOTE: The additional, special fee mentioned directly above is to be paid for each original action filed in a probate court and is in addition to all other fees. The fee is deposited in the county's

Sec. 118.064

general fund and is usually used for the continuing education of the judge and staff of the probate courts.

(B) Services in Pending Probate Action (§118.056):

*Loc. Gov't Code
Sec. 118.056
Sec. 118.052(2)(B)*

- (i) Filing an inventory and appraisal after the 120th day after the date of the initial filing of the action \$ 25.00
- (ii) Approving and recording bond \$ 3.00
- (iii) Administering Oath..... \$ 2.00
- (iv) Filing annual or final account of estate \$ 25.00
- (v) Filing application for sale of real or personal property \$ 25.00
- (vi) Filing annual or final report of guardian of a person \$ 10.00
- (vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisal OR after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages..... \$ 25.00

(C) Adverse Probate Action (§118.057) \$ 40.00

Sec. 118.057

(D) Claim Against Estate (§118.058) \$ 10.00

(E) Supplemental Court-Initiated Guardianship Fee in Probate Original Actions and Adverse Probate Actions (§118.067) \$ 20.00

Sec. 118.067

Sec. 118.068

(F) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator (§118.068) \$ 10.00

NOTE: *The fees for “Services in Pending Probate Action” under Subsection (B) above are for services in an action in an open probate docket rendered after the filing of an order approving the inventory and appraisal or after the 120th day after the initial filing of the action, whichever occurs first.*

Sec. 118.056(a)

(G) Other Fees

(1) Issuing Document (§118.059):

Sec. 118.059

- original document and one copy..... \$ 4.00
- each additional set of an original and one copy... \$ 4.00

(2) Certified Papers (§118.060):	<i>Loc. Gov't Code</i> <i>Sec. 118.060</i>
for the Clerk's certificate.....	\$ 5.00
plus a fee per page or part of a page of	\$ 1.00
(3) Noncertified Papers (§118.0605):	
for each page or part of a page.....	\$ 1.00 <i>Sec. 118.0605</i>
(4) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (§118.061)	\$ 2.00 <i>Sec. 118.061</i>
(5) Deposit and Safekeeping of Wills (§118.062)	\$ 5.00 <i>Sec. 118.062</i>
(6) Mail Service of Process (§118.063)	same as sheriff <i>Sec. 118.063</i>
(7) Records Management and Preservation Fee (§118.0546)	\$ 5.00 <i>Sec. 118.0546</i>
(8) Records Technology & Infrastructure Fee.....	\$ 2.00

Sec. 118.053. FILING OF ORIGINAL ACTION.

Sec. 118.053

- (a) The fee for "Filing of Original Action" under §118.052(1) is for all clerical duties in connection with an original action filed in a county civil court.
- (b) The fee is charged of the plaintiff or appellant and is due at the time the cause is filed. Only one fee is due in each action.
- (c) The fee does not apply to actions for which another fee is prescribed by §§118.052(2) or 118.052(3).
- (d) "Original action" includes an appeal from a justice of the peace or a corporation court and a transfer of an action from another jurisdiction.

NOTE: *The term "corporate court" means a municipal court. See Gov't Code §29.002.*

Gov't Code
Sec. 29.002

NOTE: *The \$40 initial filing fee covers all clerical services involved in handling the case. These clerical services include the receiving, filing, indexing, and recording of all instruments and the issuing, including the recording of the return thereon, of all citations, notices, subpoenas, etc.*

AG Op.
JM-727 (1987)
JM-1229 (1990)

Sec. 118.054. FILING OF ACTION OTHER THAN ORIGINAL.

Loc. Gov't Code
Sec. 118.054

- (a) The fee for "Filing of Action Other than Original" under §118.052(1) is for filing of each interpleading, cross action, or action other than the original action.
- (b) The fee is charged of the party initiating the action and is due at the time the action is initiated. Only one fee is due for each such action.

- (c) The fee does not apply to actions for which another fee is prescribed by §§118.052(2) or 118.052(3).

Sec. 118.0545. SERVICES RENDERED AFTER JUDGMENT IN ORIGINAL ACTION.

*Loc. Gov't Code
Sec. 118.0545*

- (a) The fees for "Services Rendered After Judgment in Original Action" under §118.052(1) are for services rendered after judgment in an original action filed in a county civil court.
- (b) The fee for an "Abstract of judgment" under §118.052(1) is for issuing an abstract of judgment.
- (c) The fee for an "Execution, order of sale, writ, or other process" under §118.052(a) is for issuing and recording the return on any of those documents. The fee applies only to a writ or process for the issuance of which another fee is not provided by this subchapter.
- (d) The fee is charged of the party requesting the service and is due at the time the service is requested.
- (e) In this section, "original action" has the meaning assigned by §118.053.

Sec. 118.0546. RECORDS MANAGEMENT AND PRESERVATION FEE – CIVIL CASES.

Sec. 118.0546

- (a) The fee for "Records Management and Preservation" under §118.052 is for the records management and preservation services performed by the county as required by Chapter 203.
- (b) The fee is assessed as cost and must be paid at the time of filing any civil case or ancillary pleading thereto.
- (c) The fee is placed in a special fund to be called the records management and preservation fund.
- (d) The fee must be used only for records management and preservation purposes in the county. No expenditure may be made from this fund without prior approval of the commissioners court.

NOTE: Local Government Code §118.0645(b) also requires the assessment of a records management and preservation fee at the time of filing any probate case (as opposed to other civil cases) and adverse probate action.

Sec. 118.059. ISSUING DOCUMENT.

Sec. 118.059

- (a) The fee for "Issuing Document" under §118.052(3) is for issuing an original document and one copy and includes recording the return of the document.
- (b) The fee for issuing for the same action at the same time more than one set of an original and one copy of the same document includes recording the return of the document. The fee must be paid at the time the order is placed.
- (c) In this section, "document" includes a citation, notice, commission to take

depositions, execution, order, writ, process, or other instrument or paper authorized or required to be issued by the Clerk.

Sec. 118.060. CERTIFIED PAPERS, NO RETURN REQUIRED.

*Loc. Gov't Code
Sec. 118.060*

- (a) The fees for "Certified Papers" under §118.052(3) are for the County Clerk's certificate that shall be placed on each page or part of a page, and a fee for copying each page or part of a page, of a notice, statement, transcript, or other document authorized or required to be issued by the Clerk.
- (b) The fee must be paid at the time the order is placed.

NOTE: The fee generally includes all costs associated with locating and providing copies.

*AG Op.
JC-0292 (2000)*

Sec. 118.0605. NONCERTIFIED PAPERS.

*Loc. Gov't Code
Sec. 118.0605*

- (a) The fee for "Noncertified Papers" under §118.052(3) is for issuing a noncertified copy of each page or part of a page of a document.
- (b) The fee must be paid at the time the order is placed.

Sec. 118.061. LETTERS AND ABSTRACTS. The fee for Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment under §118.052(3) is for the issuing of any of those documents.

Sec. 118.061

Sec. 118.062. DEPOSIT AND SAFEKEEPING OF WILLS. The fee for "Deposit and Safekeeping of Wills" under §118.052(3) is for receiving and keeping wills deposited for safekeeping. The fee must be paid at the time the will is deposited with the county clerk.

Sec. 118.062

Sec. 118.063. MAIL SERVICE OF PROCESS. The fee for "Mail Service of Process" under §118.052(3) is for the Clerk's service of process by certified or registered mail. The fee is the same amount that sheriffs and constables are authorized to charge under §118.131.

Sec. 118.063

Sec. 118.064. ADDITIONAL FEE IN ORIGINAL PROBATE ACTION.

Sec. 118.064

- (a) The fee "Additional, special fee" under §118.052(2)(A)(vi) is to be paid for each original action filed in a probate court and is in addition to all other fees.
- (b) The fee shall be deposited in the general fund of the county to be used for:
 - (1) the continuing education of the judge and staff of the probate courts, including the payment of travel and related expenses in attending a continuing judicial education activity of an organization accredited by the supreme court for continuing judicial education; or
 - (2) the contribution of the county to fund the compensation required by Chapter 781, Acts of the 68th Legislature, Regular Session, 1983 (Article 1969b, Vernon's Texas Civil Statutes), for the presiding judge of the

statutory probate courts.

- (c) If the fee produces more revenue than required for the purposes provided by Subsection (b), the commissioners court by order shall reduce the fee to an amount that will not produce more revenue than required.
- (d) A judge may not expend funds for continuing education without the approval of the commissioners court of the county. The judge of the court shall supply the commissioners court with an itemized receipt for those expenses.
- (e) The county auditor shall audit the fees collected in the same manner as other fees collected by the clerk.

Sec. 118.0645. RECORDS MANAGEMENT AND PRESERVATION FEE—
PROBATE CASES.

Loc. Gov't Code
Sec. 118.0645

- (a) The fee for "Records Management and Preservation" under §118.052 is for the records management and preservation services performed by the county as required by Chapter 203.
- (b) The fee shall be assessed as cost and must be paid at the time of filing any probate case or adverse probate action.
- (c) The fee shall be placed in a special fund entitled records management and preservation fund.
- (d) The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203. No expenditure may be made from this fund without prior approval of the commissioners court.

Sec. 118.065. FREE ACCESS TO RECORDS.

Sec. 118.065

- (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.
- (b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

AG Op.
DM-30 (1991)

2. Additional Fees

In addition to the above fees for probate cases, the Clerk collects the fees authorized for civil cases.

3. Fee for Judge's Signature

A fee is to be charged for all orders signed in a probate case and for some other actions by the judge. The statute says that the county judge is to collect these fees, but in practice the County Clerk usually collects the fees. The fees are as follows:

*Loc. Gov't Code
Sec. 118.101*

- (1) Probate of a will \$2.00
- (2) Granting letters testamentary, letter of guardianship
or letter of administration \$2.00
- (3) Order of sale \$2.00
- (4) Approval and confirmation of sale \$2.00
- (5) Decree refusing order of sale or confirmation of sale ... \$2.00
- (6) Decree of partition and distribution \$2.00
- (7) Decree approving or setting aside the report of a
commissioner of partition and distribution..... \$2.00
- (8) Decree removing an executor, administrator or
guardian (with the fee to be paid by the executor, administrator
or guardian) \$1.00
- (9) Fiat or certificate \$2.00
- (10) Continuance \$1.00
- (11) Orders for which another fee is not prescribed \$2.00
- (12) Administering oath or affirmation with certificate
and seal..... \$2.00
- (13) Administering oath or affirmation without certificate
and seal..... \$0.25
- (14) Records technology and infrastructure fee,
if authorized by the commissioners court
of the county \$2.00

4. Prohibited Fees

A County Clerk is not entitled to a fee for:

Sec. 118.066

- Examination of a paper or record in the Clerk's office
- Filing any process or document the Clerk issues that is returned to court
- Motion or judgment on a motion for security for costs
- Taking or approving a bond for costs

- Providing to the court, upon written request of a party to the action, a copy of a document preserved only on microfilm or other electronic means

*Loc. Gov't Code
Sec. 118.0526*

A fee may not be collected by a probate Clerk for certifying a copy of the court's escheat order under Estates Code §551.005 (escheat matters).

*A.G. Op.
JM-223 (1984)*

D. CLERK'S PROBATE PROCEDURES – GENERAL

Presentation of the Clerk's duties and responsibilities in probate matters is complicated somewhat by the fact that different types of probate have different goals and, therefore, different procedures. There are, however, common procedures such as the filing of cases, which can be discussed jointly, as below. Special procedures for specific types of cases will be discussed in Part E.

Probate cases are always initiated by the filing of an application with the County Clerk. This is usually done on behalf of an applicant by an attorney.

*Estates Code
Sec. 52.051*

- The Clerk will first file-mark the application with the Clerk's endorsement stating that the instrument has been filed for record, setting out the time and date of filing.
- The Clerk should collect the appropriate fee for the desired service, issue a receipt to the applicant, and enter the amount received into the office accounting system.
- The case should be assigned a unique, sequential number, and an entry should be created in the probate fee book. While the format of this book may vary, it is common to record (on a separate sheet for each case) such information as:
 - Case number
 - Style of case (name of deceased)
 - Applicant's name
 - Name of applicant's attorney, if any
 - Amount of fee or fee deposit received
 - List of all instruments filed with or issued by the Clerk
- The judge's docket should now be created and should contain the information previously outlined in this chapter for this instrument, plus any other data that an individual judge may wish to see. Local custom will dictate whether the Clerk keeps the judge's docket (and sets the docket for hearing) or the judge keeps his own docket.
- The claim docket is usually not prepared until a claim is actually filed with the Clerk. At that time, it is created in the manner prescribed in Part B.3.b [*Claim Docket*] above.
- The application is now ready for recording and should be transcribed or copied, numbered as to volume and page(s), and put into the permanent

minutes of the court. The volume and page number should be recorded in all other probate records deemed appropriate by the Clerk.

- Finally, the Clerk prepares the case file and places it in numerical sequence with the other probate cases.

While the above procedures have been outlined using the application to probate as an example, they should be followed for all instruments either filed with or issued by the Clerk. After the Clerk has file-marked any instrument as filed for record and collected the fee, the above procedures may be carried out in any order most convenient and efficient for the Clerk so long as all steps are accomplished.

E. CLERK'S PROBATE PROCEDURES – SPECIFIC

1. Issuance of Citations and Notices

The default rule under the Estates Code is that notice and citation are not necessary unless the Estates Code expressly provides for notice or citation or the court requires it. However, even when the Estates Code does not provide for service, the notice and citation provisions of the Texas Rules of Civil Procedure may apply. Remember that the court may require notice or citation, and will specify the way notice is to be given or citations are to be served. Also note that some counties have local notice/citation requirements in addition to that which is expressly provided for in the Estates Code.

*Estates Code
Sec. 51.001*

Sec. 1051.001

The Clerk will issue citations for service at the request of the applicants (or their attorneys) or the judges. Even if citation or notice is required by a specific section of the Estates Code, the Clerk does not issue the citation unless requested to do so. Service may be made by personal service, posting, publication (including certain required online publication), or mail. The citations must be dated, state the style and number of the case, the court in which it is pending, and describe the matter to which the citation relates. (The same elements must be included in notices issued by the Clerk.)

*Secs. 51.001
- 51.003
Sec. 51.051
Sec. 51.054
Sec. 51.101
Sec. 51.151*

*TRCP 99(a), (b),
(d)*

Some examples of situations/events requiring citations or notice are:

- Sale of real property and personal property
- Failure to file exhibits and reports
- Resignation of personal representative
- Appointment of successor representative
- Bonds and sureties

Before the probate court may act upon a petition, service of citation must occur. In most instances, service occurs when the constable or sheriff posts the citation; however, certain circumstances require service of citation by methods other than posting such as personal service, mail, or publication (including certain online publication). If citation required by the Estates Code is served by any method other than by mail, it must be served not less than 10 days before the return day, exclusive of the date of service.

*Estates Code
Sec. 258.003
Sec. 303.002
Sec. 1051.104
Sec. 1051.106
Secs. 51.051
- 51.054
Sec. 51.101
Secs. 1051.051
- 1051.054*

There are certain actions for which the Estates Code specifically provides that a

particular type of notice is required and specifies the manner of its service. Because notice and citation requirements are complex, clerks are strongly urged to review the publication [Responsibilities of the Probate Clerk](#). This extremely detailed paper provides a wealth of information and includes sample forms. However, it is a little dated and it would be prudent to verify that its directions are still valid.

Estates Code
Sec. 51.051(b)(1)
Sec. 51.051(b)(2)

2. Probate of Wills

When the deceased has left a will, he or she is said to have died "testate."

The first step in the probate process is filing an application to probate the will with the Clerk. An executor named in a will, an administrator designated as authorized by Estates Code §254.006, an independent distributee-designated administrator, or an interested person may file an application to probate a will. Usually, the application is filed by the person named as executor in the will. An application must state and aver certain information that is known or can, with reasonable diligence, be ascertained by the applicant. The original will must accompany the application to admit the will to probate and becomes part of the case file. The Clerk issues any necessary notices and/or citations.

Sec. 256.051
Sec. 301.051

Sec. 256.052
Sec. 256.053

After the application has been filed, a hearing is set by the applicant, applicant's attorney, the Clerk, or the judge. The purpose of the hearing is to appoint the executor, and to admit the will to probate.

In the typical probate case, the judge will review the original will as filed with the application. The judge may accept it as self-proving or call for testimony to establish the validity of the will. Special provisions apply if the will cannot be produced. This testimony, and any other testimony taken during the hearing to admit the will to probate, must be reduced to writing at the time it is given, signed by the person giving testimony, and sworn to by the person giving testimony in open court. The written record is filed by the Clerk in the case file.

Secs.256.152
- 256.155

Sec 256.157

Sec. 256.156

When the judge is satisfied as to the deceased person's last wishes, the judge will appoint an executor for the estate (usually named in the will) and issue an order admitting the will to probate. This order officially recognizes the will and allows for distribution of the estate. The original will and the probate of the will shall be deposited with the office of the county clerk and may be removed for inspection only upon an order of the court.

Secs. 256.201
- 256.202

The next step will be for the executor to file an oath with the Clerk stating that the executor believes that the writing offered for probate is the last will of the decedent and that the executor will well and truly perform all duties of executor. The executor will request the Clerk to issue letters testamentary. These letters, which carry the Clerk's signature and seal, are a public statement that the executor has control of the estate and is used to gain access to bank accounts and dispose of property. Before letters are issued, the Clerk must make sure that all the following documents are on file:

Sec. 305.002
Sec. 305.003
Secs.305.051
- 305.055

- Application
- Will

- Citation and return
- Proof of death and other facts
- Order admitting will to probate
- Oath of executor

NOTE: Letters testamentary are not recordable instruments and are never recorded in the probate minutes. Likewise, because they are not recordable documents, the Clerk may not issue certified copies of letters testamentary at any time. The Clerk may, however, issue a certificate under the seal of the court, stating that such letters have been issued.

A.G. Op.
H-410 (1974)

Estates Code
Sec. 306.005
Sec. 306.007

Within 90 days after qualifying, the executor must file with the Clerk an inventory and appraisal of all the property of the estate. A complete list of claims owing to the estate must be attached to and filed with the inventory, along with an affidavit of the executor stating that the inventory and list of claims are true and correct.

Secs. 309.051
- .053
Sec. 309.056

An Affidavit in Lieu of Inventory may be filed with the Clerk if all debts, excluding secured debts, taxes and administration expenses are paid and all beneficiaries have received a verified and detailed inventory. The affidavit must be filed within the 90-day period prescribed in Estates Code §309.051(a) unless an extension has been granted.

Sec. 309.056

Should the executor die, resign, or be removed from office, the court will appoint an "administrator with will annexed," unless the will has provisions for appointing a successor executor. The administrator's powers are limited unless he or she applies to the court for the powers granted to an independent executor.

Secs. 361.101
- .106
Secs. 361.151
- .152
Secs. 361.001
- .005
Secs. 361.051
- .054

If such application is made, the Clerk issues citation to all those interested in the estate. Each person may appear and show cause why such powers should not be granted. Service of such citation is by posting.

Secs. 54.001
- .002
Sec. 404.004(f)
Sec. 404.005

The court may also appoint a successor executor and enter an order continuing independent administration of the estate. Such successor serves with all the powers and privileges granted to the preceding independent executor.

Finally, when all debts of the estate have been paid, or paid so far as the estate's assets permit, there is no pending litigation, and all assets have been distributed, the executor may close the estate. This is done by filing with the court a closing report, verified by affidavit, showing the disposition of the estate.

Secs. 405.004
- .007

After an estate has been fully administered, any distributee may file an application for the estate to be closed. A court hearing must be held, and the executor must be properly served with notice of the application and hearing. The court may order the executor to file a final report, thus closing the estate, or may terminate the executor's powers to act.

Sec. 405.009

Sec. 362.001

The estate must be closed when there is no further need for its administration.

a. Foreign Wills

Probate of Foreign Will. The written will of a testator who was not domiciled in Texas at the time of his death, but which would affect any real or personal property in Texas, may be admitted to probate at any time upon proof that it was admitted to probate, or otherwise established in another state, a U.S. territory, the District of Columbia, or any foreign nation. *Estates Code
Secs. 501.001
-.008*

The procedures for and following the filing of an application for the probate of a foreign will vary depending on whether a foreign will has been admitted to probate in the domicile of the testator or jurisdiction other than the domicile of the testator at the time of his death. In either instance, however, an **authenticated** copy of the foreign will and the order by which it was admitted to probate must be filed with the application for probate. *Secs. 501.001
-.008*

Filing and Recording Foreign Will in Deed Records. When a will that conveys or disposes of land in this State has been probated according to the laws of any of the United States, its territories, the District of Columbia, or any foreign nation, an **authenticated** copy of the will and order admitting the will to probate may be filed and recorded in the deed records in any county of this State in which the real estate is situated. These documents shall be recorded in the same manner that deeds are required to be recorded. *Sec. 503.001
Sec. 503.003*

The proper filing and recording of an authenticated copy of a foreign will and the order admitting it to probate has the same effect that a deed would have in conveying the real property covered by the foreign will. *Sec. 503.051*

Contest of Foreign Wills. A foreign will either admitted to probate in Texas or filed in the deed records of any county in Texas may be contested by any interested person, but only upon the grounds set forth in Estates Code Chapter 504.

3. Administration of Estates

When the decedent does not leave a will, he or she has died "intestate."

The administration of an estate of a person who has died intestate begins with filing of an application for administration with the Clerk. An executor named in a will, an administrator designated as authorized by Estates Code §254.006, an independent administrator designated by all of the distributees of the decedent under §401.002(b), or an interested party may file the application. Upon the filing an application for letters of administration, the clerk shall issue a citation to all parties interested in the estate. A court may not act on the application until service of citation is made upon interested parties. *Sec. 256.051
Sec. 301.051

Secs. 303.001
-.002*

The judge may determine that there is no necessity for administration of the estate. If so, the court will issue an order refusing the application for letters of administration. *Sec. 301.153*

After the application for administration has been filed, a hearing is set by the applicant, applicant's attorney, the Clerk, or the judge. The purpose of the hearing is to determine whether an administrator of the estate should be appointed.

Generally, the administrator must post bond with the Clerk in an amount determined by the judge. He or she must also file an oath accepting administration with the Clerk. Upon the filing of the oath and the posting of the bond, the administrator has qualified.

*Estates Code
Sec. 305.051
Secs. 305.051
-.055
Sec. 305.002*

The Clerk will then issue letters of administration and deliver them to the administrator.

Sec. 306.004

Within 90 days from the filing of the oath and the approved bond, the administrator must file with the Clerk an inventory, appraisal, and list of claims. The administrator must also file an affidavit stating that the information in the inventory and list of claims is true and correct.

*Secs. 309.051
-.053
Sec. 309.056*

An Affidavit in Lieu of Inventory may be filed with the Clerk if all debts, excluding secured debts, taxes and administration expenses are paid and all beneficiaries have received a verified and detailed inventory. The affidavit must be filed within the 90-day period prescribed in Estates Code §309.051(a) unless an extension has been granted.

Sec. 309.056

Sec. 309.051(a)

The administrator must file with the Clerk an annual account for the period ending one year from the date of qualification. The administrator must continue to file annual reports until the estate is closed.

*Secs. 359.001
-.005*

An estate may be administered for any number of years for good cause. At some time during the administration, the administrator may terminate the case by filing with the court a final account of the estate and receipts from the heirs stating that proper distribution of the estate has been made. There will be issuance of necessary citations by the Clerk. Upon being satisfied that citation has been served upon all persons interested in the estate, the court will examine the final account, and, after hearing all objections or exceptions to the account, will audit and settle the account. When the administrator has fully administered the estate and the final account has been approved, the judge will enter an order closing the estate. This releases the administrator and sureties. There will be no more letters issued after this point.

*Secs. 362.001
-.013*

4. Partition and Distribution

In some cases, it is necessary to partition the estate. If the estate consists of more than money or debts owed, the court must appoint three commissioners to partition the estate for distribution, unless the court has determined that the estate cannot be partitioned.

*Sec. 360.151
Secs. 360.201
-.203
Sec. 362.011*

Once the commissioners have been appointed, the Clerk issues a writ of partition to them. The writ is accompanied by the court order, which orders the partition of the estate. The writ and order are served on any one of the commissioners, and the Clerk notifies the other two by any method (*e.g.*, telephone call, letter, email).

Sec. 360.152

The commissioners are required to fairly divide the property, and make a report to the court. Upon the court's approval of the commissioners' report, the judge orders the executor or administrator to deliver the property, along with any necessary papers (*e.g.*, trust deeds, car titles) to the distributees.

*Secs. 360.153 -
.156*

If any executor or administrator does not, upon demand, deliver the property to the person entitled to it, such person may file a written complaint with the Clerk of the court. The Clerk will issue a citation to be served personally on the executor or administrator, advising him or her of the complaint and citing him or her to appear before the court and answer, if he so desires, at the time designated in the citation.

*Estates Code
Sec. 360.301*

If the court finds that the representative did fail to deliver the property as required, the court will enter an order to that effect, and the representative will be liable to the distributee for damages.

5. Temporary Administration

In certain probate situations, the early appointment of a temporary administrator to take immediate action is sometimes required. When the interest of a decedent's estate requires it, the judge may appoint a temporary administrator immediately, without notice or citation of any kind. Any person may file with the Clerk of the court a written application for the appointment of a temporary administrator of a decedent's estate. The order appointing the temporary administrator both defines and limits the powers of the temporary administrator and fixes the amount of the bond.

*Secs. 452.001
- .008*

Sec. 452.152

The appointee must file the bond with the County Clerk not later than the third business day after the date of the order. "Business day" excludes Saturdays, Sundays, and holidays recognized by Texas.

Sec. 452.004

Not later than the third day after the temporary administrator has filed his or her oath and the bond is approved by the court, the County Clerk shall issue letters of temporary administration which set forth the specific rights and powers of the temporary administrator.

Sec. 452.005

On the date that the County Clerk issues letters of temporary administration, the County Clerk must post a notice of the appointment of the temporary administrator, giving all interested persons the opportunity to contest the appointment if they desire.

Sec. 452.006

A temporary administrator has only such rights and powers as are specifically set forth in the appointing order of the court or as may be expressed in subsequent orders of the court. Any acts performed by a temporary administrator that are not so expressly authorized are void. The letters of temporary administration issued by the Clerk will specify the exact powers granted by the court and will usually track the language in the order of appointment.

*Sec. 452.101
Sec. 452.102*

The appointment as temporary administrator can be made the same day that the application is filed, and the temporary administrator can be properly qualified and act officially on behalf of the estate that same day, provided that the oath and bond approved by the court are filed.

*Secs. 452.001
- .008*

In a temporary administration pending a will contest, the temporary administration terminates when the contest is over and the assets of the estate are then delivered to the duly appointed permanent executor or administrator.

Sec. 452.051

When the temporary appointment expires, the temporary administrator must file with the Clerk of the court a sworn list of all property of the estate which has come into the possession of the temporary administrator, a return of all sales made, and a full exhibit and account of all other acts of the temporary administrator. It must be acted upon by the court. If the temporary letters expire or cease to be of effect for any cause, the court will enter an order requiring the temporary administrator to deliver any remaining assets of the estate to the persons legally entitled to possession of the assets. Upon proof of such delivery, the court will enter another order closing the temporary administration, discharging the temporary administrator and releasing the surety or sureties from future liability. If, before the expiration of the temporary appointment, there is no longer a need for a temporary administration and the court determines there is no necessity for a permanent administration, the temporary administration may be closed.

*Estates Code
Sec. 452.151
Sec. 452.152*

6. Small Estates

Small estates may be probated on an affidavit under simplified procedures set forth in Estates Code Chapter 205, provided that:

*Secs. 205.001
-.005*

- The assets (excluding the homestead and exempt property) exceed the known liabilities of the estate;
- The value of the net assets of the estate on the date of the affidavit (excluding the homestead and exempt property) does not exceed \$75,000;
- No petition for the appointment of a personal representative is pending or has been granted; and
- At least 30 days have elapsed since the death of the decedent and the decedent died intestate.

Those entitled to a distribution file an affidavit, which must also be sworn to by two disinterested witnesses, with the Clerk. The affidavit must contain the names and addresses of all distributees, a list of the assets and liabilities of the estate, and a statement of the family history showing the distributees' right to the property.

Sec. 205.002

The judge examines the affidavit to determine if it conforms to the provisions of Estates Code Chapter 205. If the judge approves the affidavit, it is recorded as an official public record. If the county does not microfilm or otherwise electronically keep recorded public records, the Clerk must record the relevant information from the affidavit in a Small Estates record book. The record book must be indexed, and the index must include the name of the decedent and a record of any real property involved.

Sec. 205.005

The Clerk will furnish certified copies of the recorded affidavit to the distributees upon request. The certified copy is the authority by which estate assets are transferred to distributees.

Sec. 205.007

7. Muniment of Title

In some cases, when there are no debts against the estate, excluding debts secured by liens on real estate, or for other reason making administration unnecessary, the will may

*Estates Code
Sec. 257.001
Secs. 257.101
-.103*

be admitted to probate as a "muniment of title," which means that no executor or administrator is necessary and the heirs simply become owners of their parts of the estate. In such a case, no letters, oaths, or bonds are necessary. This proceeding serves to pass title to the decedent's property.

An application to admit the will to probate as a muniment of title must be filed. The judge will determine if the will should be admitted to probate as a muniment of title. The proof required is set forth in Estates Code §257.054. *Estates Code Secs. 257.051 -.054*

When the judge has determined the will should be admitted to probate as a muniment of title, he or she issues an order so stating. The order is sufficient legal authority for the named distributees to receive the assets of the estate to which they are entitled. The distributees may treat the property as their own. *Sec.257.102*

Unless the court waives this requirement, the applicant for probate of the will must file with the Clerk of the court a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms of the will that have been unfulfilled. This affidavit must be filed no later than the 180th day after the date the will is admitted to probate as a muniment of title. Failure of the applicant for probate of the will to file such affidavit does not otherwise affect title to property passing under the terms of the will. *Sec. 257.103*

8. Appeal of Probate

All final orders of any court exercising original probate jurisdiction are appealable to the courts of appeals. The case is filed in the court of appeals as a civil suit. *Sec. 32.001*

An appeal bond is required, unless the appeal is made by the executor or administrator. However, if such appeal personally concerns the executor or administrator, then he or she must give the bond. *Sec. 351.002*

Upon written notice of appeal of a probate case to the court of appeals, the Clerk will prepare a Clerk's record as for any other civil appeal.

9. Wills for Deposit and Safekeeping

A will may be deposited with the County Clerk of the county of the testator's residence. A testator or another person for the testator may deposit the will. An attorney, business entity, or other person in possession of a testator's will may deposit it with the Clerk of the county of the testator's last known residence if the attorney, business entity or other person is unable to maintain possession of the will and after a diligent search is unable to locate the testator. The Clerk may require proof of identity and residence if the Clerk does not know the person. The Clerk will collect a fee of \$5.00 and issue a certificate of deposit. The fee must be paid at the time the will is filed. The wills are to be filed and numbered by the County Clerk. The wills should be numbered in consecutive order and all certificates of deposit shall bear the same number respectively. *Sec. 252.001 Sec. 252.003 Loc. Gov't Code Sec. 118.052(3) Sec. 118.062*

The will deposited with the County Clerk is to be enclosed in a sealed wrapper, which must state "Will of," followed by the name, address, and the signature of the testator. The wrapper must state the name and current address of each person who must be notified *Estates Code Sec. 252.002 Sec. 252.004*

of the deposit of will after the death of the testator. The wrapper of a will deposited by an attorney, business entity or other person for a testator whose location is unknown must be endorsed with "Will of" followed by the name and last known address of the testator and the name and last known address of an executor and each alternate executor named in the will. The "wrappers" may be obtained from the Clerk's suppliers as they have a special seal on them. Each County Clerk will keep an index of all the wills that have been deposited with the office.

The County Clerk will deliver the will only to the testator, so long as the testator is alive, or to another person who has been authorized by the testator by a sworn written order. The County Clerk should receive the certificate of deposit issued for the will before surrendering the will to any person. In lieu of the certificate, the Clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

*Estates Code
Sec. 252.051
Sec. 252.052*

The act of depositing of a will for safekeeping does not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or the contents thereof. Please note that the act of depositing a will for safekeeping is wholly voluntary on the part of the testator; there is no requirement that a will be deposited with the Clerk for safekeeping. The deposit of a will for safekeeping has no legal effect.

Sec. 252.153

10. Custody of Adjudicated Agreements Between Spouses Creating a Right of Survivorship in Community Property

An original agreement creating a right of survivorship in community property that has been adjudicated, together with the order adjudging it valid, must be deposited in the office of the County Clerk where it was adjudicated. The agreement and order must remain there, except during such time when it may be removed for inspection on order of the court where adjudicated. If the court orders an original agreement to be removed, the person removing the original agreement must give the Clerk a receipt for it, and the Clerk of the court must make and retain a copy of the original agreement.

Sec. 112.106

11. Payment of Estates into State Treasury

When an escheat order has been entered by the court for an executor or administrator to pay any funds to the comptroller in accordance with Estates Code Chapter 551, the Clerk of the court in which such order is made must serve, by personal service, on the comptroller a certified copy of the order within five days after the order has been made. No fee may be collected for certifying a copy of the court's order. A filing fee may be collected for the filing by an administrator of his receipt from the state treasurer of the escheat payment.

*Sec. 551.001
-.005*

*AG Op.
JM-223 (1984)*

Any Clerk who neglects to have the comptroller served with a certified copy of the order to escheat within the time prescribed by Estates Code §551.101 of the is liable for a penalty of \$100.

*Estates Code
Sec. 551.101*

F. GUARDIANSHIP

1. Jurisdiction

Sec. 1022.001. GENERAL PROBATE COURT JURISDICTION IN GUARDIANSHIP PROCEEDINGS; APPEALS

*Estates Code
Sec. 1022.001*

- (a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in §1021.001 of this code for that type of court.
- (b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.
- (c) A final order issued by a probate court is appealable to the court of appeals.

Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING

Sec. 1021.001

- (a) For purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes:
 - (1) the granting of letters of guardianship;
 - (2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;
 - (3) a claim brought by or against a guardianship estate;
 - (4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;
 - (5) an action for trial of the right of property that is guardianship estate property;
 - (6) after a guardianship of the estate of a ward is required to be settled as provided by Estates Code §1204.001:
 - (A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;
 - (B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;
 - (C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;
 - (D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155; and
 - (E) a matter related to an authorization made or duty performed by a

guardian under Chapter 1204; and

- (7) the appointment of a trustee for a trust created under §§1301.053 or §1301.054, the settling of an account of the trustee, and all other matters relating to the trust.
- (b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:
 - (1) all matters and actions described in Subsection (a) of this section;
 - (2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under §§1301.053 or 1301.054; and
 - (3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

Sec. 1022.002. ORIGINAL JURISDICTION FOR GUARDIANSHIP PROCEEDINGS

*Estates Code
Sec. 1022.002*

- (a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.
- (b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The judge of a county court may hear guardianship proceedings while sitting for the judge of any other county court.
- (c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.
- (d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Sec. 1022.003. JURISDICTION OF CONTESTED GUARDIANSHIP PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR COUNTY COURT AT LAW

Sec. 1022.003

- (a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:
 1. request the assignment of a statutory probate court judge to hear the contested matter, as provided by Government Code §25.0022; or

2. transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.
- (b) a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.
 - (c) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.
 - (d) A party to a guardianship proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.
 - (e) Notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section:
 1. is disregarded for purposes of this section; and
 2. does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

2. Venue

Except as otherwise indicated below, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person must be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

*Estates Code
Sec. 1023.001*

A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

Sec. 1023.001

- In the county in which both the minor's parents reside;
- If the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator, or the joint managing conservator who has the greater period of physical custody of the minor, resides;
- If only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

- If both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or
- If both parents died in a common disaster and there is no evidence they died other than simultaneously, in the county in which the parents resided at the time of their deaths, if they resided in the same county.

A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

*Estates Code
Sec. 1023.001*

If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

Sec. 1023.002(a)

If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

Sec. 1023.002(b)

a. Clerk's Duties When Venue Transferred

If the proper venue in a guardianship proceeding is finally determined to be in another county, the Clerk, after making and retaining a true copy of the entire file in the case, must transmit the original file to the proper county. Along with the original file, the Clerk of the transferring county must send a certified copy of the entries in the minutes that relate to the proceeding. An administration of the guardianship in the proper county for venue purposes must be completed in the same manner as if the proceeding had originally been instituted in that county.

Ch. 1023

3. The County Clerk's Guardianship Records

a. Judge's Guardianship Docket

At the start of each guardianship proceeding, the Clerk must create a docket sheet for the judge and maintain the docket until the case is finished. The County Clerk must keep a record book to be styled "Judge's Guardianship Docket," which contains the docket sheets for guardianship proceedings. Information contained on the docket sheet must include all of the following:

Sec. 1052.001

- Name of each person on whose person or estate a proceeding is had or is sought to be had;
- Name of the guardian of the estate or person or of the applicant for letters of guardianship;
- Date the original application for a guardianship proceeding was filed;
- Notation of each order, judgment, decree, and proceeding in each

guardianship, including the date it occurs;

- Docket number of each guardianship, sequentially assigned as provided in Subsection (b).

Each paper filed in a guardianship proceeding must have the case number on it.

*Estates Code
Sec. 1052.051(b)*

b. Claim Docket

Some guardianship estates will have outstanding debts or claims filed against them. The Clerk is responsible for recording these claims for the use of the judge and the guardian.

A claim may be presented to the guardian of the estate at any time while the estate is open and when the suit on the claim has not been barred by the general statutes of limitations. A claim of an unsecured creditor for money that is not presented within the time limits set forth in Estates Code §1153.004 is barred.

*Sec. 1157.001
Sec. 1157.060
Sec. 1157.061*

A claim may also be presented by depositing the claim with the Clerk. The Clerk, on receiving a claim, must advise the guardian of the estate or the guardian's attorney by letter mailed to the last known address of the guardian of the deposit of the claim.

Sec. 1157.002

After a claim against a ward's estate has been presented to and allowed by the guardian, the claim must be filed with the County Clerk who must enter it on the claim docket.

Sec. 1157.053

The County Clerk must keep a record book to be styled "Claim Docket" and must enter in the claim docket all claims presented against a guardianship for court approval. The claim docket must be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages must be assigned to each guardianship. The columns, beginning with the first or marginal column, are as follows:

Sec. 1052.002

- Names of claimants in the order in which their claims are filed
- Amount of the claim
- Date of the claim
- Date of filing the claim
- Claim due date
- Date from which it bears interest
- Rate of interest
- Date claim allowed by guardian
- Amount allowed
- Date claim rejected by guardian
- Date claim approved by the court

- Amount of claim approved by the court
- Date claim was disapproved by the court
- Class to which the claim belongs
- Date of court judgment, if claim was established in this manner
- Amount of court judgment

NOTE: Every claim will not contain information in each column.

NOTE: When a claim has been rejected by the guardian, the claimant has 90 days to institute suit thereon or the claim will be barred. The suit may be instituted in the court of original probate jurisdiction in which the guardianship is pending or in any other court of proper jurisdiction. When a rejected claim is established by suit, no execution will issue but the judgment shall be certified within 30 days of the date of rendition if the judgment is from a court other than the court of original probate jurisdiction, filed in the court in which the cause is pending, entered on the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

*Estates Code
Sec. 1157.063
Sec. 1157.065*

c. Case Files

The County Clerk must keep a case file for each person's filed guardianship proceedings. The recommended way to keep case files is in order by case number. The case file must contain all orders, judgments, and proceedings with the court, and any other guardianship filings with the court. Examples of documents in the case file include, but are not limited to, applications for the granting of guardianship, bonds and official oaths, citations and notices, and exhibits and accounts. If a document, other than criminal history record information, is filed with the Clerk, it is included in the guardianship case file. Criminal history record information should never be placed in a case file.

Sec. 1052.052

d. Guardianship Fee Book

The County Clerk must keep a record book styled "Guardianship Fee Book" and must enter in the guardianship fee book each item of court costs, showing to whom costs or fees are due, the date of the accrual of the costs or fees, the party liable for the costs or fees, and the date on which they are paid.

Sec. 1052.003

e. Maintaining Records in Lieu of Record Book

In lieu of keeping the record books described by Estates Code §§1052.001, 1052.002, and 1052.003, the County Clerk may maintain the information on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Sec. 1052.004

The County Clerk must properly index the records and keep the index open for public inspection, but may not release it from the Clerk's custody.

Sec. 1052.053

While the statutes do not specifically state the contents of such an index, a recommended guardianship index contains the following:

- Name of the ward upon whose person or estate proceedings are being initiated
- Case number
- Type of case
- Name of the guardian
- Date the case was filed
- Volume and page number of all minutes

G. GUARDIANSHIP FEES

The fees a Clerk may charge are set by statute. Standard fees for guardianship cases are outlined below. For other fees, refer to Chapter IV of this manual, and Chapter 118, Subchapter C of the Local Government Code.

*Loc. Gov't Code
Ch. 118, Subch. C*

- | | | |
|---|---------|--------------------------------------|
| • Filing original action | \$40.00 | <i>Sec. 118.052
Sec. 118.055</i> |
| • Filing annual or final account of estate | \$25.00 | <i>Sec. 118.056</i> |
| • Filing annual or final report by guardian of a person | \$10.00 | <i>Sec. 118.056</i> |
| • Issuing letters of guardianship | \$ 2.00 | <i>Sec. 118.061</i> |

All other fees are the same as those set forth in Part C.2, C.3, and C.4 above.

H. CLERK'S GUARDIANSHIP PROCEDURES – GENERAL

1. Filing of Cases

Guardianship cases are always initiated by the filing of an application with the County Clerk. This is usually done on behalf of an applicant by an attorney.

*Estates Code
Sec. 1052.051
Sec. 1052.053
Secs. 1052.001
-.004*

- The Clerk will first file-mark the application received with the Clerk's endorsement stating that the instrument has been filed for record, setting out the time and date of filing.
- The Clerk should collect the appropriate fee, issue a receipt to the applicant, and enter the amount received into the office accounting system.
- The case should be assigned a unique, sequential number, and an entry should be created in the guardianship fee book. While the format of this book may vary, it is common to record (on a separate sheet for each case) such information as:
 - Case number
 - Style of case

- Applicant's name
 - Name of applicant's attorney, if any
 - Amount of fee or fee deposit received
 - List of all instruments filed with or issued by the Clerk
- Effective June 1, 2018, as a prerequisite to appointment, the proposed guardian or their attorney must file information with the Judicial Branch Certification Commission (JBCC) and complete online guardianship training provided by the JBCC. The proposed guardian must also undergo a criminal history background check. For more information, please see: <http://www.txcourts.gov/jbcc/register-a-guardianship/>.
 - The clerk shall by written notice refer the proposed guardian or the attorney for the proposed guardian to the JBCC upon filing the application for guardianship. The JBCC shall provide notice to the clerk that the proposed guardian has completed the online training and the criminal history check no later than 10 days before the hearing on the application.
 - The JBCC will forward all criminal history record information to the court. Criminal history record information should never be placed in the file. The information is to be used solely for the benefit of the court in making a determination of whether to appoint the proposed guardian. Once the court makes a decision regarding the appointment of the proposed guardian, the criminal history record information may be destroyed.
 - Once a guardian has been appointed and qualified, the clerk shall notify the JBCC of the appointment so that the guardianship may be registered in the statewide registry.
 - The clerk shall notify each guardian who was appointed prior to June 1, 2018 of the requirement to register the guardianship with the JBCC. The clerk shall provide the registration notice when the guardian files the first annual report after June 1, 2018.
 - The judge's docket should be created and should contain the information outlined in a previous section for this instrument, plus any other data that an individual judge may wish to see. Local custom will dictate as to whether the Clerk keeps the judge's docket (and sets the docket for hearing) or the judge keeps his own docket.
 - The claim docket is usually not prepared until a claim is actually filed with the Clerk. At that time, it is created in the manner prescribed in Estates Code §1052.002.
 - The application is now ready for recording and should be transcribed or copied, numbered as to volume and page(s), and put into the permanent minutes of the court. The volume and page number should be recorded in all other guardianship records deemed appropriate by the Clerk.

- Finally, the Clerk puts the application for guardianship in a separate file jacket or folder and files the record in numerical sequence with the other guardianship cases.

After the Clerk has file-marked any instrument as filed for record and collected the fee, the above procedures may be carried out in any order most convenient and efficient for the Clerk so long as the proposed guardian has completed training and undergone a criminal history background check before the hearing and all other steps are accomplished.

I. CLERK'S GUARDIANSHIP PROCEDURES – SPECIAL

1. Issuance of Notice and Citation

A person does not need to be cited or otherwise given notice in a guardianship matter unless expressly required by Estates Code Chapter 1051.

When notice or citation is required, and the Estates Code section does not specify the means of notice or service, then the Clerk will issue or serve the required notice or citation as directed by the judge.

The Clerk must issue a notice stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the proposed guardian, if different from the applicant. The notice must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application.

The notice must also contain a clear and conspicuous statement informing interested persons of their rights set out in Estates Code §1051.252 as follows:

You are notified that you have the right under Texas Estates Code Section 1051.252 to file with the Clerk a written request that you be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in your request, relating to the application for the guardianship that has been filed or relating to any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. If you make such a request, you are responsible for the fees and costs associated with furnishing you the documents specified in the request. The Clerk may require a deposit to cover the estimated costs of furnishing you with the requested notice.

The sheriff must personally serve citation to appear and answer the application for guardianship, to:

- A proposed ward who is 12 or older;
- A proposed ward's parents, if their whereabouts are known or can be reasonably ascertained;

*Estates Code
Secs. 1051.001
- .003
Secs. 1051.051
- .054
Secs. 1051.101
- .106
Secs. 1051.152
- .154
Sec. 1051.201
Sec. 1051.252
Secs. 1051.101
- .102*

Sec. 1051.252

Sec. 1051.103

- Any court-appointed conservator or other person having control of the care and welfare of the proposed ward;
- A proposed ward's spouse, if his or her whereabouts are known or can be reasonably ascertained; and
- The proposed guardian, if that person is not the applicant.

A citation served as provided by §1051.103(a) must contain the statement regarding the right under §1051.252 that is required in the citation issued under §1051.102.

*Estates Code
Sec. 1051.103(b)*

The applicant must mail a copy of the application for guardianship and a notice containing the information required in the citation issued under §1051.102 by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons if their whereabouts are known or can be reasonably ascertained:

Sec. 1051.104

- Each adult child of the proposed ward;
- Each adult sibling of the proposed ward;
- The administrator of a nursing home or similar facility in which the proposed ward resides;
- The operator of a residential facility in which the proposed ward resides;
- A person whom the applicant knows to hold a power of attorney signed by the proposed ward;
- A person designated to serve as guardian of the proposed ward by a written declaration under Estates Code Chapter 1104, Subchapter E, if the applicant knows of the existence of the declaration;
- A person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;
- A person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
- Each adult named in the application for guardianship as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by §1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

The notice must also contain a clear and conspicuous statement informing interested persons of their rights set out in §1051.252 as follows:

You are notified that you have the right under Texas Estates Code Section 1051.252 to file with the Clerk a written request that you be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in your request, relating to the application

for the guardianship that has been filed or relating to any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. If you make such a request, you are responsible for the fees and costs associated with furnishing you the documents specified in the request. The Clerk may require a deposit to cover the estimated costs of furnishing you with the requested notice.

The applicant must file (1) a copy of the notice and the proofs of delivery of the notice; and (2) a sworn affidavit stating that the notice was mailed and the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery. *Estates Code Sec. 1051.104*

Any person other than the proposed ward may waive receipt of notice or service of citation by filing a written waiver with the Clerk. This may be done by the person or through his or her attorney ad litem. *Sec. 1051.105*

If an attorney has entered an appearance on record, required notices or citations are served on the attorney, not the party for whom the attorney appears. *Sec. 1051.055*

The court may not act on an application for the creation of a guardianship until the applicant has complied with §1051.104(b) and not earlier than the Monday following the expiration of the 10-day period beginning on the date service of notice and citation has been made as provided by §§1051.102, 1051.103, and 1051.104(a)(1). The Clerk must be aware of this restriction, particularly if he or she schedules hearings for the judge. *Sec. 1051.102 Sec. 1051.103 Sec. 1051.104*

2. Appointment of Guardian

A court may appoint a guardian with either full or limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the incapacitated person. *Sec. 1001.001 Sec. 1101.105*

Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The necessary elements of the application are found in Estates Code §1101.001. *Sec. 1001.001 Sec. 1101.001*

Special provisions apply if the proposed ward is a minor who, because of incapacity, will require a guardianship after the proposed ward reaches majority. If the application is filed under this section, the Clerk may not issue the oath or take a required bond before the proposed ward's 18th birthday. *Secs. 1103.001 -.004*

The judge will hold a hearing to consider the application for the appointment of a guardian. The proposed ward must be present at the hearing, unless the judge determines and orders that a personal appearance is not required. *Secs. 1101.051 -.052*

If the judge issues an order appointing a guardian of the individual's person or estate, or both, the person who is appointed guardian must qualify by taking and filing an oath to discharge faithfully the duties of guardian and filing the required bond with the *Sec. 1105.002 Sec. 1105.051*

Clerk when it has been approved by the court.

The oath of a guardian may be taken and subscribed, or the bond of a guardian may be given and approved, at any time before the expiration of the 21st day after the date of the order granting letters of guardianship or before the letters have been revoked for a failure to qualify within the time allowed. An oath may be taken before any person authorized to administer oaths under the laws of Texas. A guardian of an estate must give a bond before being issued letters of guardianship unless the guardian is a corporate fiduciary, a guardianship program operated by a county.

Estates Code
Sec. 1105.003
Sec. 1105.051

Sec. 1105.101

When a person who is appointed guardian has qualified under §1105.002, the Clerk shall issue a certificate under seal stating: (1) the fact of the appointment and of the qualification; (2) the date of the appointment and of the qualification; and (3) the date the letters of guardianship expire. The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship. The order of the court appointing the guardian is effective upon the issuance of letters of guardianship. The order is evidence of the authority of the guardian to act within the scope of the powers and duties that are set forth in the order.

Sec. 1106.001

Letters of guardianship expire one year and 4 months after the date of issuance unless renewed.

Sec. 1106.002

The Clerk may not renew letters of guardianship until receipt and approval by the court of the guardian's annual accounting. If the guardian's annual accounting is disapproved, the Clerk may not issue further letters of guardianship to that guardian relating to the ward or the ward's estate unless ordered by the court.

Sec. 1106.003

NOTE: *Letters of guardianship are not recordable instruments and are never recorded in the guardianship minutes.*

Sec. 1106.001

When letters of guardianship have been destroyed or lost, the Clerk must issue new letters that have the same force and effect as the original letters. The Clerk must also issue any number of letters on request of the person who holds the letters.

Sec. 1106.004

Unless otherwise discharged, a guardian remains in office until the estate is closed.

Sec. 1202.001

Within 30 days after the date the guardian of the estate has qualified as guardian, the guardian must file with the Clerk the original inventory, appraisal, and list of claims of the estate.

Sec. 1154.051
Sec. 1154.052

Within 60 days after the expiration of 12 months from the date of qualification, the guardian of the estate must file a detailed account of the estate with the court. Thereafter, a guardian of the estate must file annual accounts with the court, and the filing of the accounts must be noted on the judge's docket.

Secs. 1163.001
- .006
Sec. 1163.051

The guardian of the person must also submit annual reports to the court which discuss, among other things, the ward's condition, location, care, and well-being.

Secs. 1163.101
- .105

When a guardianship of the estate is required to be settled, the guardian must

Sec. 1204.001
Secs. 1204.101
- .102

present to the court the guardian's verified account for final settlement.

When the guardianship of an estate is required to be settled, the guardian of the person, if there is one, must deliver all property of the ward in the possession or control of the guardian to the emancipated ward or other person entitled to the property. If the ward is deceased, the guardian shall deliver the property to the personal representative of the deceased ward's estate or other person entitled to the property. If there is no property of the ward in the possession or control of the guardian of the person, the guardian must, not later than the 60th day after the date on which the guardianship is required to be settled, file with the court a sworn affidavit that states the reason the guardianship was terminated and to whom the property of the ward in the guardian's possession was delivered. The judge may issue appropriate orders as to the disposition of property if the ward is deceased.

*Estates Code
Sec. 1204.108*

3. Partition of Ward's Interest in Real Estate

If a ward owns an interest in real estate in common with another and if, in the opinion of the guardian of the estate, it is in the best interests of the ward's estate to partition the real estate, the guardian may agree on partition with the other part owners subject to the approval of the court in which the guardianship proceeding is pending.

Sec. 1158.701

When a guardian has reached an agreement with the other part owners as to how the real estate is to be partitioned, the guardian must file with the court an application to have the agreement approved. When the application is filed, the County Clerk must immediately call the filing of the application to the attention of the judge of the court in which the guardianship proceeding is pending. The judge will designate a day to hear the application. The application must remain on file at least 10 days before any orders are made, and the judge may continue the hearing from time to time until the judge is satisfied concerning the application.

*Sec. 1158.702
Sec. 1158.703*

4. Temporary Guardianships

If a court is presented with substantial evidence that a person may be a minor or other incapacitated person, and the court has probable cause to believe that the person or the person's estate, or both, requires the immediate appointment of a guardian, the court must appoint a temporary guardian with limited powers as the circumstances of the case require. The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

Sec. 1251.001

A sworn written application for the appointment of a temporary guardian must be filed before the court appoints a temporary guardian. The required elements of the application are detailed in Estates Code §1251.003.

Sec. 1251.002

The court must appoint an attorney to represent the proposed ward, if counsel has not been retained by or on behalf of the proposed ward.

Sec. 1251.004

On the filing of an application for temporary guardianship, the Clerk issues notice that must be served on the respondent, the respondent's appointed attorney, and the proposed temporary guardian, if that person is not the applicant. The notice must describe the rights of the parties and the date, time, place, purpose, and possible consequence of a

Sec. 1251.005

hearing on the application. A copy of the application must be attached to the notice.

A hearing must be held before the 10th day after the date of filing the application for temporary guardianship. The Clerk needs to be aware of this deadline, particularly if he or she schedules hearings for the judge. *Estates Code Secs. 1251.006 -.009*

A temporary guardianship may not remain in effect for more than 60 days, except if an application for temporary guardianship or an application to convert a temporary guardianship to a permanent guardianship is challenged or contested, the court must appoint a temporary guardian whose term expires at the conclusion of the hearing or on the date a permanent guardian appointed by the court qualifies to serve as the ward's guardian. *Sec. 1251.151 Sec. 1251.051*

When the temporary guardian files the oath and bond, the court order appointing the temporary guardian takes effect without issuance of letters of guardianship. The Clerk must note compliance with oath and bond requirements by the appointed guardian on a certificate attached to the order. The order is evidence of the temporary guardian's authority to act within the scope of the powers and duties set forth in the order. The Clerk may not issue certified copies of the order until the oath and bond requirements are satisfied. *Sec. 1251.101*

At the expiration of a temporary appointment, the appointee must file with the Clerk of the court a sworn list of all property of the estate that has come into the hands of the appointee, a return of all sales made by the appointee, a full exhibit and account of all of the appointee's acts as temporary appointee. *Sec. 1251.152*

5. Payment of Claims without Guardian and Administration of Terminated Guardianship Assets

The County Clerk may, on occasion, be required to administer funds due to a minor or an incapacitated person who does not have a guardian. If the amount is less than \$100,000, the debtor may pay money to the County Clerk for the benefit of the minor or incapacitated person, called the creditor. *Sec. 1355.001 Sec. 1355.002*

The Clerk gives a receipt to the debtor making such payment. The Clerk notifies the creditor of payment by mailing a letter to the address provided by the debtor. Upon receipt of payment, the Clerk must notify the court and invest the money as ordered by the court. *Sec. 1355.001 Sec. 1355.051*

No later than March 1 of each calendar year, the Clerk makes a written report to the court of the status of the funds invested. The report must contain: *Sec. 1355.052*

- Amount of the original investment as of the date of receipt or the last annual report, whichever is later
- Any increase, dividend or income since the last annual report
- Total amount of the investment, including increases at the date of the report
- Name of the depository or the type of investment

The parent, spouse, or person who has actual custody of a creditor may withdraw *Sec. 1355.102*

the funds from the Clerk for the use and benefit of the creditor, as his or her custodian. The custodian must file a written application with the Clerk, and post bond. The bond must be double the amount of the funds in question, and the application and bond must be approved by the county judge. The custodian must use the money for the benefit of the creditor, under the direction of the court.

*Estates Code
Sec. 1355.103*

When the funds have been expended or otherwise properly accounted for, the custodian files a sworn report of his or her accounting for the funds with the County Clerk. When the report is filed, and when it has been approved by the court, the custodian is discharged as custodian and the sureties are relieved from liability under the bond.

Sec. 1355.104

When the creditor is a not a resident of Texas, and has no guardian in Texas, and the money is owed as a result of transactions in Texas, the debtor may pay the money to the County Clerk in which the creditor owns real property. If no real property is owned, the debtor pays the money to the County Clerk of his or her county of residence. The money is handled as outlined above.

Sec. 1355.002

If the custodian does not withdraw the funds as outlined in §§1355.101 – 1355.104, a minor creditor who has reached age 18, or a creditor restored to capacity, or a creditor's personal representative or heirs may seek a court order authorizing that person to withdraw the funds. The Clerk must release to the funds upon presentation of such order.

Sec. 1355.105

When funds in the registry of court belong to a person who is an inmate in an eleemosynary institution exceeds \$10,000, and the person is mentally disabled or incapacitated, this fact may be brought to the court's attention by means of affidavit. The superintendent, business manager or field representative of the institution may present an affidavit to the court. If the court accepts the affidavit, the court can order the Clerk to release the funds to the institution for the benefit of the incapacitated person. After the expenditure or all funds, or after an inmate dies, the institution is required to present a statement of accounting to the surviving next of kin. A copy of the statement must be filed with the court that granted the order to release the funds.

*Secs. 1355.151
- .154*

6. Judicial Branch Certification Commission

The Judicial Branch Certification Commission (JBCC) oversees the certification, registration, and licensing of court reporters and court reporting firms, guardians, process servers, and licensed court interpreters. Regulation was transferred to the JBCC and the Office of Court Administration (OCA).

*Gov't Code
Chapter 155
Sec. 155.101*

Certain individuals who provide guardianship services in Texas must be certified. It is also possible for some individuals to be provisionally certified guardians for a specific period of time before becoming fully licensed. OCA's website includes information, forms, and lists of certified and provisionally certified guardians.

Government Code Chapter 155, Estates Code §§1104.302-.306 and §§1104.257-.258, and Rule 7.3 of the Rules Governing Guardianship Certification impose requirements for County Clerks, the Department of Aging and Disability Services, guardianship programs and private professional guardians to report certain information to the JBCC. In

addition, Estates Code §§1104.302-.306 and §§1104.257-.258 require guardianship programs and private professional guardians to provide certain information to County Clerks. County Clerks are required to report information to the JBCC on private professional guardians only. County Clerks do not report information on guardianship programs or DADS to the JBCC. In addition, County Clerks are not required to report information to the Health and Human Services Commission. Reports must be submitted to the JBCC, not the former Guardianship Certification Board. The form for making the required report is available on OCA's website. The website also provides forms for the certification of guardians and the registration of guardianships.

Pursuant to Estates Code §§1104.302-.303, private professional guardians must make annual application to the clerk for a certificate of registration. On their annual application to the clerk for a certificate of registration, the private professional guardian must include the certification number or provisional certification number issued by the JBCC to that private professional guardian or person representing the ward's interests on behalf of the private professional guardian.

The registration of guardians with the clerks should not be confused with the registration of guardianships with the JBCC. Every guardianship – even those in which a family or friend is guardian – must be registered with the JBCC. For more information of the registration of guardianships see Part H.1 above and <http://www.txcourts.gov/jbcc/register-a-guardianship/>.

Estates Code §1104.306 provides that the clerk must submit the names and business addresses of private professional guardians who have satisfied the registration requirements for the calendar year. Reports must be submitted to the JBCC no later than January 31 each year.

Certification by the JBCC is required for an individual:

- Who is a private professional guardian;
- Who will represent the interests of award on behalf of a private professional guardian;
- Who will provide services to a ward of a private professional guardian or the Department of Aging and Disability Services on the guardian's or Department's behalf; and
- Other than a volunteer, who will provide services to a ward of a guardianship program.

*Gov't Code
Sec. 155.102*

*Estates Code
Sec. 1104.251*

The above individuals subject to certification include those employed by or contracting with a guardianship program and employees of the Department of Aging and Disability Services. A family member or friend appointed guardian of an incapacitated person is not required to be certified.

Sec. 1104.253

7. Registration of Private Professional Guardians

A private professional guardian must apply annually to the Clerk for certificate of

Sec. 1104.303

registration. The application must include a sworn statement which contains all of the following information concerning the applicant:

- Educational background and professional experience;
- Three or more professional references
- Names of all the wards for whom the private professional guardian is or will be serving as guardian
- Aggregate fair market value of all property of all wards that is or will be managed by the guardian
- Place of residence, business address, and business telephone number
- Whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and
- The certification number or provisional certification number issued by the JBCC to the private professional guardian or person

The application must be accompanied by a non-refundable fee of \$40, which covers the cost of administering Estates Code Chapter 1104, Subchapter G.

*Estates Code
Sec. 1104.303(b)*

The term of the registration begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of registration, the term of the registration begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested.

Sec. 1104.304

The Clerk must bring the information contained in the initial or renewal application to the judge's attention for review. The judge will use the information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

Sec. 1104.205

Not later than January 31 of each year, the Clerk shall submit to the JBCC the names and business addresses of private professional guardians who have satisfied the registration requirements of Estates Code Chapter 1104, Subchapter G during the preceding year.

Sec. 1104.306

Unless the JBCC obtains criminal history record information on a proposed guardian, the Clerk must do so. The information is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

- a private professional guardian;
- a person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
- each person employed by a private professional guardian who has personal contact with wards or who performs duties with respect to the management

and/or control of the wards' estates;

- each person employed by, volunteering with or contracting with a guardianship program to provide guardianship services to a ward on the program's behalf; or
- any person proposed to serve as a guardian, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

The Clerk may charge a \$10 fee to recover the costs of obtaining the criminal history information records.

Estates Code
Sec. 1104.402
Sec. 1104.404

The criminal history record information obtained is for the exclusive use of the court and the Judicial Branch Certification Commission and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The Clerk may destroy the criminal history information records after the records are used for the authorized purposes.

Sec. 1104.405
Sec. 1104.408

The court will use the information obtained only in determining whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services or to appoint any other person proposed to serve as a guardian except a proposed ward's family member or an attorney.

Sec. 1104.409

A person commits a Class A misdemeanor offense if the person releases or discloses any information received without a court order to do so or the consent of the person being investigated.

Sec. 1104.4011

8. List of Certain Public Guardians Maintained by County Clerks

Not later than January 31 of each year, each guardianship program operating in a county shall submit to the County Clerk a copy of the report submitted to the JBCC under Government Code §155.105.

Sec. 1104.257

Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the JBCC a statement containing:

- the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and
- the name of each county in which each department employee who is or will be providing guardianship services is providing or is authorized to provide those services.

Sec. 1104.258

9. Report Regarding Alleged Abuse of Elderly or Disabled Person Who Has a Guardian

If an elderly or person with a disability has a guardian, a written notification of the

Hum. Res. Code
Sec. 48.211

findings of an investigation by the Department of Family and Protective Services will be sent to the court to which the guardian is accountable.

J. MENTAL HEALTH

1. Fee for Mental Health Action

The Clerk will collect a \$40.00 fee for mental health or chemical dependency services. The \$40.00 fee for an action involving mental health or chemical dependency services is for the services listed in Health and Safety Code §§571.016, 571.017, 571.018, and 574.008(c), or services under Health and Safety Code Chapter 462, Subchapters C or D. The fees must be paid by the person executing the application for mental health or chemical dependency services and are due at the time the application is filed if the services requested relate to services provided or to be provided in a private facility. If the services requested relate to services provided or to be provided in a mental health facility of the Texas Department of Mental Health and Mental Retardation or the federal government, the County Clerk may collect the fees only in accordance with Health and Safety Code §571.018(h).

*Loc. Gov't. Code
Sec. 118.052(2)(A)
Sec. 118.055(c)*

Except as provided by Local Government Code §118.055(c), the fee must be paid by the party initiating the action and is due at the time the action is initiated, except that with the permission of the court the fee may be paid at the time that the legal or personal representative of the estate qualifies; or if a Veterans Administration chief attorney is the attorney of record, at the time the legal or personal representative of the estate receives funds with which to make the payment.

Sec. 118.055(e)

If a person is unable to pay the \$40.00 fee, the person must file an affidavit on indigency, pursuant to Texas Rules of Civil Procedure Rule 145. Upon the filing of the affidavit, the Clerk must docket the action, issue citation and provide such other customary services as are provided to any other party.

TRCP 145

2. Inspection of County Clerk Records in Docket for Mental Health Proceedings

Each paper in a docket for mental health proceedings in the County Clerk's office is a public record of a private nature. These papers may be used, inspected or copied only under a written order issued by the county judge, a judge of a court with probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located. Information can be released that does not disclose "intimate" information regarding the person or his or her family.

*Health & Safety
Code
Sec. 571.015(a)*

*AG Op.
JM-260 (1985)*

The judge may not issue such order unless he or she enters a finding that the use, inspection or copying of the record is in the public interest, or that the paper is to be released to a person designated in a written release by the person to whom it pertains, or that the paper is to be released to the person to whom it relates.

*Health & Safety
Code
Sec. 571.015(b)*

*A.G. ORD-481
(1987)*

In addition, if a law relating to confidentiality applies, the judge must find that the reasons for the release of the paper fall within the statutory exemptions.

*Health & Safety
Code
Sec. 571.015(c)*

The papers must be released to an attorney representing the proposed patient in a proceeding under Health and Safety Code Title 7.

*Health & Safety Code
Sec. 571.015(d)*

This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

Sec. 571.015(e)

It is recommended that a separate (from the probate docket and index) mental health proceedings docket and index be maintained.

3. Notification of Voter Registrar of Mental Incompetence

It is the Clerk's responsibility to prepare an abstract of each final judgment declaring a person above the age of 17 to be mentally incompetent. These abstracts are filed with the voter registrar of the person's county of residence not later than the 10th day of the month following the month in which the abstract is prepared.

*Election Code
Sec. 16.002*

K. ACCESS TO RECORDS

Except as noted in Part J above, a person is entitled to read, examine and copy from documents referenced in Local Government Chapter 118, Subchapter C, or from microfilm or other photographic image of the documents. A person may, without paying a fee, exercise the right to view the documents under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

*Loc. Gov't Code
Sec. 118.065
Sec. 118.066*

CHAPTER 6

CLERK OF THE COMMISSIONERS COURT

A. INTRODUCTION

The County Clerk is the Clerk of the commissioners court. The Clerk shall:

*Loc. Gov't Code
Sec. 81.003*

1. serve the court during each of its terms;
2. keep the court's books, papers, records, and effects; and
3. issue the notices, writs, and process necessary for the proper execution of the court's powers and duties.

The court shall require the Clerk to record the proceedings of each term of the court. This record may be in a paper or electronic format. After each term the Clerk must attest to the accuracy of this record.

The Clerk must record the court's authorized proceedings between terms. This record may be in paper or electronic form. The Clerk must attest to the accuracy of the record.

The actual responsibilities of the Clerk in supporting the commissioner's court will vary from county to county. In general, though, the Clerk will perform the following tasks:

- Attend all regular and special meetings as ex officio Clerk of the commissioners court;
- Assist the county judge in preparing the agenda;
- Post notices of the agenda for each meeting;
- Take minutes of all actions;
- Index and record minutes;
- Keep the official commissioners court seal and use it to authenticate the official acts of the court;
- Preserve and keep all books, papers, records and effects belonging to the court;
- Issue all notices, writs, and processes necessary for the court; and
- Perform all such other duties as may be prescribed by law.

*AG Op.
O-6318*

*Loc. Gov't Code
Sec. 81.003
Sec. 81.004*

The duties described in Local Government Code §81.003 are vested exclusively with the Clerk or Deputy Clerk and cannot be delegated to other persons. Additionally, the Clerk may handle correspondence for the court and assist the commissioners as they sit as special committees.

*Cameron County
v. Rivera, 761 SW
2d 517 (Tex. Ct.
App.-Corpus
Christi 1988, no
writ)*

B. ATTENDANCE AT COMMISSIONERS MEETINGS

At the last regular term of each fiscal year of the county, the commissioners court by order shall designate a day of the week on which the court shall convene in a regular term each month during the next fiscal year. If the completion of the court's business does not require a monthly term, the court need not hold more than one term a quarter. The court

*Loc. Gov't Code
Sec. 81.005(a)*

Sec. 81.005(b)

may meet in special session whenever the need arises.

*Loc. Gov't Code
Sec. 81.003*

The Clerk, or a Deputy, should attend each session as official recorder of actions taken, and performs the following duties:

- Notice of any regular or special meeting and agenda must be posted at least 72 hours preceding the meeting. If notice is required or allowed to be posted on the internet, it must be posted continuously for the notice period. Notice on the internet does not negate a requirement to physically post a notice. However, if the notice is continuously posted on the internet, then the physical notice must be accessible only during normal business hours. *Gov't Code
Sec. 551.043*
- Notice of an emergency meeting to deliberate or take action on an emergency or matter of urgent public necessity must be posted at least 1 hour before the meeting is convened and any news media requesting notice of an emergency meeting must be notified of such. *Sec. 551.045
Sec. 551.047*

The Clerk should also take to the meeting any applications, instruments, or official documents filed in the Clerk's office which are of interest to the commissioners or that require action on their part. This includes such items as bonds to be approved, instruments relating to special districts under the commissioners' control, and subdivision plats.

C. TAKING MINUTES

Good minutes should leave no doubt in a reader's mind as to exactly what items have been considered by the commissioners court and what action has been taken on each item. The following procedures will help ensure accurate minutes:

- All motions for action should be recorded exactly as they were put forth — not paraphrased.
- Ideally, the Clerk should record the name of the person making each motion, the name of the person seconding, and the vote of each commissioner upon the motion.
- Items such as contracts, special bills, records of payment, and proclamations will also be recorded in the minutes. The Clerk should either collect these documents at the meeting or make a note of where they will be filed to facilitate subsequent recording.

***NOTE:** Audio tape recordings of commissioners court meetings that are made by the County Clerk as an aid in the preparation of minutes are subject to the provisions of the Open Records Act. The fact that such recordings may be the personal property of the County Clerk does not exempt them from the Open Records Act.*

*AG Op.
JM-1143 (1990)*

D. PREPARING AND RECORDING MINUTES

The County Clerk must record the proceedings of each term of the court and shall record the court's authorized proceedings between terms. The Clerk shall attest to the accuracy of the record, which may be in paper or electronic format.

*Loc. Gov't Code
Sec. 81.003*

The format of the minutes will vary at the preference of the Clerk, but all minutes for a meeting should be recorded on consecutive pages of the record book. The Clerk will

probably be asked to reproduce the minutes for distribution to various county offices and other interested parties.

Additional procedures for recording the minutes are listed below:

- Prior to recording, compare the prepared minutes to the agenda and any notes of the meeting to ensure that the minutes are complete.
- All documents and instruments to be recorded as minutes should be examined for proper seal and signature where either is required.
- Assign each page of the minutes a volume and page number in the permanent record.
- Copy the minutes and bind the copy into the permanent record.
- File the original minutes in an appropriate place after returning any instruments or documents not to be kept in the Clerk's office.

E. INDEXING THE MINUTES

The Clerk should maintain a record book titled "Index to Commissioners Court Minutes" to facilitate access to the minutes. To provide a useful index, many Clerks have adopted the "key word" method of indexing. In this system, each motion, instrument, or document will be cross-indexed under every meaningful or "key" word in its title.

Take, for example, a motion to "Advertise for Bids to Pave Elm Street." The Clerk may select "Advertise," "Bids," "Pave," and "Elm Street" as key words which would lead an interested party to this particular minute. A secondary key word such as "Capital Improvements" may also be used. The Clerk would then create a separate entry in the index to commissioners court minutes for each key word. The index is kept alphabetically by key word and includes:

- Key word
- Full title of motion, instrument, or document
- Volume and page number of minutes
- Date of commissioners court action

F. SEAL

The commissioners court shall have a seal engraved with the words "Commissioners Court, (name of county) County, Texas" and a five-pointed star or other design selected by the court and approved by the Secretary of State. The Clerk shall keep the seal and use it to authenticate official acts of the commissioners court, or of its presiding officer, or of the Clerk that require a seal for authentication.

*Loc. Gov't Code
Sec. 81.004*

CHAPTER 7

UCC FINANCING STATEMENTS

A. INTRODUCTION

Article 9 of the Uniform Commercial Code (“UCC”) is codified in Texas as Chapter 9 of the Texas Business and Commerce Code. It applies to the security interest created when a debtor borrows money from a creditor and pledges personal property or fixtures to the creditor to secure the debt. It provides for public notice of a security interest in certain types of collateral through the filing of a financing statement in the public records.

*Bus. & Com.
Code
Sec. 9.101
Sec. 9.109*

Most financing statements are filed in the office of the Secretary of State. However, financing statements to perfect security interests in real-estate related collateral are required to be filed in the office of the County Clerk where the real property is located. The revisions facilitate electronic filing and electronic communication with the filing offices.

Sec. 9.501

B. INITIAL FILINGS

1. Types of Collateral

The County Clerk’s office is the proper office in which to file financing statements if (1) the collateral is as-extracted collateral or timber to be cut or (2) if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures. In all other cases, the Secretary of State’s office is the proper office in which to file.

*Bus. & Com.
Code
Sec. 9.501*

2. Contents of Financing Statement

- A financing statement is sufficient only if it provides the name of the debtor;
- Provides the name of the secured party or a representative of the secured party;
- Indicates the collateral covered by the financing statement.
- Indicates that it covers extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures
- Indicates that it is to be filed for record in the real property records
- Provides a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law and the description were contained in a record of the mortgage of the real property.
- If the debtor does not have an interest of record in the real property, provides the name of a record owner.

Sec. 9.502(a), (b)

3. A record of a mortgage is effective:

- From the date of recording, as a financial statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be

Sec. 9.502(c)

cut only if:

1. the record indicates the goods or accounts that it covers;
2. the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
3. the record satisfies the requirements for a financing statement, but:
 - a. the record need not indicate that it is to be filed in the real property records; and
 - b. the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom §9.503(a)(4 or (5) applies; and
4. the record is duly recorded.

4. Reasons to Refuse a Filing

A Clerk's office must refuse to accept a record for initial filing for the following reasons:

*Bus. & Com.
Code
Sec. 9.520(a)*

- The record is not communicated by a method or medium of communication authorized by the Clerk's office.
- An amount equal to or greater than the applicable filing fee is not tendered.
- The Clerk's office is unable to index the record because:
 - The record does not provide a name for the debtor; or
 - In the case of an initial filing statement providing the name of a debtor identified as an individual, the record does not identify the debtor's surname; or
 - The record does not provide a sufficient description of the real property to which it relates.
- The record does not provide a name and mailing address for the secured party of record.
- The record does not:
 - Provide a mailing address for the debtor.
 - Indicate whether the name provided as the name of the debtor is the name of an individual or an organization.
- The record is not on an industry standard form, including a national standard form or form approved by the International Association of

Sec. 9.516(b)

Commercial Administrators, adopted by rule by the Secretary of State.

The Clerk may refuse to accept a record for filing only for the reasons set forth above. If the Clerk is unable to read or decipher the information in the tendered record, then the record does not provide the information. Any record that does not indicate that it is an amendment or does not identify an initial filing statement to which it relates is considered to be an initial filing statement.

Bus. & Com. Code
Sec. 9.520(a)
Sec. 9.516(c)(1)
Sec. 9.516(c)(2)

If the Clerk refuses to accept a record for filing, the fact of and the reason for the refusal and the date and time the record would have been filed had the Clerk accepted it must be communicated to the person who presented the record. See [Form VII-1](#) for a sample form that can be used as a means of communication.

Sec. 9.520(b)

The communication must be made in no event more than two business days after the Clerk receives the record. Note that a financing statement or a continuation statement filed in the County Clerk's office **need not be signed**. This omission of the signature requirement was intended to facilitate paperless filing. A financing statement also need not contain an acknowledgment or jurat.

Sec. 9.502
A.G. Op.
JC-0526 (2002)
Prop. Code
Sec. 12.001(c)

5. Forms

A written initial financing statement and amendment must be on an industry-standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by the Secretary of State.

Bus. & Com. Code
Sec. 9.5211

Except for the reasons noted in the section above, the Clerk's office cannot refuse to accept a record on an industry-standard form.

6. Procedures for Filing

For each record filed in the Clerk's office, the Clerk must:

- Assign a unique number to the financing statement;
- Create a record that bears the number assigned to the financing statement and the date and time of filing (for paper filings, the number and date and time may be marked on the financing statement itself);
- Collect the filing fee and enter it into the office's bookkeeping system;
- File the financing statement in the real property records;
- Index the financing statement under the names of the debtor and of each owner of record shown on the financing statement, and also under the name of the secured party, as if they were the grantor(s) and grantee under a deed of trust on the real property; and
- Maintain the filed financing statement for public inspection.

Sec. 9.519
A.G. Op.
JC-0526 (2002)
Bus. & Com. Code
Sec. 9.516(b)(2)
Sec. 9.519

Note: Clerks who use a software package to facilitate recording duties will follow the same procedures and allow for public access.

C. SUBSEQUENT FILINGS

All subsequent filings (such as assignments, continuation statements, etc.) of financing statements for which the initial filing is to be in the County Clerk's office must be linked to the initial financing statement to which they relate. *Bus. & Com. Code Sec. 9.519(f)*

1. Amendments

Amendments to the initial financing statement are filed in order to amend a previously filed financing statement by terminating its effectiveness, continuing its effectiveness, assigning all or part of the assignor's interest, changing the name or address of a party, deleting or adding a party, or changing collateral. *Sec. 9.512 Sec. 9.513 Sec. 9.514*

2. Corrections

Any person named as a debtor or a secured party may file in the Clerk's office a correction statement with respect to a record indexed thereunder the person's name if the person believes that the record is inaccurate or was wrongfully filed. A correction statement must: *Sec. 9.518*

- Identify the record to which it relates by the file number assigned to the initial financing statement;
- Indicate that it is a corrected statement; and
- Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record. Filing of a correction statement is not effective as an amendment to a filed financing statement and is not sufficient to effect a change in the manner in what the filing office has indexed a financing statement or information contained in a financing statement. *Sec. 9.517*

The failure of the filing office to index a record or to correctly index information contained in a record does not affect the effectiveness of the filed record.

D. CONSUMER GOODS FILINGS

The proper place to file a financing statement to perfect a security interest in consumer goods is the office of the Secretary of State. Filings that affect financing statements filed before July 1, 2001, also must be filed with the Secretary of State, with one narrow exception of termination financing statements. *Sec. 9.501 A.G. Op. JC-0526 (2002)*

1. Terminating a Financing Statement

A financing statement to terminate the effectiveness of a financing statement on consumer goods that was filed with the County Clerk before July 1, 2001, must be filed in the County Clerk's office, unless an initial financing statement relating to the pre-effective- *Bus. & Com. Code Sec. 9.513 Sec. 9.707(d)*

date financing statement has been filed in the office of the Secretary of State.

*A.G. Op.
JC-0526 (2002)*

2. Amending or Continuing a Financing Statement

A financing statement to continue the effectiveness of or amend a financing statement that was filed in the office of the County Clerk before July 1, 2001 to perfect a security interest in consumer goods must be filed in the office of the Secretary of State.

*Bus. & Com.
Code
Sec. 9.707(c), (e)
A.G. Op.
JC-0526 (2002)*

E. REQUEST FOR INFORMATION

The Clerk's office is required to respond within two business days to the following requests for information:

*Bus. & Com.
Code
Sec. 9.523*

- Whether there is on file any financing statement that
 - Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;
 - Has not lapsed under §9.515 with respect to all secured parties of record; and
 - If the request so states, has lapsed under §9.515 and a record of which is maintained by the filing office under §9.522(a); and
- The date and time of filing of each financing statement;
- The information provided in each financing statement; and
- The number assigned to the record.

Form UCC-11, Information Request, may be found on the Secretary of State's website at www.sos.state.tx.us/ucc/forms/ucc11.pdf.

F. FEES

The fees for filing in the real property records are as described in Chapter II of this manual and as prescribed by the Local Government Code.

CHAPTER 8
VITAL STATISTICS

A. INTRODUCTION

The County Clerk's involvement in the area of vital statistics is principally in the issuing of marriage licenses, and the recording of birth and death certificates and the issuing of certified copies of the same. The Clerk is closely supported in these activities by the Vital Statistics Unit ("VSU") of the Texas Department of State Health Services in Austin.

Information for local registration officials regarding new laws, regulations, forms, and procedures relating to vital records is available from the VSU's website at <https://dshs.texas.gov/vs/Vital-Statistics-Partners.shtm>. The site contains training guides and conference and webinar schedules for local registrars regarding the new registration system called the Texas Electronic Vital Events Register (TxEVER).

B. BIRTH AND DEATH CERTIFICATES

At one time, the Clerk was required to record all birth and death certificates. Now, this responsibility is shared with local registration officials of vital statistics in most of the larger cities. In 1987, the legislature made provisions for the consolidation of county and municipal maintenance of birth and death records.

*Health & Safety Code
Sec. 191.023*

In 1987, the legislature also closed birth records and death records to public inspection and placed them under the control of the Department of State Health Services (formerly known as the Department of Health) or local registration officials.

*Gov't Code
Sec.552.115*

Birth and death records maintained by the Vital Statistics Unit of the Texas Department of State Health Services or by a local registration official are closed to public inspection, except that:

Sec. 552.115(a)

*Loc. Gov't Code
Sec. 191.004(c)*

- a. a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official;
- b. a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on record filed with the Vital Statistics Unit or local registration official; and
- c. a general birth or death index established and/or maintained by the bureau of vital statistics is open to the public, only to the extent that the index relates to a record as described in (a) or (b) above.

NOTE: *The Genealogical Society of Utah shall have access to birth records on and after the 50th anniversary of the date of birth but such birth records shall not be made available to the public until the 75th anniversary of the date of birth.*

*Gov't Code
Sec. 552.115(d)*

In issuing a certified copy of a birth certificate, the area entitled "for medical and health use only" shall not be considered a part of the legal certificate of birth, and the information contained in this area is confidential. This area should be covered when a copy of the certificate is made. This information may not be released or made public on subpoena

*Health & Safety Code
Sec. 192.002(b)*

or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Occupations Code Title 3, Subtitle B, or to a faculty member at a medical school, as that term is defined in Education Code §61.501, for statistical or medical research, to appropriate state or federal agencies for statistical research.

Similarly, the social security numbers and signatures of the mother and father are not part of the legal birth certificate and should only be made available in the limited circumstances set out in Health and Safety Code §192.002(c) and (d).

*Health & Safety Code
Sec. 192.002(c), (d)*

A person who knowingly violates Health and Safety Code §192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section is guilty of a Class A misdemeanor.

Sec. 195.005

1. Certified Copies

When a Clerk is called upon to issue certified copies of vital records, the Clerk must charge the same fees as charged by the Vital Statistics Unit. A \$10.00 fee is charged to conduct each search for a record. The fee for a certified or a regular copy of a birth certificate is \$10.00 per copy; this includes the search fee.

Sec. 191.0045(d)

25 TAC §181.22

The fee for a certified copy of a death certificate is also \$10.00, which includes the search fee. If more than one copy is requested in the same initial request of death certificates only, the fee will be \$10.00 for the first copy and then \$3.00 for each additional copy requested by the applicant at the time.

In addition to the fees listed above, the Clerk must collect an additional \$2.00 surcharge for searching for and issuing a certified copy of a certificate of birth, a wallet-sized birth certificate, and for conducting a search for a certificate of birth. The Clerk shall remit \$1.80 of the fee collected for a certified copy to the Comptroller.

*Health & Safety Code
Sec. 191.0045(e)
Sec. 191.022(f)*

Also in addition to the fees listed above, the Clerk must add a Texas Online fee of \$10.00 to all requests for birth, death, marriage and divorce record searches and document production.

25 TAC §181.22(s)

For example: the fee for a certified copy of a birth certificate is \$22.00

25 TAC §181.22(a), (b), (c), (f), and (s)

- \$10.00 for the search and the copy
- \$2.00 surcharge
- \$10.00 Texas Online

Additional copies of the birth certificate are \$10.00 per copy.

NOTE: A Clerk that on March 31, 1995, was charging a fee for the issuance of a certified copy of a birth certificate that exceeded the fee charged by the bureau of vital statistics for the same type of certificate may continue to do so but shall not raise the fee until the fee charged by the bureau exceeds the fee charged by the Clerk. The Clerk must still charge the additional \$2.00 fee for the services listed above.

*Health & Safety Code
Sec. 191.0045(g)*

The Clerk may also collect a fee not to exceed \$1.00 for the preservation of vital statistic records. The fee is to be collected upon the issuance of a vital statistics report, including a record issued through a Remote Birth Access site. This \$1.00 fee is retained by the county. The fee may be used for preserving vital statistics records, training registrar or County Clerk employees regarding vital statistics records, and ensuring the safety and security of vital statistics records. The remaining fees are sent to the comptroller, as provided by Local Government Code Chapter 133, Subchapter B.

*Health & Safety Code
Sec. 191.0045(h)
Sec. 191.0045(i)*

It is strongly recommended that a Clerk request a written application signed by the applicant for any certified copies, which should be kept on file. Due to fraud and the selling of birth records, this record will assist in answering inquiries about certified copies from the Clerk's office. It is recommended that the Clerk get identification from the applicant and retain the application for more than five years.

2. Delayed Certificates of Births and Deaths

If a birth has not been registered within one year from the date of birth, the registrant may apply to file a delayed certificate of birth with the State Registrar of Vital Statistics. The Clerk may obtain necessary forms from the Vital Statistics Unit to assist the public with the procedure. The fee charged by the state registrar for each application for a delayed certificate of birth is \$25.00 for filing the delayed certificate, plus \$22.00 (\$10.00 for copy + \$2.00 surcharge + \$10 Texas Online) for a certified copy of the delayed certificate.

*Sec. 192.022
Sec. 192.027*

25 TAC §181.22

3. Amended Certificates of Births and Deaths

Errors or omissions in the content of original birth or death certificates may be corrected or completed by the filing of amendments with the state registrar. The Clerk receives copies of these amendments and attaches them to the original certificates and changes the original index if necessary. The state registrar charges a \$15.00 fee for filing the amendment to correct a birth or death certificate.

*Health & Safety Code
Sec. 191.028*

25 TAC §181.22

4. Adoptions

After an adoption, the state registrar prepares and files a new birth certificate showing the facts as established by adoption. The state registrar sends copies of the new certificates to the County Clerk of the county of birth. The Clerk, if possible, pulls the original birth certificate from the files and sends it to the Vital Statistics Unit. The index to the original certificate is obliterated. The new birth certificate, containing the child's new name, will then be recorded and indexed. A fee of \$25.00 is charged by the state registrar for filing a new birth certificate based on adoption.

*Health & Safety Code
Sec. 192.006*

25 TAC §181.8

25 TAC §181.22

5. Amended Birth Certificate Based on Legitimation or Paternity Determination

A special form is used for this procedure. Clerks can obtain this form from the Vital Statistics Unit. To file a new birth certificate based on legitimation, the Clerk forwards to the Vital Statistics Unit:

*Health & Safety Code
Sec. 192.006*

25 TAC §181.8

- a certified copy of the certificate of marriage of the parents;
- an Acknowledgment of Paternity; or

- a certified copy of the court order concerning legitimation if the information in the order is not already on file.

When possible, the Clerk shall remove the original birth certificate from the file and forward it to the VSU along with the other information required.

A fee of \$25.00 is charged by the state registrar for filing a new birth certificate based on legitimation or paternity determination. *25 TAC §181.22*

When the legitimation birth certificate is received back in the Clerk's office, indexes and records will be handled in the same manner as for adoptions.

6. Notation of Death on Birth Certificates

When a person whose birth has been registered in this state dies, the state registrar shall make a conspicuous notation on the face of the decedent's birth certificate that the person is dead, shall conspicuously note the person's date of death and certificate number on the person's birth certificate and shall provide computer-generated abstracts, transcripts, or copies of the death certificate to the County Clerk of the county in which the decedent was born and to the appropriate local registrar. On receipt of the notification of death, the County Clerk and the local registrar shall conspicuously note the person's date of death and certificate number on the person's birth certificate. *Health & Safety Code Sec. 191.034*

A number of County Clerks have a rubber stamp with the word "DECEASED" in approximately 2" letters, and use this stamp to make the required 'conspicuous notation' on the face of the affected birth certificates.

C. MARRIAGE LICENSES

Persons wishing to get married must obtain a marriage license from the County Clerk of any Texas county. County Clerks issue all marriage licenses in the State of Texas. In counties in which branch offices are authorized by statute, marriage licenses may be issued from the Clerk's branch office as well as the Clerk's main office. *Family Code Secs. 2.001, 2.002, 2.004*

The marriage license application must be on a form prescribed by the Vital Statistics Unit. *Health & Safety Code Sec. 194.0011*

The fee for a marriage license is \$60.00. The Clerk may collect an additional \$100 fee from out-of-state applicants if *neither* license applicant provides satisfactory proof that the applicant is a Texas resident. *Loc. Gov't Code Sec. 118.011(a)(7) Sec. 118.011(b)(4) Sec. 118.018(c) Sec. 118.018(d)*

An applicant may make a \$5 voluntary contribution for the Texas Home Visiting Program.

The marriage license fee is for issuing a marriage license, including every service related to issuing the license, including preparing the application, filing health certificates, administering oaths, filing waivers and orders of the county judge, and issuing and recording all papers including the return of the license. The fee must be paid at the time the license is issued. The Clerk deposits \$20 of the marriage license fee to be sent to the comptroller for the child abuse and neglect prevention trust fund established under Human Resources Code §40.105. *Sec. 118.018(a), (b) Sec. 118.022(a)(1)*

The Clerk remits \$10 of the marriage license fee to the comptroller for deposit in the family trust fund established under Family Code §2.014. *Loc. Gov't Code Sec. 118.022(a)(2)*

The Clerk must issue the marriage license without collecting a marriage license fee if the applicant: *Sec. 118.018(b-1)*

- Completed a premarital education course;
- Provided a course completion certificate to the County Clerk showing that the course was completed not more than one year before the filing of the marriage license application; and
- Provides satisfactory proof to the Clerk that the applicant is a Texas resident.

Upon proper execution of the application, the Clerk shall:

Family Code Sec. 2.009(c)

- Prepare the license
- Enter the names of the licensees, the date and time the license was issued, and, if applicable, the name of any proxy applicant on the license
- Distribute to each applicant written notice of the online location of the information prepared under Family Code §2.010 regarding HIV and AIDS and note on the license that the distribution was made;
- Inform each applicant that a premarital education handbook developed by the child support division of the office of the attorney general under Family Code §2.014 is available on the child support division's Internet website or if the applicant does not have Internet access, how the applicant may obtain a paper copy of the handbook.

The Clerk must also make a copy of each license issued, to be mailed to the Vital Statistics Unit no later than 90 days after the license is issued. Most Clerks make it a practice to file the application copies on the first day of each month to insure compliance. *Health & Safety Code Sec. 194.001*

1. Application for License

Persons applying for a license must:

Family Code Sec. 2.002

- Appear together or separately before the County Clerk *Sec. 2.005*
- Submit proof of identity and age as required by Family Code §2.005(b). (Some Clerks make photocopies of the proof submitted and attach it to the application.)
- Provide the information applicable to that person for which spaces are provided in the application for a marriage license
- Mark the appropriate boxes provided in the application
- Take the oath printed on the application and sign the application before the County Clerk. *Sec. 2.004*

It is a Class A misdemeanor for a person to knowingly submit inaccurate

information to the Clerk.

Family Code §2.009 of the sets forth several instances in which a County Clerk may not issue a marriage license. A license cannot be issued if either applicant has been divorced within the last 30 days; the license can be issued on the 31st day after the decree is issued. This restriction does not apply when divorced spouses are remarrying each other or when the applicant has received a waiver from a court and a record of the proceedings was made and preserved, or findings of fact and conclusions of law were filed by the court. If either applicant or both applicants have been divorced within the last 30 days but in another state, the Clerk must mark the "yes" square on the marriage license application and indicate in what state the divorce(s) was granted.

*Family Code
Sec. 2.009(a)
Sec. 6.801
Sec. 6.802*

If either applicant provides information indicating he or she is presently married, the Clerk may ascertain if the applicant is married to the other applicant. If so, the Clerk shall record that statement on the license prior to the admission of the oath. The Clerk may not refuse to issue a license on the ground that the applicants are married to each other.

Sec. 2.009(b)

NOTE: *The County Clerk may not refuse to issue a license to an applicant on the ground that the applicant checked "false" in response to the statement, "I am not presently delinquent in the payment of court-ordered child support."*

Sec. 2.009(d)

A marriage license is valid for 89 days from the date of issuance. If the marriage license has not been used before the 90th day after it was issued, the license expires. The applicants must obtain a new marriage license and repay the fee.

Sec. 2.201

The Clerk shall indicate the time at which the license was issued on the license. The marriage ceremony may not take place during a 72-hour period immediately following the issuance of the marriage license unless an applicant:

*Sec. 2.009(c)
Sec. 2.204*

- is a member of the armed forces of the United States and on active duty;
- performs work for the United States Department of Defense as an employee or contract worker;
- obtains a written waiver from a judge of a court with jurisdiction in family law cases, a justice of the supreme court, a judge of the court of criminal appeals, a county judge, or a judge of a court of appeals; or
- completes a premarital education course described by Family Code Section 2.013 and provides a completion certificate to the Clerk.

2. Underage Applicants

A County Clerk may not issue a marriage license if either applicant is under 18 years of age, unless each underage applicant shows that the applicant has been granted by this state or another state a court order removing the disabilities of minority of the applicant for general purposes.

Sec. 2.101

3. Persons Authorized to Conduct Ceremonies

The person who conducts the ceremony shall enter on the license the date and county in which it was performed and his or her name as the person who performed the

*Family Code
Sec. 2.206
Sec. 2.202*

ceremony, subscribe it and return the license to the County Clerk who issued it within 30 days after the ceremony is conducted. The following persons are authorized to conduct marriage ceremonies in Texas:

- a licensed or ordained Christian minister or priest;
- a Jewish rabbi;
- a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony;
- a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, retired judge of a municipal court, associate judge of a statutory probate court, retired associate judge of a statutory probate court, associate judge of a county court at law, retired associate judge of a county court at law, or judge or magistrate of a federal court of this state; and
- a retired judge or magistrate of a federal court of this state.

A person who conducts a marriage ceremony in violation of Family Code §2.202 is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500. A person who knowingly conducts a marriage ceremony involving a minor whose marriage is prohibited by law or a person who by marrying is guilty of bigamy (Penal Code §25.01) commits a third-degree felony.

*Family Code
Sec. 2.202 (a), (d)*

4. Proxy Marriage or Absent Applicant

Family Code §2.002 states the general rule that each person applying for a marriage license must appear before the County Clerk (either with the person the applicant intends to marry or alone) and complete the application. An exception to this general rule is found in §2.006 which states that " if an applicant is unable to appear personally before the County Clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant."

*Sec. 2.002
Sec. 2.006*

The Clerk may not issue a marriage license for which both applicants are absent unless the person applying on behalf of each applicant provides an affidavit to the Clerk stating that the absent applicant is a member of the United States armed forces stationed in another country in support of combat or another military operation.

Sec. 2.006(c)

The person applying on behalf of an absent applicant must present an affidavit to the Clerk that includes:

Sec. 2.006(b)

- the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth, citizenship, and social security number, if applicable;
- a declaration that the absent applicant has not been divorced within the last 30 days;
- a declaration that the absent applicant is not presently married (unless to

Sec. 2.007

the other applicant and they wish to marry again);

- a declaration that the other applicant is not related (including as a former or present stepchild or stepparent) to the absent applicant;
- a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;
- the approximate date on which the marriage is to occur;
- the reason the absent applicant is unable to appear personally before the County Clerk; and
- the appointment of any adult, other than the applicant, to act as proxy for the purpose of participating in the marriage ceremony if the absent applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation and unable to attend the ceremony.

5. Informal Marriages

An informal marriage, also called a common-law marriage, is more than merely "living together." The parties to an informal marriage must have agreed to be married, lived together as husband and wife after such agreement, and represented to others that they were married.

Family Code
Sec. 2.401(a)(2)

NOTE: Living together as husband and wife is a crucial element of an informal marriage. The intent to cohabit after an agreement to marry is not sufficient to satisfy this element; without actual cohabitation, an informal marriage does not exist in a form recognized by the State of Texas.

Canady v. Russell
(138 SW 3d 412, Tex. App. - Tyler 2004, pet. denied)

Declaration of Informal Marriage. Couples in an informal marriage may wish to make it a matter of record without formal ceremony. To accomplish this, the couple must sign a declaration and file it with the County Clerk. A person who is presently married, and the current spouse is not the other party to the informal marriage, may not be a party to or file a declaration of an informal marriage. A person under the age of 18 may not be a party to an informal marriage and may not execute a declaration of informal marriage.

Family Code
Sec. 2.401
Sec. 2.401(d)
Sec. 2.402
Sec. 2.404(b)(2)

The Clerk shall require proof of the identity and age of each party to the declaration of formal marriage. Identity and age may be established by a certified copy of the party's birth certificate, or by certificate or other document issued by a state, the United States, or a foreign government. A person who knowingly provides inaccurate information commits a Class A misdemeanor.

Sec. 2.403

The declaration must be completed in the presence of the County Clerk or Deputy. No person other than the parties to the informal marriage may make the declaration, and only the County Clerk or Deputy may certify the declaration. A blank form should never be provided for completion outside the presence of the Clerk or Deputy. The Clerk shall verify that all required information has been provided, and that any required documents have been submitted. The Clerk then administers the oath to each party, has each party sign the declaration in his or her presence, and executes the Clerk's certificate. The Clerk shall distribute printed materials to each party concerning AIDS and HIV. These materials are

Sec. 2.404

prepared by and provided to the Clerk by the Department of State Health Services. The Clerk shall note on the declaration that the distribution of materials was made.

The Clerk records the declaration and any documents submitted with it. The original declaration is returned to the parties, and a copy is submitted to the Vital Statistics Unit. The copy must be submitted no later than 90 days after the declaration is executed.

Family Code
Sec. 2.404(c)

Health & Safety Code
Sec. 194.001(b)

The fee for a declaration of informal marriage is \$25.00. The Clerk remits \$12.50 of the fee for recording a declaration of information marriage to the Comptroller for deposit to the credit of the child abuse and neglect prevention trust fund established under Human Resources Code §40.105.

Loc. Gov't Code
Sec. 118.011(a)(8)
Sec. 118.019
Sec. 118.022(a)(1)

CHAPTER 9

ELECTIONS

The County Clerk or the county elections administrator has many duties and responsibilities in the conduct of elections. The duties may be assigned to and performed by deputies. Laws governing the conduct of elections (primary, special, and general) are found in the Texas Election Code.

The Secretary of State is the chief election officer of Texas. As such, he or she is charged with the responsibility of interpreting election laws.

The Elections Division of the Secretary of State's Office issues directives, memoranda, sample ballots, copies of election forms, calendars of important election dates and handbooks for judges and Clerks on polling place procedures for each of the different voting systems approved for the conduct of elections in Texas. These resources are readily and easily available on the Secretary of State's website at <http://www.sos.state.tx.us/about/index.shtml>. There is a section called "Conducting Your Elections" (under the "Election Information" icon on the home page) that contains procedures, forms, pamphlets, and laws, including a link to the full text of the Texas Election Code.

In addition, the Elections Division holds an "elections school" each year. The elections school usually takes place in July or August, is held in Austin, and usually lasts two to three days. At the school, the Clerk's duties are covered in detail, forms are distributed, and directives and handbooks with all the information needed to conduct an election of any nature are provided. The County and District Clerks' Association urges each Clerk to place this seminar in budget requests every year and make plans to attend the seminar.

Any questions regarding elections may be directed to the Elections Division, P.O. Box 12060, Austin, Texas 78711-2060. The Elections Division may also be reached by email at elections@sos.texas.gov or by telephone at (800)-252-8683.

CHAPTER 10
OTHER DUTIES

A. INTRODUCTION

This Manual has covered procedures relating to the majority of the duties and responsibilities of the County Clerk. There remain, however, many duties that can only be classified as miscellaneous. Some of these duties are applicable to all Clerks while some may be assigned to individual Clerks on a local basis.

B. ACCOUNTING SYSTEM

Each County Clerk must maintain an accounting system which adequately reports all receipts of money and its subsequent disbursement. Accounting systems vary so greatly that no procedural description is possible here. It is suggested that the county auditor be consulted regarding any question about the accounting system.

Loc. Gov't Code
Sec. 114.041

**C. REGISTRY OF THE COURT AND TRUST FUND ACCOUNTS
ADMINISTERED BY COUNTY CLERKS**

Each County Clerk must maintain a registry of the court to receive payments of judgments, bonds, and other funds ordered to be paid by the court. The commissioners court in each county will select a depository for the registry funds. An account in the selected depository in which registry funds are placed is called a "special account." In some cases, the Clerk is directed to transfer funds from the special account into a separate interest-bearing account called a "separate account."

Loc. Gov't Code
Sec. 117.025
Sec. 117.001

The Clerk acts only in a custodial capacity in relation to a registry fund. A Clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

Sec. 117.0521

If a special or separate account earns interest, the Clerk, at the time of withdrawal, distributes the original amount deposited into the registry according to the direction of the court. Any interest credited to the account should be distributed according to the following calculation:

Sec. 117.054(a)

Sec. 117.054(b)

1. 10% of the interest must be paid to the general fund of the county to compensate the county for the accounting and administrative expenses of maintaining the account.
2. 90% of the interest must be credited to the special or separate account.

To compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a separate or special account, the Clerk will, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to 5% of the withdrawal, not to exceed \$50.00. A fee collected under this section must be deposited in the general fund of the county. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction.

Sec. 117.055

SPECIAL NOTE: *When cash funds are deposited as a bail bond and a refund of those funds is required, the refunded amount is the amount shown on the face of the receipt less the administrative fee authorized by Local Government Code §117.055.*

CCP
Art. 17.02

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

Loc. Gov't Code
Sec. 117.003(a)

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

Sec. 117.003(b)

NOTE: Regarding Liability for Deposits Pending Suit. *A County Clerk who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.*

Civ. Prac. & Rem. Code
Sec. 7.002(a)

Sec. 7.002(b)

The Clerk must keep in his or her office as part of his or her records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.

1. Depositories for Registry Funds

If a depository for registry funds has been selected under Local Government Code Chapter 117, Subchapter B (hereinafter Subchapter B), a County Clerk who is to have for more than three days the legal custody of money deposited in the registry of the court pending the result of a legal proceeding shall deposit the money in the depository. The funds deposited shall be carried at the depository selected as a special account in the name of the Clerk making the deposit.

Loc. Gov't Code
Sec. 117.052

The code does not require that the special account earn interest, but the Clerk may elect to have the special account bear interest. If the Clerk wishes to have an interest-bearing account for registry funds, he or she must make a written request to the commissioners court. The bank at which the funds will be held in an interest-bearing account must file its application on or before the date set by the commissioners court. The application must be accompanied by a certified check or a cashier's check in an amount equal to one-half of one percent of the average daily balance of the registry funds held by the Clerk during the preceding year as determined by the County Clerk on or before the 10th day before the application is required to be filed.

Sec. 117.021

A Clerk is responsible for funds deposited into the registry fund from the following sources:

Sec. 117.112
Sec. 117.052(c)

- Funds of minors or incapacitated persons
- Funds tendered in an interpleader action

- Funds paid in satisfaction of a judgment
- Child support funds held more than three days
- Cash bonds
- Cash bail bonds
- Funds in an eminent domain proceeding
- Any other funds tendered to the Clerk for deposit into the registry of court

If a commissioners court selects a new depository under Subchapter B, when the depository qualifies, the County Clerk shall transfer the funds in a special account from the old depository to the new depository, and the Clerk may draw checks on the account(s) for this purpose. *Loc. Gov't Code Sec. 117.053(a)*

Except as provided above, a County Clerk may not draw a check on special account funds held by a depository except to pay a person entitled to the funds. The payment must be made under an order of the court of proper jurisdiction in which the funds were deposited, except that an appeal bond shall be paid without a written order of the court on receipt of mandate or dismissal. Also, funds deposited under Estates Code Chapter 1355 may be paid without a written order of the court. The Clerk shall place on the check the style and number of the proceeding in which the money was deposited with the Clerk. *Sec. 117.053(b)*

In counties with a population of 190,000 or more, each check issued for the disbursement of funds must be issued in accordance with the laws providing for registry fund depositories. Each check must be signed according to procedure established by the county auditor before delivery or payments. *Sec. 117.058(c)*

NOTE: *Neither the signature of the county treasurer nor that of the county auditor is required for the withdrawal of money from a trust fund account administered by a County Clerk pursuant to Local Government Code Chapter 117. Money deposited with a court and administered by a County Clerk in a trust fund pursuant to Chapter 117 may be withdrawn only by a check drawn by the Clerk having custody by law of those funds, upon the order of the judge of the court in which the funds have been deposited.* *AG Op. JM-882 (1988)*

The Clerk must transfer any registry funds into a separate account when directed to do so by a written order of a court. The separate account must be in one of the locations set out in Local Government Code §117.053(c). *Loc. Gov't Code Sec. 117.053(c)*

A depository selected under Subchapter B shall pay a check drawn by a County Clerk against funds deposited in the Clerk's name on presentment of the check at the county seat if the funds subject to the check are in the possession of the depository. If the depository is not located at the county seat, the depository shall file a statement with the County Clerk of the county designating a place at the county seat where, and a person by whom, deposits by the Clerks will be received and checks drawn on the depository will be paid. *Sec. 117.056(a)*

A County Clerk is not responsible for a loss of registry funds resulting from the failure or negligence of a depository. However, a County Clerk is not released from either: *Sec. 117.081(a)*

- Liability for a loss of registry funds resulting from the Clerk's official *Sec. 117.081(b)*

misconduct, negligence, or misappropriation of the funds

- Responsibility for keeping the registry funds safe until the Clerk deposits them in a depository selected under Subchapter B

After a County Clerk deposits in a depository selected under Subchapter B, the registry funds held by the Clerk, the Clerk is relieved of the responsibility for keeping the funds secure.

*Loc. Gov't Code
Sec. 117.081(c)*

If the commissioners court has not selected a depository under Subchapter B, a County Clerk holding money, an evidence of debt, an instrument of writing, or any other article deposited into the registry of the court pending the result of a legal proceeding must seal the article in a secure package and deposit the package in an iron safe or a bank vault.

Sec. 117.027

2. Trust Fund Accounts

a. Payment from Judgments

When a judgment is rendered, the judge may order that its payment be made into the registry of the court. This is to provide for a court record that proper payment has been made. Normally, as soon as the defendant pays the judgment, the plaintiff may immediately withdraw his funds.

Often, the defendant will wish to pay a judgment into the registry even though not ordered to do so. In this manner, the defendant will have such payment recorded in the registry as a receipt of compliance with the judgment.

In both cases, the Clerk merely sets up a ledger for the defendant's payment and clears the account when the plaintiff makes his withdrawal. The plaintiff's withdrawal must be accompanied by a court order authorizing such action.

b. Payment of Unclaimed Judgment

A judgment debtor may pay to the court that rendered the judgment the amount under the judgment owed to a judgment creditor whose location is unknown to the judgment debtor if the judgment debtor complies with Civil Practice and Remedies Code §31.008(b) and (c).

*Civ. Prac. &
Rem. Code
Sec. 31.008(a)*

- The payment must be made without offset or reduction for any claims of the judgment debtor.
- The judgment debtor shall prepare a recordable release of the judgment.
- The judge or Clerk of the court shall execute the release of the judgment on behalf of the creditor and issue the release to the debtor. The release shall recite the cause number, the court, the parties, the date of judgment, the amount of judgment, the amount paid into the court, and date of release.

Before being entitled to pay a judgment to a court under Civil Practice Remedies Code §31.008(a), the judgment debtor shall send a letter notifying the judgment creditor of the judgment, by registered or certified mail, return receipt requested, to all the following:

Sec. 31.008(b)

- Judgment creditor's last known address

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

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

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

The court shall hold the amount paid to it by the judgment debtor under Civil Practice and Remedies Code §31.008(a) and interest earned on that amount in trust for the judgment creditor.

Sec. 31.008(d)

The Clerk of the court shall deposit the trust funds and any interest earned by the funds in the Clerk's trust fund account.

Sec. 31.008(e)

The Clerk shall pay the funds and any interest earned by the funds to the judgment creditor or to the successors to the rights of the judgment creditor. The Clerk may presume that the funds are payable to the judgment creditor unless the Clerk is furnished with a written assignment of the judgment.

Funds held in the Clerk's trust fund account in accordance with Civil Practice and Remedies Code §31.008 are subject to escheat under Property Code Chapter 72.

Sec. 31.008(f)

If the judgment creditor refuses to accept payment or refuses to file a release of judgment once payment has been received, the court shall set a hearing to determine if a release should be filed. If the court finds that the amount under judgment has been paid into the registry of court and that the judgment creditor has accepted payment and refused to file a release, the court may order the judgment debtor to prepare and file a recordable release with the Clerk of court.

Sec. 31.008(g)

NOTE: *The County Clerk may not charge a filing fee for the rendition of clerical services in connection with the execution or preparation of a release of judgment pursuant to Civil Practices and Remedies Code §31.008. This provision neither requires nor prohibits the filing of the release of judgment in the court file for the case. The county is entitled to the fee authorized by Local Government Code §117.055 of the for accounting and administrative expenses incurred in handling funds deposited in the County Clerk's trust fund pursuant to §31.008. It may not collect the fee at the time the funds are paid to the court.*

AG Op.
DM-174 (1992)

c. Investment Trusts

If the recipient of the judgment is a minor child or an incapacitated person who has no legal guardian, the judge may order all funds paid into the registry for the Clerk to

Prop. Code
Sec. 142.004

administer. In such cases, the funds may be invested by the Clerk, on written order of the court, only in the locations specified in Property Code §142.004. Interest earned on such funds must be paid in the same manner as interest earned on a registry account under Local Government Code Chapter 117.

The court may also order a structured settlement for a minor or an incapacitated person who has no legal guardian and is represented by a next friend or an appointed guardian ad litem. It is the responsibility of the person obligated to fund the settlement to provide the necessary documents to the court. The Clerk should be familiar with the requirements for structured settlements and the special requirements for structured settlements funded by annuity contracts.

*Prop. Code
Sec. 142.008
Sec. 142.009*

d. Specific Performance Bonds

The forfeiture of court-ordered specific performance bonds is paid into the registry. The proceeds from such payment may be withdrawn by the damaged party upon court order. Specific performance bonds may be ordered in a number of different circumstances. One example is contained in Government Code §2253.001. Another example is contained in Family Code §§157.109 and 157.110.

*Gov't Code
Sec. 2253.001*

*Family Code
Sec. 157.109
Sec. 157.110*

e. Proceeds from Executions

The officer making the sale must return the order to the court from which it issued, along with the proceeds, within five days. The funds are paid to the Clerk of the court for deposit into the court's registry.

TRCP 712

3. Hot Checks

A County Clerk may set and collect a fee of between \$15.00 and \$30.00 from any person for a check that is presented to the Clerk in payment of taxes or any other item the person owes to the county and is returned by the depository bank or any other financial institution because of:

*Loc. Gov't Code
Sec. 118.011(b)*

Sec. 118.0215

- Insufficient funds to cover the check
- Closed account
- Unauthorized signature
- Check drawn on uncollected funds
- Any other reason considered to be the fault of the drawer

4. Collection Made by One Officer on Behalf of Another

With the prior consent of the commissioners court and the officer to whom funds are owed, a County Clerk may receive or collect, on behalf of another district, county or precinct officer, money or property owed to the county.

Sec. 113.903(a)

If a County Clerk collects money under Local Government Code §113.903, the Clerk must deposit the money in accordance with Local Government Code §113.022.

Sec. 113.903(b)

When the County Clerk reports or deposits the collection, the Clerk shall file with

Sec. 113.903(c)

the report or deposit a statement containing the information listed in Local Government Code §113.903(c).

The county auditor, or the County Clerk if there is no county auditor, and the county treasurer shall attribute money or property received or collected under Local Government Code §113.903 to the account of the officer on whose behalf it is received or collected. *Loc. Gov't Code Sec. 113.903(d)*

A person who accepts a payment under the terms of Local Government Code §113.903 shall issue a receipt for any money received to the payer of the debt. *Sec. 113.903(e)*

D. PAYMENTS TO COUNTY TREASURER

A county official's failure to deposit county funds with the county treasurer within five business days of the receipt of such funds is a violation of the official's statutory duty. *Loc. Gov't Code Sec. 113.022 Sec. 116.113*

In a county with fewer than 50,000 inhabitants, the commissioners court may extend the period during which funds must be deposited with the county treasurer, but the period may not exceed 15 days after the date the funds are received. *AG Op. JM-397 (1985) JC-0031 (1999) JM-383 (1985) JM-832 (1987) JM-928 (1988)*

All county funds are to be deposited in the county depository duly designated by the commissioners court.

E. JURY SELECTION

Petit juries may decide both criminal cases and civil cases. It is usually assumed that a jury will be necessary in criminal cases unless the defendant specifically waives this right. In civil cases, one of the parties to the case must specifically request a jury trial. *TRCP 216(a)*

SPECIAL NOTE CONCERNING BEXAR COUNTY: *Government Code §62.011(b) authorizes the designation of a bailiff as the officer in charge of the jury selection process in Bexar County.* *Gov't Code Sec. 62.011(b)(4)*

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

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

- Names of all persons on the current voter registration lists from all the precincts in the county, and; *Sec. 62.001(a)*
- All names on a current list to be furnished by the Department of Public Safety, showing the citizens of the county who hold either a valid Texas driver's license or a valid personal identification card or certificate issued by the department and who are not disqualified from jury service because of age, citizenship, or prior felony conviction.

If a written summons for jury service is returned with a notation from the U.S. Postal Service of a change of address, the Clerk updates the jury wheel card to reflect the person's new address. *Sec. 62.001(k) Sec. 62.0146*

Each year, not later than the third Tuesday in November or the date provided by Election Code §16.032, for the cancellation of voter registrations, whichever is earlier, the voter registrar of each county shall furnish to the secretary of state a current voter *Sec. 62.001(c) Sec. 62.001(d)*

registration list from all the precincts in the county. This list **must exclude** the names of persons on the suspense list maintained under Election Code §15.081.

The Clerk shall maintain a list of persons excused or disqualified from jury service because of non-residence in the county. On the third business day of each month, the Clerk shall provide the list to the voter registrar. The voter registrar shall notify each person on the list that he or she is being placed on the county's suspense list of registered voters because of exemption or disqualification for jury service based on non-residence in the county. The voter registrar's notice must include information describing how the person may be removed from the suspense list and restored to regular voter registration in the county.

*Gov't Code
Sec. 62.114*

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

Sec. 62.001(f)

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

Sec. 62.001(g)

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

Sec. 62.001(h)

The commissioners court may, instead of using the method provided by Government Code §62.001(c) - (h), contract with another governmental entity or a private person to combine the voter registration list with the list furnished by the Department of Public Safety.

Sec. 62.001(i)

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

Sec. 62.001(j)

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

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

If a written summons for jury service sent by a sheriff, constable, or bailiff is undeliverable, the Clerk may remove from the jury wheel the card for the person summoned, or the district clerk or, in a county with a population of at least 1.7 million and in which more than 75% of the population resides in a single municipality, a bailiff may remove the person's name from the record of names for electronic selection under Government Code §62.011. If a written summons for jury service sent by a sheriff, constable, or bailiff is returned with forwarding information by the United States Postal Service, the Clerk may update the jury wheel card to reflect the person's new address. When the jury wheel is reconstituted, the cards shall reflect the updated address.

Sec. 62.0145
Sec. 62.0146
Sec. 62.001(k)

2. Selection of Jurors

One duty of the County Clerk in many counties is the summoning of jurors. The procedure for summoning jurors is as follows:

Sec. 62.004(a)
Sec. 62.011

- The Clerk determines how many jurors must be summoned initially to meet jury requirements.
- In counties using the jury wheel, the County Clerk and the sheriff shall draw the appropriate number of names from the wheel in the presence and under the direction of the judge.
- In counties using electronic or mechanical equipment for jury selection, the appropriate number of names are drawn by a random and impartial selection process.
- The County Clerk prepares a list of jurors selected ([Form X-1](#)) and seals it in an envelope until the judge notifies the Clerk of the date the prospective jurors are to be summoned. Upon such notification (which should be a reasonable time before the jurors are to be summoned), the Clerk immediately notes on the list the date the jurors are to be summoned and delivers the list to the sheriff. The sheriff then immediately notifies the jurors on the list to appear for jury service on the date designated by the judge.
- In counties with a single district court and a single county court at law with concurrent jurisdiction, the judges may agree to a general panel of jurors for service in both courts. The names are drawn from the jury wheel, either weekly or in advance as determined by the judges. The sheriff notifies persons whose names are drawn to appear before then district judge for jury service. Once impaneled, the jurors constitute a general panel and may be used interchangeably by both courts. General panels with

Martinez v. State,
507 S.W.2d 223,
226-227 (Tex.
Crim. App. 1974)

Gov't Code
Sec. 62.004
Sec. 62.006
Sec. 62.007
Sec. 62.008
Sec. 62.012
Sec. 62.013
Sec. 62.0175

interchangeable jurors may not be used in a capital case or a mental health commitment case.

NOTE: Prospective jurors may not be summoned to appear for jury service on the date of the general election for state and county officers.

Gov't Code
Sec. 62.015

A person is qualified to serve as a juror if he or she meets all of the following requirements:

Sec. 62.102

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

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

A person qualified to serve may establish an exemption from jury service if the person meets one of the following requirements:

Sec. 62.106

- Is over 70 years of age
- Has legal custody of a child under the age of 12 years if jury service by that person would necessitate leaving the child without adequate supervision
- Is a student at a public or private high school
- Is enrolled and in actual attendance at an institution of higher education
- Is summoned for service in a county with a population of at least 200,000 and has served as a petit juror during the preceding 24-month period (or the period of time specified in a plan for the electronic selection of jurors under Government Code §62.011)
- Is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government
- Is the primary caretaker of a person who is unable to care for himself or herself (This exemption does not apply to health care workers.)
- Is summoned for service in a county with a population of at least 250,000

and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service (This exemption does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.)

- Is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence

*Gov't Code
Sec. 62.107(b)*

A person may claim an exemption from jury service under Government Code §62.106 by filing with the sheriff, voter registrar, or District or County Clerk of the county of the person's residence a sworn statement that sets forth the ground of and claims the exemption. The name of the person who claims an exemption by filing the sworn statement may not be placed in the jury wheel for the ensuing year.

A person who is over 70 years of age may establish a permanent exemption by furnishing a signed statement to the Clerk of the court. A person summoned for jury service who files a statement with the court Clerk under Government Code §62.107 of the claiming an exemption from jury service on the ground of being over 70 years of age may claim the permanent exemption by including in the statement a declaration that he or she desires a permanent exemption. Promptly after a statement claiming a permanent exemption is filed, the Clerk shall have a copy delivered to the voter registrar of the county and the name of the person claiming such exemption will be removed from the jury wheel. A person may claim a permanent exemption by filing with the voter registrar of the county, by mail or personal delivery, a signed statement affirming that the person is over 70 years of age and desires a permanent exemption on that ground. The voter registrar of the county is now required to maintain a current register indicating the name of each person who has claimed and is entitled to a permanent exemption from jury service because the person is over 70 years of age.

*Sec. 62.107(c)
Sec. 62.108*

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

Sec. 62.109

Three separate affidavit forms are included in these materials.

[Form X-2](#) Request for Exemption due to Physical Impairment

[Form X-3](#) Request for Exemption due to Mental Impairment

[Form X-4](#) Request for Exemption due to English Language Inability

Promptly upon receipt of an order from the district judge exempting such person ([Form X-5](#)), the District Clerk must notify the county tax assessor-collector of the name and address of such person so exempted and the duration of the exemption. The person so exempted will not be summoned for jury service during the period for which he or she is exempted and the name of the person will not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected, during the period

Sec. 62.109

for which the person is exempted.

4. Postponement of Jury Service

A court may hear any reasonable sworn excuse, including any claim of exemption or lack of qualification, of a prospective juror and release him or her entirely or until a later time. A form for a juror to request a postponement of jury service ([Form X-6](#)) is included in these materials.

*Gov't Code
Sec. 62.110*

A person summoned for jury service may request a postponement of his or her initial appearance for jury service. The person summoned requests the postponement by contacting the Clerk of the court in person, in writing or by telephone, before the appearance date. The Clerk shall grant the postponement if no other postponement has been granted during the year preceding the appearance date AND a substitute date for appearance, within six months of the original appearance date, is set.

*Sec. 62.0143(a),
(b)*

A subsequent postponement may be requested but will be granted only in the event of an unanticipated, extreme emergency (*e.g.*, a death in the family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved). A substitute appearance date within six months must be determined before a second postponement will be granted.

Sec. 62.0143(c)

5. Mandatory Model Jury Summons/Questionnaire Promulgated

The Office of Court Administration (OCA) has developed a model for a uniform written jury summons and questionnaire to accompany the written jury summons, which can be found at <https://www.txcourts.gov/rules-forms/forms.aspx>. Each county is required to conform its summons to the model developed by OCA and to include the questionnaire with each summons. A written jury summons must include either a copy of the questionnaire OR the court's website from which the questionnaire can be easily printed. The questionnaire must also notify a person that if the person states that the person is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship.

*Sec. 62.0131
Sec. 62.0132*

Sec. 62.0132(b)

Sec. 62.0132(h)

The model developed by OCA allows a person to claim an exemption by signing a statement and returning it to the Clerk of court. OCA's form contains the required language notifying the person that he or she may no longer be eligible to vote in the county if he or she claims exemption because of lack of citizenship or county residence. The form must notify the person that by claiming a disqualification or exemption based on the lack of citizenship, the person will no longer be eligible to vote if the person fails to provide proof of citizenship

Sec. 62.0142

6. Selection of Jury Panel

On the day that jurors appear for jury service in court, the judge, if jury trials have been set, will select from the names on the jury lists a sufficient number of qualified jurors to serve on the jury panel. If the court at any time does not have a sufficient number of prospective jurors present whose names are on the jury lists and who are not excused by the judge from jury service, the judge shall order the sheriff or constable to summon additional prospective jurors to provide the requisite number of jurors for the panel. The names of

Sec. 62.015

additional jurors to be summoned by the sheriff or constable to fill a jury panel shall be drawn from the jury wheel under the orders of the judge. Additional jurors summoned to fill a jury panel shall be discharged when their services are no longer required. The judge may order all or part of a panel of jurors to stand adjourned from jury service until a subsequent date in the term, but a juror will not be paid for the time that he stands adjourned from jury service. When impaneling the jury, the following procedures are required:

- All jurors summoned are gathered in the court or jury room for examination by the judge and the granting of excuses, including exemptions and disqualifications, from jury duty. *Gov't Code Sec. 62.110*
- The Clerk brings the jury cards (or a list of petit jurors) drawn from the wheel to the court or jury room and removes the names of absent jurors and those excused, exempted or disqualified from duty. *CCP Art. 35.03*
Gov't Code Sec. 62.110
- The Clerk shall randomly select the jurors by a computer or other process of random selection and shall write or print the names, in the order selected, on the jury list. A copy of each jury list will be prepared for the parties ([Form X-7](#) and [Form X-8](#)). In addition to the jurors' names, the list should contain the file number of the case and the style of the case. The Clerk shall deliver a copy of the list to the State's counsel and to the defendant or his attorney. *CCP Art. 35.11*
TRCP 224
- Before the parties or their attorneys begin examination of the jurors whose names have so far been listed, the jurors on the panel shall be given the following oath:

Civil Cases:

TRCP 226

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

NOTE: *After the jury panel has been sworn in, and before the voir dire examination can begin, the court must give instructions to the panel as prescribed by Texas Rules of Civil Procedure Rule 226a.*

TRCP 226a

Criminal Cases:

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

CCP Art. 35.02

- The final jury list will consist of the first six (or more, if alternate jurors are chosen), names on the jury list to survive challenges by the judge and attorneys. This final list is filed in the case file folder as a part of the permanent record. ([Form X-9](#)) *Art. 35.26*
TRCP 234
- The six jurors are officially impaneled when either the Clerk or the judge administers the following jurors' oath:

Civil Cases:

"You, and each of you, do solemnly swear that in all cases

TRCP 236

between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

Criminal Cases:

CCP
Art. 35.22

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

- A juror may be removed from a jury panel for cause or by peremptory challenge, and subsequently placed on another jury panel, except in counties having a population of 2,000,000 or more, in which case the juror must be dismissed. Upon dismissal, the juror should be paid and released.

Gov't Code
Sec. 62.021

7. Juror Reimbursement

The rate of reimbursement for travel and other expenses for persons who report for jury service in response to the process of a court (not including persons who report for jury service in a municipal court) is not less than \$6 for the first day or fraction of a first day, and not less than \$40 for each day or fraction of each day the person is in attendance in court in response to the process after the first day and discharges the person's duty for that day.

Sec. 61.001(a)
Sec. 61.001(c)

In preparing and approving the annual budget for a county, the commissioners court of the county shall determine the daily amount of reimbursement for expenses for a person who reports for jury service and discharges the person's duty. The amount of reimbursement for each day must be within the minimum and maximum amounts prescribed by this section and paid out of the jury fund of the county. The commissioners court may set different daily amounts of reimbursement for: (1) grand and petit jurors; or (2) different petit jurors based on: (A) whether a juror serves in a small claims court, justice court, constitutional county court, county court at law, or district court; or (B) any other reasonable criteria determined by the commissioners court.

Sec. 61.001(b)

In a specific case, the presiding judge, with the agreement of the parties involved or their attorneys, may increase the daily reimbursement for jurors in that case. The difference between the usual daily reimbursement and the reimbursement for jurors in a specific case shall be paid, in equal amounts, by the parties involved in the case. It is necessary to record the amount paid to each juror.

Sec. 61.001(d)

The state currently reimburses counties \$34 of the fee paid to jurors for each day following the first day. The commissioners court of a county entitled to this reimbursement may file a claim for reimbursement with the Comptroller.

Sec. 61.0015

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

Sec. 61.001(f)

- The instrument or other method of payment is considered forfeited and

void.

- The money represented by the instrument or other method of payment may be placed or retained in the county's jury fund, the county's general fund, or any other fund in which county funds can be legally placed, at the discretion of the commissioners court.

8. Donation of Juror Pay

Each prospective juror reporting for jury service will be personally provided a form letter which contains a brief description of the programs designated for donation. This letter when signed by the prospective juror directs the county treasurer to donate all or a specific amount of the prospective juror's reimbursement for jury service to one of the entities described below.

*Gov't Code
Sec. 61.003*

- The compensation to victims of crime fund established under Code of Criminal Procedure Chapter 56B, Subchapter J;
- The child welfare board, child protective services, or child services board of the county appointed under Family Code §264.005 that serves abused and neglected children;
- Any program selected by the commissioners court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence;
- Any other program approved by the commissioners court of the county, including a program established under Code of Criminal Procedure Article 56A.205 that offers psychological counseling in criminal cases involving graphic evidence or testimony; or
- A veterans court program established by the commissioners court as provided by Chapter 124.

IMPORTANT NOTE: *Not all worthy charitable programs qualify to be the subject of donation of juror pay. Please review the list above carefully and do not include others which are not authorized by the statute.*

A county that has adopted a system or method of payment authorized by Local Government Code §113.048 may provide a person who reports for jury service in the county an opportunity to donate all, or a specific part designated by the juror, of the juror's daily reimbursement by completing a self-executing application on a form prescribed by the commissioners court.

Additionally, the county treasurer or a designated county employee will collect each form letter directing the county treasurer to donate a prospective juror's reimbursement for service. A sample "Juror Donation Form" ([Form X-10](#)) is in Appendix B of this Manual.

9. Removing Names from the Jury Wheel

Those persons convicted of a felony and those found to be of unsound mind in probate court should have their names removed from the list of qualified voters and thereby from the jury pool or wheel. (A person convicted of a felony may be eligible to vote after

*Elec. Code
Sec. 11.002*

he or she has finally discharged the sentence, completed court-ordered probation, or has been pardoned or otherwise released from the resulting disability to vote.)

Those persons over 70 years of age who have filed a statement claiming a permanent exemption from jury duty should have their names removed from the jury wheel. *Gov't Code Sec. 62.001(b) Sec. 62.107-.108*

Additionally, those persons who, by order of the court, have been permanently or for a specified period excused from jury duty for physical or mental impairment or inability to communicate in the English language, should have their names removed from the jury wheel or otherwise not used in preparing the record of names from which a jury list is selected. (See Part E.3 in this chapter.) *Sec. 62.001(b) Sec. 62.109*

Also, those persons who claim exemption from jury service based on lack of citizenship or county residence may be ineligible to vote, and thus no longer eligible to serve as jurors. *Sec. 62.0142 Elec. Code Sec. 11.002*

Those persons whose summons has been returned as undeliverable may be removed from the jury wheel, provided the Clerk has not received any forwarding information from the United States Postal Service. The district clerk or, in a county with a population of at least 1.7 million and in which more than 75% of the population resides in a single municipality, the appointed bailiff as provided under Government Code §62.019, can remove the person's name for selection under Government Code §62.011 (see below). *Gov't Code Sec. 62.0145 Sec. 62.0146*

10. Excuse of Jurors

Generally, the court hears and determines excuses offered for not serving as a juror, including any claim for exemption or lack of qualification. However, under a plan approved by the commissioners court in the same manner as a plan approved for jury selection by electronic or mechanical method, in a case other than capital felony case, a designee of the court (typically the Clerk) may hear and determine an excuse offered for not serving as a juror. If the court's designee considers the excuse sufficient, he or she may discharge the prospective juror or postpone the juror's service. The prospective juror may also be discharged or have service postponed if he or she submits a statement to the court's designee of the grounds for exemption or disqualification. *CCP Art. 35.03*

In this regard, the Government Code provides that the court's designee may hear any reasonable sworn excuse of a prospective juror, including a claim for exemption or lack of qualification. The court's designee may discharge a prospective juror or release him or her from jury service until another day of the term. *Gov't Code Sec. 62.110*

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee will release the prospective juror from jury service entirely or until another day of the term. *Sec. 62.112*

11. Computer or Telephone Response to Jury Summons

A plan authorized under Government Code §62.011 for the selection of names of prospective jurors by electronic or mechanical means may allow for a prospective juror to appear in response to a summons by any of these methods: *Sec. 62.0111*

- Contacting the county officer responsible for summoning jurors by

computer

- Calling an automated telephone system
- Appearing before the court in person

A plan authorized under Government Code §62.011 may also allow for a prospective juror to provide information to the county officer responsible for summoning jurors or for the county officer to provide information to the prospective juror by computer or automated telephone system, including:

- Information that permits the court to determine whether the prospective juror is qualified for jury service under §62.102
- Information that permits the court to determine whether the prospective juror is exempt from jury service under §62.106
- Submission of a request by the prospective juror for a postponement or excuse from jury service under §62.110
- Information for jury assignment under §62.016, including:
 - Prospective juror's postponement status
 - If the prospective juror could potentially serve on a jury in a justice court, the residency of the prospective juror
 - If the prospective juror could potentially serve on a jury in a criminal matter, whether the prospective juror has been convicted of a misdemeanor theft
- Completion and submission by the prospective juror of the written jury summons questionnaire under §62.0132
- Prospective juror's electronic mail address
- Notification to the prospective juror by electronic mail of:
 - Whether the prospective juror is qualified for jury service
 - Status of the exemption, postponement, or judicial excuse request of the prospective juror
 - Whether the prospective juror has been assigned to a jury panel

The county officer responsible for summoning jurors must purge the electronic mail address of a prospective juror collected under Government Code §62.0111(b):

- If the prospective juror serves on a jury, not later than the 30th day after the date that:
 - The county sends the person payment for jury service, or
 - The county would otherwise send the person payment for jury service, if the person has donated the payment under §61.003, or
- If the prospective juror does not serve on a jury, not later than the 30th day after the date that the court releases the person from jury service.

12. Personal Information About Jurors in Criminal Trials

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other person information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

*CCP
Art. 35.29*

Art. 35.29(c)

Notwithstanding this general prohibition, defense counsel may disclose personal information about a juror collected during the jury selection process to successor counsel representing the same defendant in a habeas corpus proceeding in a death penalty case without application to the court or a showing of good cause.

13. Jury Fees

The Clerk of a county court or statutory county court must collect a \$40.00 jury fee for each civil case in which a person requests a jury trial. The \$40.00 fee includes the \$5.00 jury fee required by Texas Rule of Civil Procedure 216. At least \$5.00 of the fee must be paid not less than 30 days before the date set for trial; the remaining \$35.00 must be paid no later than 10 days before trial is scheduled.

*Gov't Code
Sec. 51.604*

TRCP 216

14. Uniform Jury Handbook

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

*Gov't. Code
Sec. 23.202(a)*

- Informs jurors in lay terminology of the duties and responsibilities of a juror;
- Explains basic trial procedures and legal terminology; and
- Provides other practical information relating to jury service.

A Spanish language version of the handbook is published and made available.

Sec. 23.202(b)

The State Bar must distribute copies of the uniform jury handbook to each trial court of this State in sufficient numbers to meet the requirements of Government Code Chapter 23, Subchapter C. The handbook may be viewed on the State Bar's website: http://www.texasbar.com/AM/Template.cfm?Section=Jury_Information&Template=/CM/ContentDisplay.cfm&ContentID=23549 or a copy of the publication may be obtained by calling the State Bar at 800.204.2222, x 2610.

Sec. 23.203(a)

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

Sec. 23.203(b)

F. LIQUOR LICENSES - TEXAS ALCOHOLIC BEVERAGE COMMISSION

The Election Code instructs the registrar of voters to verify the signatures appearing on a petition calling for a local option election to legalize (or to prohibit) the sale of alcoholic beverages. The Election Code sets forth the following requirements:

*Elec. Code
Sec. 501.031*

- The registrar of voters of the county shall check the names of the signers of petitions and the voting precincts in which they reside to determine whether the signers of the petition were qualified voters of the county, justice precincts, or incorporated city or town at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures. On written request from a citizen in the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.
- A petition may not be counted unless the signature is the actual signature of the purported signer and the petition:
 - Contains, in addition to the signature:
 - Signer's printed name;
 - Signer's date of birth;
 - If the territory from which the signatures must be obtained is situated in more than one county, the county of registration;
 - Signer's residence address;
 - Date of signing; and
 - Complies with any other applicable requirements prescribed by law.

The county tax assessor-collector is the voter registrar for the county unless the position of county elections administrator is created or the County Clerk is designated as the voter registrar. The commissioners court may designate the County Clerk as the county's voter registrar if the Clerk and the tax assessor-collector agree.

Elec. Code
Sec. 12.001
Sec. 12.031

The County Clerk must certify the results of any local option election to the secretary of state and the Texas Alcoholic Beverage Commission (TABC), within 3 days after the commissioners court of such county has declared the results thereof, free of charge.

Sec. 501.153

On August 1 of each year, it is the duty of each County Clerk to report to the TABC the exact status as to wet and dry areas of his or her county, specifying the status of the county as a whole and of each incorporated city or town in each justice precinct of said county. Such information will be furnished to the commission free of charge.

No later than the 30th day after the date a prospective applicant for a permit or a license issued by the TABC request certification:

Alco. Bev. Code
Sec. 11.37(a), (b)
Sec. 61.37(a), (b)

- the county clerk of the county in which the request is made shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the permit or license is sought is prohibited by any valid order of the commissioners court; and
- the city secretary or clerk of the city in which the request is made shall

certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the permit or license is sought is prohibited by charter or ordinance.

If the county clerk, city secretary, or city clerk certifies that the location or address given in the request is not in a wet area or refuses to issue the certification required by this section, the prospective applicant is entitled to a hearing before the county judge to contest the certification or refusal to certify. The prospective applicant must submit a written request to the county judge for a hearing. The county judge shall conduct a hearing not later than the 30th day after the date the county judge receives the written request.

*Alco. Bev. Code
Sec. 11.37(d)
Sec. 61.37(d)*

Most of the time if the location is within the city limits, the signature of the city secretary or Clerk is already affixed when it arrives in the County Clerk's office.

The Clerk shall furnish the commission, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of the Alcoholic Beverage Code. The Clerk cannot charge a fee for furnishing the copy.

Sec. 101.09

G. BINGO ENABLING ACT

The Bingo Enabling Act provides instructions for holding elections to allow or prohibit bingo in a political subdivision.

For bingo to become legal in a political subdivision, it must be affirmatively voted in. The governing body of a county, justice precinct, or municipality shall order and hold a bingo election if it is presented with a petition for such election that meets the requirements outlined below. (Although not required by statute, the governing body may wish to furnish standardized, bilingual petitions to petitioners to ensure compliance with the Federal Voting Rights Act.) The governing body may also order and hold an election on its own motion.

*Occ. Code
Sec. 2001.657(b)
Sec. 2001.651*

The governing body for a county or justice precinct is the commissioners court. The governing body for a municipality is the city council or other chief legislative body.

Sec. 2001.002(12)

The Bingo Enabling Act requires the following to appear in a petition to legalize (or prohibit) bingo:

Sec. 2001.652

- Statement preceding the space reserved for signatures **on each page** reading as follows: "This petition is to require that an election be held in (name of political subdivision) to legalize (or prohibit) bingo games authorized under the Bingo Enabling Act"
- Signature of the signer and the date on which the signer signed the petition. A signature may not be counted if the signer fails to insert the date of signing or if the date of signing is earlier than the 90th day before the date the petition is submitted to the governing body
- Signer's current voter registration number, printed name, and residence address, including zip code

*Sec. 2001.652(a)
Sec. 2001.652(b)*

Sec. 2001.652(d)

Sec. 2001.652(e)

The Bingo Enabling Act requires signatures totaling 10% of the total votes cast in the political subdivision for governor at the last such election. As an alternative to the 10% requirement, the number of signatures may be the amount specified in the document

Sec. 2001.652(c)

*A.G. Op.
H-199 (1974)*

governing the administration of the political subdivision, whichever is less. If boundaries of the political subdivision do not coincide exactly with boundaries of election precincts in effect for the election, the officer verifying the petition may use any reasonable method to estimate the number of votes for governor cast by qualified voters of the political subdivision.

The petition is then presented to the governing body. Not later than the fifth day after it receives the petition, the governing body shall present it for verification to the County Clerk if the petition applies to a county or justice precinct, or to the municipal secretary if the petition applies to a municipality. The County Clerk or municipal secretary shall determine if the petition has been signed by the required number of voters.

Occ. Code
Sec. 2001.653(a)

Not later than the 30th day after the petition is presented to the officer for verification, the officer shall certify to the governing body whether the petition is valid or invalid, and if the petition is deemed invalid, the officer shall state all reasons for such determination.

Sec. 2001.653(c)

Once a petition is certified as valid, the governing body shall order that an election be held in the appropriate political subdivision on a date not later than the 60th day after the date of the officer's certification. The governing body shall notify the Texas Lottery Commission by certified mail, return receipt requested that an election has been ordered.

Sec. 2001.654(a)

If a uniform election day, as specified in the Texas Election Code, does not occur within the 60-day period, the governing body shall order the election to be held on the next uniform election date specified within that section.

Sec. 2001.654(b)

Elec. Code
Sec. 41.001(a)

The proposition on the ballot shall read: "Legalizing (or prohibiting) bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

Occ. Code
Sec. 2001.655

If an election to legalize or prohibit bingo carries, the result of such election is effective the 14th day after the date the result of the election is officially declared, except as otherwise provided in Occupations Code §2001.657 (see below). If the majority of voters in an election to legalize or prohibit bingo do not vote to do so, the election has no effect on the status of bingo in the political subdivision in which the election was held.

Sec. 2001.656(a),
(b), (c)

The governing body of a political subdivision in which a bingo election has been held shall within 14 days after the election give written notification to the Texas Lottery Commission of the results of the election. If a majority of the qualified voters vote to legalize bingo in the political subdivision, the governing body shall furnish the commission with a map prepared by the governing body indicating the boundaries of the political subdivision in which the playing of bingo may be conducted.

Sec. 2001.656(d)

The status of a municipal election prevails over a contrary status voted by a justice precinct or a county; the status of a justice precinct prevails over that of a county; and, to the extent two or more local option elections held at the justice precinct level applies to the same territory, the most recent election prevails.

Sec. 2001.657(c),
(d)

Territory annexed by a municipality after a bingo election assumes the status of the rest of the municipality. Territory detached by the municipality assumes the status the

Sec. 2001.657(e)

territory would have had if it had never been a part of the municipality. Detached territory added to another municipality assumes the status of the municipality to which it is added.

The addition or detachment of territory from a justice precinct does not affect the status of the added or detached territory, **except** in a county with a population more than 3.3 million. In that case, the added or detached territory assumes the status of the justice precinct of which it becomes a part. The abolition of a justice precinct does not affect the status of the territory formerly within the justice precinct.

Occ. Code
Sec. 2001.657(f)

H. EMINENT DOMAIN

District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A constitutional county court has no jurisdiction in eminent domain cases.

Prop. Code
Sec. 21.001

1. Venue

The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located

Sec. 21.013(a)

Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there are one or more county courts at law with jurisdiction shall file the petition with any Clerk authorized to handle such filings for that court or courts. A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the District Clerk. The filing fee shall be due at the time of filing in accordance with Texas Government Code §51.317.

Sec. 21.013(b)
Sec. 21.013(c)

Gov't Code
Sec. 51.317

District and County Clerks must assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the Clerk serves.

Prop. Code
Sec. 21.013(d)

2. Notice of Decision of Special Commissioners

The judge of a court hearing a proceeding under Property Code Chapter 21 (regarding eminent domain) shall inform the Clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the Clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding or to their attorneys of record at their addresses of record.

Sec. 21.049

I. NOTARIZING DOCUMENTS

Unlike a notary public, a court Clerk notarizing instruments for the court does not have to keep a record of the notarization of each instrument.

Gov't Code
Sec. 406.014

NOTE: Contrary to early Attorney General opinions, the Dallas Court of Appeals has declared that a Clerk or Deputy Clerk may, at the same time, hold the office of notary public.

Hannah v. Walker, 409 S.W. 2d 949 (Tex. Civ. App.-Dallas 1966, orig. proceeding)

Upon the resignation, removal, or death of a notary public, the County Clerk of the

Gov't Code
Sec. 406.022

county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the County Clerk's office.

J. MENTAL HEALTH BACKGROUND CHECK

The County Clerk, at the request of the Department of Public Safety, will conduct a search of the county records involving the mental condition of a person who applies for a license to carry a handgun. The fee for such a background check may not exceed \$2.00 and will be paid to the County Clerk from the application fee submitted to the Department of Public Safety.

*Loc. Gov't Code
Sec. 118.0217*

The County Clerk's conducting a search of mental health records for the specific purpose outlined above does not affect the procedures for access to court records prescribed by Health and Safety Code §571.015.

K. REPORTING AND NOTICE REQUIREMENTS

Appendix C of this Manual identifies the various reporting and notice requirements imposed upon County Clerks.

L. NONRESIDENT ATTORNEYS

Clerks should be aware of the law permitting a nonresident attorney to participate in a Texas court proceeding. A nonresident attorney is defined as a person who resides in and is licensed to practice law in another state but who is not a member of the State Bar of Texas. A nonresident attorney who participates in a Texas court appears *pro hac vice*. This phrase refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted to the jurisdiction temporarily for the purpose of participating in a particular case.

*Gov't Code
Sec. 82.0361*

A nonresident attorney who wishes to participate in a Texas court proceeding shall first pay a fee of \$250 to the Texas Board of Law Examiners for each case in which he or she requests to participate. Then the attorney shall file a motion with the applicable court requesting permission to participate in the particular proceeding in that court. The attorney must provide the court with proof of payment of the \$250 fee.

M. NOTICE OF SELF-HELP RESOURCES

The Clerk must post a link to TexasCourtHelp.org on the court's Internet website and must post a conspicuous sign in a location frequently accessed by the public in the Clerk's office that contains information found on the <http://texascourthelp.org/> website.

*Gov't Code
Sec. 51.808*

N. PROTECTIVE ORDERS

Clerks must enter certain protective order application and order information into the Office of Court Administration's Internet-based protective order application and order registry. Clerks can access the registry here: <https://courtal.txcourts.gov/>.

*Gov't Code
Ch. 72, Subch. F*

Clerks should bookmark the registry's authorized user information and instructions page, available at <https://www.txcourts.gov/judicial-data/protective-order-registry/authorized-user-information-instructions/>, which contains background

information on the registry, user instructions, relevant registry laws and rules, and an FAQ.

Here, “protective order” means an order issued by a court in Texas to prevent family violence (as defined by Family Code §71.004), which includes a magistrate’s order for emergency protection issued under Code of Criminal Procedure Article 17.292, with respect to a person who is arrested for an offense involving family violence.

*Gov’t Code
Sec. 72.151(3)*

Registry entry applies only to:

- An application for protective order filed under Family Code Chapter 82, or Code of Criminal Procedure Article 17.292 with respect to a person who is arrested for an offense involving family violence; and
- A protective order issued under Family Code Chapters 83 or 85, or Code of Criminal Procedure Article 17.292 with respect to a person who is arrested for an offense involving family violence.

Sec. 72.152

Except where delay is permissible:

- The clerk of the court must enter a copy of a protective order application into the registry as soon as possible but not later than 24 hours after the time the application is filed; and
- The clerk of the court must enter into the registry a copy of a protective order and if applicable a notation regarding any modification or extension of the order, and the information required under Government Code §72.154(b), as soon as possible but not later than 24 hours after the time a court issues an original or modified protective order or extends the duration of a protective order.

Sec. 72.156

Sec. 72.157

Sec. 72.157(c)

For a protective order that is vacated or that has expired, the clerk must modify the record of the order in the registry to reflect the order’s status as vacated or expired.

Sec. 72.157(b)

O. OTHER MISCELLANEOUS DUTIES

In addition to the above duties, the Clerk will probably be called upon to perform other services for citizens and county officials.

As an elected official of the county, the Clerk may serve as a member or recorder of various committees relating to county business, such as a County Bail Bond Board, if the County Clerk has responsibility over criminal matters.

*Occ. Code
Sec. 1704.053*

Outdoor music festivals may be required to file an application with the County Clerk and the promoter shall register with the County Clerk of the county in which the outdoor music festival is to be held.

Sec. 2104.051

The Clerk receives and may record public notices of all types prior to posting in the courthouse, excluding school board notices.

CHAPTER 11

RECORDS MANAGEMENT

A. INTRODUCTION

This chapter provides a synopsis of the duties and responsibilities of County Clerks under the Local Government Records Act (Local Government Code Chapters 201-205). The Act applies to all local governments and elected county officials, not just County Clerks.

The Act requires that all County Clerks establish programs for the efficient and cost-effective management of the records of their offices. It also requires that the records of the office of County Clerk be retained for minimum periods of time set by the Texas State Library and Archives Commission before they are eligible for disposal. When records become eligible for disposal, the disposal/destruction of records that have ceased to have administrative, fiscal, legal or historical value to the county is essential to the success of records management.

B. STATE AGENCY CONTACT

If a Clerk has questions regarding the Local Government Records Act or would like to request assistance in establishing a records management program, the Clerk should contact the Texas State Library, State and Local Records Management Division, by mail at P.O. Box 12927, Austin, TX 78711-2927, or by telephone at 512-463-7610. Information is also available on the Texas State Library's web site, <https://www.tsl.texas.gov/>, including a link to contact the library by email.

C. RECORDS MANAGEMENT, GENERAL PROVISIONS

1. Definitions

a. Custodian

*Loc. Gov't. Code
Sec. 201.003(2)*

County Clerks are the "custodians" of the records of their respective offices.

b. Essential Record

Records that are necessary for the resumption or continuation of operations in an emergency or disaster in order to recreate the office's legal and financial status or to fulfill the office's legal obligations to the public.

Sec. 201.003(5)

c. Local Government Record

Any information created or received by a County Clerk pursuant to law or in the transaction of public business is a local government record, regardless of whether it is a document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or any other type of information recording medium and regardless of whether it is an open or closed record.

Sec. 201.003(8)

For purposes of the Local Government Records Act, the following are **not** local government records:

*Loc. Gov't Code
Sec.
201.003(8)(A)–
(G)*

- extra identical copies of documents created for the convenience of an employee or official (*e.g.*, Clerk's copy of a commissioners court agenda);
- notes, journals, diaries, and similar documents created for the convenience of an employee or official (*e.g.*, telephone message pads and desk calendars);
- blank forms;
- stocks of publications;
- library and museum materials acquired solely for the purpose of display or reference (*e.g.*, law books);
- copies of documents in any media furnished to members of the public to which they are entitled under Government Code Chapter 552, commonly known as the Public Information Act; and
- any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Government Code §2009.054(c), associated with a matter conducted under an alternative dispute resolution to which a government entity was a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

2. Declaration of Records as Public Property

Local government records are public property and no official has any personal property right in them.

Sec. 201.005

3. Records to Be Delivered to Successor in Office

A custodian of local government records shall deliver to his or her successor all records of the office.

Sec. 201.006

4. Alienation of Records

A County Clerk may transfer custody of a local government record to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer after the expiration of the records retention period under the local government's records control schedule.

Sec. 202.004(a)

A County Clerk may not transfer custody of any of his or her local government records to a private organization or individual without the consent of the director and librarian of the Texas State Library. This prohibition does not apply to records that are temporarily transferred for the purpose of microfilming, conversion to electronic media, restoration, or other records management activities or when records are to be destroyed by sale or donation to a recycler.

*Sec. 202.004(b),
(c)*

5. Personal Liability

A County Clerk who destroys records in compliance with the Local Government

Sec. 202.007

Records Act and rules adopted under it is not personally liable for the destruction of those records.

6. Penalty for Destruction or Alienation of Records

A County Clerk who knowingly or intentionally destroys or alienates local government records or fails to deliver the records of his or her office to a successor, contrary to the provisions of the Local Government Records Act or rules adopted under it, commits a Class A misdemeanor.

*Loc. Gov't Code
Sec. 202.008*

D. RECORDS MANAGEMENT IN THE OFFICE OF COUNTY CLERK

1. Administration, Duties, and Support

a. County Clerk as Records Management Officer

A County Clerk is automatically designated as the records management officer for his or her office.

*Loc. Gov't Code
Sec. 203.001*

A County Clerk may, at his or her discretion, designate the person appointed by the commissioners court to serve as records management officer for the non-elective offices of the county to serve as records management officer for the office of County Clerk. It is important to note that in doing so, a County Clerk does not relinquish legal custody of records to the county records management officer, but rather chooses to participate in one or more specific components of a countywide records management program and to have the county records management officer assist the Clerk in meeting the requirements of the Local Government Records Act.

Sec. 203.005(g)

A County Clerk may not be designated as records management officer for the non-elective offices of the county without the Clerk's consent.

Sec. 203.025(g)

b. Duties of County Clerk as Records Management Officer

A County Clerk, as the records management officer for his or her office, is responsible for:

Sec. 203.002

- developing a records management program;
- administering the records management program efficiently and effectively;
- identifying and ensuring the preservation of records of permanent value;
- identifying and ensuring the preservation of essential records;
- ensuring that records management activities (*e.g.*, destruction, preservation and microfilming) are conducted in accordance with the requirements of the Local Government Records Act and rules adopted under it; and
- cooperating with the Texas State Library in records management surveys.

c. Funding for Records Management

Several sources of funding exist for the management and preservation of records held by the County Clerk.

*Loc. Gov't Code
Sec.118.052(3)(G)*

(1) The County Clerk is required to assess a filing fee of \$5 upon the filing of a civil case or an ancillary proceeding thereto. Money collected from this filing fee is to be placed in a special fund called the records management and preservation fund. Any expenditure from the fund must be approved by the county commissioners court and can only be used for records management and preservation purposes in the county. The funds are not limited to records management and preservation purposes of the County Clerk, but can be used for any records management and preservation purpose in the county.

*Sec. 118.0546
Sec. 118.0645*

(2) The County Clerk has the option of setting a records management and preservation fee of not more than \$10 to be assessed upon the filing of any document other than a court document. In other words, a County Clerk may choose to assess this fee on the filing of a record in the official public records. The exact amount of the fee (within the statutory limitations) is to be set by the County Clerk – not by the commissioners court. The fee may be used only to provide for specific records management and preservation purposes. There are special rules for the use of this money in counties that are adjacent to an international boundary. Although the relevant statute does not specify the person or entity that approves expenditures of this money, the common understanding is that the commissioners court has final spending authority. Interest earned on the fund is to be added to the fund.

*Sec. 118.011(b)(2)
Sec. 118.0216*

*A.G. Op.
GA-118*

(3) The commissioners court is authorized (but not required) to adopt a records archive fee as part of the county's annual budget. The amount of the fee is to be set by the commissioners court but cannot exceed \$10. The fee is to be assessed at the time a person (other than a state agency) presents a public document to the County Clerk for recording or filing. Funds are to be directed to a separate records archive account in the general fund of the county and can only be expended for the preservation and restoration of the County Clerk's records archive.

*Sec.118.025(b)
Sec.118.011(f)(1)*

Sec. 118.025(c)

*Sec. 118.025(d),
(e)*

(4) The County Clerk can also assess a fee not to exceed \$1 in connection with the issuance of a vital statistics record. The fee may be used for preserving vital statistics records maintained by the registrar or county clerk (including birth, death, fetal death, marriage, divorce, and annulment records), training registrar or county clerk employees regarding vital statistics records, and ensuring the safety and security of vital statistics records.

*Health & Safety
Code
Sec. 191.0045(h)*

2. Planning the Records Management Program

a. The Records Management Plan

Each County Clerk must prepare a written records management plan for his or her office that sets out policies and procedures which will enable the Clerk to fulfill his or her

*Loc. Gov't Code
Sec. 203.005*

responsibilities as a records management officer. The plan must be filed with the director and librarian of the Texas State Library within 30 days after its adoption.

b. Model Plan Available

The Texas State Library has prepared a model plan that can be used by County Clerks to meet the requirement of the Local Government Records Act that a written records management plan be prepared and filed. To request the model, a County Clerk should contact the Texas State Library. A model plan is available on the library's web site: <https://www.tsl.texas.gov/slrn/forms>.

c. Deadlines and Determining Status

The deadline for filing a written plan was January 1, 1991. A County Clerk who has recently assumed office and is uncertain whether his or her predecessor fulfilled this requirement of the Act should contact the Texas State Library.

3. Scheduling Records

a. The Records Control Schedule

Each County Clerk must prepare a records control schedule that lists the records of his or her office and how long the Clerk will retain the records listed before disposing of them and file with the Director and Librarian of the Texas State Library a written certification of compliance that the records retention schedule complies with the Commission's minimum retention requirements.

*Loc. Gov't Code
Sec. 203.041(a)*

The schedule must list all records, by records series, created and maintained in the office and all records no longer created or received that the Texas State Library has determined must be retained permanently or for periods that have not yet expired at the time the Clerk prepares the schedule.

Schedules may be prepared on an office-by-office or department-by-department basis. A County Clerk may, for instance, submit one schedule for administrative records, a second for court records, and a third for all other records.

Sec. 203.041(f)

The Clerk must review the record control schedule and prepare amendments to the records control schedule as needed to reflect new records created or received by the Clerk's office or revisions to retention periods established in a records retention schedule issued by the State Library and Archives Commission. The Clerk must file a written certification of compliance with the Director and Librarian of the Texas State Library that Clerk amended the records retention schedule to comply with the Commission's minimum retention requirements.

Sec. 203.041(d)

b. Retention Periods

The retention periods chosen by the County Clerk for the records of his or her office may not be less than the minimum retention periods established by the Texas State Library for the various records of the office of County Clerk.

Sec. 203.042(b)

c. Retention Schedule for Records of County Clerks

The Texas State Library’s retention periods for documents maintained by a County Clerk can be found in [Local Schedule CC — Retention Schedule for Records of County Clerks](#) (Revised 3d Ed., effective March 25, 2019). It can be accessed via the Internet at <https://www.tsl.texas.gov/slr/recordspubs/cc.html>. For those without Internet access, a copy of the document can also be requested directly from the State and Local Records Management Division of the State Library.

4. Not Scheduling Records

a. Declaring Intention to Keep All Records Permanently

A County Clerk who wishes to keep all records of his or her office permanently or wishes to destroy only those for which the Texas State Library has not set minimum retention periods is not required to prepare a records control schedule.

*Loc. Gov’t Code
Sec. 203.041(g)*

b. How to Make the Declaration

The Texas State Library created a policy model form which allows a Clerk to state whether he or she will file and prepare a records control schedule with the Texas State Library or to declare permanent retention of records. Clerks should contact the Texas State Library for the form.

c. What the Declaration Means

[Local Schedule CC — Retention Schedule for Records of County Clerks](#) is quite thorough and minimum retention periods for almost all records of the office of County Clerk have been established. Remember also that a declaration of intention to keep all records permanently means even such records as cash receipts would have to be retained indefinitely.

5. Microfilming Records

a. Records That May Be Filmed

Any record of a County Clerk may be filmed and retained on microfilm either as the sole recording media or in addition to paper or other media.

Sec. 204.002

b. Microfilming Standards

Any filming of records must be in accordance with microfilming standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

Sec. 204.004

*13 TAC Secs.
7.21-7.35*

All microfilm produced before June 1, 1990 under prior law is validated to the extent the microfilm was produced in the manner and according the standards prescribed by prior law. The Texas State Library and Archives Commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by law.

*Loc. Gov’t Code
Sec. 204.003*

NOTE: While Local Government Code §118.024(a) provides a right to copy from a microfilm record, it provides no duty on the part of County Clerk to provide a record for purchase in the form of microfilm.

*A.G. Op.
DM-30 (1991)*

DM-41 (1991)

A contract for microfilming of records of a County Clerk's office is subject to competitive bidding. It does not fall within the "personal or professional service" exception of Local Government Code §262.024.

*Loc. Gov't Code
Sec. 262.023*

*A.G. Op.
JM-890 (1988)*

c. Classification of Records

If a County Clerk chooses to maintain records on microfilm as provided by Local Government Code Chapter 204 and rules adopted under that chapter, the Clerk is required to divide the instruments received for filing, registering, or recording into the following seven classes for recording on microfilm.

*Loc. Gov't Code
Sec. 193.008*

1. Records relating to real property, known as "Official Public Records of Real Property";
2. Records relating to receivables, chattels, and personal property, known as "Official Public Records of Personal Property and Chattels";
3. Records relating to probate matters, known as "Official Public Records of Probate Courts";
4. Records relating to county civil court matters, known as "Official Public Records of County Civil Courts";
5. Records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";
6. Records relating to matters in the commissioners court, known as "Official Public Records of Commissioners Court";
7. Records relating to an individual, a business entity, or a governmental agency other than a property record or a court record, known as "Official Public Records of Governmental, Business, and Personal Matters."

The Clerk may consolidate the records described by numbers 1 and 7 above into a single class known as "Official Public Records."

d. Indexing

An index to a microfilmed record must show the same information that state law requires for the record if it is not microfilmed.

*Sec. 204.006
Sec. 193.009*

An instrument that is recorded and classified on microfilm as provided above must be alphabetically indexed and cross-indexed in the indexes to that record under the names of the parties identified in the instrument.

Sec. 193.009(a)

The index entry for an instrument recorded in the official public records of real property, personal property and chattels, or governmental, business, and personal matters must include:

Sec. 193.009(b)

- the names of the parties of the instrument;
- a brief description of the instrument;
- the date of filing;
- a brief description of the property, if any; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under the rules adopted under Local Government Code Chapter 204.

The index entry for an instrument recorded in the official public records of probate courts, county civil courts, county criminal courts, or the commissioners court must give information that would assist in further identifying the cause or action, including:

*Loc. Gov't Code
Sec. 193.009(c)*

- the names of the parties to the action, except an action in the commissioners court;
- the nature of the cause or action;
- the date the cause or action was opened or taken;
- the court in which the cause of action lies;
- the docket number; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under rules adopted under Local Government Code Chapter 204.

The Clerk must periodically revise the indexes throughout the year to obtain a complete alphabetical index to each of the classes of official public records for each calendar year. The Clerk may not make a marginal entry to a previously completed index.

Sec. 193.010

A current register of court docket numbers must be maintained in numerical order for each type of court record included in an official public record. The entries in the register of court documents must include essentially the same information included in an equivalent index entry under Local Government Code §193.009.

Sec. 193.011

After an original instrument that is not related to a court matter or proceeding has been microfilmed, the Clerk shall return the original instrument to the person who filed it for record.

Sec. 193.012

The index may be maintained by computer, provided a backup copy is made daily and stored in a climate-controlled facility with fire alarms and sprinklers. The storage facility must be separate from the building in which the computer is located.

Sec. 193.013

e. Destruction of Records

The original of a record that has been microfilmed may be destroyed before the expiration of its retention period, and permission from the Texas State Library is not required for destruction. A list of the originals destroyed must be filed with the Clerk. The

Sec. 204.007

microfilmed record must be retained until the expiration of its retention period for the record, and the microfilm must be retained until the expiration of the retention period for the original record.

f. Effect as an Original Record

Microfilm records produced in accordance with the standards of the Texas State Library and Archives Commission or in accordance with prior law if filmed before June 1, 1990, are to be accepted by state agencies and courts as certified copies of original records.

*Loc. Gov't Code
Sec. 204.011*

6. Storing Records Electronically

a. Records that May be Stored Electronically

Any record of a County Clerk may be stored electronically (*e.g.*, on computer hard disk, magnetic tape, optical disk, or similar machine-readable medium) in addition to or in lieu of any other medium.

Sec. 205.002

b. Electronic Storage Standards

The electronic storage of any record whose minimum retention period is set by the Texas State Library as 10 years or more must be stored in accordance with standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

Sec. 205.003

*13 TAC Sections
7.71-7.79*

c. Destruction of Source Documents

The source document for an electronically stored record may be destroyed or returned to the person who filed it for record. If the minimum retention period set for a source document is less than 10 years, the source document may be destroyed after the information in it is stored electronically.

*Loc. Gov't Code
Sec. 205.008(a)*

In either case, the electronic recording medium and the software and hardware necessary to read it must be kept until the retention period for all source documents has expired.

Sec. 205.008(b)

A County Clerk may also destroy electronically stored records if the source documents have been retained or if a paper or microfilm copy of the data has been generated from the electronic media.

Sec. 205.008(c)

d. Indexing

An index to records stored electronically must show the same information that state law requires for the source document.

Sec. 205.006

e. Denial of Access Prohibited

Persons under contract with a County Clerk to provide electronic services or equipment may not refuse to provide the Clerk timely access to the records of the office in a usable format.

Sec. 205.009

7. Destruction of Records

a. When Lawful Destruction Can Occur

A County Clerk may lawfully destroy a record if:

*Loc. Gov't Code
Sec. 202.001*

- the record is listed on a valid records control schedule and either its retention period on the schedule has expired or it has been microfilmed or stored electronically in accordance with Local Government Code Chapters 204 and 205, respectively, including administrative rules of the Texas State Library and Archives Commission adopted under those chapters;
- the record appears on a list of obsolete records as provided by §203.044;
- the record is not listed on a records retention schedule issued by the Texas State Library and Archives Commission and the Clerk provides notice to the Commission at least 10 days before destroying the record;
- the record is destroyed pursuant to an expunction order; or
- the Texas State Library and Archives Commission has defined the records as exempt from scheduling or filing requirements.

b. Litigation and Open Records Requests

A County Clerk may not destroy any records the Clerk knows to be a subject of litigation or for which there is an open records request until the matter is resolved.

Sec. 202.002

c. Method of Destruction

Normally a Clerk may destroy records by burning, shredding, pulping, burial in a landfill, or sale or donation for recycling. A Clerk who sells or donates records for recycling is required to establish procedures to ensure that the records are rendered unrecognizable as local government records by the recycler.

Sec. 202.003

Records designated as exempt from public disclosure by the Public Information Act or any other state law may be destroyed only by burning, shredding, or pulping. Extra, identical copies of these closed records must be destroyed in the same manner.

Sec. 202.006

CHAPTER 12

NOTICE OF AND CONSENT TO ABORTION

A. INTRODUCTION

In 1999, the Texas Legislature enacted legislation requiring parental notification or judicial approval before a minor could have an abortion. As of January 2000, minors must obtain approval by a judge to have an abortion without notifying a parent. Many of these cases will be filed in district court.

*Family Code
Chapter 33*

B. CONFIDENTIAL, PRIVILEGED, AND SENSITIVE NATURE OF THESE CASES

These cases are legally confidential and of a sensitive nature. Family Code Chapter 33 and the Texas Supreme Court *Rules for Judicial Bypass of Parental Notice and Consent Under Family Code Chapter 33* (herein shortened to the Supreme Court Rules and abbreviated as “SCR”) require that the process for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of, a parent, a managing conservator, or a guardian be conducted in a manner that ensures the minor’s confidentiality and anonymity.

*Family Code
Sec. 33.003(k)*

SCR 1.3(a)

SCR 1.4(a)

The Clerk may not divulge to anyone, except essential court personnel, anything about the minor’s application, including the fact that the minor was ever in the Clerk’s office. The Clerk may not divulge to anyone that the minor is or ever has been pregnant or wants or ever wanted an abortion.

The application and all other court documents pertaining to the proceeding, and all information contained therein, are confidential and privileged. The documents are not subject to disclosure under Government Code Chapter 552, nor are they subject to discovery, subpoena, or other legal process. They may be disclosed only when expressly authorized by Supreme Court rule. An order, ruling, or opinion may be released only to the minor; her guardian ad litem; her attorney; the physician who is to perform the abortion; a person specifically designated in writing by the minor to receive the information; a governmental agency in connection with a proceeding seeking to assert or protect the minor’s interest; or another court, judge, or clerk in the same or related proceedings.

SCR 1.4(b)

*Family Code
Sec. 33.003(k)*

The Attorney General has issued several open records rulings regarding what information may be released without impairing confidentiality. Identification of the trial court, amounts paid to a specific trial court, information regarding attorneys appointed and amounts paid to them, and a list of attorneys who have received payments have all been held to be confidential. This type of information, as well as any other information that may serve to identify a trial court or any participant in a proceeding, are exempt from disclosure under Government Code Chapter 552.

*OR 2001-2485
OR 2002-2558
OR 2002-3007*

A ruling of a court of appeals or the Supreme Court issued under Family Code Chapter 33 is also confidential and privileged. However, the courts may publish their opinions if they are written in such a way to preserve the confidentiality of the identity of the pregnant minor.

*Family Code
Sec. 33.004(d)*

*In re Doe, 19
S.W.3d 249 (Tex.
2000)*

C. FILING THE APPLICATION

Except in the case of a medical emergency in which a minor requires an abortion and the physician certifies this in writing to the Department of State Health Services and provides other required notice, a minor must have judicial approval to have an abortion without parental notification. A minor who wishes to have an abortion without notifying one of her parents or legal guardian may file an application for a court order authorizing the minor to get an abortion without notifying one of her parents.

Family Code
Sec. 33.002

The application must be filed in a county court at law, a court having probate jurisdiction, or a district court, including a family district court. Except under certain circumstances, the application must be filed in one of the designated courts located in the minor's county of residence. If the minor's parent, managing conservator, or guardian is a presiding judge of a court in which these cases may be filed, the application may be filed in a contiguous county or in the county in which the facility where the minor intends to have the abortion is located. If the minor resides in a county with a population of less than 10,000 then the application may be filed in the minor's county of residence, a contiguous county, or in the county in which the facility where the minor intends to have the abortion is located. If the minor is not a resident of the state, the application must be filed in the county in which the facility where the minor intends to have the abortion is located. No filing fees or court costs may be assessed or charged to the minor.

Sec. 33.003(b)
Sec. 33.003(n)
SCR 1.9(a)
SCR 2.1(a)

There may be no reference to the minor's identity anywhere in the proceedings, except on the separate verification page, discussed below. In all other court documents, the minor is referred to as "Jane Doe." To preserve her anonymity, all notices and communication from the court must be to the minor's attorney with a copy to the guardian ad litem. This requirement takes effect when an attorney appears for the minor or when the Clerk has notified the minor that an attorney ad litem or guardian ad litem has been appointed for her.

SCR 1.3(b)
SCR 1.3(c)

1. Application Requirements

To further ensure confidentiality, the rules promulgated by the Supreme Court require that the application be in two parts: the cover page and the verification page. The cover page must be styled "In re Jane Doe" and must not contain any identifying information about the minor.

SCR 2.1(c)(1)

The cover page must state:

- that the minor is pregnant;
- that the minor is unmarried, is under 18 years of age, and has not had her disabilities of minority removed;
- a statement that the minor wishes to have an abortion without notifying either of her parents or a managing conservator or guardian;
- whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney; and
- whether the minor has filed a Confidential Application for Waiver of Parental Notification other than this one.

The separate verification page must be signed under oath by the person completing it and must state:

- the minor’s full name and date of birth;
- the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
- a telephone number or pager number, whether hers or someone else’s, at which the minor can be contacted immediately and confidentially until an attorney is appointed for her; and
- that all the information contained in the application is true.

2. Filing, Hearings, and Records

Documents may NOT be filed through the State’s e-filing system. Documents may be filed in paper form, by fax or by email. The Clerk must designate an email address or a fax number for the filings of documents in these proceedings and must take all reasonable steps to maintain the confidentiality of the filings. Attorneys should notify the Clerk by telephone before filing documents by email or fax.

SCR 1.5

The Clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the Clerk must take all reasonable steps to maintain the confidentiality of the transmission.

With the court’s permission, any witnesses may appear by video conferencing, telephone, or other remote electronic means. However, the minor must appear before the court in person.

Family Code
Sec. 33.003(g-1)

If a court reporter is unavailable at the time of the hearing, a record of the hearing may be made by audio recording or other electronic means. If the decision is appealed, the recording must be transcribed, if possible. The person transcribing the recording must certify the accuracy of the transcription. Both the recording and the transcription must be included in the record on appeal that the Clerk sends to the court of appeals.

SCR 1.5(e)

3. Clerk’s Duties

The Clerk must give prompt and courteous assistance to persons seeking to file an application and is required to provide a copy of the Supreme Court Parental Notification Rules as well as the relevant forms promulgated by the Supreme Court (such as the application form) to any person without charge. The forms must be in both English and Spanish. The Supreme Court’s rules, instructions and forms are available from the following links:

SCR 1.7
SCR 2.2(a)

- <http://www.txcourts.gov/media/1240923/Parental-Notification-Rules-2015.pdf>
- <http://www.txcourts.gov/media/1240926/Parental-Notification-Forms-2015.pdf>

The Clerk should ensure that both the cover page and the verification page of the application are completed in full. If requested, the Clerk must administer the oath required for the verification page, or provide a person authorized to do so.

SCR 2.2(a)

Because of the confidentiality requirements, the Clerk should not enter information about the case in case management software or docket the application as a regular case.

SCR 2.2(b)

The Clerk must redact from the cover page any information identifying the minor. The Clerk must assign a case number and write it on the cover page and the verification page, then provide a certified copy of the verification page to the applicant. The verification page must be filed under seal in a secure place, with access limited to essential court personnel.

Judges may be assigned in accordance with a county's local rules, which require approval by the Supreme Court of Texas. If there is no local rule, the Clerk receiving the application (whether District Clerk or County Clerk) assigns it to a district court, if a judge is in the county. If not, the case is then assigned to a statutory county court or probate court. If one of these judges is not available, then the case is assigned to a constitutional county court, if the court has probate jurisdiction and if the judge is in the county. If the case cannot be assigned under any of these requirements, then it is assigned to the district court.

SCR 2.1(b)(3)
SCR 2.1(b)(4)

The Clerk must immediately determine if the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the Clerk must immediately inform the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page, so the case may be reassigned.

SCR 2.2(d)

D. JUDICIAL PROCEEDINGS

1. Before the Hearing

The Clerk of the court must deliver a copy of the application (the cover page and the verification page) to the judge who is to hear the application and inform the judge if a specific guardian ad litem has been requested.

SCR 2.2(c)

Family Code
Sec. 33.003(d)

The court is required to appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court is required to appoint an attorney to represent the minor.

Sec. 33.003(e)

These proceedings shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly. The court must fix a time for a hearing on an application filed and shall keep a record of all testimony and other oral proceedings in the action. The Clerk must give notice of the time and place of the hearing and must notify the persons appointed as guardian ad litem and attorney ad litem of their appointments, as well as the time and place of the hearing. A court coordinator, or other court personnel, may give notice instead of the Clerk.

Sec. 33.003(g)

SCR 1.2(a),
2.2(e)

A minor may object to the assignment of a judge or file a motion to recuse or disqualify the judge. The objection or motion must be filed before 10:00 a.m. of the first business day following the filing of the application, or promptly after the assignment of a judge to hear the case is made known to the minor or her attorney, whichever is later. Such objection or motion does not extend the deadline for ruling on a minor's application. The minor may object to or file a motion to recuse or disqualify the judge only once in the proceeding.

SCR 1.6(a)
SCR 1.6(d)

A judge may recuse himself voluntarily, and must do so immediately, if that is his choice. If the judge does not remove himself voluntarily, then the judge must immediately

SCR 1.6(b), (c)

refer the matter to the appropriate judge or justice under rule or statute, pursuant to local rule. That judge or justice must rule on the objection or motion as soon as possible, and may do so with or without a hearing. If the motion is granted, the judge or justice who made the ruling must assign a new judge immediately.

Any judge involved in a proceeding in any capacity may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. A minor's attorney and guardian ad litem must have access to the case file to the extent necessary to perform their respective duties.

*SCR 1
Comment No. 3
(2001)*

To assist the court in making its determination, amicus briefs may be submitted to the court. These briefs are not to be filed with the Clerk and are subject to all anonymity and confidentiality provisions contained in the Supreme Court Rules and Family Code Chapter 33.

SCR 1.10

2. After the Hearing

The court must enter judgment on the application immediately after the hearing is concluded. The court must rule on an application and issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the application is filed with the court. The Clerk must provide a copy of the order, including the findings of fact and conclusions of law, to the minor's attorney and her guardian ad litem.

*Family Code
Sec. 33.003(h)*

*SCR 2.5(f)
SCR 2.2(f)*

The time to issue an order may be extended only upon request by the minor. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed to hearing.

*Family Code
Sec. 33.003(h)*

*SCR 2.4(a)
SCR 2.5(g)*

If the court fails to rule on the application within the period specified by Family Code §33.003(h), the application is deemed to be denied.

*Family Code
Sec. 33.003(h)*

An order of the court issued under Family Code §33.003 is confidential and privileged and is not subject to disclosure under Government Code Chapter 552, or discovery, subpoena, or other legal process. The order may not be released to any person but the minor, the minor's guardian ad litem, the minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

Sec. 33.003(l)

3. Payment of Fees and Costs

The court may order the State to pay the cost of any guardian ad litem and attorney ad litem appointed for the minor. The court may also order the State to pay associated court fees, costs and any court reporter's fees certified by the Clerk. Court costs include the expenses of an interpreter and an evaluation by a licenses mental health counselor, but not witness fees or fees which must be remitted to the state treasury.

Sec. 33.007

SCR 1.9(b)

The order must be directed to the Comptroller of Public Accounts but should be sent by the Clerk to the Director, Fiscal Division, Texas Department of Health.

SCR 1.9(b)(2)

E. CERTIFICATE

As discussed above, if the relevant judge fails to rule on an application within the time required by Family Code §33.003(h), then the application is deemed to be denied. Upon the request of the minor or her attorney, the Clerk must immediately issue a certificate stating that the court failed to rule timely and the application is deemed to be denied. *SCR 2.2(g)*

F. APPEAL

A minor whose application has been denied may appeal to the court of appeals with jurisdiction over civil matters in the county in which the application was filed. When the application is denied, the court must inform the minor of her right to appeal and furnish her with the appropriate appeal form. *SCR 2.5(h)*
Family Code
Sec. 33.004

Upon receipt of a notice of appeal, the Clerk of the court that denied the application shall deliver to the appellate court a copy of the notice of appeal and the Clerk's record. The Clerk will include the reporter's record if it has been provided and is in the file. (Court reporter's notes, in any form, may be filed with other court documents in these proceedings to preserve confidentiality.) The verification page is not included in the record on appeal. *Sec. 33.004*
SCR 1.4(c)
SCR 3.2(b)

The trial court Clerk must not send the record to the Clerk of the court of appeals by mail but must, deliver the record by hand or transmit it by facsimile or email. *SCR 3.2(b)*

The minor or her attorney is responsible for filing a notice of appeal with the appropriate court of appeals, and for notifying the court of appeals by telephone that the appeal is being taken under Family Code §33.003. *SCR 3.1*

It is the Clerk's responsibility to give prompt assistance to persons seeking to file an appeal. Such assistance includes assuring that the notice of appeal is sent to the proper court of appeals, and that no identifying information is disclosed. A filing fee is not required and costs may not be assessed to the minor for filing an appeal. *SCR 3.2(a)*
Family Code
Sec. 33.004(e)

A minor may appeal to the Supreme Court of Texas if her appeal is denied by the court of appeals. The Clerk has no role in this proceeding, except to inform the minor of the availability of this remedy and provide whatever assistance the minor may request. *SCR 4*

CHAPTER 13

JUVENILE LAW

A. INTRODUCTION

The Juvenile Justice Code (Family Code Title 3, Chapters 51-61 and Title 3A, Chapter 65) is the basis for juvenile law in Texas.

The provisions of the Juvenile Justice Code apply to children. For purposes of the Juvenile Justice Code, a “child” is defined as a person who is: *Family Code Sec. 51.02(2)*

- 10 years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

It is important to note that married persons under the age of 18 are still subject to the provisions of the Juvenile Justice Code. The statutory definition makes no provision for married persons and the Attorney General has stated that all rules and procedures must be followed for married as well as unmarried persons subject to the Juvenile Justice Code. *A.G. Op. MW-298 (1981)*

1. Courts Hearing Juvenile Cases

The juvenile court of a county, as designated by the county's juvenile board, has jurisdiction for cases dealing with juvenile delinquents. There must be at least one juvenile court designated for each county. The juvenile court may be a district court, county court, or county court at law. If the county court is designated as a juvenile court, at least one other court must be designated as the juvenile court. If the judge of the court designated as a juvenile court is not an attorney licensed in this state, a court with a judge who is an attorney licensed to practice in Texas must be designated an alternate court. A court that has jurisdiction over proceedings under Title 5 may be designated by the county juvenile board as a juvenile court. *Family Code Sec. 51.04*

2. Jurisdiction

With certain exceptions, juvenile courts have exclusive original jurisdiction over all alleged offenders under the age of 18. There are four situations in which a criminal court, not a juvenile court, has jurisdiction even though the offender is under 18: perjury, traffic violations, violation of statutes or ordinances punishable by fines only, and alcohol violations. These will be discussed in more detail in Part C, *Transferring to Other Courts*. *Sec. 51.04*

It is important to note that Title 3A grants a truancy court exclusive original jurisdiction over cases involving allegations of truant conduct. Truancy Courts will be discussed in more detail in Part G. *Sec. 65.003*

B. PROCEEDINGS

Before proceedings commence, two determinations must be made:

- that the person referred to juvenile court is a “child” as defined in the Family Code; and

Family Code Sec. 51.02(2)

- that there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision.

Next, the type of conduct in which the child engaged must be determined: delinquent conduct or conduct indicating a need for supervision. Delinquent conduct and conduct indicating a need for supervision are defined in Family Code §§51.03(a) and 51.03(b), respectively.

*Family Code
Sec. 51.03(a), (b)*

- A child adjudicated of delinquent conduct can be placed on probation or, if certain conditions are met, be committed to the Texas Juvenile Justice Department.
- A child adjudicated for conduct indicating a need for supervision cannot be committed to the Texas Juvenile Justice Department.

Cases for delinquent conduct and conduct indicating a need for supervision require separate handling from criminal cases. The Clerk reserves a special judge's docket, file docket, index, minutes, and case jacket file for juvenile cases.

Procedures for filing and issuance of processes in juvenile cases are as follows:

- The prosecuting attorney files with the Clerk a petition for an adjudication or transfer hearing. The petition must state the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts. *Sec. 53.04*
- The Clerk issues a summons with a copy of the petition attached to the child and to the child's parent, guardian, or custodian to advise them of the charge and the hearing date. *Sec. 53.06*
- The court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. The juvenile court may issue a writ of attachment for a person who violates this order. The writ of attachment is executed in the same manner as in a criminal proceeding. *Sec. 53.06
Sec. 53.08*
- If the child is taken into custody prior to the hearing on the petition, the intake officer must immediately investigate and determine if detention is warranted. The child can be detained only if: *Sec. 53.02*
 - the child is likely to abscond or be removed from the jurisdiction of the court;
 - the child is not being adequately cared for and supervised;
 - there is no adult to ensure the child's appearance in court;
 - the child is a danger to him/herself or others; or
 - the child has previously been found to be delinquent or has previously been convicted of a penal offense punishable by a term in jail.

Detention is mandatory if the child used, possessed or exhibited a firearm during the commission of the offense. *Sec. 53.02(f)*

If the child is not released, an informal detention hearing is held pursuant to the provisions of Family Code Chapter 54. The child must be released unless one of the reasons listed above for detention exists. *Family Code Sec. 54.01*

The next step in the process is an adjudication hearing. A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing. *Sec. 54.03(a)*

The adjudication hearing is conducted as a trial by jury unless a jury is waived under Family Code §51.09. If the hearing is on a charge approved by the grand jury, the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. If the hearing is on a charge classified as a misdemeanor, the jury must consist of 6 persons. The jury's verdict must be unanimous. *Sec. 54.03(c)*

If the court or jury finds the child did not engage in delinquent conduct or conduct indicating a need for supervision, the case is dismissed with prejudice. If an affirmative finding is made, the court sets a date for a disposition hearing. *Sec. 54.03(g), (h)*

The disposition hearing is separate and distinct from, and must be held subsequent to, the adjudication hearing. Generally, there is no right to a jury at the disposition hearing. No disposition may be made unless the child needs rehabilitation, or the protection of the public or the child requires that disposition be made. *Sec. 54.04*

At the conclusion of the disposition hearing, the court must inform the child of his or her right to appeal and the procedures for sealing records. Sealing of records is covered in detail in Part D of this chapter. *Sec. 54.04(h)*

1. Fees

If a disposition hearing is held and the court finds the child, parent, or other person responsible for the child is financially able to pay the fee, a fee of \$20 is to be charged as costs of court. This fee is paid into the state Juvenile Probation Diversion Fund. *Sec. 54.0411*

If a child is placed on probation, the juvenile court may charge a fee of not more than \$15 a month during a child's probation. If the court finds that a child, parent, or other party financially responsible for the child's support is financially unable to pay the probation fee, the court must enter into the records of the child's case a statement of that finding. The court may waive this fee only if the court makes this finding. *Sec. 54.061*

A "juvenile delinquency prevention fee" applies when a child is adjudicated as having engaged in delinquent conduct that violates Penal Code §28.08 (Graffiti). The juvenile court must order the child, parent, or other person responsible for the child's support to pay to the court a \$50 juvenile delinquency prevention fee as a cost of court. The court shall deposit fees received under this law to the credit of the county graffiti eradication fund provided for under Code of Criminal Procedure Article 102.0171. If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the juvenile delinquency prevention fee, the court shall enter into the child's case records a statement of that finding. If the court finds and documents that the person responsible for this fee is unable to pay, the court may waive the fee. *Sec. 54.0461*

The juvenile court may order the parent or other person responsible for the support of the child to reimburse the county for payments the county made to counsel appointed to represent the child. Payment may be ordered for each attorney who represented the child at any hearing and may include amounts paid to or on behalf of the attorney by the county for preparation time, investigative costs, and expert witness costs. However, the court may not order payments that exceed the financial ability of the parent or other responsible person to meet the payment schedule set by the court.

*Family Code
Sec. 51.10(k), (l)*

If a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required, the juvenile court must order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court: (1) a \$50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Juvenile Justice Department; and, (2) a \$34 fee if the disposition of the case does not include a commitment and the child is required to submit a DNA sample under Family Code §54.0409 or other law. The Clerk must transfer these fees to the Comptroller. The court may waive these fees, but only if the court enters into the child's case records a statement of having made a finding that the child, parent, or other person responsible for the child's support is unable to pay the fee.

Sec. 54.0462

C. TRANSFERRING TO OTHER COURTS

1. Mandatory Transfers

Depending on the nature of the case, the juvenile court may waive its exclusive original jurisdiction and transfer a child to another court.

In some cases, transfer to a district court or criminal district court (if such courts exist in the child's county) is mandatory. Transfer is mandatory if the child is alleged to have committed a felony and the child has previously been transferred to a district or criminal district court, unless, in the matter previously transferred:

*Family Code
Sec. 54.02(m)*

- the child was not indicted by a grand jury;
- the child was found not guilty;
- the matter was dismissed with prejudice; or
- the child was convicted, the matter was reversed on appeal, and the appeal is final.

When transfer is mandatory, the required summons must provide notice that the purpose of the hearing is to consider mandatory transfer to criminal court. Likewise, the study which must be conducted in discretionary transfers is not required in mandatory transfers.

Sec. 54.02(n)

2. Discretionary Transfers

The juvenile court may waive its original exclusive jurisdiction and transfer a matter to a district court for regular criminal proceedings if the child is alleged to have committed particular felonies at certain ages, no adjudication hearing has been conducted, and the court determines there is probable cause to believe the child committed the offense and that because of the seriousness of the offense or the background of the child

Sec. 54.02(a)

or the welfare of the community criminal proceedings are required. The petition and notice requirements of Family Code §§53.04, 53.05, 53.06 and 53.07 must be met, and the summons must state that the purpose of the hearing is to consider a discretionary transfer to criminal court.

The court must conduct a hearing without a jury to consider the transfer of the proceedings to district court. Prior to the hearing, the court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his or her circumstances, and the circumstances of the alleged offense.

*Family Code
Sec. 54.02(c), (d)*

If the petition alleges multiple offenses that constitute more than one criminal transaction, the court must either retain or transfer all offenses relating to a single transaction. A child cannot be subject to criminal prosecution at any time for any offense arising out of a transaction for which the juvenile court maintains jurisdiction, except that a child may be subject to criminal prosecution for an offense committed under Chapter 19 or Penal Code §49.08 if the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction, and if on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or Penal Code §49.08 had not occurred.

*Sec. 54.02(g)
Sec. 54.02(g-1)*

In its order transferring the case to a criminal court, the juvenile court must state its reasons for waiver and certify its action. Upon transfer, the child is dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Human Resources Code §152.0015, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Code of Criminal Procedure Article 4.19. If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses. A transfer of custody made under this subsection is an arrest. Once the matter is transferred, the criminal court may not remand the child to the jurisdiction of the juvenile court.

Sec. 54.02(h), (i)

Sec. 54.02 (h-1)

A judge exercising jurisdiction over a child in a suit instituted under Family Code Title 5, Subtitle E (Protection of the Child) may refer any aspect of a suit involving the child that is instituted under the Juvenile Justice Code to the appropriate associate judge appointed under Chapter 201, Subchapter C, serving in the county and exercising jurisdiction over the child under Title 5, Subtitle E if the associate judge consents to the referral. The scope of an associate judge's authority over a suit referred under this subsection is subject to any limitations placed by the court judge in the order of referral.

Sec. 51.04(h)

The juvenile court may transfer a child's case, including transcripts of records and documents for the case, to a district or statutory county court located in another county that is exercising jurisdiction over the child in a suit instituted under Title 5, Subtitle E (Protection of the Child). A case may only be transferred to combine proceedings with the consent of the judge of the court to which the case is being transferred. A district or statutory county court to which a case is transferred to combine proceedings has jurisdiction over the transferred case regardless of whether the court is a designated juvenile court or alternative juvenile court in the county. If the court exercising jurisdiction over the child under Title 5, Subtitle E consents to a transfer to combine

Sec. 51.0414

proceedings, then the juvenile court must file the transfer order with the clerk of the transferring court. On receipt and without a hearing or further order from the juvenile court, the clerk of the transferring court must transfer the files, including transcript of records and documents for the case as soon as practicable but not later than the 10th day after the date an order of transfer is filed. On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the receiving court must notify the judge of the receiving court, all parties, and the clerk of the transferring court.

D. RECORDS

1. Confidentiality and Restricted Access

Juvenile records — that is, any documentation related to a juvenile matter, including information contained in a document — are confidential and subject to restricted access. Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records.

*Family Code
Sec. 58.251*

The records and files (whether physical or electronic) of a juvenile court or a clerk of court relating to a child who is a party to a proceeding under Family Code Title 3 are open to inspection and copying **ONLY** by:

Sec. 58.007(b)

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency that has custody or control over a juvenile offender;
- an attorney representing the child’s parent in a Title 3 proceeding;
- an attorney representing the child;
- a prosecuting attorney;
- an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child’s release or discharge from a juvenile facility;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court or having custody of the child under juvenile court order; or
- with the juvenile court’s permission, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

A person who is the subject of the records is also entitled to access the records to prepare and present a motion or application to seal the records.

Sec. 58.007(b-1)

An individual or entity that receives confidential information cannot disclose the information unless otherwise authorized by law.

Sec. 58.007(c)

Not all records are subject to the above confidential provisions. The following records are still subject to public inspection:

- Motor vehicle records, municipal and justice court records of criminal cases involving juveniles, and sex offender records maintained under Code of Criminal Procedure Chapter 62; *Family Code Sec. 58.007(a)*
- Records that must be released under Code of Criminal Procedure Article 15.27 (notification of arrest to school) and under Family Code §54.051 (determinate sentence probation to appropriate district court); and *Sec. 58.007(b)*
- The petition for discretionary transfer, the transfer order, and the commitment order, if any, transferred under Family Code §54.02 (waiver of jurisdiction by juvenile court and discretionary transfer to criminal court). *Sec. 54.02(s)*

The juvenile court may disseminate the following information to the public relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension: *Sec. 58.007(h)*

- the child's name, including other names by which the child is known;
- the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- a photograph of the child; and
- a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

2. Sealing the Records

The sealing of juvenile records is controlled by Family Code Chapter 58, Subchapter C-1. Records are considered sealed if they are not destroyed but are stored in a manner that allows access to the records only by the records custodian for the entity possessing the records. Records related to criminal gangs and records related to sex offender registration are exempt from Subchapter C-1's records sealing provisions. Subchapter C-1's provisions do not encompass justice court or municipal court records related to fine-only misdemeanors. *Sec. 58.259(b)*
Sec. 58.252

When a record is sealed, all adjudications relating to the person are vacated and the proceedings are dismissed and treated, for all purposes, as though they never happened. When the record is sealed, the clerk must seal all court records relating to the proceedings, including records created in the clerk's case management system. The clerk must also send copies of the order to any entity listed in the sealing order by any reasonable method, including certified mail, regular mail, or email. *Sec. 58.258*

If the clerk that received an order sealing a record relating to a person later receives an inquiry about that person or the matter contained in the records, the clerk must respond that no records relating to that person or matter exist. *Sec. 58.259(c)*

The juvenile court may, by order, allow the inspection of a sealed record only by: *Sec. 58.260*

- a person named in the order, on petition of the person who is the subject of

the records;

- a prosecutor, on the prosecutor's petition, to review the records for possible use in a capital prosecution or enhancing punishment for repeat and habitual felony offenders; and
- a court, TDCJ, or TJJD, to determine a person's sex offender risk level.

When a child is referred to juvenile probation, and again upon final discharge or upon the last official action in the matter if there is no adjudication, a child must receive an explanation describing the sealing process and eligibility for records sealing.

Family Code
Sec. 58.262

Records subject to sealing can be split into two categories: records sealed without application and records sealed with application.

- Records Sealing without Application

- Finding of Not True

Sec. 58.2551

- A juvenile court, on the court own motion and without a hearing, must immediately order the sealing of all records related to the alleged conduct if the court enters a finding that the allegations are not true.

- Delinquent Conduct

- A person referred for delinquent conduct, but not adjudicated as having engaged in delinquent conduct or adjudicated for a misdemeanor but not a felony, and who does not have any pending delinquent conduct matters, who has not been transferred by a juvenile court to a criminal court for prosecution, and who does not have any pending felony charges or misdemeanor charges punishable by confinement, will have that person's records sealed without application to the court when that person turns 19.

Sec. 58.253

- Eligibility for sealing without application must be certified to a juvenile probation department, which must in turn notify the juvenile court. The juvenile court must issue an order sealing all records related to the person's juvenile matter within 60 days of receiving the notice.

Sec. 58.254

- Conduct Indicating Need for Supervision

- A person referred to a juvenile court for conduct indicating need for supervision and who has records relating to the conduct filed with the court clerk, who has not been referred to juvenile probation for delinquent conduct, who has not been convicted of a felony as an adult, and who does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement, will have that person's records sealed without application to the court when that person turns 18.

Sec. 58.255

- Juvenile probation must give notice to a court of person’s eligibility for sealing, and the court must issue an order sealing all records related to the person’s juvenile matter within 60 days of receiving the notice.
 - Records Sealing with Application
 - If a person does not qualify for sealing without application to the court, a person may file an application for records sealing. **A court cannot charge a fee for this filing, regardless of the application’s form.** Upon receipt of the application, the court can order the sealing immediately or hold a hearing to determine whether to order the sealing. A court cannot order records sealed for certain persons.

*Family Code
Sec. 58.256*

3. Destruction of Records

The destruction of juvenile records is controlled by Family Code Chapter 58, Subchapter C-1. Records related to criminal gangs and records related to sex offender registration are exempt from Subchapter C-1’s records destruction provisions.

If a clerk has questions about whether a juvenile record can be destroyed, it is strongly advised that the clerk contact the Texas Juvenile Justice Department’s Legal Help Desk and/or the Texas State Archives and Library Commission for guidance.

For juvenile courts and court clerks, the destruction of juvenile records falls into two categories:

- “No Probable Cause” Destruction
 - The court must order the destruction of the records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody if a determination is made, either by juvenile intake or by the prosecutor (after referral to the prosecutor by intake), that no probable cause exists to believe that a child engaged in illegal conduct.
- “Spring Cleaning” Destruction of Records
 - Courts and clerks can destroy physical copies of juvenile records, regardless of when created, following the conversion of the physical record into an electronic record. “Electronic record” here means an entry in a computer file, or information on microfilm, microfiche, or any other electronic storage media. Once converted to an electronic record, however, the electronic version must be retained and maintained permanently. **NOTE: if the court or the clerk cannot PERMANENTLY retain and maintain the electronic record, the physical record should not be destroyed.**

*Family Code
Sec. 58.263*

*Sec. 58.264(e),
(f)*

Sec. 58.251(1)

4. Expunction of Records

Juvenile records are NOT subject to an order of expunction issued by any court.

Sec. 58.265

5. Local Juvenile Justice Information Systems

A local juvenile justice information system (JJIS) is a county or multicounty computerized database of information concerning children, with data entry and access by partner agencies that are members of the system. Information in a local JJIS is non-public, is confidential, and is subject to the sealing and destruction provisions listed above. *Family Code Sec. 58.301(4) Sec. 58.307*

A local system must, to the extent possible, include several partner agencies, including the juvenile court and the court clerk. A local JJIS exists, in part, to: *Sec. 58.305*

- Provide for the efficient transmission of juvenile records from justice and municipal courts to county juvenile probation departments and the juvenile court, and from the county juvenile probation departments and juvenile court to the state JJIS; *Sec. 58.302(4)*
- Provide efficient computerized case management resources to juvenile courts and court clerks, among other partner agencies; *Sec. 58.302(5)*
- Provide an efficient means for municipal and justice courts to report filing of charges, adjudications, and dispositions of juveniles to the juvenile court as required by law. *Sec. 58.306(7)*

Clerks should familiarize themselves with the component parts of and types of information contained in their local JJIS, as well as the level of access to which each partner agency is entitled. The juvenile court and court clerk are entitled to Level 3 Access, which includes access to Level 1 and Level 2 information. Level 3 information is that which relates to a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision. The court and the clerk may also access certain information about a child obtained to diagnose, examine, evaluate, treat, or refer for treatment. *Secs. 58.303-58.306*

6. Sex Offender Registration

Code of Criminal Procedure Chapter 62, Subchapter H details exemptions from sex offender registration for certain juveniles. The subchapter covers hearings to determine the need for sex offender registration of a juvenile, the appeal of a decision, and the judicial discretion to exempt a juvenile from sex offender status registration. *CCP Art. 62.351*

A person who has registered as a sex offender for an adjudication of delinquent conduct may file a motion in the adjudicating juvenile court seeking to be excused from registration or seeking an order that the registration become nonpublic. If the motion is granted, the Clerk must send a copy of the order by certified mail, return receipt requested, to the Department of Public Safety and each local law enforcement agency that the person has proven to the court has registration information about him or her. The Clerk must also send notice to any public or private agency or organization that the court determines may have registration information pertaining to the person. The Clerk also must send a copy of the order to any other agency or organization designated by the person who is the subject of the order. The person provides the address (es) to the Clerk, and pays a fee of \$20 for each agency or organization designated. *Art. 62.353(a), (f)*

E. REPORTS TO DPS IN CONNECTION WITH THE JUVENILE JUSTICE INFORMATION SYSTEM

The Texas Department of Public Safety (“DPS”) is responsible for maintaining a database for a juvenile justice information system (JJIS) that serves as the statewide tracking system for juvenile record information.

Family Code
Sec. 58.102
Sec. 58.103

A juvenile court clerk must:

- compile and maintain records needed for reporting data required by DPS;
- transmit data required by DPS to DPS;
- give DPS or its accredited agents access to the court for the purpose of inspection to determine the completeness and accuracy of data reported; and
- cooperate with DPS to enable DPS to perform its duties.

Sec. 58.108(a)

A Clerk of a court must retain the documents related to these duties.

Sec. 58.108(b)

The juvenile court clerk must report the disposition of the case to DPS, and the clerk may make alternative arrangements for reporting the required information including combined reporting or electronic reporting, if the alternative reporting is approved by the Juvenile Board and DPS.

Sec. 58.110(c)

Sec. 58.110(d)

The clerk must report the information no later than 30 days after the date the clerk receives the information, except that a juvenile offender’s custody or detention without previous custody must be reported to DPS no later than seven days after the date of the custody or detention.

Sec. 58.110(e)

F. RIGHTS AND RESPONSIBILITIES OF PARENTS

All Clerks whose courts handle juvenile law matters should be familiar with the provisions in Chapter 61. A brief summary of the three subchapters follows.

Subchapter A defines circumstances in which a "juvenile court order" will be entered against the parent or other responsible adult. A "juvenile court order" is defined as an order by a juvenile court requiring a parent or other eligible person (e.g., a guardian) to act or refrain from acting. For example, a parent may be ordered to pay probation fees, restitution, or court costs. A parent may also be ordered to participate in counseling or to refrain from doing any act injurious to a particular child's welfare. (The list of potential juvenile court orders is set out in Family Code §61.002 and includes an order for payment of fees under §54.0462 [Payment of Fees for Offenses Requiring DNA Testing]). The parent or other adult must be provided notice of the proposed order, and must be given an opportunity to be heard concerning it. A parent or other adult may appeal the order as in other civil cases.

Family Code
Secs. 61.001-
61.004

Subchapter B details the procedures for enforcing juvenile court orders, and remedies for contempt. A motion to enforce is filed, and a hearing is set. The court is required to issue a written notice, served by personal service or certified mail, of the hearing on the motion to enforce. If incarceration is a possible punishment upon the motion being granted, the court must also inform the person who is subject to the motion

Secs. 61.051 –
61.057

to enforce of his or her right to an attorney. An indigent person must also be informed of his or her right to have an attorney appointed, and the court shall appoint an attorney if the person so requests. Punishment on a finding of contempt in an enforcement proceeding can include up to six months in jail and a fine of up to \$500, or both.

Subchapter C sets forth the right of parents in connection with procedures in juvenile court. Parents have the right to be informed of proceedings, the right of access to their child, and the right to make written and oral statements concerning the matter in juvenile court. The failure to exercise any of these rights may not be used as a ground for appeal, for a post-adjudication writ of habeas corpus, or exclusion of evidence against the child in any proceeding.

*Family Code
Secs. 61.101 –
61.107*

G. TRUANCY COURT

Family Code Title 3A details the civil truancy court system that hears cases involving a child’s failure to attend school. The definition of child in Title 3A is different from the definition used in Title 3 of the Family Code. In Title 3A, “child” means a person who is 12 years of age or older and younger than 19 years of age. Truant conduct may be prosecuted only as a civil case in a truancy court.

*Family Code
Sec. 65.002(1)

Sec. 65.003(b)*

Title 3A grants a truancy court exclusive original jurisdiction over cases involving allegations of truant conduct, which is defined as the failure to attend school on 10 or more days or parts of days within a six-month period in the same school year where the child is required to attend school.

Sec. 65.003(a)

The following courts are designated as truancy courts:

- Justice Courts;
- Municipal Courts; and
- In counties with a population of 1.75 million or more, the constitutional county court.

Sec. 65.004

A child, the child’s parent or guardian, or the State may appeal any order of a truancy court to a juvenile court. A truancy court appeal is tried de novo, and Chapter 65 applies to the de novo trial in the juvenile court. On appeal, the judgment of the truancy court is vacated.

*Sec. 65.151
Sec. 65.153*

If a child fails to obey a remedial order issued by a truancy court or if the child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt on two or more occasions, the truancy court can refer the child to juvenile probation which may on review of the child’s truancy court information, refer the child to a juvenile court for proceedings. Enforcement of order proceedings in juvenile court on referral from a truancy court are governed by Family Code Chapter 65, Subchapter F.

*Sec. 65.251
Sec. 65.252*

CHAPTER 14

REQUESTS FOR RECORDS

A. INTRODUCTION

The County Clerk is the officer for public information and the custodian of the information created or received by the Clerk's office. The County Clerk must prominently display a sign that is plainly visible to members of the public and office employees that contains basic information about the rights of a public information requestor, the Clerk's responsibilities, and the procedures for inspecting or obtaining public information under Government Code Chapter 552, the Texas Public Information Act.

*Gov't Code
Sec. 552.201(b)
Sec. 552.205*

Clerks often receive requests to inspect or copy records, and the law that applies to requests for records depends on the type of record that is requested.

NOTE: Open Government Training. *Elected and appointed officials are required to complete Open Government Training not later than 90 days after taking the oath of office or assuming the duties of the office.*

Sec. 552.012

More information, including frequently asked questions and resource materials, can be obtained from the Open Government section of the Attorney General's website at: <https://www.texasattorneygeneral.gov/og/open-government-related-publications>.

County Clerks hold two types of records: **court case records** and **public records**. Because each type is sometimes handled differently, they are discussed separately in this chapter.

B. REQUESTS FOR COURT CASE RECORDS

County Clerks frequently receive requests for records related to proceedings in the courts they serve, and the requests a Clerk may receive for court case records are as wide and varied as the universe of documents that may be filed in any court proceeding handled by a county-level court.

A County Clerk holds court case records on behalf of the judges of the courts served by the Clerk. Therefore, **court case records maintained by County Clerks are records of the judiciary**.

*A.G. Op.
DM-166 (1992)
H-826 (1976)*

The Public Information Act (PIA) **does not apply** to records of the judiciary. The Texas Legislature has expressly excluded the judiciary and its records from the PIA. *Accordingly, when dealing with a request for court case records, County Clerks need not concern themselves with the PIA. The PIA is not relevant to a request for court case records.*

*Gov't Code
Sec. 552.003(1)(B)*

Similarly, Rule 12 of the Texas Rules of Judicial Administration **does not apply** to court case records. Rule 12 deals only with public access to "judicial records." A **judicial record** is a record made or maintained by or for a court in its regular course of business **but not pertaining to its adjudicative function**. *A record that is filed in connection with any matter that is or has been before a court would be a record pertaining to a court's adjudicative function and would not be a judicial record.* Examples of judicial

*Texas Rules of
Judicial Admin.
Rule 12.2(d)*

records might include a judge’s calendar, a court’s security plan, personnel records, and written materials obtained in connection with an educational seminar.

***NOTE:** Judicial records are almost always maintained by judges themselves, and not by Clerks. If a Clerk receives a request for a judicial record, the Clerk should refer the requestor to the relevant judge.*

Correspondingly, a judge may receive a request for court case records. Because court case records are maintained by Clerks, the judge should refer the person making such a request to the Clerk.

Like court case records judicial records are records of the judiciary, but the two types of records are entirely separate. **A record cannot be both a court case record and a judicial record.**

The fact that neither the PIA nor Rule 12 apply to requests for court case records does not mean there are no laws controlling requests for court case records. Many *statutes* address the right of access to court case records. Public access to certain court case records is also controlled by *judicial rules* such as the Texas Rules of Civil Procedure. If there are no applicable statutes or rules regarding the release of a particular type of court case record, then access to such a record is controlled by *common law*.

*Gov’t Code
Sec. 552.0035*

1. General Rule – Court Case Records are Open to the Public

a. Local Government Code §191.006 – Public Access to Records

*Loc. Gov’t Code
Sec. 191.006*

The general rule regarding access to court case records maintained by the County Clerk is that the records are open and are to be accessible by the public. This general rule is set out in Local Government Code §191.006 of the as follows:

All records belonging to the office of the County Clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.

Records maintained by the County Clerk on behalf of the judiciary are considered to be records belonging to the office of the County Clerk for purposes of this statute.

*A.G. ORD
274 (1981)*

Additionally, Local Government Code §118.065 provides that a “person is entitled to read, examine, and copy from” documents referred to in Subchapter C of Chapter 118 of the Local Government Code. That subchapter makes reference to all documents in civil court actions and probate court actions filed with the County Clerk. The term “documents” is defined to include “any microfilm or other photographic image of the documents.”

*Loc. Gov’t Code
Sec. 118.065
Ch. 118, Subch. C*

b. Statutes Controlling Access to Court Case Records

Some statutes serve to make particular types of documents public information.

i. Arrest Warrants and Supporting Affidavits

The Texas Legislature has specifically stated that arrest warrants and affidavits in support thereof are "public information." The Clerk or the magistrate who issued the arrest warrant is required to make a copy of both the warrant and the supporting affidavit available for public inspection.

CCP
Art. 15.26
Art. 18.01

Similarly, affidavits in support of search warrants become public information when the search warrant is executed, and the Clerk must copy and make the affidavit available for public inspection. The statute does not say that search warrants themselves are public information, but this does not mean the public should not be granted access to search warrants under other law.

ii. Deferred Adjudication

The fact that a criminal defendant is granted deferred adjudication does not serve to make his or her criminal file confidential. Rather, the Code of Criminal Procedure affirmatively states that, except for the existence of a nondisclosure order, a record in the custody of the court Clerk regarding a case in which a person is granted deferred adjudication is not confidential.

Art. 42A.106(a)

iii. Parentage Cases

Papers and records in proceedings to adjudicate parentage (*i.e.*, paternity suits) are available for public inspection.

Family Code
Sec. 160.633

c. Court Rules Controlling Access to Court Case Records

Records filed in connection with any matter before any civil court are presumed to be open, other than documents filed in actions originally arising under the Family Code, documents filed with a court in camera solely for the purpose of obtaining a ruling on their discoverability, and documents to which access is otherwise restricted by law.

TRCP 76a

**Clear Channel
Communications v.
United States Auto
Ass'n.**
*195 S.W.3d 129 (Tex.
App.—San Antonio
2006, no pet.).*

This presumption may be overcome, and the court case records may accordingly be sealed, only in certain limited situations in which the judge finds that (1) a specific, serious and substantial interest clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and (2) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. The sealing of court records without compliance with Rule 76a is improper.

Attorneys have a special right of access to the records of cases in which they are involved, and each attorney at law practicing in any court must be allowed, at all reasonable times, to inspect the papers and records relating to any suit or other matter in which the attorney may be interested.

TRCP 76

d. Common Law Principles Controlling Access to Court Records

In the absence of a statute or court rule, access to court case records is controlled by common law.

A.G. Op.
DM-166 (1992)

The United States Supreme Court has observed that the courts of this country recognize a general right to inspect and copy court case records, but this right is not absolute.

Nixon v. Warner Communications,
435 U.S. 589, 597-98
(1978)

Built on the Supreme Court's reasoning, a Texas appellate court clarified that the public's right to inspect and copy court case records is subject to the court's inherent power to control access to its records. But a court's power to limit access to its records ends when the court no longer has jurisdiction over the case.

Ashpole v. Millard,
778 S.W. 2d 169 (Tex.
App. – Houston [1st
Dist.] 1989, no writ)

2. Exceptions to General Rule that Court Case Records are Open

There are several statutes that restrict public access to court case records. As noted in Local Government Code §191.006, a law that restricts public access to a particular record will prevail over the general rule that all records belonging to the County Clerk are open. A law restricting public access will also prevail over the general law set out in Local Government Code §118.065.

Loc. Gov't Code
Sec. 191.006

Rule 76a of the Texas Rules of Civil Procedure specifically states that the court records presumed to be open do not include "documents in court files to which access is otherwise restricted by law." The laws which serve to create "exceptions" to Rule 76a's general rule of openness are delineated below.

TRCP 76a

a. Mental Health Proceedings

Records in mental health proceedings (including docket books, indexes, and judgment books) that are maintained in the County Clerk's office are termed "public record[s] of a private nature." The general rule is that these records may be inspected or copied only pursuant to court order. This means that even a person who is the subject of a mental health proceeding may not access his or her court file absent a court order.

Health & Safety Code
Sec. 571.015

There is, however, an exception to the general rule requiring a court order to access mental health records. Mental health papers may be accessed by an attorney representing the proposed patient.

b. Juvenile Case Records

Juvenile records — that is, any documentation related to a juvenile matter, including information contained in a document — are confidential and subject to restricted access. Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records.

Family Code
Sec. 58.251

The records and files (whether physical or electronic) of a juvenile court or a clerk of court relating to a child who is a party to a proceeding under Family Code Title 3 are open to inspection and copying ONLY by:

Sec. 58.007(b)

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency that has custody or control over a juvenile offender;

- an attorney representing the child’s parent in a Title 3 proceeding;
- an attorney representing the child;
- a prosecuting attorney;
- an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child’s release or discharge from a juvenile facility;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court or having custody of the child under juvenile court order; or
- with the juvenile court’s permission, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

A person who is the subject of the records is also entitled to access the records to prepare and present a motion or application to seal the records. *Family Code Sec. 58.007(b-1)*

An individual or entity that receives confidential information cannot disclose the information unless otherwise authorized by law. *Sec. 58.007(c)*

c. Juror Information Sheets in Criminal Cases

Information about a person who serves as a juror in a criminal case, such as the juror's home address, home telephone number, social security number, and driver's license number, and other personal information is confidential and may not be disclosed absent an order of the court in which the juror served. There are two exceptions to this prohibition: *CCP Art. 35.29*

- a good cause for disclosure exception that requires court permission for disclosure (applicable to a party in the trial and to a bona fide member of the news media acting in that capacity); and
- a defense counsel successor exception (applicable only in an Code of Criminal Procedure Article 11.071 case).

Jury lists are not confidential. Petit jury lists in a criminal matter are not the type of information made confidential by Code of Criminal Procedure Article 35.29. That statute does not impose a duty on a Clerk or a judge to keep jury lists confidential (after the point in time when the case is called for trial and the names of those summoned as jurors have been called). *A.G. Op. GA-0422 (2006)*

d. Written Jury Summons Questionnaires

The information contained in a written jury summons questionnaire is confidential. The information contained in a completed questionnaire may be disclosed only to: *Gov't Code Sec. 62.0132(f)*

- a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror; *Sec. 62.0132(g)*
- court personnel;

- a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror; and
- other than information provided that is related to a misdemeanor theft or a felony conviction or accusation, the voter registrar of the county in connection with any matter of voter registration or election administration.

e. Criminal History Records of Guardians

Except as provided by Estates Code §§1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian must obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

*Estates Code
Sec. 1104.402(a)*

*Gov't Code
Sec. 411.1386*

- (1) a private professional guardian;
- (2) each person who represents or plans to represent the interests of a ward as guardian on behalf of the private professional guardian;
- (3) each person employed by a private professional guardian who will: (A) have personal contact with a ward or proposed ward; (B) exercise control over and manage a ward's estate; or (C) perform any duties with respect to the management of a ward's estate;
- (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
- (5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

The clerk may charge a \$10 fee to recover the costs of obtaining criminal history record information under Subsection (a).

*Estates Code
Sec. 1104.402(b)*

The Judicial Branch Certification Commission must provide to the Clerk, **if requested by the court**, the criminal history record information that was obtained from the Department of Public Safety or the Federal Bureau of Investigation. *See [Form XIV-1](#)* Court's Request for Criminal History Report.

Sec. 1104.404(b)

These criminal history records are for the exclusive use of the court and are privileged and confidential. The criminal history information may be released only pursuant to court order or the consent of the person being investigated.

Sec. 1104.405

The Department of Aging and Disability Services must provide to the clerk of the county having venue of the guardianship proceeding, at the court's request, criminal history record information relating to each person who is or will be providing guardianship services to a ward of or referred by the Department. This information is privileged and confidential, is for the exclusive use of the court or guardianship certification program of the Judicial Branch Certification Commission, and cannot be released except on court order, with the consent of the person being investigated, or as otherwise authorized by Estates Code §1104.404 or Government Code §411.1386(a-6).

*Sec. 1104.406
Sec. 1104.407
Sec. 1104.408(a)*

Sec. 1104.408(b)

The County Clerk or guardianship certification program of the Judicial Branch Certification Commission may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

The court must use the obtained criminal history record information only in determining whether to:

*Estates Code
Sec. 1104.409*

- appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, an office of public guardian, or the Health and Human Services Commission; or
- appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guard and a proposed successor guardian other than an attorney.

f. Exceptions Applicable only in a County with a Population of 3.4 Million or More

If a county has a population of 3.4 million or more, the pleadings and documents filed in a court for the dissolution of marriage are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing suit, whichever date is sooner.

*Family Code
Sec. 6.411*

If a county has a population of 3.4 million or more, an application for a protective order is confidential and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

Sec. 82.010

If a county has a population of 3.4 million or more, the pleadings and documents filed in a suit affecting the parent-child relationship are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Sec. 102.0086

g. Suits for Adoption

The records concerning a child maintained by the Clerk after entry of an order of adoption are confidential. No person may access the records except for good cause under an order of the court that issued the order of adoption.

Sec. 162.022

h. Sealed Records

Almost all civil court case records in cases that do not arise under the Family Code may be sealed in certain circumstances and pursuant to certain detailed procedures. Court orders themselves cannot be sealed, but certain information such as the identity of a sexual assault victim may be ordered to be redacted from an otherwise open judgment. Court records may be sealed only upon a party's written motion. The motion must be open to public inspection. A motion to seal records must be decided by written order. The written order is open to the public.

TRCP 76a

Fox v. Anonymous,
869 S.W. 2d 499 (Tex.
App.-San Antonio
1993, writ denied)

Courts may also seal records in certain cases originating under the Family Code. Specifically, courts may order the sealing of a file in a suit for termination of parental rights and in a suit requesting an adoption.

*Family Code
Sec. 162.021
Sec. 161.210*

Courts are required to seal records concerning orders issued under Chapter 144 of the Civil Practice and Remedies Code. (Chapter 144 deals with certain court orders dealing with former mental health patients.)

Civ. Prac. & Rem. Code
Sec. 144.005

The law is silent as to the exact meaning of sealing a record. However, the general understanding appears to be that a judge's order that a Clerk seal a record requires something more than merely not making the record publicly accessible. The recommended practice is that the Clerk actually place a seal around the record or records in question and physically place the records in a special area. The physical seal is not to be broken until the records are ordered to be unsealed.

i. Parental Notification Case Records

As noted in Chapter 12 of this manual, all court documents pertaining to a minor's application for judicial approval to undergo an abortion are confidential and privileged. These cases are legally confidential and of a sensitive nature. Chapter 33 of the Family Code and the Texas Supreme Court *Parental Notification Rules* ("SCR") require that the process for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of a parent, managing conservator, or guardian be conducted in a manner that ensures the minor's confidentiality and anonymity.

Family Code
Sec. 33.003(k)

SCR 1.3(a)

SCR 1.4(a)

The Clerk may not divulge to anyone, except essential court personnel, anything about the minor's application, including the fact that the minor was ever in the Clerk's office. The Clerk may not divulge to anyone that the minor is or ever has been pregnant or wants or ever wanted an abortion.

The application and all other court documents pertaining to the proceeding, and all information contained therein, are confidential and privileged. The documents are not subject to disclosure under Government Code Chapter 552, nor are they subject to discovery, subpoena, or other legal process. They may be disclosed only when expressly authorized by Supreme Court rule. An order, ruling, or opinion may be released only to the minor; her guardian ad litem; her attorney; the physician who is to perform the abortion; a person specifically designated in writing by the minor to receive the information; a governmental agency in connection with a proceeding seeking to assert or protect the minor's interest; or another court, judge, or clerk in the same or related proceedings.

SCR 1.4(b)

Family Code
Sec. 33.003(k)

j. Forms and Information Provided to Clerk so that Interest Earned on Registry Funds can be Reported to the Internal Revenue Service

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

Loc. Gov't Code
Sec. 117.003

k. Certain Investment Information held by Governmental Body

Most information regarding investments held by a governmental body are open to the public. This information includes: *Gov't Code Sec. 552.0225*

- Name of a fund or investment entity;
- Date the fund or entity was established;
- Each date the governmental body invested in the fund or entity;
- Amount of the investment;
- Amount received from a fund or entity in connection with any investment;
- Rate of return;
- Amount of fees paid;
- Names of the managers of the fund or entity in which a governmental body has invested;
- Any recusal filed in connection with an investment;
- minutes of a governmental body's meeting in which investments were discussed; and
- Any annual ethics disclosure report submitted to the governmental body by the investment fund or entity.

Pre- and post-investment due diligence and activity regarding restricted securities are confidential. Generally, information that is not enumerated in Government Code §552.0225(b) may be withheld by a governmental entity. *Sec. 552.143*

NOTE: Neither situation discussed above applies to the Texas Mutual Insurance Company. *Sec. 552.225(c) Sec. 552.143(f)*

C. REQUESTS FOR PUBLIC RECORDS

1. General Rule – Public Records are Open to the Public

One of the County Clerk's major responsibilities is to maintain public records and make those records available to the public. Local Government Code §191.006 declares that "[a]ll records belonging to the office of the County Clerk to which access is not otherwise restricted by law or by court order are to be accessible by the public." This statute applies with equal force to public records. *Loc. Gov't Code Sec. 191.006*

Public records held by the County Clerk are also generally available under Government Code Chapter 552, the Public Information Act (PIA). As noted earlier in this chapter, the PIA does not apply to records of the judiciary. Accordingly, court case records maintained by County Clerks are not subject to the PIA. Public records maintained by County Clerks are not records of the judiciary, and access to these records is controlled by the PIA. *Gov't Code Sec. 552.002 Sec. 552.003 Sec. 552.021*

Because a County Clerk's public records are subject to the PIA, exceptions contained within the PIA to its general rule of openness are also applicable to these records. Clerks must be familiar with these exceptions. The disclosure of confidential information to a person who is not authorized to receive that information is a misdemeanor offense constituting official misconduct.

*Gov't Code
Sec. 552.352*

Deeds, mortgages, and deeds of trust that are properly recorded in the proper county are "subject to inspection by the public."

*Prop. Code
Sec. 13.002*

2. Exceptions to the General Rule that Public Records are Open

Some public records are not open to the public. Exceptions to the general rule that public records are open to the public are detailed below.

a. Military Discharge Records

The County Clerk must record the official discharge of persons who after 1915 have served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary. These military records are often contained on a form known as a Department of Defense Form DD-214.

*Loc. Gov't Code
Sec. 192.002*

*Gov't Code
Sec. 552.140*

If the military discharge record is first recorded by the County Clerk (or first comes into the possession of the County Clerk or other governmental body) on or after September 1, 2003, then the discharge record is confidential for a period of 75 years after the date it is recorded. During the 75-year time period, the County Clerk may permit inspection or copying of the record by members of the general public only pursuant to court order. However, the following individuals may inspect the record and may obtain a free copy or free certified copy of the discharge record upon the presentation of proper identification:

- the veteran who is the subject of the record;
- the veteran's legal guardian;
- the veteran's spouse, child or parent;
- the veteran's closest living relative if the veteran has no living spouse, child or parent;
- the personal representative of the veteran's estate;
- the person named by any of the above persons in an appropriate power of attorney;
- another governmental body; or
- an authorized representative of the funeral home that assists with the burial of the veteran.

If the military discharge record first came into the possession of the County Clerk or other governmental body prior to September 1, 2003, then the Clerk is to make the record available to the general public. However, the veteran who is the subject of the military discharge record or the veteran's legal guardian may direct the County Clerk to destroy all copies of the record that the Clerk makes generally available to the public. The County Clerk must comply with such a directive within 15 business days after the

directive is received.

b. Birth Records and Death Records

A birth record is public information but is not to be made available to the public until the 75th anniversary of the date of birth shown on the record. However, the Genealogical Society of Utah shall have access to birth records on or after the 50th anniversary of the date of birth shown on the record. A birth record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

*Gov't Code
Sec. 552.115*

A death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the death record, except that if the decedent is unidentified, the death record is public information and available to the public on and after the first anniversary of the date of death. A death record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

c. Protected Health Information

Public health information, as defined by Health and Safety Code §181.006, is not public information and is not subject to disclosure under the PIA.

Sec. 552.002(d)

D. METHOD OF MAKING REQUEST FOR RECORDS

A person may make a written request for public information under the PIA only by delivering the request by one of the following methods to the Clerk by:

*Gov't Code
Sec. 552.234(a)*

- US mail;
- Email;
- Hand delivery; or
- Any other appropriate method approved by the governmental body, including fax and electronic submission through the Clerk's website.

The Clerk is considered to have approved an "other appropriate method" only if the Clerk includes a statement that a request for public information may be made by that method on the sign required to be displayed in the Clerk's office under Government Code §552.205 (notifying a public information requestor of the requestor's rights and the procedures for requesting records).

Sec. 552.234(b)

The Clerk may designate one mailing address and one email address for receiving written requests for public information. The Clerk must provide the designated mailing address and email address to any person on request.

Sec. 552.205(c)

If the Clerk posts the designated mailing address and email address on the Clerk's website or if the Clerk prints those addresses on the sign required by Government Code §552.205, the Clerk is not required to respond to a written request for public information unless the request is received at one of those addresses, by hand delivery, or by an approved "other appropriate method" (as outlined above).

Sec. 552.205(d)

If the Clerk maintains an internet website and allows public information requestors to use the public information request form developed by the Office of the Attorney General, then the Clerk must post the form on its website.

Sec. 552.235(b)

E. REDACTION OF INFORMATION FROM RECORDS

Some laws prohibit the release of certain information as opposed to prohibiting the release of documents altogether. Thus, the Clerk is faced with two conflicting mandates – first, make the document available to the public but, second, don't release a particular item of information. The solution to this conflict is for the Clerk to redact the particular item of information from the document before making the document generally available. Usually, Clerks are not statutorily required to redact information from documents. However, redaction appears to be the only way in which Clerks can meet both the requirement of making documents available to the public and the requirement of keeping certain information (such as social security numbers) confidential.

1. Redaction Process

To redact information from a document means to remove confidential references from a document. There is no specific statute detailing the proper method of redacting information from a document. The general and recommended practice, however, is to make a copy of the original document and remove the confidential references from the copy of the document. The original document is to remain unaltered.

The confidential references are usually removed from the copy of the document by blackening the areas of the copy in which the confidential references are situated. Sometimes the confidential references can still be ascertained even after the blackening of the relevant area of the document. If this is the case, a copy of the altered copy should be made so that the references cannot be ascertained. The altered copy is the document that is presented to the requestor of the document in satisfaction of his or her request. The requestor does not view the original document.

2. Social Security Numbers

Federal law provides that social security numbers obtained or maintained by authorized persons are confidential and may not be disclosed. OCA has researched this issue and advises Clerks that they do not meet the statutory definition of “authorized persons” under federal law. Thus, the federal law does not appear to require Clerks to keep social security numbers confidential.

*42 U.S.C. Sec.
405(c)(2)(viii)(1)*

State law seems consistent with this. The PIA provides that the social security number of a living person is excepted from the requirement to disclose under the PIA, but that a social security number is not confidential.

*Gov't Code
Sec. 552.147(a)*

The PIA also allows a County Clerk to disclose a social security number “in the ordinary course of business” without becoming subject to allegations of misconduct or criminal or civil liability.

Sec. 552.147(c)

County Clerks may redact social security numbers of a living person and must redact all but the last four digits of the social security number if an individual or his or her representative requests redaction in writing.

Sec. 552.147(d)

3. Social Security Numbers on Marriage License Applications

The social security number of an individual that is maintained by a County Clerk and that is on an application for a marriage license is confidential. If the County Clerk receives a request to access information in the marriage license application, the Clerk must redact the social security number from the application and release the remainder of the information in the application.

*Gov't Code
Sec. 552.141*

4. Social Security Numbers, Signatures, and Other Information on Birth Certificates

The social security numbers and signatures of the mother and father are not part of the legal birth certificate. Generally, the social security numbers and signatures must be redacted from the birth certificate. However, the social security numbers and signatures are to be made available to the agency administering the state's plan under Part D of Title IV of the federal social security act and may be used and disseminated for the establishment and the enforcement of child support orders. The social security numbers must also be made available to the federal Social Security Administration or to a faculty member at a medical school, as that term is defined in Education Code §61.501, for statistical or medical research.

*Health & Safety
Code
Sec. 192.002*

The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information in that section of the birth certificate is confidential. The information contained in this area should be redacted from the document before a copy of the document is made. The information may not be released or made public on subpoena or otherwise, except that release may be made:

- for statistical purposes only so that no person, patient, or facility is identified;
- to medical personnel of a health care entity; or
- to appropriate state or federal agencies for statistical research.

5. Crime Victim Information Contained in Victim Impact Statements

The name, social security number, address, and telephone number of a crime victim is confidential if it relates to a victim impact statement. Additionally, any other information that would identify or tend to identify a crime victim is not to be disclosed. Accordingly, any documents (not just victim impact statements) that contain this type of confidential information must have the confidential information redacted from the documents prior to any release of the documents.

*Gov't Code
Sec. 552.1325*

6. E-Mail Addresses

The law described here applies only to public records and does not apply to court case records. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body (including the County Clerk) is confidential. However, the e-mail address may be disclosed if the member of the public affirmatively assents to release of the e-mail address.

Sec. 552.137

An e-mail address is not confidential if the e-mail address is:

- provided by a person who has a contractual relationship with the governmental body or by the vendor's agent;
- provided by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided in the course of negotiating the terms of a contract or potential contract;
- provided on a letterhead, coversheet, printed document, or other document made available to the public; or
- provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Government Code §2001.003(2) of the or receiving orders or decisions from a governmental body.

The County Clerk may disclose an e-mail address to another governmental body or to a federal agency.

Any record that contains a confidential e-mail address must have the e-mail address redacted from the record before the record may be released to the public.

7. Biometric Identifiers

A biometric identifier is a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A County Clerk who possesses an individual's biometric identifier, whether as part of a court case record or public record, may not disclose the identifier to another person unless:

*Gov't Code
Sec. 560.001
Sec. 560.002*

- the individual consents to the disclosure;
- the disclosure is required or permitted by a federal statute or a Texas statute other than the Public Information Act; or
- the disclosure is made to a law enforcement agency for a law enforcement purpose.

A biometric identifier in the possession of a governmental body is exempt from disclosure under Government Code Chapter 552.

Sec. 560.003

8. Protective Orders

Generally, the information contained in protective orders is open to the public. However, in response to a request from the person protected by an order (or from a member of the family or household of the person protected by an order), the court may exclude from a protective order the address and telephone number of the following:

*Family Code
Sec. 82.011
Sec. 85.007*

- a person protected by the order (in which case the order shall state the county in which the person resides;
- the place of employment or business of a person protected by the order;

or

- the child-care facility or school a child protected by the order attends or in which the child resides.

If the court grants the request for confidentiality, the court will order the Clerk to strike the information from the public records of the court and maintain a confidential record of the information for use only by the court or by a law enforcement agency to enter information into the Texas Crime Information Center.

9. Writ of Withholding

A writ of withholding is a document issued by the Clerk and delivered to an employer directing that earnings be withheld for payment of spousal maintenance. *Family Code Sec. 8.001*

Sec. 8.152

A writ of withholding must state, among other things, the name, address and (if available) the social security number of both the obligor and the obligee. Upon the request of an obligee, the court may exclude from the writ the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. If the court grants the obligee's request, the Clerk must strike the address and social security number from the writ and maintain a confidential record of the obligee's address and social security number to be used only by the court.

10. Real Property Records

Deeds, deeds of trust, and any other record recorded by a county clerk related to real property are subject to inspection by the public. These instruments are not required to contain an individual's social security number, but, if they do, the Clerk has no duty to redact the social security number unless the individual has requested redaction under Government Code §552.147(d). *Prop. Code Sec. 11.008 (a)(b)(e)*

A Clerk cannot be held criminally or civilly liable for disclosing an instrument or information like a social security number in an instrument if the disclosure was consistent with the PIA or another law. *Sec. 11.008 (g)*

Clerks must post a notice in their office stating that deeds and deeds of trust are not required to contain a social security number or driver's license number and are public records available for review by the public. *Sec. 11.008(f)*

All deeds and deeds of trust transferring an interest in real property must include a notice at the top of the document as follows: *Sec. 11.008(c)*

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORDING: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENCE NUMBER

The Clerk may not reject an instrument presented for recording solely because it *Sec. 11.008(d)*

does not contain this notice.

F. RESPONDING TO RECORDS REQUESTS

The Public Information Act (PIA) details relevant procedures in responding to records requests. These procedures are directly relevant only to requests for records to which the PIA is applicable, but these procedures also provide a helpful but non-binding guideline for responding to requests for records to which the PIA does not apply.

1. Time in Which to Respond to Records Requests

a. Generally

In response to a request for records that are open to the public, the County Clerk is required to promptly produce the records. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

*Gov't Code
Sec. 552.221(a)*

A Clerk complies with the requirement of prompt production of records by:

*Sec. 552.221(b)
Sec. 552.221(b-1)*

- Providing the public information for inspection or duplication in the Clerk's office;
- Sending copies of the information by first class US mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges accrued under Government Code Chapter 552, Subchapter F; and
- Referring a requestor to an exact Internet location or uniform resources locator (URL) address on a website maintained by the political subdivision and accessible to the public if the requested information is identifiable and readily available on that website;

NOTE: if the person requesting the information prefers a manner other than access through URL, the political subdivision must supply the information by providing the information for inspection or duplication or by sending copies by US mail, as described above.

Sec. 552.221(b-1)

NOTE: if the Clerk sends the requestor an email with Internet location or uniform resource locator (URL) regarding the requested information, the email must contain a statement in conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail.

Sec. 552.221(b-2)

If the requested records are unavailable at the time of the request because the record is in active use or in storage, the Clerk must certify this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be made available for inspection or duplication.

Sec. 552.221(c)

If the Clerk cannot produce public information for inspection or duplication within ten business days after the date the records are requested, the Clerk must certify this fact in writing and shall set a date and hour within a reasonable time when the

Sec. 552.221(d)

information will be available for inspection or duplication.

A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the information in the Clerk's office on or before the 60th day after the date the information is made available or fails to pay the postage and other applicable charges accrued under Government Code Chapter 552, Subchapter F on or before the 60th day after the date the requestor is informed of the charges.

*Gov't Code
Sec. 552.221(e)*

b. Financing Statements

The County Clerk's office is required to respond within two business days to the following requests for information:

*Bus. & Com. Code
Sec. 9.523(e)*

- Whether there is on file any financing statement that:
 - Designates a particular debtor;
 - Has not lapsed under Business and Commerce Code §9.515 with respect to all secured parties of record;
 - If the request so states, has lapsed under §9.515 and a record of which is maintained by the Clerk under Business and Commerce Code §9.522(a);
 - The date and time of filing of each financing statement; and
 - The information provided in each financing statement.

Sec. 9.523(c)

2. Permissible Inquiries in Response to Records Requests

Regarding requests for records, the County Clerk may not make any inquiry of a requestor except to establish proper identification or to clarify the request.

*Gov't Code
Sec. 552.222(a), (b)*

***NOTE:** a written request for clarification or discussion or a written request for additional information **MUST** include a statement as to the consequences of the failure by the requestor to timely respond to the request.*

Sec. 552.222(e)

If a large amount of information has been requested, the Clerk may discuss with the requestor how the scope of the request might be narrowed. The Clerk may not make inquiry as to the purpose for which the information will be used.

Sec. 552.222(b)

If the information relates to a motor vehicle record (as defined by Transportation Code §730.003) the Clerk may require the requestor to provide additional identifying information sufficient for the Clerk to determine whether the requestor is eligible to receive the information under Transportation Code Chapter 730.

Sec. 552.222(c)

If the information requested includes a photograph described by Government Code § 552.155(a), the Clerk may require the requestor to provide additional information sufficient for the Clerk to determine whether the requestor is eligible to receive the information.

Sec. 552.222(c-1)

If, by the 61st date after the day a Clerk sends a written request for clarification or discussion or a request for additional information, the Clerk does not receive a written response from the requestor, the underlying request is considered to have been withdrawn.

Sec. 552.222(d)

NOTE: except where the requestor used email to make the request, if the requestor's request included a physical or mailing address, the request cannot be considered to have been withdrawn unless the Clerk sends the request for clarification or discussion or written request for additional information to that address by certified mail.

*Gov't Code
Sec. 552.222(f)*

If the requestor's request for public information was sent by email, the request may be considered to have been withdrawn under Government Code §522.222(d) if:

Sec. 552.222(g)

- the Clerk sends the request for clarification or discussion or the written request for additional information by email to the same email address from which the original request was sent or to another email address provided by the requestor; and
- the Clerk does not receive from the requestor a written response or response by email within the period described by §522.222(d).

The Clerk must treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Sec. 552.223

These rules are also good guidelines for records that are considered open under other law or policies.

3. Time for Requestor to Examine Records

A requestor must complete the examination of the requested information not later than the 10th business day after the date the Clerk makes the information available to the requestor.

Sec. 552.225(a)

The requestor can request additional time to examine the records. The Clerk must, within certain limits, grant these requests for additional time. If the requestor does not complete the examination within the 10 business days and does not request an extension of time, the request is considered withdrawn.

Sec. 552.225(b)

4. Providing Copies of Requested Records

A requestor CANNOT remove original records from the Clerk's office, but Clerks must provide suitable copies of requested records within a reasonable period of time following the request. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

*Sec. 552.226
Sec. 552.228*

If the requested information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. The Clerk shall provide a copy in the requested medium if:

- the Clerk has the technological ability to produce a copy of the requested information in the requested medium;
- the Clerk is not required to purchase any software or hardware to accommodate the request; and

- provision of a copy of the information will not violate the terms of any copyright agreement between the Clerk (or county) and a third body.

If the Clerk is unable to comply with a request to produce a copy of information in a requested medium, the Clerk shall provide a paper copy of the requested record or a copy in another medium that is acceptable to the requestor.

G. DENYING REQUESTS FOR RECORDS

If the requested record is in writing and is a record to which the Public Information Act (PIA) applies and the County Clerk believes the record should be withheld from public disclosure pursuant to one of the exceptions listed in the PIA, then the Clerk must ask for a decision from the Texas Attorney General about whether the information is within one of the exceptions IF there has not been a previous determination about whether the information falls within one of the exceptions.

*Gov't Code
Sec. 552.301*

The Clerk must ask for the Attorney General's decision and state the exceptions that are thought to apply within a reasonable time but not later than the 10th day after the date of receiving the written records request.

If the Clerk asks for an Attorney General's opinion, the Clerk must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the written records request:

- a written statement that the Clerk wishes to withhold the requested information and has asked for a decision from the Attorney General about whether the information is within an exemption to public disclosure; and
- a copy of the Clerk's written communication to the Attorney General asking for the decision or, if the Clerk's written communication to the Attorney General discloses the requested information, a redacted copy of that written communication.

A Clerk who requests an Attorney General decision must, within a reasonable time but not later than the 15th business day after the date of receiving the written request, submit to the Attorney General:

- written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- a copy of the written request for information;
- a signed statement as to the date the request for information was received by the governmental body or evidence sufficient to establish that date; and
- a copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested.

A copy of written comments, as discussed above, must be sent to the person who originally requested the information. If the comments disclose or contain the substance of the information requested, then the copy to the requestor must be redacted.

The Clerk must label the copy of the specific information, or of the representative

samples, to indicate which exceptions apply to which parts of the copy.

While the Clerk makes the formal request for an Attorney General decision, a Clerk would be wise to consult with his or her County Attorney or Criminal District Attorney on formulating the request. In many circumstances, the County Attorney or the Criminal District Attorney will prepare the request on behalf of the Clerk.

The Clerk must release the requested information and, in most cases, may not request a determination from the attorney General if a determination was previously requested concerning the same information and the Attorney General or a court determined the information is public and not excepted from disclosure.

H. FEES IN CONNECTION WITH RECORDS REQUESTS

The charge for providing a paper copy of records made by a County Clerk's office must be the charge provided by Local Government Code Chapter 118, or other applicable law.

*Gov't Code
Sec. 552.265*

1. Fees for Copies of Records on Paper

a. Certified Copies Generally

Often, County Clerks are asked to provide not only a copy of a record but a "certified copy" of the record. A certified copy is a duplicate of an original document that is certified by the County Clerk as an exact reproduction of the original document. The County Clerk certifies a document by placing the Clerk's certificate "on each page or part of a page" of the document.

*Loc. Gov't Code
Sec. 118.014*

The fee for applying the Clerk's certificate to the document is \$5.00. There is also a fee of \$1.00 for each page or part of a page of the document.

Sec. 118.011(a)(3)

Thus, the charge for a certified copy of a one-page document would be \$6.00. The charge for a six-page document would be \$11.00. The charge for a ten-page document would be \$15.00. The charge for a 500-page document would be \$505.00.

*A.G. Op.
JC-0292 (2000)*

The Clerk is not to charge any additional amount for labor, materials or overhead no matter how many pages are in the document. Labor costs and clerical preparation costs are included in the charges set out in the statutorily specified \$1.00 per page charges (plus the \$5.00 certification charge).

The fees for a certified copy are to be paid at the time the order for a certified copy is placed.

The fee does not apply to a certified copy of map records or condominium records. Nor does the fee apply to a certified document or license for which another statute prescribes a different fee.

b. Noncertified Copies Generally

The fee for issuing a noncertified copy of a record is \$1.00 per page or part of a page. As is the case with certified copies, the Clerk is not to charge any additional amount for labor, materials or overhead. The fee must be paid at the time the order for the noncertified copy is placed. A County Clerk may waive or reduce the fee if the document

JC-0292 (2000)

*Loc. Gov't Code
Sec. 118.011(a)(4)
Sec. 118.0145*

involves a family law matter or is the record of a judgment in a misdemeanor case.

c. Certified Copy of a Birth Certificate or Death Certificate or Marriage License

When a Clerk is called upon to issue certified copies of vital records, the Clerk must charge the same fees as charged by the Vital Statistics Unit. A \$10.00 fee is charged to conduct each search for a record. The fee for a certified or a regular copy of a birth certificate is \$10.00 per copy; this includes the search fee.

*Health & Safety Code
Sec. 191.0045(d)
25 TAC §181.22*

The fee for a certified copy of a death certificate is also \$10.00, which includes the search fee. If more than one copy is requested in the same initial request of death certificates only, the fee will be \$10.00 for the first copy and then \$3.00 for each additional copy requested by the applicant at the time.

In addition to the fees listed above, the Clerk must collect an additional \$2.00 surcharge for searching for and issuing a certified copy of a certificate of birth, a wallet-sized birth certificate, and for conducting a search for a certificate of birth. The Clerk shall remit \$1.80 of the fee collected for a certified copy to the Comptroller.

*Health & Safety Code
Sec. 191.0045(e)
Sec. 191.022(f)*

In addition to the fees listed above, the Clerk must add a Texas Online fee of \$10.00 to all requests for birth, death, marriage and divorce record searches and document production.

25 TAC §181.22(s)

2. Fees for Copies of Records on a Format Other Than Paper

A County Clerk who provides a copy of a record on a format other than paper must charge a fee in accordance with Government Code §§ 552.231 and 552.262. Government Code §552.262 states that the Attorney General must prescribe the methods for computing the charges for providing copies of public information in electronic and other media. Those rules set out the following copy charges for non-standard media:

*Loc. Gov't Code
Sec. 118.011(e)
1 TAC §70.10*

- diskette \$ 1.00
- magnetic tape actual cost
- data cartridge actual cost
- tape cartridge actual cost
- CD
 - Rewritable (CD-RW) \$ 1.00
 - Non-rewritable (CD-R) \$ 1.00
- Digital video disk (DVD) \$ 3.00
- JAZ drive actual cost
- other electronic media actual cost
- VHS video cassette \$ 2.50
- audio cassette \$ 1.00

These charges are to cover the cost of materials only. A County Clerk may charge for the personnel costs involved in processing the request for non-paper copies of records at a rate of \$15 per hour per person. However, if the services of programming personnel were required to comply with the request, then those programming personnel charges should be billed at the rate of \$28.50 per hour.

Whenever any personnel charge is applicable to a request for non-paper copies of records, the Clerk may also include direct and indirect overhead costs in the charges. These charges may cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The overhead charge should be computed at 20 percent of the charge made to cover any personnel costs associated with a particular request.

If the Clerk already has the requested information on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies are available and the information on the microfiche or microfilm can be released in its entirety, then the Clerk should make a copy of the microfiche or microfilm and should not exact a charge that is greater than the cost of reproduction. If the Clerk cannot reproduce microfiche or microfilm in-house, then the Clerk may charge the actual costs of having the reproduction made commercially.

The Clerk may also charge additional fees in connection with providing non-paper copies of requested documents such as remote document retrieval charges, computer resource charges, miscellaneous supplies charges, and postal or shipping expenses. The proper amounts of these charges are detailed in 1 TAC §70.3.

A Clerk must request an exemption from the Attorney General to recover costs that are more than 25% higher than the standard charges set out above. The detailed procedures for requesting an exemption are delineated in the Texas Administrative Code.

1 TAC § 70.4

3. No Fees for Inspection of Records

A person is entitled to read, examine, and copy from the documents to which the public has access (after redaction) that are maintained by the County Clerk. This access is to be full and free. A person may execute this entitlement without paying any charge under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

*Loc. Gov't Code
Sec. 118.024*

The right to copy from documents in the County Clerk's office apparently includes the right of a person to use his or her own copy equipment. A Clerk may not require a person copying from the records to provide an indemnity bond or provide proof of insurance.

*The Permian Report
v. Lacy, 817 S.W. 2d
175 (Tex. App.-El
Paso 1991, writ
denied)*

Clerks should pay attention to the provisions of Government Code §552.271, especially if the request meets the criteria in §552.271(c) or (d). If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the County Clerk may charge for the cost of making a photocopy of the page from which the confidential information must be edited. No charge other than the cost of the photocopy may be imposed.

*Gov't Code
Sec. 552.271*

In response to a request to inspect information that exists in an electronic medium

Sec. 552.272

and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data.

NOTE: the Texas Attorney General has determined that birth and death records that are accessible to the public are not "open for persons to thumb through." Rather, the Clerks should provide copies of birth and death records to requestors.

*A.G. Op.
DM-146 (1992)*

4. Fee for Mental Health Background Check

The fee for a mental health background check for a license to carry a handgun is not to exceed \$2.00. The Clerk is to perform such a background check at the request of the Department of Public Safety.

*Loc. Gov't Code
Sec. 118.0217(b)(3)*

5. Notification to Requestor if Charges Will Exceed \$40.00

If a request for copies of records will result in a charge of more than \$40.00 then the Clerk must provide the requestor with a written itemized statement detailing the estimated charges that will be imposed. If an alternative, less costly way of viewing the records is available, the statement must include a notice that the requestor may contact the Clerk regarding the alternative method.

*Gov't Code
Sec. 552.2615*

The Clerk must inform the requestor (at a mail, fax, or e-mail address provided by the requestor) that the requestor's request will be considered to be automatically withdrawn if the requestor does not respond in writing to the itemized statement and that the requestor may respond to the statement by delivering his or her written response to the Clerk by mail, fax, e-mail or in-person delivery.

A request is considered to have been withdrawn if the requestor does not respond in writing by informing the Clerk within ten business days after the statement is sent to the requestor that:

- the requestor will accept the estimated charges;
- the requestor is modifying the request in response to the itemized statement; or
- the requestor has sent a complaint to the attorney general alleging that the requestor has been overcharged for being provided with a copy of the public information.

If the County Clerk later determines, but before he or she makes the copy of the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20% or more, the Clerk must send to the requestor an updated itemized statement that details all estimated charges that will be imposed. If the requestor does not timely respond to the updated estimate, the request will be considered to have been withdrawn by the requestor.

If the actual charges that the Clerk imposes exceed \$40.00, then the charges may not exceed the amount estimated in the updated itemized statement, or, if an updated itemized statement is not sent, an amount that exceeds by 20% or more the amount estimated in the itemized statement.

A County Clerk may require a deposit or a bond for payment of anticipated costs for the preparation of a copy of public information if the Clerk has provided the requestor with the written itemized statement required under Government Code §552.2615 detailing the estimated charge for providing the copy and the charge for providing the copy is estimated to exceed \$100 (if the Clerk has more than 15 full-time employees) or \$50.00 if the Clerk has fewer than 16 full-time employees).

*Gov't Code
Sec. 552.236(f)*

A request is considered withdrawn if a deposit or bond, as set forth above, is not made before the 10th business day after the date the Clerk required it.

APPENDIX A
**TEXAS ATTORNEY GENERAL OPINIONS,
LETTER OPINIONS AND OPEN RECORD DECISIONS**

Attorney General Opinions

An attorney general opinion is a written interpretation of existing law. Attorney general opinions cannot create new provisions in the law or correct unintended, undesirable effects of the law. Attorney general opinions do not necessarily reflect the attorney general's personal views, nor does the attorney general in any way "rule" on what the law should say. Attorney general opinions cannot resolve factual disputes.

Who Can Request an Attorney General Opinion?

Government Code §§402.042 and 402.043 set out the state and local officials who are authorized to request formal Attorney General opinions on questions of law. The Attorney General is prohibited by statute from giving a written opinion to anyone other than an authorized requestor. The Attorney General must also advise a district or county attorney in certain instances in which the State is interested, and certain requirements are met. Additionally, the Attorney General must advise the proper authorities regarding the issuance of bonds that by law require the Attorney General's approval.

How Does Someone Request an Attorney General Opinion?

If the law authorizes you to request an attorney general opinion, you may send a request letter in writing in one of two ways:

- Email: opinion.committee@oag.texas.gov
- Certified or registered mail, with return receipt requested:

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

No specific formatting requirements exist to submit a request, but it should include any relevant background information and known legal authorities significant to the subject matter.

Legal Effect of Opinions

The appellate courts of Texas have consistently held that attorney general opinions, although not binding on the courts, are entitled to "great weight." An opinion of the Attorney General should be deemed to state the law correctly, unless or until the opinion is modified or overruled by statute, judicial decision, or subsequent attorney general opinion.

Open Records Decisions

Open Records Decisions are formal opinions relating to the Public Information Act (formerly the Open Records Act). These decisions usually address novel or problematic legal questions and are signed by the Attorney General. Open Records Decisions (ORD) may be cited as precedent in

briefing to the Open Records Division. ORDs may be accessed on the Attorney General's website at <https://www.texasattorneygeneral.gov/opinions>.

Letter Opinions

In most cases, an opinion that is designated by the initials of the attorney general addresses issues that are or may be of interest to persons throughout the state. A Letter Opinion generally addresses issues that are local in nature or that affect the interests of a person or group. The "LO" designation does not mean that a document is any less authoritative than one denominated by the attorney general's initials. On January 4, 1999, Attorney General John Cornyn discontinued the practice of issuing letter opinions. All attorney general opinions are now issued under the Attorney General's initials; i.e., Attorney General Ken Paxton's opinions would be named KP-0001, KP-0002, etc. LOs may be accessed on the Attorney General's website at <https://www2.texasattorneygeneral.gov/opinion/information-on-letter-opinions>.

Open Records Letter Rulings

Unlike Open Records Decisions, Open Records Letter Rulings (ORs) are limited to the particular information at issue in each particular request and limited to the facts as presented to the Attorney General. Unless explicitly stated otherwise in the ruling, a ruling must not be relied upon as a previous determination regarding any other information or any other circumstances. ORs may be accessed on the Attorney General's website at https://www2.texasattorneygeneral.gov/open/index_orl.php.

Appendix A Materials

As in previous versions of this manual, the Office of Court Administration is not providing copies of the opinions or decisions cited. The summaries below show the opinion or decision number, the year of the opinion or decision, and the issue presented.

There are several other ways to obtain a copy of an Attorney general opinion. You may obtain an electronic copy directly from the Office of the Attorney General's website (<https://www.texasattorneygeneral.gov/attorney-general-opinions>). If you do not have internet access, or, if you would like a copy of an opinion that is not online, you may call the Opinions Library at the Attorney General's Office at 512-463-2110. You may also subscribe to the Notification of Opinions subscription list to receive an e-mail alert regarding newly issued Attorney General Opinions by following the directions online here: <https://www.texasattorneygeneral.gov/about-office/email-subscriptions-center>.

Opinion	Issue Presented
C-637 (1966)	Payment of certain witness fees (party responsible for submitting claim to the Office of the Comptroller).
DM-26 (1992)	Fees payable to county and district clerks in eminent domain cases and when fees are payable by state agency.
DM-30 (1991)	County clerk's duty to provide duplicate microfilm of county real estate and deed records.
DM-41 (1991)	Whether a person requesting records pursuant to the Texas Open Records Act may dictate the media in which public information must be provided and related questions.
DM-146 (1992)	Whether the San Antonio Metropolitan Health District may limit public access to and charge a search fee for locating birth and death records which are made public by the Open Records Act.
DM-166 (1992)	Whether charges for uncertified copies of records of judiciary in district clerk's office are set by section 9(d) of article 62.52-17a, V.T.C.S.
DM-174 (1992)	Authority of county clerk to charge fees under section 31.008, Civil Practice and Remedies Code, and related questions.
DM-283 (1994)	Whether section 291.007 of the Local Government Code authorizes a county commissioners court to set a security fee of not more than five dollars to be taxed as court costs in each civil case filed in a probate court, as well as in a county court, county court at law, and district court and related questions.
DM-371 (1995)	Whether Attorney General Opinion DM-283 correctly determined that a county clerk may collect a security fee, as authorized by section 291.008 of the Local Government Code, at the time of filing a birth, death, or fetal death record and related questions. [may be collected as county clerk, not as local registrar]
DM-382 (1996)	Whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable; whether deferred collection of the fee for service of civil process by a sheriff or constable constitutes a loan of credit under article III, section 52, or article XI, section 3, of the Texas Constitution.
DM-459 (1997)	Whether the State of Texas is exempted from paying filing fees and other court costs prior to judgment; reconsideration of AG Opinion MW-447A (1982) [reaffirmed]
DM-492 (1998)	Whether the commissioners court or the county clerk is authorized to control the expenditure of records management and preservation fees collected under Local Government Code section 118.0216 and related questions.
GA-0118 (2003)	Whether records management and preservation fees collected under section 118.011(b)(2), Local Government Code, may be used to pay salaries in the county clerk's office.
GA-0404 (2006)	Whether the seal placed on certified copies of documents recorded in the county clerk's office must be raised.
GA-0486 (2006)	Effect of judgment nisi in bond forfeiture cases.
GA-0702 (2009)	Indexing certain real-property instruments under Chapter 193 of the Local Government Code.
GA-0714 (2009)	Authority of a county to contract with a private entity for the collection of delinquent fines, fees and court costs.
GA-0733 (2009)	Effect of a final conviction for a felony or misdemeanor crime involving moral turpitude on a notary public's application or commission.
GA-0778 (2010)	Whether a commissioners court may amend the county budget to reduce salaries for the county clerk's office because the clerk closed her office temporarily for a weather-related emergency.
GA-0884 (2011)	Appointment of counsel in criminal cases for non-indigent defendants.

Opinion	Issue Presented
GA-0886 (2011)	Whether Chapter 603, Texas Government Code, is applicable to notaries public.
GA-0915 (2012)	Whether a county clerk must allow the public to copy records with a sheet-feed scanner.
GA-0929 (2012)	Authority of a commissioners court to remove salary increases for county officials at the final budget hearing, and the effect of that removal on the grievance process.
GA-0939 (2012)	Whether a commissioners court may employ a county elections administrator to perform the duties of a 9-1-1 addressing agent and to assist in the preparation of redistricting maps.
KP-0134 (2017)	<p>Access to clerk's records, criminal history record information subject to a nondisclosure order.</p> <p>Pursuant to section 411.076 of the Government Code, a court may disclose criminal history record information subject to an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to the person who is the subject of the order, or to an agency or entity listed in section 411.0765(b) of the Government Code. Such criminal history record information may not be disclosed to employees of a district or county clerk except as necessary for statutorily authorized purposes. The adequacy of measures necessary to seal criminal history record information involves questions of fact that cannot be determined in an attorney general opinion.</p>
KP-0257 (2019)	<p>Section 604A.0021 of the Business and Commerce Code prohibits imposing a surcharge for the use of a credit card in certain instances. Although a recent judicial decision held section 604A.0021 unconstitutional as applied to specific facts, it remains enforceable in some contexts. But it does not apply to a county imposing a surcharge on a payee using a credit card for the payment of money owed to the county.</p> <p>Section 103.0031 of the Code of Criminal Procedure authorizes a county to contract with a private attorney or a public or private vendor for the provision of collection services for fees. If a county is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges.</p>
KP-0263 (2019)	Under article 102.0121 of the Code of Criminal Procedure, the commissioners court, not the prosecuting attorney, ultimately determines the authorized uses of the county pretrial intervention program fund. The statute authorizes the commissioners court to use the pretrial intervention fund for an employee's salary, salary supplement, or a benefit only to the extent the use of the fund is solely for the administration of the program.
H-410 (1974)	Authority of county clerk to issue certified copy of letters testamentary after estate has been closed.
H-826 (1976)	Whether court records pertaining to certain types of cases affecting the parent-child relationship are confidential.
JC-0031 (1999)	Whether section 113.022 of the Local Government Code, which requires a county officer who receives funds to deposit the funds with the county treasurer within certain time limits, applies to court fees collected by a district clerk.
JC-0156 (1999)	Whether a county clerk must accept for filing a "declaration of domestic partnership."

Opinion	Issue Presented
JC-0259 (2000)	Whether a recent amendment to article 42.01, section 2 of the Code of Criminal Procedure precludes a court clerk from preparing a judgment.
JC-0292 (2000)	Whether the \$1 fee that a county clerk charges to issue "a noncertified copy of a page or part of a page of a document" (Local Government Code section 118.011(a)(4)) includes the cost of locating requested information that is no more than fifty pages long, and related questions.
JC-0323 (2001)	Whether a county clerk must file-stamp an instrument immediately upon its delivery and acceptance for filing, and related questions.
JC-0526 (2002)	Duties of the county clerk with regard to financing statement filings.
JM-223 (1984)	County clerk's fee for filing and recording a certificate of service under the probate code.
JM-260 (1985)	Availability of information from mental health records.
JM-318 (1985)	Disposition of appeals from justice of the peace courts under article 1970-31.2, V.T.C.S.
JM-373 (1985)	Authority of a county and/or district clerk to affix a judge's signature to a judgment in a criminal case.
JM-383 (1985)	Whether county funds must be deposited in a designated county depository.
JM-397 (1985)	When a county treasurer is required to deposit funds under article 1709a, V.T.C.S., and related questions.
JM-409 (1985)	Whether court costs and attorney fees may be excluded in determining the "amount in controversy" in justice and county courts.
JM-533 (1986)	Whether a county clerk may delivery the services of his office on credit. [see JM-1229; overruled if inconsistent]
JM-727 (1987)	Duty of the district clerk to file and docket improperly tendered documents.
JM-757 (1987)	Right of an individual to copy and reproduce public records in a district or county clerk's office.
JM-779 (1987)	Whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding.
JM-832 (1987)	The selection and qualification of depositories for the funds of River Authorities.
JM-882 (1988)	Whether the signature of the county auditor and/or county treasurer is required for withdrawal of money from a trust fund account administered by a county or district clerk.
JM-883 (1988)	Requirements of acknowledgment and jurat in instruments recorded by a county clerk.
JM-890 (1988)	Whether a contract for microfilming of records of county clerks office is subject to competitive bidding.
JM-928 (1988)	Selection of a depository by a hospital authority.
JM-1029 (1989)	Whether an abstract of judgment must meet the requirements of section 12.013 of the Property Code.
JM-1092 (1989)	Liability of the members of the board of directors of the Texas Agricultural Finance Authority (re: employee status).
JM-1143 (1990)	Whether a county clerk must make available to the public tapes of commissioners court meetings.
JM-1229 (1990)	Whether county of state may provide goods to patron prior to receipt of payment (reconsideration of AG opinion MW-461)
L.O. 97-082 (1997)	Computer signature on arrest warrants and affidavits.
L.O. 98-016 (1998)	Instruments that the county clerk must accept for filing and recording.

Opinion	Issue Presented
M-547 (1970)	The meaning of the phrase "the substance only of depositions shall be recorded" as employed in Section 15 of the Texas Probate Code.
MW-298 (1981)	Whether section 53.06 of the Family Code requires service of summons on the parents of a married juvenile.
MW-396 (1981)	Filing fees for federal tax liens.
O-637 (1939)	May county clerk adopt photostatic method of recording written instruments.
OR 2001-2485	Whether certain information regarding minors receiving abortions without parental notification through the judicial approval process is subject to public disclosure.
OR 2002-2558	Whether certain information regarding appointment of attorneys to represent minors under the Parental Notification Act is subject to public disclosure.
OR 2002-3007	Whether certain information regarding payment to attorneys in cases under the Parental Notification Act is subject to public disclosure.
ORD-274 (1981)	Whether summons and complaints issued by police department to persons violating traffic regulations are open to the public.
ORD-481 (1987)	Whether Open Records Act, article 6252-17a, V.T.C.S., allows Dallas/Fort Worth International Airport Board to deny request submitted by unsuccessful applicant for employment for access to information concerning his application.

COUNTY CLERK MANUAL

FORMS

2020 Edition

Form Number	Form Name
<u>II-1</u>	Certificate of Acknowledgment
<u>II-2</u>	Jurat
<u>II-3</u>	Recording Certificate
<u>III-1</u>	Order Directing the Form of the Appellate Record in Criminal Cases
<u>IV-1</u>	Letter Acknowledging Receipt of Appeal from Justice of the Peace Court
<u>IV-2</u>	Notice of Filing Foreign Judgment
<u>IV-3</u>	Order Directing the Form of the Appellate Record in Civil Cases
<u>V-1</u>	Notice of Claim Against Estate
<u>V-2</u>	Abstract for Application for Probate Action
<u>VII-1</u>	Uniform Commercial Code Rejection Letter
<u>X-1</u>	List of Jurors Names Drawn from Jury Wheel
<u>X-2</u>	Request for Exemption due to Physical Impairment
<u>X-3</u>	Request for Exemption due to Mental Impairment
<u>X-4</u>	Request for Exemption due to English Language Inability
<u>X-5</u>	Order Granting Juror Exemption
<u>X-6</u>	Request for Postponement of Jury Service
<u>X-7</u>	Defendant's Jury List
<u>X-8</u>	State's/Plaintiff's Jury List
<u>X-9</u>	List of Jurors Chosen
<u>X-10</u>	Juror Donation Form
<u>XIV-1</u>	Court's Request for Criminal History Report

COUNTY CLERK REPORTING REQUIREMENTS[†]

2020**

† The following list of reporting requirements should not be considered an exhaustive list, and the following information is intended only to assist clerks in educating themselves about certain reporting requirements. Although the Office of Court Administration makes every effort to ensure the accuracy of the information below, clerks retain the responsibility to stay up to date on statutory and rule-based reporting requirements.

**County Courts at Law jurisdiction varies widely throughout Texas. The jurisdiction granted to some CCLs includes matters which are generally handled by district courts. Each County Clerk should be very familiar with the jurisdiction granted to the County Courts at Law in the county served by the Clerk to correctly determine which of the reporting requirements listed below apply to the Clerk.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
1	Adoption Decree	Certificate of Adoption	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-160 http://www.dshs.state.tx.us/vs/reqproc/forms.shtm (888) 963-7111	Not later than the 10 th day of the first month after the month in which the adoption is rendered.	Family Code, § 108.003 Health & Safety Code § 192.009	Clerk to transmit a certified report of adoption using a VS-160 form.
2	Appeal of decision of the Texas Workers' Compensation Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission–Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78744	(512) 804-4055	Not later than the 20 th day after the date the suit is filed must send the notice Not later than the 20 th day after the date the judgment is rendered must send certified copy of the judgment	Labor Code §§ 501.022, 501.050, 502.069, 503.069, 505.059	Clerk must mail a “notice” to the TWCC giving the case style, case number, and date the case was filed. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University System; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense.
3	Appointments by Court for Attorney Ad Litem, Guardian Ad Litem, Guardian, Mediator, or Competency Evaluator		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/reporting-to-oca/appointments-and-fees/district-county/ 512-463-1625 judinfo@txcourts.gov	Not later than the 15 th day of each month for the preceding month's report	Gov't Code §§36.004, 36.005 Gov't Code §71.035	Clerk of each court must prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluation for a case before the court in the preceding month. For a court that does not make an appointment in the preceding month, the clerk must file a report indicating that no appointments were made during the month. Reports here focus on appointments as attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case by the court. The report must include: (1) the name of each person appointed by the; (2) the name of the judge and the date of the order approving compensation to be paid to the appointed person; (3) the number and style of each case in which a person was appointed; (4) the number of cases each person was appointed by the court to serve and (5) the total amount of compensation paid; and (6) if the total compensation paid to a person for one appointed case exceeds \$1,000, any information related to that case that is available to the court on the number of hours billed to the court for the work performed by the appointee (including paralegals) and billed expenses. NOTE: courts not complying with reporting requirement not eligible for ANY grant funds from the State
4	Child Support Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Vital Statistics 1100 W. 49 th Street Austin, TX 78756-3191	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	No stated time frame	Family Code § 105.008	Clerk shall provide a record of a court order for child support. VS-165 form must be used. To the extent possible, the Title IV-D agency is to reimburse the clerk for costs incurred in providing the record.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
5	Court Closure / Reopening Reports		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/media/524139/CourtClosureReportRE/VISED.pdf http://www.txcourts.gov/media/883044/courtreeningreportre/vised.pdf 512-463-1642			Visit https://www.txcourts.gov/programs-services/court-security/emergency-court-preparedness/closures/reporting-instructions/ for procedures on reporting court closures and reopenings. Report only closures due to an emergency or "special circumstances." An emergency includes the following: hurricane, flooding, fire, ice or snow storm, bombing, etc. "Special circumstances" include the closure of a courthouse due to repairs. Do not report court closures due to holidays, personal emergencies, vacation, sick leave, etc. If reopening information is not reported to OCA office, OCA will assume each court and clerk's office was only closed during the time initially reported and will remove the closure information posted on the OCA website.
6	Court Order – Chemical Dependency Treatment And Expiration of Order of Involuntary Treatment of a Chemically- Dependent Person		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10 th day after the date the court enters the order Before the 10 th day after the date of the expiration of the order.	Transportation Code § 521.319 Transportation Code § 521.319	Clerk must notify DPS of the court order so that DPS may revoke the driver's license of the person who is the subject of the order. Clerk must notify DPS that order of involuntary treatment for chemical dependency has expired.
7	Court Order – Incapacitation to Act as the Operator of a Motor Vehicle or Judgment of Total Incapacitation		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10 th day after the date the court renders the order or judgment.	Transportation Code § 521.319	Clerk must notify DPS of court's order/judgment so that DPS may revoke the driver's license of the person who is the subject of the order/judgment.
8	Court Order – Restoring a Person's Capacity		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10 th day after the date the person is restored to capacity.	Transportation Code § 521.319	Clerk must notify DPS of the fact that a person has had his or her capacity restored so that DPS will know that the revocation of the person's driver's license has expired.
9	Court Order – Person Released from Hospital for the Mentally Incapacitated		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10 th day after the release of the person from the hospital.	Transportation Code § 521.319	Clerk must notify DPS of release of person from hospital for the mentally incapacitated on a certificate of the superintendent or administrator that the person has regained capacity
10	Court Order – releasing defendant sentenced to TDCJ on community supervision before the 180 th day after execution of sentence begins when offender is under bench warrant and not physically imprisoned in Institutional Division		Texas Department of Criminal Justice Correctional Institutions Division P.O. Box 99 Huntsville, TX 77342	(936) 437-2169 Fax: (936) 437-6325	Not later than the 7 th day after the date of the defendant's release	Code of Criminal Procedure, art. 66.252(f)	The clerk is to "report" the release. No specific manner of reporting is mandated.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
11	Court Order – releasing person acquitted by reason of insanity from mental hospital on regimen of outpatient care or on discharge from mental hospital		Crime victim or the victim’s guardian or close relative		No stated time frame, but implication is immediately after the issuance of the order.	Code of Criminal Procedure, art. 46C.003	Clerk is to notify the victim or the victim’s guardian or the victim’s close relative of the release of the person’s release from the mental hospital.
12	Criminal Case Disposition	Criminal History Reporting Form	Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	CR-4345	Not later than the 30 th day after the date on which the clerk receives the case disposition	Code of Criminal Procedure, art. 66.252(c)	The clerk shall report the disposition of the case to the DPS. The DPS provides training on how to complete this form.
13	Criminal Case Disposition of case in which offender charged with fine-only misdemeanor involving family violence		Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143		Not later than the 30 th day after the date on which the clerk receives the case disposition	Code of Criminal Procedure, art. 66.252(g)	The clerk of the court exercising jurisdiction over the case shall report the applicable information regarding the person’s citation or arrest and the disposition of the case to the Department of Public Safety using a uniform incident fingerprint card described by Article 66.251 or an electronic methodology approved by the Department of Public Safety.
14	Criminal Conviction - automatic suspension of driver’s license required and license surrendered to court	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17 (512) 424-5720	Not later than the 10 th day after the date on which the driver’s license is surrendered to the court	Transportation Code § 521.347(a)	The court in which a person is convicted of an offense requiring automatic suspension of the person’s driver’s license “may” require the person to surrender his or her license to the court. If the license is surrendered to the court, then the clerk must send the license to the DPS along with completed Form DIC-17.
15	Criminal Conviction – Juvenile Adjudication, Deferred Disposition or Acquittal – Alcoholic Beverage Code Chapter 106 offense (minors and alcohol)		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Alcoholic Beverage Code § 106.117	Clerk is to send to DPS a notice of each conviction of an offense under Chapter 106 of the Alcoholic Beverage Code which deals with offenses involving alcohol and minors. Clerk is also to send DPS a notice of each juvenile adjudication, deferred disposition order or acquittal of an offense under Chapter 106.
16	Criminal Conviction - negligent homicide or other felony in which vehicle was used	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17	Not later than the 7 th day after the date of conviction	Transportation Code §§ 543.202, 543.203	Clerk is to submit to the DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form
17	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by certified teacher		Texas State Board for Educator Certification 1701 North Congress Ave WBT 5-100 Austin, TX 78701-1494		Not later than the fifth day after the date the teacher is convicted or is granted deferred adjudication	Code of Criminal Procedure, art. 42.018(b), (c)	Clerk is to provide the State Board for Educator Certification and the chief administrative officer of the private school at which the person is employed with written notice of the teacher’s conviction or deferred adjudication.
18	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by licensed nurse		Texas Board of Nurse Examiners 333 Guadalupe 3-460 Austin, TX 78701	(512) 305-7400	Not later than the 30 th day after conviction	Occupations Code § 301.409	Attorney representing the State “shall cause the clerk” to prepare and forward to the Board “a certified true and correct abstract of the court record of the case.”
19	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by		Texas Department of Insurance Agent Licensing Division Mail Code 107-1A P.O. Box 149104		Not later than the fifth day after the conviction or grant of deferred adjudication	Code of Criminal Procedure, art. 42.0181	Clerk is to provide the Department of Insurance with written notice of the person’s conviction of, or deferred adjudication for, an offense under Penal Code Chapters 31 (theft), 32 (fraud), 34 (money laundering), or 35 (insurance fraud).

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
	person licensed by Texas Department of Insurance		Austin, TX 78714-9104				
20	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by physician		Texas Department of Public Safety Crime Records Service PO Box 4143 Austin, TX 78765-4143		Not later than the 30 th day after the conviction or grant of deferred adjudication	Occupations Code § 160.101(b)	Clerk is to prepare and forward the information required by Chapter 66, Code of Criminal Procedure. <i>See</i> Article 66.252.
21	Criminal Conviction (or grant of deferred adjudication) for felony by “illegal criminal alien”		Immigration and Naturalization Service (INS)		No stated time frame	Code of Criminal Procedure, art. 2.25	“Judge” is to report to INS. As a practical matter, however, the clerk should make this report. In some counties the sheriff’s department or the CSCD make this report –if this is not ideal.
22	Criminal Conviction (or grant of deferred adjudication) for offense constituting family violence or offense under Title 5, Penal Code (criminal homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses in certain circumstances)		Staff Judge Advocate General or the provost marshal of the military installation to which the defendant is assigned.		No stated time frame, but implication is immediately after issuance of the order.	Code of Criminal Procedure, art. 42.0183	This reporting requirement applies only if the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active duty status.
23	Criminal Conviction (or grant of deferred adjudication) or juvenile adjudication for offense requiring registration as a sex offender		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Code of Criminal Procedure, art. 42.016	Clerk is to send to DPS a copy of the record of conviction, a copy of the order granting deferred adjudication, or a copy of the juvenile adjudication, and a copy of the court order requiring the DPS to include sex offender information in a driver’s license record.
24	Criminal Conviction (or placement on community supervision) -felony committed by law enforcement officer licensed by the Texas Commission on Law Enforcement		Texas Commission on Law Enforcement 6330 U.S. Hwy. 290 E. Austin, TX 78723		No stated time frame, but basically upon the order being received by the clerk	Code of Criminal Procedure, art. 42.011	Clerk is to send (either electronically or by mail) the person’s license number and a certified copy of the judgment. Article 42.022 refers to individuals licensed under Occupations Code, Chapter 1701.
25	Daily Deposit of Funds		County Treasurer		Daily	Local Government Code § 113.022	The Clerk must on or before the next regular business day after the date on which the funds are received deposit with the County Treasurer.
26	Death Certificate Abstract		County Voter Registrar		Not later than the 10 th day of the month following the month in which the abstract was prepared.	Election Code § 16.001(a)	Local registrar shall prepare an abstract of each death certificate issued in the month for a decedent 18 years of age or older who was a resident of the state at the time of death. This is a requirement only if the clerk is designated as the local registrar. For a list of local registrars see: www.dshs.state.tx.us/vs/field/localremotedistrict.shtm#local .

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
27	Divorce or Annulment granted	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	Not later than the 9 th day of the month after the month the divorce or annulment was granted	Health & Safety Code § 194.002	Clerk must file a completed report for each divorce or annulment granted in the district court. For each report that is filed, the clerk may collect \$1 as costs in the case in which the divorce or annulment was granted.
28	DNA Test Results – when court has ordered DNA testing of evidence containing biological material of person already convicted		Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	(512) 424-2105	Not later than the 30 th day after the conclusion of a proceeding wherein a convicted defendant seeks DNA testing under Chapter 64 of the Code of Criminal Procedure.	Code of Criminal Procedure, art. 64.03	Clerk is to forward DNA test results to the DPS in cases where the testing is conducted by a laboratory other than a DPS laboratory or a laboratory operating under a contract with the DPS.
29	Exemplary Damage Award against a nursing home or nursing home officer, employee or agent		Director of Central Operations, Long Term Regulatory Texas Department of Aging and Disability Services (Mail Code E-341) P.O. Box 149030 Austin, TX 78714		No stated time frame. The presumption is that this notice should occur shortly after the award of exemplary damages.	Health & Safety Code § 242.051	Clerk is to notify the Texas Department of Human Services if exemplary damages are awarded against a nursing home (or an officer, employee or agent of a nursing home) pursuant to Civil Practice & Remedies Code, Chapter 41.
30	Expunction Order		Texas Department of Public Safety PO Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	When the order of expunction is final	Code of Criminal Procedure, art 55.02, Sec. 3(c)	Clerk must send certified copy of an expunction order to the Crime Records Service of DPS and to each official or agency or other governmental entity or political subdivision designated by the person who is the subject of the order. Must be sent by secure electronic mail, electronic transmission, fax or certified mail, return receipt requested.
31	Federal Prohibited Person Information		Texas Department of Public Safety		Not later than the 30 th day after the relevant court order	Government Code §§ 411.052, 411.0521	Clerk must prepare and forward to DPS certain information in Government Code § 411.0521(b) when the court: (1) orders a person to receive inpatient mental health services; (2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility; (3) commits a person determined to have mental retardation; (4) Appoints a guardian for an incapacitated adult; (5) determines a person is incompetent to stand trial; or (6) finds a person is entitled to relief from a firearms disability. NOTE: Not later than 09/01/10, clerk shall forward information for court orders issued between 09/01/89 and 08/31/09.
32	Forfeiture of Bail where defendant is charged with negligent homicide or other felony where vehicle was used	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DR-18	Not later than the 7 th day after forfeiture of bail	Transportation Code §§ 543.201, 543.202, 543.203	Clerk is to submit to DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form.
33	Forfeiture of Corporation's Charter – order forfeiting, appeal of order & disposition of appeal		Texas Secretary of State of Texas Administrative Unit P.O. Box 12887 Austin, TX 78711		“promptly” after the relevant court action	Tax Code § 171.304	If a district court forfeits a corporation's charter, the clerk is to mail a certified copy of the judgment to the Secretary of State. If an appeal is perfected, the clerk is to certify that fact to the Secretary of State. The clerk shall also certify any disposition of an appeal to the Secretary of State.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
34	Guardians – Private Professional Guardians and Public Guardians Certification Requirement		Judicial Branch Certification Commission c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711		No stated time frame but implication is immediately on discovering the fact	Estates Code § 1104.256	Court must notify guardianship certification program of the Judicial Branch Certification Commission if it finds an individual in noncompliance with certification terms, standards and rules regarding individuals who must be certified in order to serve as a guardian (i.e. a person serving as a guardian who is supposed to be certified but is not).
35	Guardians – Programs Reporting To The County Clerk NOTE: The County Clerk does not send a copy of the report to the GCB because the program has already done so.				The report which must be sent to the guardianship certification program of the Judicial Branch Certification Commission is due not later than January 31 st of each year. The copy which must be sent to the County Clerk should be sent at the same time the original report is sent to the GCB.	Estates Code § 1104.257	Each guardianship program operating in a county shall submit to the County Clerk a copy of the report that the program submitted to the guardianship certification program of the Judicial Branch Certification Commission under Section 155.105, Government Code. NOTE: The report must contain the name, address, and telephone number of individuals employed by, volunteering with, or contracting with each program to provide guardianship services to a ward or proposed ward.
36	Guardians – Registered Private Professional Guardians		Judicial Branch Certification Commission c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711			Estates Code § 1104.306	Clerk must annually submit to the guardianship certification program of the Judicial Branch Certification Commission the names and business addresses of all private professional guardians who have satisfied the registration requirements set out in Estates Code Section 1104.306.
37	Hate Crime – request for affirmative finding	Report of a Request for a Hate Crime finding	Office of Court Administration P.O. 12066 Austin, TX 78711	http://www.txcourts.gov/statistics/hate-crimes/ (512) 463-1625	Not later than the 30 th day after the date judgment is entered in the case	Code of Criminal Procedure, art. 2.211	This report concerning requests for affirmative hate crime findings is part of the Official District Court Monthly Report that is sent to OCA. No other report is required.
38	Interest earned		Internal Revenue Service	1099-INT (866) 455-7438	File Copy A with IRS by March. Furnish Copy B to the Recipient by February. Keep Copy C for your file.	Local Government Code § 117.003	If any funds deposited in the registry of the court are placed into an interest-bearing account, any person with a taxable interest in funds deposited to such account must submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be timely and appropriately reported to the IRS.
39	Judgment of Mental Incompetency		County Voter Registrar		Not later than the 10 th day of the month in which the abstract is prepared	Election Code § 16.002	Each month the clerk must prepare an abstract of each final judgment of a court adjudging a Texas resident who is 18 years of age or older to be mentally incompetent.
40	Judgment rendered in case appealing a decision of the Texas Workers’ Compensation Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers’ Compensation Commission – Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78711-2757	(512) 804-4055	Not later than the 20 th day after the date the judgment is rendered	Labor Code §§ 501.022; 501.050; 502.069; 503.069; 505.059	Clerk must mail a certified copy of the judgment to the TWCC. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University System; (4) State Employees’ Workers’ Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense

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41	Judicial Bypass Report	Report of Judicial Bypass Cases	Office of Court Administration P.O. 12066 Austin, TX 78711	http://www.txcourts.gov/media/1364535/Judicial-Bypass-Report-Instructions-20160429.pdf judinfo@txcourts.gov 512-463-3789	Not later than 20 days following the end of the month in which the judgment was entered	Family Code §33.003(1-1)	Clerk of court must submit a report to Office of Court Administration that includes, for each case filed, the case number and style, applicant's county of residence, the court of appeals district in which proceeding occurred, date of filing, date of disposition, and case disposition. Reports can be entered in OCA's Court Activity Reporting Database at https://card.txcourts.gov/Secure/login.aspx
42	Judicial Bypass Suit – Order for State to pay ad litem, court costs, and court reporters		Accounting Division Attn: Staff Service Officer Texas Department of State Health Services P.O. Box 149347 Austin, TX 78714-9347	(512)458-7111 ext. 3945	Not later than the 90 th day after the date of a final ruling	Family Code § 33.007 Sup. Ct. Parental Notification Rule 1.9(b)(2), (4)	Clerk must “direct” copy of court order to Comptroller who shall pay the amount ordered from funds appropriated to the Texas Department of State Health Services. But copy of order is actually sent to the Texas Department of State Health Services instead of to the Comptroller.
43	Jury charge and sentence in capital case		Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 936-1358 https://www.txcourts.gov/statistics/jury-charges-sentences-in-capital-cases/	Not later than the 30 th day after the date the judgment of acquittal or conviction is entered	Government Code § 72.087	Clerk shall submit a written record of the case containing the contents of the trial court's charge to the jury and the sentence issued.
44	Jury Service - Disqualification because potential juror not county resident		County Voter Registrar		On the third business day of each month	Government Code § 62.114	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a resident of the county. On the third business day of each month, the clerk sends a copy of the list to the voter registrar.
45	Jury Service - Disqualification because potential juror not U.S. citizen		County Voter Registrar, secretary of state, and county attorney or district attorney		On the third business day of each month	Government Code § 62.113	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a citizen of the United States. On the third business day of each month, the clerk sends a copy of the list to the voter registrar, the secretary of state, and the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.
46	Jury Service - Exemption ordered by District Court		County Voter Registrar		“promptly”	Government Code § 62.109	Clerk is to notify county voter registrar of the name and address of a person exempted from jury service because of a physical or mental impairment or because of an inability to comprehend or communicate in English.
47	Jury Service – Permanent Exemption Claimed by Person Over 70		County Voter Registrar		“promptly”	Government Code § 62.107	Clerk shall have a copy of the statement claiming a permanent exemption on the basis of age promptly delivered to the county voter registrar.
48	Juvenile Court Case Disposition		Department of Public Safety Crime Records Service P.O. Box 4143 Austin, TX 78765-4143		Not later than 30 days after the date the clerk receives notice of the disposition	Family Code § 58.110(c)	Clerk is to report disposition of juvenile case to DPS.
49	Mental Incompetency – Nurse found to be mentally incompetent by court		Texas Board of Nurse Examiners 333Guadalupe Street Suite 3-460 Austin, TX 78701	(512) 305-7400	Note later than 30 days after the date the nurse is found to be mentally incompetent	Occupations Code § 301.409	Clerk to prepare and forward to the Board a certified true and correct abstract of the court record of the case.
50	Mental Incompetency – Physician found to be mentally incompetent by court		Texas State Board of Medical Examiners P.O. Box 2018 Austin, TX 78768-2018		Not later than the 30 th day after the date a court finds that a physician is mentally ill or mentally incompetent	Occupations Code § 160.102	Clerk to prepare and forward to the Board a certified abstract of the record.

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51	Monthly Court Activity	Official County Court Monthly Report	Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/reporting-to-oca/judicial-council-trial-court-activity-reports/ (512) 463-1625	No later than the 20 th day of the month following the month reported	Government Code § 71.035(b)	Reporting may be done either on paper or electronically.
52	Name Change for Minor		Texas Department of State Health Services –Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040			Family Code § 45.004(b)	If a child who is subject to the continuing jurisdiction of a court, the clerk is to transmit a copy of the minor’s name change order.
53	Occupational Driver’s License Granted or Revoked		Texas Department of Public Safety Safety Responsibility P.O. Box 15999 Austin, TX 78761-5999		No stated time frame, but implication is immediately after issuance of the order	Transportation Code § 521.249	Clerk is to send certified copy of the petition and court order granting the occupational license. The order is to set out the judge’s findings and restrictions regarding issuance of the license. Similarly, if the court that granted the license subsequently revokes the license, the clerk must send a certified copy of the order.
54	Order of Nondisclosure		Texas Department of Public Safety P.O. Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	Not later than the 15 th business day after the date an order of nondisclosure is issued	Government Code § 411.075	Clerk is to send to DPS all relevant criminal history record information contained either in (1) the order; or (2) a copy of the order. Clerk is to send the material by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or fax.
55	Order Vacating a Protective Order		Each individual who received a copy of the original protective order		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042(c)	Notice must be given that the protective order has been vacated to each individual or entity who received a copy of the original or modified protective order from the clerk.
56	Paternity Determination	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Immediately after order becomes final	Family Code § 108.008 Health & Safety Code § 192.0051	Clerk prepares report of each order determining paternity on designated form and sends to Vital Statistics.
57	Petition Filed – occupational driver’s license sought where driver’s license has been suspended for certain criminal offenses		Attorney representing the State		No stated time frame, but best practice would be immediately after petition is filed	Transportation Code § 521.243	Clerk must send a copy of petition and any notice of hearing “by certified mail” to attorney representing the state if the petitioner’s license was suspended following a conviction for an offense under Sections 19.05 or 49.04 - 49.08 of the Penal Code or an offense to which Section 521.342 of the Transportation Code applies.
58	Petition or Motion Challenging the Constitutionality of a Texas Statute		Attorney General of Texas Const_claims@texasattorneygeneral.gov OCA form referenced in Subsection (a-1) http://www.txcourts.gov/media/687731/constitutionality.pdf		No stated time frame, but implication is immediately after petition or motion is filed.	Government Code, § 402.010	In an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a Texas statute, the party shall file the form required by Subsection (a-1), which is a form adopted by OCA. If the Attorney General is not a party to or counsel involved in the suit, the court shall serve notice of the constitutional challenge on the Attorney General by either certified or registered mail or electronically to an e-mail address designated by the Attorney General for the purpose of this section along with a copy of the petition, motion or other pleading that raises the challenge.

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59	Probate Application		County Voter Registrar		Not later than the 10 th day of the month following the month in which the application was received (and the abstract was prepared).	Election Code § 16.001(b)	Clerk must prepare an abstract of each application for probate of a will, administration of a decedent's estate, or determination of heirship and each small estate affidavit under Ch. 205, Estates Code, and shall then file the abstract with the voter registrar.
60	Protective Order		See Notes		Not later than the next business day after the date the court issues an original or modified protective order.	Family Code § 85.042 (a), (a-1)	Not later than the next business day after the date the court issues an original or modified protective order, Clerk shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b)(6), Government Code, to the chief of police of the municipality in which the person protected by the order resides, if the person reside in a municipality; to the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality; and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency. If the respondent, at the time of issuance of the original or modified protective order, is a member of the state military forces or is serving in the US armed forces in an active-duty status, and the applicant or applicant's attorney provides to the Clerk the mailing address of the staff judge advocate or provost marshal, as applicable, then the Clerk must also provide a copy of the protective order to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned, with the intent that the commanding officer will be notified, as applicable.
61	Protective Order based on criminal defendant's commission of offense because of bias or prejudice		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 (512) 424-7294 Helpline: (800) 224-5744		Code of Criminal Procedure, art. 7B.103(3)	Clerk is to forward a copy of the order to the DPS "with a designation indicating that the order was issued to prevent offenses committed because of bias or prejudice."
62	Protective Order issued by court other than court where SAPCR and/or marriage dissolution suit is pending		Clerk of Court where SAPCR and/or marriage dissolution suit is pending		No stated time frame, but implication is immediately after the issuance of the order	Family Code § 85.062	Clerk is to send a copy of the protective order to the court in which the suit is pending.
63	Protective Order prohibiting respondent from going near a child-care facility or a school		Child-care facility and/or school		No stated time frame but implication is immediately after the issuance of the order	Family Code § 85.042(b)	If the protective order prohibits the respondent from going near a child-care facility or a school, clerk is to send a copy of the protective order to the child-care facility or school.
64	Protective Order suspending a license to carry a handgun		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 or (512) 424-7294 Helpline: (800) 224-5744	No stated time frame; but implication is immediately after the issuance of the order	Family Code § 85.042(e)	Clerk is to send a copy of the order to the DPS.

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65	SAPCR –Court Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	No stated time frame	Family Code § 108.001(a), (d)	This reporting requirement applies to any orders in SAPCR’s that are not covered by a more specific reporting requirement. Clerk is to provide a certified record of any SAPCR order on a VS-165 form.
66	SAPCR –loss of court’s jurisdiction	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 http://www.dshs.state.tx.us/vs/apcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Upon the loss of continuing, exclusive jurisdiction	Family Code § 108.004	The report is to be made if the court has lost continuing, exclusive jurisdiction of the case for any reason. The reason for the loss of jurisdiction is to be noted on the form. Clerk must transmit a certified record on the VS-165, stating that jurisdiction has been lost, the reason for the loss, the name and all previous names of child, and date and place of birth of the child.
67	Suspension of license for failure to pay child support or vacation or stay of suspension		Appropriate State licensing agency – all licensing agencies are subject to this requirement unless otherwise exempted		No stated time frame, but implication is immediately after the issuance of the order. If order is one of vacation or stay then “promptly.”	Family Code §§ 232.002; 232.008(d); 232.013	Clerk is to forward a copy of the final order suspending a license to the appropriate licensing authority (<i>e.g.</i> , Texas Board of Barber Examiners, Texas State Board of Pharmacy). The clerk is to collect a fee of \$5 from the child support obligor for each order mailed. If the court renders an order vacating or staying an order to suspend a license, the clerk must promptly deliver the order to the licensing authority. The clerk must collect from the obligor \$5 for each order mailed.
68	Unclaimed Cash Bail Bonds		Texas Comptroller of Public Accounts Unclaimed Property Division P.O. Box 12019 Austin, Texas 78711-2019	Elaine Walker, (512) 463-2059	The report must be made on or before July 1 st following the Clerk’s annual March 1 st review.	Property Code §§ 72.101, 74.101 Melton v. State, 993 S.W.2d 95 (Tex. 1999).	The clerk must review all cash bail bonds held by clerk each March 1st. Any cash bail bonds that have been “dormant” for three years or more are considered to be abandoned property. The dormancy period begins to run three years from the date of entry of final judgment or order of dismissal in the action in which the funds were deposited. The clerk must report all cash bail bonds that are considered to be dormant to the Comptroller.
69	Unclaimed Funds other than cash bail bonds		Texas State Comptroller Unclaimed Property Division Holder Reporting Section P.O. Box 12019 Austin, TX 78711-2019	Form 53-119 (800) 321-2274, ext. 6-6246 or in Austin, call (512) 936-6246	The report and the delivery must be made on or before November 1st following the Clerk’s annual June 30 th review. NOTE: The report and the delivery must be made on or before July 1st following the Clerk’s annual March 1 st review.	Property Code §§ 72.101, 74.101, 74.301 Local Gov’t Code § 117.002	Any funds deposited in the registry of the court, except cash bail bonds, that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be <u>reported and delivered</u> to the comptroller without further action by any court. Property is presumed to be abandoned if, the property has remained unclaimed for 3 years and the owner has not communicated during the abandonment period and the location of the owner is unknown. The clerk must review property in the registry of the court on March 1to find property that is presumed to have been abandoned.
70	Vexatious Litigant prohibited from filing new litigation (Pre-Filing Order)		Office of Court Administration P.O. Box 12066 Austin, TX 78711 Attention: Judicial Information	(512) 463-1625	Not later than 30 days after the date the pre-filing order is signed.	Civil Practice & Remedies Code § 11.104	Clerk is to provide a copy of any pre-filing order issued under Section 11.101 of the Civil Practice & Remedies Code. These pre-filing orders prohibit individuals found to be vexatious litigants from filing, in propria persona, new litigation.

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71	Writs of Attachment		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/media/1438748/writs-of-attachment-report-instructions_08232017.pdf	No later than 30 days of issuance	Code of Criminal Procedure, art. 2.212	Clerk is to report to Texas Judicial Council the date attachment issued, whether attachment issued in connection with a grand jury investigation/criminal trial/other criminal proceeding, the names of the person requesting and the judge issuing attachment, and the statutory authority under which attachment issued. Reports can be entered in OCA's Court Activity Reporting Database at https://card.txcourts.gov/Secure/login.aspx