

**RULES UPDATE:
WHAT'S NEW AND WHAT'S AROUND THE CORNER**

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CHAPTER 23

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RULES UPDATE: WHAT'S NEW AND WHAT'S AROUND THE CORNER

I. INTRODUCTION

Since 1939, the Supreme Court of Texas has had broad authority to promulgate and amend rules governing practice and procedure in civil actions. *See* Tex. Gov't Code Ann. § 22.004 (West Supp. 2013) (“The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.”). To ensure this power is full, the Legislature even allows rules to trump statutes to the extent the rules address procedural (as opposed to substantive) matters. *Id.* § 22.004(c) (“[A] rule adopted by the [Court] repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed.”). Generally, the Court must publish all rules for 60 days before they become effective. *Id.* § 22.004(b). The Court invites public comments during this period, reviews all of the comments before finalizing any rule, and often modifies rules in response to the comments.

Sometimes new rules and amendments to existing rules are prompted by legislative mandate. At other times, the Court decides to promulgate or amend rules on its own initiative, often because members of the bar and/or public have identified a need for change.

In the last couple years, the Court has promulgated several rules in response to legislative mandates. This article addresses two sets of such rules: (1) the rules governing expedited actions; and (2) the rules governing dismissal procedures. These rules are highlighted because they impact procedures relating to evidence and discovery in civil actions and, therefore, are relevant to the CLE course at hand.

Recently, the Court also has promulgated a few rules simply because of a need for those rules. The most noteworthy example is the e-filing rules governing civil and criminal cases pending in trial and appellate courts. Because of the statewide impact of the e-filing rules, they are also covered in this article.

As is always the case, there are also some proposed rules in the pipeline at the Court. This article does not provide a comprehensive overview of such rules; it addresses amendments to evidence rules that are likely to be issued in or around the spring of 2014.

II. THE EXPEDITED ACTIONS PROCESS AND DISMISSAL PROCEDURES¹

A. Impetus for Rules Governing the Expedited Actions Process and Dismissal Procedures

The expedited actions process stems from House Bill 274, which the 82nd Legislature enacted in 2011. In the bill, the Legislature added subsection (h) to Section 22.004 of the Government Code and mandated the Court to enact “rules to promote the prompt, efficient, and cost-effective resolution of civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney’s fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000.” Tex. Gov’t Code § 22.004(h). The Legislature provided further that the rules had to “address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system.” *Id.* Finally, the Legislature prohibited any conflicts between the rules and “(1) Chapter 74 [of the] Civil Practice and Remedies Code; (2) the Family Code; (3) the Property Code; or (4) the Tax Code.” *Id.*

The dismissal procedures also stem from House Bill 274. In the bill, the Legislature added subsection (g) to Section 22.004 of the Government Code and mandated the Court to “adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence.” *Id.* § 22.004(g). The Legislature also provided that “[t]he rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss” and “shall not apply to actions under the Family Code.” *Id.* Finally, the Legislature added Section 30.021 to the Civil Practice and Remedies Code, which reads: “In a civil proceeding, on a trial court’s granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the [Court] under Section 22.004(g), Government Code the court shall award costs and reasonable and necessary attorney’s fees to the prevailing party.” Tex. Civ. Prac. & Rem. Code Ann. § 30.021 (West Supp. 2013). Of note, however, actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law” are excluded from Section 30.021. *See id.*

¹ When drafting this section of the article, I used some content from the State Bar of Texas webcast entitled “The New Dismissal Rule and Rules for Expedited Actions: Tips and Traps for the Unwary,” which aired on March 19, 2013. I participated in the webcast, along with Edward Trey Bergman III, Michael G. Guajardo, Judge Elizabeth Ray, Judge Alan Waldrop, and Daniel K. Worthington. The Court’s former Rule Attorney, Marisa Secco, also provided some of the information in this section of the article.

B. Rules Governing Expedited Actions Process

By order dated November 13, 2012, the Court promulgated proposed Texas Rules of Civil Procedure 47, 169, 190.2, and 190.5, as well as proposed Texas Rule of Evidence 902(10)(c). *See* Misc. Docket No. 12-9191 (Nov. 13, 2012). The Court also revised the civil case information sheet required by Texas Rule of Civil Procedure 78a, to require more information about the relief sought in original petitions that are filed in civil suits in Texas. Rule 47 addresses pleading requirements, Rule 169 addresses the expedited actions process, Rule 190 addresses discovery limitations, and Rule 902(10)(c) addresses affidavits regarding medical expenses. The Court invited public comments regarding its proposed rules through February 1, 2013.

The Court received approximately 500 public comments regarding the proposed expedited actions rules.² The bulk of the comments addressed two issues (1) whether the expedited actions process should be mandatory—applying whenever the amount in controversy is \$100,000 or less—or voluntary—applying only when parties opt for its application; and (2) whether and how the expedited actions process should impact alternative dispute resolution (ADR). Under the proposed rules, the process was mandatory. In support of the mandate, the Court reasoned that “the objectives of HB 274 cannot be achieved, or the benefits to the administration of justice realized, without rules that compel expedited procedures in smaller cases.” Misc. Docket No. 12-9191 at 5. In regard to ADR, the proposed rule provides: “Unless the parties have agreed to engage in [ADR] or are required to do so by contract, the court must not—by order or local rule—require the parties to engage in [ADR].” Misc. Docket No. 12-9191 at 10. Most commentators opposed the mandatory nature of the proposed rules, and many commentators (especially mediators) opposed the limits on ADR.

The Court made several changes to the rules in response to the public comments it received. For example, the Court revised the ADR bar to allow one referral to ADR not to exceed a half-day in duration or cost more than twice the amount of the civil filing fees. The Court also added a comment to TRCP 169 to list factors to consider when determining whether there is “good cause” that justifies an exemption from the expedited actions process or an extension of the time for a trial under the process. But the Court maintained the mandatory nature of the expedited actions process.

The final rules governing expedited actions are in an order dated February 12, 2013. *See* Misc. Docket No. 13-9022 (**Appendix A**). The rules took effect March 1, 2013. Corrective comments to Texas Rule of Evidence 902(10)(c) are in Misc. Docket No. 13-9043 (**Appendix B**), which the Court issued on March 26.

² The public comments are available upon request.

This section of the article addresses the scope of the rules and highlights key aspects of the rules. This section also contains practice tips to guide parties in suits governed by the expedited actions process.

1. Overview of the Rules
 - a. Texas Rule of Civil Procedure 47 and the Civil Case Information Sheet

Texas Rule of Civil Procedure 47 generally applies to all civil suits, except cases governed by the Texas Family Code, regardless of the amount in controversy. In other words, it applies to suits that are, and are not, governed by the expedited actions process.

Under Rule 47(c), a petition must specify whether a party is seeking “(1) only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or (2) monetary relief of \$100,000 or less and non-monetary relief; or (3) monetary relief over \$100,000 but not more than \$200,000; or (4) monetary relief over \$200,000 but not more than \$1,000,000; or (5) monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(1)–(5). The Court added teeth to these new pleading requirements by providing that “[a] party that fails to comply with [the requirements] may not conduct discovery until the party’s pleading is amended to comply.” Tex. R. Civ. P. 47.

Some people have questioned why amended Rule 47 requires more specificity than necessary to determine whether a suit is governed by the expedited actions process. According to the comments to Rule 47, the additional requirements are intended to collect information regarding the nature of suits filed and are not intended to impact a party’s substantive rights.

Practice Tip: Regardless of whether a suit is governed by the expedited actions process, a petition must contain the information required under Texas Rule of Civil Procedure 47(c). You cannot conduct discovery unless your petition contains this information.

All of the information required under Rule 47(c) is also required in the amended civil case information sheet that a party must file with a petition. *See* Appendix A at 15.³ While this is redundant, it provides a readily accessible source of information for individuals and entities, such as court clerks and the Office of Court Administration, that compile data regarding Texas court proceedings.

³ The civil case information sheet is also available in both type-in and print-and-fill-out versions at the following link: <http://www.txcourts.gov/pubs/pubs-home.asp>.

Practice Tip: File a civil case information sheet each time you file an original petition in any civil suit. Use the version of the sheet that took effect on March 1, 2013 (in [Appendix A](#)). If you do not know the value of your claims at the time of filing, provide information that is “the best available at the time of filing.” *Id.* (instructions on top of civil case information sheet).

b. Texas Rule of Evidence 902

Like Texas Rule of Civil Procedure 47, Texas Rule of Evidence 902 applies to civil suits that are, and are not, governed by the expedited actions process. Rule 902 addresses the self-authentication of documents. New subparagraph (10)(c) contains an affidavit that a party may use to make prima facie proof of medical expenses. Tex. R. Evid. 902(10)(c). The intent of the affidavit is twofold: (1) to allow medical expenses to be proven up without live testimony and save time that would otherwise be spent on such testimony; and (2) to comply with Section 41.0105 of the Texas Civil Practice and Remedies Code and *Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011). See Tex. R. Evid. 902, Comment to 2013 Change; *Task Force for Rules in Expedited Actions: Final Report to the Supreme Court of Texas*, at 3.

c. Texas Rule of Civil Procedure 169

(1) General Scope of Expedited Actions Process

Texas Rule of Civil Procedure 169 applies to expedited actions alone. Subparagraph (a)(1) specifies the rule’s scope, providing: “The expedited actions process in this rule applies to a suit in which all claimants, *other than counter-claimants*, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, *pre-judgment interest*, and attorney fees.” Tex. R. Civ. P. 169(a)(1) (emphasis added). Note that the claimant must be seeking “only monetary relief”; a claimant’s request for non-monetary relief, such as injunctive relief, will keep a suit out of the expedited actions process.

For the most part, subparagraph (a)(1) of Rule 169 tracks section 22.004(h) of the Government Code. The italicized language highlights two exceptions. In the statute, the amount of controversy is defined as “inclusive of *all* claims” (without any exception for counterclaims) and with reference to “interest” generally (not just pre-judgment interest). Tex. Gov’t Code § 22.004(h) (emphasis added). The exception relating to counter-claimants precludes the possibility of defendants filing counterclaims to knock suits out of the expedited actions process. Thus, while a plaintiff can opt in to the expedited actions process through its claims against a defendant, the defendant cannot opt out of the expedited actions process through its claims against the plaintiff. The Court added the exception

relating to counterclaims on its own initiative. The exception relating to pre-judgment interest reflects the reality that post-judgment interest cannot be valued at the time a suit is filed. The Court’s Task Force for Rules in Expedited Actions, which assisted with drafting the rules at hand, recommended this exception.

Subparagraph (a)(2) narrows the scope of Rule 169’s applicability by providing that “[t]he expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.” *Id.* at 169(a)(2). This was the Court’s efficient, clean way of meeting the statutory requirement that there be no conflict between the expedited actions rules and provisions of the Family Code, the Property Code, the Tax Code, and Chapter 74 of the Civil Practice and Remedies Code. See Tex. Gov’t Code Ann. § 22.004(h)(1)–(4).

Practice Tip: To determine whether a suit is governed by the expedited actions process, add up the value of the damages, penalties, costs, expenses, pre-judgment interest, and attorney fees that each claimant (other than a counter-claimant) is seeking in the suit. If the total amount is \$100,000 or less per claimant (other than a counter-claimant), then the suit is governed by the expedited actions process, unless (1) a claimant (other than a counter-claimant) is seeking non-monetary relief or (2) the suit is governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(2) Removal from Expedited Actions Process

Even when the expedited actions process applies to a suit, a court will be required to remove the suit from the process under two circumstances: (1) on motion and showing of good cause by any party; and (2) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by Rule 169(a)(1). Tex. R. Civ. P. 169(c)(1).

“Good cause” is not defined in the rule itself, but a comment to the rule provides helpful guidance. The comment lists the following, *nonexclusive* factors that a court should consider in determining whether there is good cause for removal from the expedited actions process: (1) “whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1)”; (2) “whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1)”; (3) “the number of parties and witnesses”; (4) “the complexity of the legal and factual issues”; and (5) “whether an interpreter is necessary.” *Id.*, Comment 3 to 2013 Change.

Practice Tip: If you want to remove a suit from the expedited actions process, move for removal promptly after the suit is filed and explain which “good cause” factors from comment 3 to the rule justify removal. Remember that the list of factors is nonexclusive, and reference any additional factors that support removal. If the case is removed from the expedited actions process, immediately file a motion for continuance and explain what additional discovery is required in the suit. (See Section II.B.2. below for more information.)

Rule 169 imposes limits on amended and supplemental pleadings that request relief that no longer falls within the scope of applicability of the expedited actions process. Specifically, a pleading that removes a suit from the process “may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial.” Tex. R. Civ. P. 169(c)(2). Moreover, “[l]eave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.” *Id.*

d. Texas Rule of Civil Procedure 190

The Court amended Texas Rules of Civil Procedure 190.2 and 190.5, which govern discovery, to address the expedited actions process. Rule 190.2—the new Level 1 of discovery—applies to any suit that is governed by the expedited actions process and, with some exceptions, continues to apply to any divorce suit “not involving children in which a party pleads that the value of the marital estate is more than zero but not more than \$50,000.” Tex. R. Civ. P. 190.2(a)(1)–(2). Rule 190.5 addresses modifications of discovery control plans and generally applies to civil suits regardless of whether they are governed by the expedited actions process. But the Court amended this rule to limit the additional discovery that will be required in suits that are governed by the expedited actions process. *See id.* 190.5.

2. Procedural Limits Under the Rules

a. Discovery Limits

Under amended Rule 190.2, discovery in suits governed by the expedited actions process is limited in several ways. First, the discovery period is redefined. Prior Rule 190.2 defined the discovery period as beginning when a suit is filed and continuing until 30 days before the date set for trial. This allowed parties or the court to more or less set the discovery period via scheduling orders. Current Rule 190.2, however, provides that the discovery period ends “180 days after the date the first request for discovery of any kind is served on a party.” Tex. R. Civ. P. 190.2(b)(1). Thus, parties will generally have approximately six months to complete discovery in an expedited action.

Also under amended Rule 190.2, a rule of 15 applies to interrogatories, requests for production, and requests for admissions. The number of permissible interrogatories has been reduced from 25 to 15. *See* Tex. R. Civ. P. 190.2(b)(3). And the rule now limits (to 15) the requests for production and requests for admissions that were previously unlimited. *See id.* 190.2(b)(4)–(5) (providing that “[a]ny party may serve on any other party no more than 15 written requests”).

But amended Rule 190.2 actually expands the permissible requests for disclosure by providing that, “[i]n addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.” *Id.* 190.2(b)(6). Rule 190.2 provides further that this request “is not considered a request for production” and, therefore, does not count as one of the 15 requests for production that a party is entitled to under the expedited actions process. The additional request for disclosure in Rule 190.2 is modeled after Federal Rule of Civil Procedure 26(a)(1)(A)(ii).

The time for oral depositions has not changed in amended Rule 190.2. With some exceptions (provided in the rule), each party is still entitled to “no more than six hours in total to examine and cross-examine all witnesses[.]” Tex. R. Civ. P. 190.2(b)(2).

Practice Tip: The production limit is not imposed on a subpoena duces tecum; therefore, a deposition may be another mechanism for document production.

Amended Rule 190.5 may limit discovery further by excepting suits governed by the expedited actions process from the mandate for courts to allow additional discovery that (a) is “related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response” if certain, specified conditions are met; or (b) “regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.” *Id.* at 190.5(a)–(b). But Rule 190.5 still gives courts the discretion to “modify a discovery control plan at any time” and still requires courts to modify the plan “when the interest of justice requires.” *Id.* at 190.5. Thus, even if a party is subject to restricted discovery under the expedited actions process, the party can seek relief through modification of the discovery plan.

Practice Tip: If you are in a suit governed by the expedited actions process and you believe the default discovery control plan under Rule 190.2 should be modified, file a motion requesting modification under Rule 190.5. Consider filing this motion *before* filing any motion for removal from the expedited actions process, if a basis for the desired removal is the limited discovery under Rule 190.2. This will place you in a better position on appeal, should you seek appellate relief for denial of the removal motion.

As indicated above, a suit may be removed from the expedited actions process after discovery has begun and is well underway. The Court accounted for that possibility by amending Rule 190.2 to require the discovery period to be reopened any time a suit is removed from the expedited actions process. *See* Tex. R. Civ. P. 190.2(c). The rule also provides that “discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable.” *Id.* Of note, however, the rule does not automatically allow any person previously deposed to be redeposed. *Id.* (“Any person previously deposed *may* be redeposed.” (Emphasis added.)). Moreover, the rule does not require the court to continue the trial date if necessary to permit completion of discovery. *Id.* (“On motion of any party, the court *should* continue the trial date if necessary to permit completion of discovery.” (Emphasis added.)).

Practice Tip: If your suit is removed from the expedited actions process, request that the court reopen discovery under Rule 190.2(c). Under Rule 169(c)(3), the court is obligated to comply with your request. But keep in mind that the court is not obligated to allow you to redepose witnesses or continue your trial date.

b. Trial Limits

Pursuant to Rule 169(d)(2), “[o]n any party’s request, the court *must* set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.” Tex. R. Civ. P. 169(d)(2) (emphasis added). The court has discretion to “continue the case twice, not to exceed a total of 60 days.” *Id.*

Practice Tip: To ensure that an expedited action is set for trial within 90 days after the discovery period ends, you must request a trial setting that is within the 90-day period. The mandatory trial setting in the expedited actions process is triggered only by request.

Rule 169(d)(3) addresses time limits for trials. In an expedited action, each side is entitled to “eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments.”

Tex. R. Civ. P. 169(d)(3). Any “[t]ime spent on objections, bench conferences, bills of exception, and challenges for cause to a juror” are not included in the eight-hour time limit. *Id.* at 169(d)(3)(B).

If a side believes eight hours is insufficient for its trial presentation, then the side may seek an extension of time. “On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.” *Id.* at 169(d)(3). The factors for “good cause” in this context are the same as the factors for establishing good cause to remove a suit from the expedited actions process—“whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.” *Id.*, Comment 3 to 2013 Change.

Practice Tips: If possible, decide *before the trial begins* whether your side will need more than eight hours to complete jury selection, opening statements, the presentation of evidence, the examination and cross-examination of witnesses, and closing arguments. The rules do not require you to move for an extension of time before the trial begins, but you are more likely to prevail if you ask before the court calendars your trial.

During the trial, document the precise amount of time that each side spends on things that count toward the limited amount of time within which the case must be tried. This will enable you to maximize your time and, if need be, challenge the other side’s use of time.

c. ADR Limits

As indicated above, ADR options are limited under the expedited actions process. The parties are always free to agree to engage in ADR. But absent that agreement, the court may only refer the case to an ADR procedure once, and that “procedure must: (i) not exceed a half-day in duration, excluding scheduling time; (ii) not exceed a total cost of twice the amount of applicable civil filing fees; and (iii) be completed no later than 60 days before the initial trial setting.” Tex. R. Civ. P. 169(d)(4)(A)(i)–(iii). Unless statutorily prohibited, “[t]he court must consider objections to the referral” to the ADR procedures. *Id.* at 169(d)(4)(B).

d. Daubert/Robinson Limits

As a general rule, “a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits.” Tex. R. Civ. P.

169(d)(5). But this limitation does not apply if the party sponsoring the challenged expert requests a different procedure (e.g., a Daubert/Robinson hearing), nor does it “apply to a motion to strike for late designation.” *Id.*

Practice Tip: Confer with the other side to determine which expert witnesses will be challenged and then decide whether it would be better to address challenges to your experts through the default procedures in the expedited actions process or in a Daubert/Robinson hearing. If you believe a hearing would benefit your side, then request the hearing for the experts you are sponsoring and get it docketed before the trial begins.

e. Recovery Limits

A claimant who pursues claims governed the expedited actions process cannot recover a judgment in excess of \$100,000, excluding post-judgment interest. *See* Tex. R. Civ. P. 169(b); *see also id.*, Comment 4 to 2013 Change (providing that rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), will not apply if jury awards claimant damages in excess of \$100,000). In contrast, counter-claimants in expedited actions may recover more than \$100,000; in other words, they are not subject to the recovery cap. *See* Tex. R. Civ. P. 169, Comment 4 to 2013 Change. By allowing defendants to recover more than \$100,000, the Court softened the blow to defendants who are unable to remove a suit from the expedited actions process by filing counterclaims that are valued at more than \$100,000 or that seek non-monetary relief. Nevertheless, defendants will effectively be stuck in the process unless they can establish that there is “good cause” to have a suit removed from the process. Before trying to get out of the process, defendants should assess whether their potential for recovery is hampered or hindered by an expedited trial.

Practice Tip: A claimant in a suit governed by the expedited actions process cannot recover more than \$100,000, even if the jury awards damages over \$100,000. *See* Tex. R. Civ. P. 169, Comment 4 to 2013 Change. But counter-claimants in expedited actions are not subject to the \$100,000 limit. *See id.*

As with any new process, there are questions about whether the expedited actions process will work as intended and how the process will be handled by parties and courts in Texas. As of the date this article was written, there were no reported cases referencing the expedited actions process in Texas Rule of Civil Procedure 169. Thus, the best available guidance regarding Rule 169 is the text of the rule itself and the explanatory comments that accompany the rule.

C. Overview of Dismissal Procedures

In the same Order containing the rules relating to expedited actions, the Court included a new dismissal rule—Texas Rule of Civil Procedure 91a—that allows a party to move to dismiss a cause of action that “has no basis in law or fact.” Tex. R. Civ. P. 91a.1; *see also* Misc. Docket No. 13-9022 (Appendix A). The dismissal rule has been much less controversial than the rules relating to expedited actions. The most controversial aspect of the rule (and the aspect that will likely lead to relatively low use of the rule) is the “loser-pay” provision addressed below.

1. Grounds for and Contents of Motion

In all cases except cases brought under the Family Code or Chapter 14 of the Civil Practice and Remedies Code, a party may file a motion “to dismiss a cause of action on the grounds that [the cause of action] has no basis in law or fact.” Tex. R. Civ. P. 91a.1. Rule 91a provides the following guidance for assessing the merits of a cause of action: “A cause of action has no basis in law if the allegations, taken as true, together with the inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.” *Id.* A motion to dismiss must state that it is made pursuant to Rule 91a, “identify each cause of action to which it is addressed, and . . . state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.” *Id.* 91a.2.

Practice Tip: A vague assertion that a cause of action is groundless will not suffice. A motion to dismiss must state *specifically* the reasons why each challenged cause of action has no basis in law and/or in fact.

2. Timing Considerations

Under Rule 91a, “[a] motion to dismiss must be . . . filed within 60 days after the first pleading containing the challenged cause of action is served on the movant[.]” *Id.* 91a.3(a). Considering this tight time period, any discovery that will be helpful in determining the validity of a motion to dismiss should be initiated directly after the cause of action is pled.

Several deadlines in Rule 91a are based on the date the motion to dismiss is set to be heard. First, the motion must be filed at least 21 days before the hearing. *Id.* 91a.3(b). Second, “[a]ny response to the motion must be filed no later than 7 days before the date of the hearing.” *Id.* 91a.4. Third, a court will be precluded from ruling on the motion if, at least three days before the date of the hearing, the respondent nonsuits the challenged cause of action or the movant withdraws the motion. *Id.* 91a.5(a). Fourth, if a respondent amends the challenged cause of action at

least three days before the date of the hearing, the movant may—before the date of the hearing—withdraw the motion or file an amended motion directed to the amended cause of action. *Id.* 91a.5(b). If the nonsuit or amendment is not filed within the allotted time period, the court will be prohibited from considering them. *Id.* 91a.5(c). But if a movant files an amended motion within the allotted time period—before the date of the hearing—the amended motion “restarts the time periods” in Rule 91a. *Id.* 91a.5(d).

Practice Tip: If you file a motion to dismiss and then decide the grounds for the motion are weak, withdraw the motion at least three days before the motion is set to be heard so that you can avoid incurring attorney fees and costs associated with losing the motion. For the same reason, if you file a cause of action that is challenged via a motion to dismiss and you decide the cause of action has no merit, nonsuit it at least three days before the motion to dismiss is set to be heard.

A court must grant or deny a motion to dismiss within 45 days after the motion is filed, “unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5.” Comment to 2013 Change to Rule 91a; *see also* Tex. R. Civ. P. 91a.3(c). As indicated in 91a.5, “[i]f an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion.” Comment to 2013 Change to Rule 91a.

3. Hearing on Motion to Dismiss

A hearing on a motion to dismiss may be oral or by submission. *See id.*; Tex. R. Civ. P. 91a.6. Regardless, “[e]ach party is entitled to at least 14 days’ notice of the hearing[.]” Tex. R. Civ. P. 91a.6. Except to the extent required to determine an award of attorney fees and costs, the court is prohibited from considering evidence when ruling on the motion “and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule [of Civil Procedure] 59.” *Id.*

4. “Loser-Pay” Provision

With some limited exceptions (for actions by or against a governmental entity or a public official acting in his/her official capacity or under color of state law), a court is required to “award the prevailing party on the motion *all* costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court.” *Id.* 91a.7 (emphasis added). The court is also required to “consider evidence regarding costs and fees in determining the award.” *Id.*

Practice Tip: “Attorney fees awarded under 91a.7 are limited to those associated with [a] challenged cause of action, including fees for preparing or responding to the motion to dismiss.” Comment to 2013 Change to Rule 91a. Thus, if you expect to file a motion or have to defend against a motion, segregate your billing records to delineate clearly which fees relate to the challenged cause of action and associated pleadings.

5. Impact on Other Procedures

Rule 91a.8 provides explicitly that a party does not open itself to a court’s full jurisdiction by filing a motion to dismiss. Instead, the “party submits to the court’s jurisdiction only in proceedings on the motion[.]” Tex. R. Civ. P. 91a.8.

Finally, Rule 91a.9 provides that the dismissal “rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.” *Id.* 91a.9. Examples of such “other procedures” include special exceptions and motions for summary judgment.

As with Rule 169 (governing expedited actions), there are no reported cases referencing Rule 91a. Thus, for now, the best available guidance regarding Rule 91a is the text of the rule itself and the explanatory comments that accompany the rule.

III. E-FILING RULES

A. Brief History of E-Filing in Texas

E-filing began in Texas in 1995, in the district courts of Jefferson County. *See* David Slayton and Megan LaVoie, *Paperless Courts: Are you ready for the e-filing mandate?*, 77 Tex. B.J. 25 (2014). Two years later, the Montgomery County district courts implemented e-filing. *Id.* E-filing benefited the bench and bar in many ways—e.g., it reduced storage expenses, reduced time spent sorting and file-stamping documents, and provided instant access to pleadings. *See* Misc. Docket No. 13-9164 (Dec. 9, 2013), at 1.

The benefits of e-filing prompted an e-filing pilot project in January 2003 in order to test and refine the e-filing model. *See id.* In 2004, the model was instituted statewide through an Internet portal that was initially named TexasOnline and then became Texas.gov. *Id.* Then, in 2007, the Court adopted statewide e-filing rules for participating justice courts. *See* Misc. Docket No. 07-9200 (Dec. 10, 2007).

Over the years, most courts accepted e-filings through the statewide portal, but several courts adopted systems that diverged from the portal. *See* Misc. Docket No. 13-9164 at 2. Because the statewide portal had a “toll-road” funding structure, e-filings outside of the portal had a negative financial impact on the vendor managing the portal. *Id.* Also, the need for e-filers to learn and master the requirements of multiple filing systems reduced the efficiencies associated with e-filing. *See id.*

On December 8, 2011, the Supreme Court of Texas convened a hearing “to assess the benefits and drawbacks of creating a uniform statewide e-filing system.” *Id.* The majority of commentators (both at and after the hearing) supported mandatory e-filing and the implementation of a uniform statewide system in Texas. *Id.* Testimony received during the hearing also revealed concerns relating to the high costs of e-filing, the inability to allow free e-filing for certain government and indigent e-filers, the decentralized nature of the system, and the possibility that the system would not be able to handle an increase in filings. *Id.*

At the hearing, the Court also learned that the vendor that managed Texas.gov would not renew its contract. *Id.* at 3. Thus, a new vendor was secured. According to the Court, the new e-filing manager (EFM) system—TexFile—“drastically reduces the cost of e-filing and electronic service[,] . . . will permit . . . indigent and certain government filers to submit documents at no cost[;] . . . [and] will be scalable to handle as many filings as necessary . . .” *Id.*

After considering all of the testimony and comments it received, along with recommendations of the Judicial Committee on Information Technology (JCIT), the Court concluded “that mandatory e-filing in civil cases will promote the efficient and uniform administration of justice in Texas courts.” *Id.*

B. E-Filing Mandate

The current e-filing mandate became effective January 1, 2014 in all civil cases in appellate courts, in all criminal cases in appellate courts (absent a good-cause showing in a motion), and in all non-juvenile civil cases (including family and probate cases) in the district courts, statutory county courts, constitutional county courts, and statutory probate courts in the ten most populous counties in Texas—Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Tarrant, and Travis. *See id.*; Tex. R. Civ. P. 9.2(c)(1); Supreme Court of Texas Misc. Docket No. 13-9165 (Dec. 13, 2013); Court of Criminal Appeals Misc. Docket No. 13-003 (Dec. 11, 2013).⁴

Every six months, the mandate will apply in courts in additional counties. The rollout schedule is based on the population of the counties, as follows: (1) courts in counties with a population of 500,000 or more – January 1, 2014; (2) courts in counties with a population of 200,000 to 499,999 – July 1, 2014; (3) courts in counties with a population of 100,000 to 199,999 – January 1, 2015; (4) courts in counties with a population of 50,000 to 99,999 – July 1, 2015; (5) courts in counties with a population of 20,000 to 49,999 – January 1, 2016; and (6) courts in counties

with a population less than 20,000 – July 1, 2014. Misc. Docket No. 13-9164 (Dec. 9, 2013), at 4.

The mandate applies specifically to attorneys; unrepresented parties are not required to e-file any documents but may do so in courts in which e-filing is available. Tex. R. Civ. P. 21(f)(1); Tex. R. App. P. 9.2(c)(1). All e-filing must be done through the EFM established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. Tex. R. Civ. P. 21(f)(3); Tex. R. App. P. 9.2(c)(2). Certain documents are excepted or excluded from the mandate in trial courts—wills are not required to be e-filed, documents filed under seal or presented to the court in camera *must not* be e-filed, and documents to which access is otherwise restricted by law or court order *must not* be e-filed. Tex. R. Civ. P. 9.2(f)(4). In appellate courts, documents filed under seal, subject to a motion to seal, or to which access is otherwise restricted by law or court order *must not* be e-filed. Tex. R. App. P. 9.2(c)(3). And for good cause, all courts may permit a party to file other documents in paper form in a case. Tex. R. Civ. P. 21(f)(4)(C); Tex. R. App. P. 9.2(c)(3).

C. Overview of Statewide E-Filing Rules

The following rules have been amended to address procedural matters relating to e-filed documents: Texas Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502, and Texas Rules of Appellate Procedure 6, 9, and 37. The Supreme Court of Texas and the Court of Criminal Appeals issued companion orders attaching these and amended rules, as well as new rules governing sensitive data in any filed document—Texas Rule of Civil Procedure 21c and Texas Rules of Appellate Procedure 9.9 and 9.10—and unrelated amendments to Texas Rules of Appellate Procedures 68, 70-71, and 73 that apply in criminal cases alone. *See* Supreme Court of Texas Misc. Docket No. 13-9165 (Dec. 13, 2013); Court of Criminal Appeals Misc. Docket No. 13-003 (Dec. 11, 2013). The orders also attach amendments to appendices to the Texas Rules of Appellate Procedure that contain revised standards governing the form of the appellate record in the Supreme Court of Texas and in the Court of Criminal Appeals. *See id.* Finally, the orders attach amendments to an appendix item governing applications for writ of habeas corpus. *See id.* The orders are attached hereto as ([Appendix C](#)).

This section provides a brief overview of some of the more significant provisions of the e-filing rules. Practitioners should read all of the rules in Appendix C for a full understanding of the rules governing e-filing.

⁴ A handful of Texas courts (mostly appellate courts) mandated e-filing before the current mandate took effect.

1. Time of Filing and Service

Unless a document must be filed by a certain time of day in a trial or appellate court, the document will be considered timely filed if it is e-filed at any time before midnight (in the court's time zone) on the filing deadline. Tex. R. Civ. P. 21(f)(5); Tex. R. App. P. 9.2(c)(4). If the document is untimely due to a technical failure or system outage, then the filing party may seek appropriate relief from the court. Tex. R. Civ. P. 21(f)(6); Tex. R. App. P. 9.2(c)(4). Texas Rule of Civil Procedure 21(f)(6) also provides that, "[i]f the missed deadline is one imposed by the [] [Texas rules of Civil Procedure], the filing party must be given a reasonable extension of time to complete the filing."

As a general rule, an e-filed document is deemed filed when it is transmitted to the filing party's electronic filing service provider. Tex. R. Civ. P. 21(f)(5); Tex. R. App. P. 9.2(c)(4). But there are exceptions for a document that is transmitted during the weekend or on a holiday and for a document requiring a motion and order allowing its filing. See Tex. R. Civ. P. 21(f)(5); Tex. R. App. P. 9.2(c)(4).

Under amended Texas Rules of Civil Procedure 4 and 21a(c), the three-day grace period that used to be added when calendaring the due date for discovery responses and other responsive documents applies only when the document triggering the response obligation has been served by regular mail.

Practice Tip: The three-day grace period for response deadlines applies only if the document triggering the response obligation is served by *regular* mail. It does not apply to any other type of service.

2. Methods and Completion of Service

Under amended Texas Rule of Civil Procedure 21a(a) and Texas Rule of Appellate Procedure 9.5(b), e-filed documents must be served electronically through the EFM if the email address of the party or attorney to be served is on file with the EFM. If the email address is not on file with the EFM, the e-filer may use any of the other permissible forms of service, which also apply whenever a document is not e-filed and include email and commercial-delivery services.

Texas Rule of Civil Procedure 21a(b)(3) and Texas Rule of Appellate Procedure 9.5(c)(4) provide that electronic service "is complete on transmission of the document to the serving party's electronic filing service provider" and that the EFM "will send confirmation of service to the serving party." Although the rules now allow service by email, they do not address when service by email is complete.

Practice Tip: If you serve a document by email, maintain documentation of when you send the transmittal email and, if possible, when the party or attorney representing the party receives the email. The rules do not address when service by email is complete, but it will be upon transmission or receipt.

3. Content and Form Requirements

Documents that are filed (traditionally or electronically) in trial courts and appellate courts must include the email addresses of each attorney whose name appears on the documents (as representing a party) and all unrepresented filing parties. Tex. R. Civ. P. 21(f)(2), 57; Tex. R. App. P. 9.1.

Practice Tip: When you file a document, include your email address in your signature block in that document.

A document that is e-filed or served electronically will be considered signed if it includes either (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. Tex. R. Civ. P. 21(f)(7); Tex. R. App. P. 9.1(c).

All e-filed documents 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 JCIT's approved technology standards, which are currently in Misc. Docket No. 14-9079 (**Appendix D**). Documents e-filed in appellate courts, and any paper copies of such documents, are subject to additional requirements relating to form. See Tex. R. App. P. 9.4.

Practice Tip: E-filing service providers can assist e-filers with complying with requirements relating to form. The list of approved providers is available at <http://www.efiletexas.gov/service-providers.htm>.

4. Paper Copy Requirements

If you e-file a document, you do not need to file any paper copies of the document unless you are required by local rule to do so. This is true in the trial courts and courts of appeals. See Tex. R. Civ. P. 21(f)(9); Tex. R. App. P. 9.3(a)(2). The Texas Rules of Appellate Procedures contain additional paper-copy requirements that apply whenever a document is not e-filed. See Tex. R. App. P. 9.3(a)(1), (b)(1).

Practice Tip: Before you e-file a document, check the local rules that apply in the court in which you will e-file the document to determine whether you must also file paper copies of the document. Local rules are posted on the Supreme Court of Texas' website, at <http://www.supreme.courts.state.tx.us/rules/local.asp>.

5. Sensitive Data Requirements

New sensitive-data rules apply to all documents filed in the trial courts and appellate courts.

“Sensitive data” is defined under the rules as: (a) a driver’s license number, passport number, social security number, tax identification number, or similar government-issued personal identification number; (b) a bank account number, credit card number, or other financial account number; and (c) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed. Tex. R. Civ. P. 21c; Tex. R. App. P. 9.9(a), 9.10(a).

As a general rule, sensitive data must be redacted from a document before the document is filed. *See* Tex. R. Civ. P. 21c(b); Tex. R. App. P. 9.9(b), 9.10(b). But that rule does not apply in civil cases to the extent the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation. Tex. R. Civ. P. 21c(b); Tex. R. App. P. 9.9(b). Also excepted are wills and documents filed under seal in trial courts, Tex. R. Civ. P. 21c(b), and appellate records, Tex. R. App. P. 9.9(b).

The rules prescribe two alternative redaction methods: (1) use the letter X in place of each omitted digit or character; or (2) remove the sensitive data in a manner indicating that the data has been redacted. Tex. R. Civ. P. 21c(c); Tex. R. App. P. 9.9(c), 9.10(c).

A party that files a redacted version of a document must retain the unredacted version of the document. The retention period required depends on the stage and type of the proceeding. Tex. R. Civ. P. 21c(c) (requiring retention “during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed”); Tex. R. App. P. 9.9(c) (requiring retention in appeals in civil cases “during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed”); Tex. R. App. P. 9.10(c) (requiring retention in appeals in criminal cases “during the pendency of the appeal and any related proceedings filed within three years of the date the judgment is signed”).

If a document filed in a civil case is required to contain sensitive data, the filing party must notify the clerk of that fact in the manner prescribed in the rules. *See* Tex. R. Civ. P. 21c(d); Tex. R. App. P. 9.9(d). There is no comparable rule for documents filed in criminal cases. Moreover, the Court of Criminal Appeals has prescribed specific standards that apply to sensitive data in appellate documents filed in criminal cases. *See* Tex. R. App. P. 9.10(d)–(f).

Practice Tip: Do not include sensitive data in any document that you file unless you are required to do so.

IV. POTENTIAL AMENDMENTS TO THE TEXAS RULES OF EVIDENCE⁵

Two rule projects underway at the Court pertain to the Texas Rules of Evidence. One project involves revisions to Rule 902(10), which addresses affidavits needed to authenticate documents. The other project entails a comprehensive restyling of the rules.

A. Texas Rule of Evidence 902(10)

The potential amendments to Texas Rule of Evidence 902(10) stem from Senate Bill 679, which the 83rd Legislature enacted in 2013. The bill provides, among other things, that Rule 902(10) must be amended as soon as practicable after the effective date of the bill—September 1, 2013—“to provide that medical records and medical billing information otherwise attached to an affidavit made for the purpose of that rule and served with the affidavit on the other parties to the relevant action are not required to be filed with the clerk of the court before the trial commences.” Tex. S.B. 679, 83rd Leg., R.S. (2013). The bill is targeted specifically at affidavits relating to records of amounts that have been charged for services provided, and it amends Sections 18.001 and 18.002 of the Civil Practice and Remedies Code to address requirements relating to such records. *See id.*; Tex. Civ. Prac. & Rem. Code Ann. §§ 18.001(b), (d), 18.002(b-1)–(b-2) (West Supp. 2013). Of note, new 18.002(b-1) contains a new form affidavit for such records, and new 18.002(b-2) provides, “If a medical bill or other itemized statement attached to an affidavit under . . . (b-1) reflects a charge that is not recoverable, the reference to that charge is not admissible.” *Id.* § 18.002(b-1)–(b-2).

On June 4, 2013, the Court asked the Supreme Court Advisory Committee (SCAC)⁶ for assistance with amending Rule 902(10) in response to Senate Bill 679. The SCAC discussed potential amendments during its meeting on September 27, 2013.⁷ The starting point for amended Rule 902(10) was a restyled version of the rule, which is addressed further in Section IV.B. below. After discussing the amended

⁵ This section of the article was prepared with assistance from the Court’s current Rules Attorney, Martha Newton.

⁶ The Court created the SCAC in 1940 and has reconstituted it multiple times since then. *See* Misc. Docket No. 11-9259 (Dec. 28, 2011) (providing background information and listing current SCAC members). The SCAC “drafts rules as directed by the Court; solicits, summarizes, and reports to the Court the views of the bar and the public on court rules and procedures; and makes recommendations for change.” *Id.* SCAC recommendations do not bind the Court. *See id.*

⁷ The meeting transcript is available at the following link: <http://www.supreme.courts.state.tx.us/rules/scac.asp>.

rule, the SCAC was in favor of removing the pretrial filing requirement for *all* business records, not just medical records, as ordered by the Legislature. The SCAC also recommended other changes to the rule to address inconsistencies with relevant statutes and to clarify and simplify the procedures relating to affidavits for business records—e.g., by providing the same service deadlines for all affidavits, as opposed to a 30-days-before-trial deadline for affidavits relating to medical records and a 14-days-before-trial deadline for affidavits relating to other types of business records.⁸ The Court is expected to issue its own proposed amendments to Rule 902(10) at some point this spring.

B. Restyling of Texas Rules of Evidence

The Court initiated this project in October 2010, shortly after the Judicial Conference of the United States approved restyled Federal Rules of Evidence.⁹ The Court asked the SCAC to restyle the Texas Rules of Evidence in the same manner, with assistance from members of the State Bar of Texas Administration of Rules of Evidence Committee.¹⁰ For provisions that are substantively the same as the federal rules, the Court directed the SCAC to use the same language. For provisions that are different, the Court directed the SCAC to use the same restyling protocols used for the federal rules. The resulting amendments are intended to be stylistic; they are not intended to be substantive.

State Bar Evidence Committee members took the laboring oar on drafting the restyled rules. The SCAC discussed their proposals during its meetings on September 27 and October 18, 2013.¹¹ The State Bar Evidence Committee members amended the draft rules in response to feedback from the SCAC. The current draft of the restyled rules, along with explanatory

comments, is 61 pages long and is available at: <http://jwclientservices.jw.com/sites/scac/default.aspx>.¹²

V. CONCLUSION

The rule-making process is dynamic and never-ending in Texas. This article touches on just a few of the rules that have been promulgated and amended in the recent past and some rules to expect in the near future. All practitioners should keep in mind that the Supreme Court of Texas invites—and pays attention to—public comments it receives regarding proposed rules. All orders containing proposed rules also contain guidance about how and when to submit comments. Everyone should stay abreast of proposed rules and provide comments about rules of interest.

⁸ The version of the rule discussed, and all other related materials, are posted on the Court's website, in a file entitled "Supplementary Materials" that is located next to the transcripts of the SCAC meetings in September 2013. See <http://www.supreme.courts.state.tx.us/rules/scac.asp#2013>.

⁹ The amended, restyled Federal Rules of Evidence ultimately took effect on December 1, 2011.

¹⁰ The State Bar of Texas Board of Directors established the Administration of Rules of Evidence Committee, which monitors rules of evidence and related statutes and assists with amending the evidence rules in this State. See <http://www.texasbar.com/AM/Template.cfm?Section=Committees>. Judge Robin Malone Darr is the Committee Chair.

¹¹ The meeting transcripts are available at the following link: <http://www.supreme.courts.state.tx.us/rules/scac.asp>.

¹² The document itself is entitled "Restyled TRE – Revised 10.22.13." On the SCAC's webpage, it is entitled "SCAC – Restyled TRE revised 10 22 13" and dated November 12, 2013. The document is filed under the "SCAC Library" tab.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9022

FINAL APPROVAL OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(10)(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows.

2. By Order dated November 13, 2012, in Misc. Docket No. 12-9191, the Court promulgated Rules of Civil Procedure 91a and 169 and Rule of Evidence 902(10)(c), as well as amendments to Rules of Civil Procedure 47 and 190, and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules, effective March 1, 2013.

3. Rule of Civil Procedure 91a and Rule of Evidence 902(10)(c) apply to all cases, including those pending on March 1, 2013. Rule of Civil Procedure 169 and the amendments to Rules of Civil Procedure 47 and 190 apply to cases filed on or after March 1, 2013, except for those filed in justice court.

4. This Order also promulgates a revised civil case information sheet required by Rule 78a of the Texas Rules of Civil Procedure, in accordance with the amendments to Rule of Civil Procedure 47. The revised case information sheet applies to cases filed on or after March 1, 2013.


5. The Clerk is directed to:


- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;


- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.


Dated: February 12, 2013

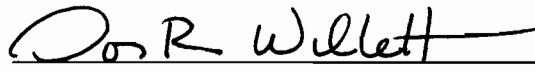
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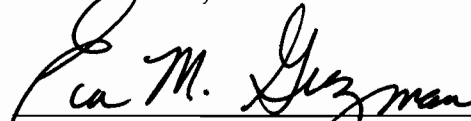

Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice



Paul W. Green, Justice

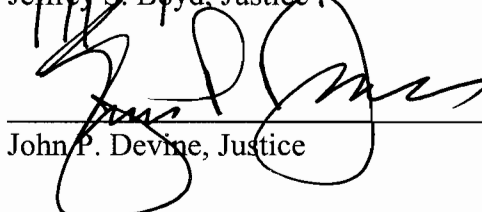

Phil Johnson, Justice


Don R. Willett, Justice


Eva M. Guzman, Justice


Debra H. Lehrmann, Justice


Jeffrey S. Boyd, Justice


John P. Devine, Justice

DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

- (a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;
- (b) filed at least 21 days before the motion is heard; and
- (c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

- (a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.
- (b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a

withdrawal of the motion or an amended motion directed to the amended cause of action.

- (c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).
- (d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a.7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be

ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term “hearing” in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

- (a) a short statement of the cause of action sufficient to give fair notice of the claim involved;
- (b) ~~in all claims for unliquidated damages only the~~ a statement that the damages sought are within the jurisdictional limits of the court;
- (c) except in suits governed by the Family Code, a statement that the party seeks:
 - (1) only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or
 - (2) monetary relief of \$100,000 or less and non-monetary relief; or
 - (3) monetary relief over \$100,000 but not more than \$200,000; or
 - (4) monetary relief over \$200,000 but not more than \$1,000,000; or
 - (5) monetary relief over \$1,000,000; and

- (ed) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

- (a) *Application.*
- (1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.
 - (2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.
- (b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of \$100,000, excluding post-judgment interest.
- (c) *Removal from Process.*
- (1) A court must remove a suit from the expedited actions process:

- (A) on motion and a showing of good cause by any party; or
 - (B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(1).
- (2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.
 - (3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).
- (d) *Expedited Actions Process.*
- (1) Discovery. Discovery is governed by Rule 190.2.
 - (2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.
 - (3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.
 - (A) The term "side" has the same definition set out in Rule 233.
 - (B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.
 - (4) Alternative Dispute Resolution.

- (A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:
 - (i) not exceed a half-day in duration, excluding scheduling time;
 - (ii) not exceed a total cost of twice the amount of applicable civil filing fees; and
 - (iii) be completed no later than 60 days before the initial trial setting.
 - (B) The court must consider objections to the referral unless prohibited by statute.
 - (C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).
- (5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed \$100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule.

3. In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that

allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

4. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of \$100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of \$100,000 to the party. The limitation in 169(b) does not apply to a counter-claimant that seeks relief other than that allowed under 169(a)(1).

5. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

...

190.2. Discovery Control Plan — ~~Suits Involving \$50,000 or Less~~ Expedited Actions and Divorces Involving \$50,000 or Less (Level 1)

(a) *Application.* This subdivision applies to:

- (1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating \$50,000 or less, excluding costs, pre-judgment interest and attorneys' fees~~ any suit that is governed by the expedited actions process in Rule 169; and
- (2) unless the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than \$50,000.

~~(b) — Exceptions. This subdivision does not apply if:~~

- ~~(1) — the parties agree that Rule 190.3 should apply;~~

- ~~(2) the court orders a discovery control plan under Rule 190.4; or~~
- ~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~
- ~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~
- (eb) *Limitations.* Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:
- (1) Discovery Period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 30 days before the date set for trial 180 days after the date the first request for discovery of any kind is served on a party.
 - (2) Total Time for Oral Depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.
 - (3) Interrogatories. Any party may serve on any other party no more than 25-15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.
 - (4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.
 - (5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.
 - (6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic

information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

- (dc) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable, If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable,~~ the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

...

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, tThe court must allow additional discovery:

- (a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:
 - (1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and
 - (2) the adverse party would be unfairly prejudiced without such additional discovery;
- (b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed \$100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than

\$50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(10)(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

...

(10) Business Records Accompanied by Affidavit.

...

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

STATE OF TEXAS §

§

COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was \$_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is \$_____.

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. See *Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011).

CIVIL CASE INFORMATION SHEET (REV. 2/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: _____ Email: _____ Address: _____ Telephone: _____ City/State/Zip: _____ Fax: _____ Signature: _____ State Bar No: _____	Plaintiff(s)/Petitioner(s): _____ Defendant(s)/Respondent(s): _____	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
		Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
[Attach additional page as necessary to list all parties]		

2. Indicate case type, or identify the most important issue in the case (select only 1):

<i>Civil</i>			<i>Family Law</i>	
Contract <i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health <i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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4. Indicate damages sought (do not select if it is a family law case):

<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000
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IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-**9043**

CORRECTION TO AMENDMENT TO RULE OF EVIDENCE 902

ORDERED that:

1. The amendment to Rule of Evidence 902(10) promulgated by Order dated February 12, 2013, in Misc. Docket No. 13-9022, is corrected as follows, effective immediately.

2. **Rule 902. Self-Authentication**

...

(10) **Business Records Accompanied by Affidavit.**

...

(c) *Medical expenses affidavit.*


...

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011). The records attached to the affidavit must also meet the admissibility standard of *Haygood*. 356 S.W.3d at 399-400 (“[O]nly evidence of recoverable medical expenses is admissible at trial.”).

3. The Clerk is directed to:

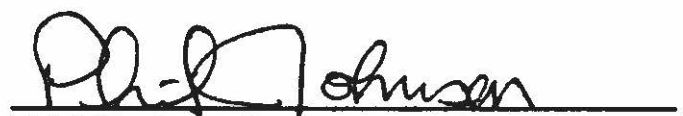
- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

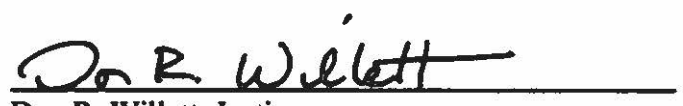
Dated: March ~~26~~²⁷, 2013

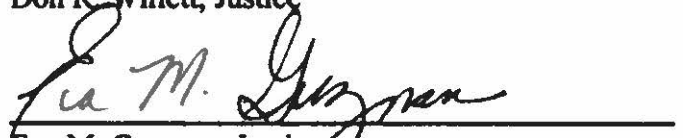

Wallace B. Jefferson, Chief Justice

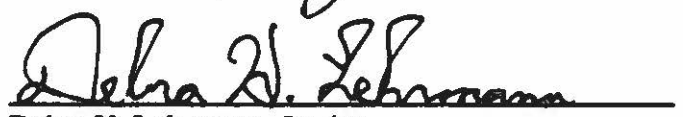

Nathan L. Hecht, Justice

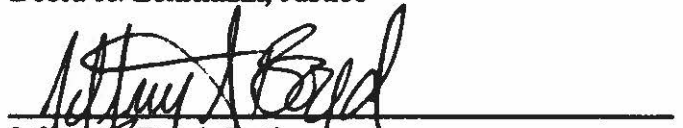

Paul W. Green, Justice

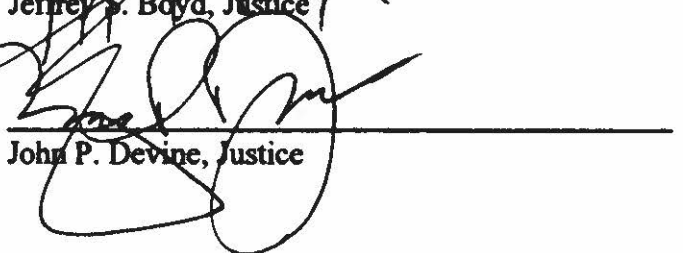

Phil Johnson, Justice


Don R. Willett, Justice


Eva M. Guzman, Justice


Debra H. Lehrmann, Justice


Jeffrey S. Boyd, Justice


John P. Devine, Justice

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9165


ORDER ADOPTING TEXAS RULE OF CIVIL PROCEDURE 21c AND AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 4, 21, 21a, 45, 57, AND 502; TEXAS RULES OF APPELLATE PROCEDURE 6, 9, AND 48; AND THE SUPREME COURT ORDER DIRECTING THE FORM OF THE APPELLATE RECORD

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with Misc. Docket No. 12-9206, as amended by Misc. Docket Nos. 13-9092 and 13-9164, Order Requiring Electronic Filing in Certain Courts, the Supreme Court of Texas adopts Rule of Civil Procedure 21c and amends Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502 and Rules of Appellate Procedure 6, 9, and 48.
2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Supreme Court orders that the appellate record be in the form attached as Appendix C.
3. By order dated August 16, 2013, in Misc. Docket No. 13-9128, the Court proposed the adoption of Rule of Civil Procedure 21c and amendments to Rules of Civil Procedure 4, 21, 21a, and 502; Rules of Appellate Procedure 6 and 9; and Appendix C to the Rules of Appellate Procedure. The Court also invited public comment. Following public comment, the Court made revisions to the rules and to the appendix. This order incorporates those revisions and contains the final version of the rules and appendix, effective January 1, 2014.
4. These rules supersede all local rules and templates on electronic filing, including all county and district court local rules based on e-filing templates; the justice court e-filing rules, approved in Misc. Docket No. 07-9200; the Supreme Court e-filing rules, approved in Misc. Docket No. 11-9152; the appellate e-filing templates, approved in Misc. Docket 11-9118; and local rules of courts of appeals based on those templates.

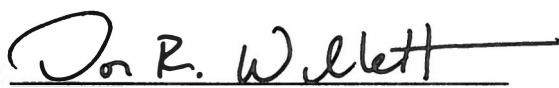
5. The Clerk is directed to:
- a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

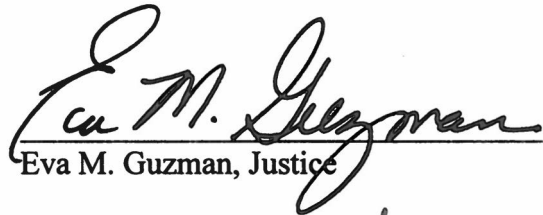
Dated: December 13th, 2013.

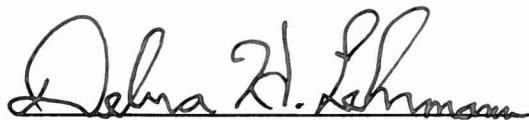

Nathan L. Hecht, Chief Justice

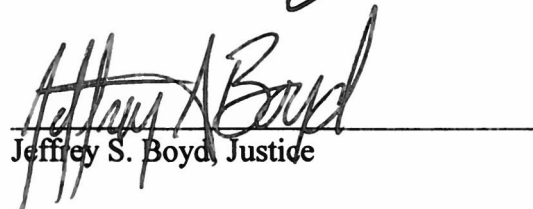

Paul W. Green, Justice

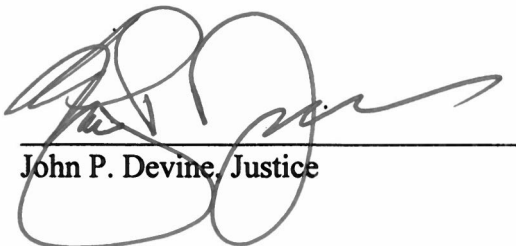

Phil Johnson, Justice

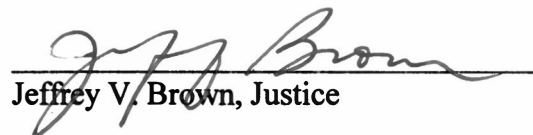

Don R. Willett, Justice


Eva M. Guzman, Justice


Debra H. Lehrmann, Justice


Jeffrey S. Boyd, Justice


John P. Devine, Justice


Jeffrey V. Brown, Justice

IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 13-003

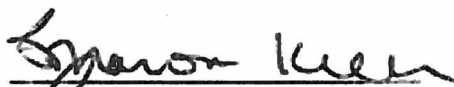
ORDER ADOPTING AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

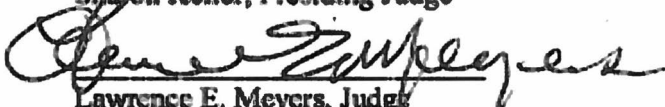
ORDERED that:


1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 6, 9, 37, 48, 68, 70, 71, and 73, Appendix C, Appendix F: Application for a Writ of Habeas Corpus and Appendix G; Appendix E: Order Directing the Form of the Appellate Record in Criminal Cases and Appendix H: Order Regarding Court of Appeals Clerk Preparing Record to Send to the Court of Criminal Appeals is repealed, effective January 1, 2014.
2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Court of Criminal Appeals orders that the appellate record be in the form attached as Appendix C.
3. By order dated September 18, 2013, in Misc. Docket No. 13-2, the Court proposed the adoption of Rules of Appellate Procedure 6, 9, 68, and 73, the Appendix: Application for Writ of Habeas Corpus; Rule 34.4 and Appendix C; and Appendix G. The Court also invited public comment. Following public comment, the Court made revisions to the rules and to the appendix. This order incorporates those revisions and contains the final version of the rules and appendix, effective January 1, 2014.
4. These rules supersede all local rules of the courts of appeals on electronic filing.

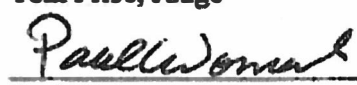
- 5. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the Texas Register.

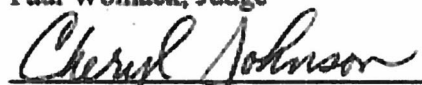
SIGNED AND ENTERED this 11th day of December, 2013.

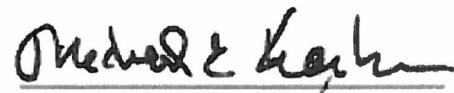

Sharon Keller, Presiding Judge

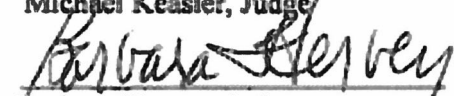

Lawrence E. Meyers, Judge

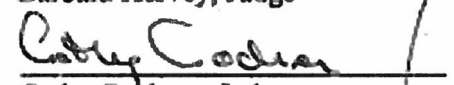

Tom Price, Judge

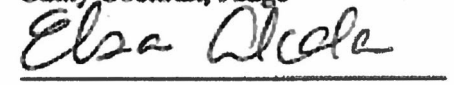

Paul Womack, Judge


Cheryl Johnson, Judge


Michael Keasler, Judge


Barbara Hervey, Judge


Cathy Cochran, Judge


Elsa Alcalá, Judge

Amendments to Rule 4, Texas Rule of Civil Procedure

RULE 4. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays, and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail, or by telephonic document transfer, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

Amendments to Rule 21, Texas Rule of Civil Procedure

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

(a) *Filing and Service Required.* Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, ~~shall~~ must be filed with the clerk of the court in writing, ~~shall~~ must state the grounds therefor, ~~shall~~ must set forth the relief or order sought, and at the same time a true copy ~~shall~~ must be served on all other parties, and ~~shall~~ must be noted on the docket.

(b) *Service of Notice of Hearing.* An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, ~~shall~~ must be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

(c) *Multiple Parties.* If there is more than one other party represented by different attorneys, one copy of ~~each~~ such pleading ~~shall~~ must be served on ~~delivered or mailed to~~ each attorney in charge.

(d) *Certificate of Service.* The party or attorney of record, ~~shall~~ must certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion, or application.

(e) *Additional Copies.* After one copy is served on a party, that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

(f) Electronic Filing.

(1) Requirement. Except in juvenile cases under Title 3 of the Family Code, 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.

(2) Email Address. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

(3) Mechanism. 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.

(4) Exceptions.

(A) Wills are not required to be filed electronically.

(B) The following documents must not be filed electronically:

(i) documents filed under seal or presented to the court in camera; and

(ii) documents to which access is otherwise restricted by law or court order.

(C) For good cause, a court may permit a party to file other documents in paper form in a particular case.

(5) Timely Filing. 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.

(6) Technical Failure. 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.

(7) Electronic Signatures. 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.

(8) Format. 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.

(9) Paper Copies. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

(10) Electronic Notices From the Court. The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

(11) Non-Conforming Documents. 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.

(12) Original Wills. 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.

(13) Official Record. 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.

Comment to 2013 Change: Rule 21 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order – Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 – mandating electronic filing in civil cases beginning on January 1, 2014. The mandate will be implemented according to the schedule in the order and will be completed by July 1, 2016. The revisions reflect the fact that the mandate will only apply to a subset of Texas courts until that date.

Amendments to Rule 21a, Texas Rule of Civil Procedure

RULE 21a. METHODS OF SERVICE

(a) *Methods of Service.* Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in the manner specified below:

(1) Documents Filed Electronically. A document filed electronically under 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 under subparagraph (2).

(2) Documents Not Filed Electronically. A document not filed electronically may be served either in person, or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, by commercial delivery service, or by fax, telephonic document transfer to the recipient's current telecopier number, by email, or by such other manner as the court in its discretion may direct.

(b) *When Complete.*

(1) Service by mail or commercial delivery service shall be complete upon deposit of the paper document, postpaid and properly addressed, in the mail or with a commercial

~~delivery service, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.~~

(2) Service by fax is complete on receipt. Service completed after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(3) 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.

(c) Time for Action After Service. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, ~~or by telephonic document transfer,~~ three days shall be added to the prescribed period.

(d) Who May Serve. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(e) Proof of Service. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document ~~notice or instrument~~ was not received, or, if service was by mail, that ~~it~~ the document was not received within three days from the date ~~that it was deposited of deposit in the mail a postoffice or official depository under the care and custody of the United States Postal Service,~~ and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

(f) Procedures Cumulative. These provisions ~~hereof relating to the method of service of notice~~ are cumulative of all other methods of service prescribed by these rules.

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Comment to 2013 Change: Rule 21a is revised to incorporate rules for electronic service in accordance with the Supreme Court's order – Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 – mandating electronic filing in civil cases beginning on January 1, 2014.

New Rule 21c, Texas Rules of Civil Procedure

RULE 21c. PRIVACY PROTECTION FOR FILED DOCUMENTS.

(a) *Sensitive Data Defined.* Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number;
and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) *Filing of Documents Containing Sensitive Data Prohibited.* Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) *Redaction of Sensitive Data; Retention Requirement.* Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) *Notice to Clerk.* If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) *Non-Conforming Documents.* The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) *Restriction on Remote Access.* Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

Comment to 2013 Change: Rule 21c is added to provide privacy protection for documents filed in civil cases.

Amendments to Rule 45, Texas Rule of Civil Procedure

RULE 45. DEFINITION AND SYSTEM

Pleadings in the district and county court shall

- (a) be by petition and answer;
- (b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for an objection when fair notice to the opponent is given by the allegations as a whole; and
- (c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense; ;
- ~~(d) —~~

Pleadings that are not filed electronically must be in writing, on paper measuring approximately 8 ½ inches by 11 inches, and signed by the party or his attorney, ~~and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court.~~ The use of recycled paper is strongly encouraged.

~~When a copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.~~

All pleadings shall be construed so as to do substantial justice.

Amendments to Rule 57, Texas Rule of Civil Procedure

RULE 57. SIGNING OF PLEADINGS

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, email address, and if available, ~~telecopier~~ fax number. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, email address, and, if available, ~~telecopier~~ fax number.

Amendments to Rule 502, Texas Rule of Civil Procedure

RULE 502. INSTITUTION OF SUIT

RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing. Electronic filing is governed by Rule 21.

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Amendments to Rule 6, Texas Rule of Appellate Procedure

Rule 6. Representation by Counsel

6.1. Lead Counsel

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(c) *How to Designate.* The original or a new lead counsel may be designated by filing a notice stating that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. If a new lead counsel is being designated, both the new attorney and either the party or the former lead counsel must sign the notice.

6.2. Appearance of Other Attorneys

An attorney other than lead counsel may file a notice stating that the attorney represents a specified party to the proceeding and giving that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. The clerk will note on the docket the attorney's appearance. When a brief or motion is filed, the clerk will note on the docket the name of each attorney, if not already noted, who appears on the document.

Amendments to Rule 9, Texas Rule of Appellate Procedure

Rule 9. ~~Papers~~ Documents Generally

9.1. Signing

(a) *Represented Parties.* If a party is represented by counsel, a document filed on that party's behalf must be signed by at least one of the party's attorneys. For each attorney whose name appears on a document as representing that party, the document must contain that attorney's State Bar of Texas identification number, mailing address, telephone number, ~~and~~ fax number, if any, and email address.

(b) *Unrepresented Parties.* A party not represented by counsel must sign any document that the party files and give the party's mailing address, telephone number, ~~and~~ fax number, if any, and email address.

(c) *Electronic Signatures.* A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

(1) a “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

9.2. Filing

(a) *With Whom.* A document is filed in an appellate court by delivering it to:

(1) the clerk of the court in which the document is to be filed; or

(2) a justice or judge of that court who is willing to accept delivery. A justice or judge who accepts delivery must note on the document the date and time of delivery, which will be considered the time of filing, and must promptly send it to the clerk.

(b) *Filing by Mail.*

(1) *Timely Filing.* A document received within ten days after the filing deadline is considered timely filed if:

(A) it was sent to the proper clerk by United States Postal Service ~~first-class, express, registered, or certified mail~~ or a commercial delivery service;

(B) it was placed in an envelope or wrapper properly addressed and stamped; and

(C) it was deposited in the mail or delivered to a commercial delivery service on or before the last day for filing.

(2) *Proof of Mailing.* Though it may consider other proof, the appellate court will accept the following as conclusive proof of the date of mailing:

(A) a legible postmark affixed by the United States Postal Service;

(B) a receipt for registered or certified mail if the receipt is endorsed by the United States Postal Service; ~~or~~

- (C) a certificate of mailing by the United States Postal Service; or
- (D) a receipt endorsed by the commercial delivery service.

(c) *Electronic Filing.* ~~Documents may be permitted or required to be filed, signed, or verified by electronic means by order of the Supreme Court or the Court of Criminal Appeals, or by local rule of a court of appeals. A technical failure that precludes a party's compliance with electronic filing procedures cannot be a basis for disposing of any case.~~

(1) Requirement. Attorneys in civil cases must electronically file documents. Attorneys in criminal cases must electronically file documents except for good cause shown in a motion filed in the appellate court. Unrepresented parties in civil and criminal cases may electronically file documents, but it is not required.

(2) Mechanism. 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.

(3) Exceptions. Documents filed under seal, subject to a pending motion to seal, or to which access is otherwise restricted by law or court order must not be electronically filed. For good cause, an appellate court may permit a party to file other documents in paper form in a particular case.

(4) Timely Filing. 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 the motion is granted.

(5) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.

(6) Confirmation of Filing. The electronic filing manager will send a filing confirmation notice to the filing party.

(7) Electronic Notices From the Court. The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

9.3. Number of Copies; ~~Electronic Copies~~

(a) *Courts of Appeals.*

(1) Paper Copies in General— Document Filed in Paper Form. If a document is not electronically filed, ~~A~~ a party must file ~~the original and one unbound copy of the document unless otherwise required by local rule. The unbound copy of an appendix must contain a separate page before each document and must not include tabs that extend beyond the edge of the page.~~

~~(A) — the original and three copies of all documents in an original proceeding;~~

~~(B) — the original and two copies of all motions in an appellate proceeding; and~~

~~(C) — the original and five copies of all other documents.~~

(2) Electronically Filed Document. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

~~Local Rules.~~ A court of appeals may by local rule require:

~~(A) — the filing of more or fewer paper copies of any document other than a petition for discretionary review; and~~

~~(B) — an electronic copy of a document filed in paper form.~~

(b) *Supreme Court and Court of Criminal Appeals.*

(1) Paper copies of Document Filed in Paper Form. If a document is not electronically filed, A a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be

filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

~~(2) — Electronic Copies of Documents Filed in Paper Form. An electronic copy of a document filed in paper form may be required by order of the Supreme Court or the Court of Criminal Appeals.~~

~~(3)(2) Paper Copies of Electronically Filed Document. Paper~~ Copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within ~~one business day~~ three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.

(c) *Exception for Record.* Only the original record need be filed in any proceeding.

9.4. Form

Except for the record, a document filed with an appellate court, including a paper copy of an electronically filed document, must — unless the court accepts another form in the interest of justice — be in the following form:

(a) *Printing.* A document may be produced by standard typographic printing or by any duplicating process that produces a distinct black image. Printing ~~may~~ must be on ~~both~~ one sides of the paper.

(b) *Paper Type and Size.* The paper on which ~~the~~ a document is produced must be 8½ by 11 inches, white or nearly white, and opaque. ~~Paper must be 8½ by 11 inches.~~

(c) *Margins.* ~~Papers~~ Documents must have at least one-inch margins on both sides and at the top and bottom.

(d) *Spacing.* Text must be double-spaced, but footnotes, block quotations, short lists, and issues or points of error may be single-spaced.

(e) *Typeface.* A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

(f) *Binding and Covering.* A paper document must be bound so as to ensure that it will not lose its cover or fall apart in regular use. A paper document should be stapled once in the top left-hand corner or be bound so that it will lie flat when open. A paper petition or brief should have durable front and back covers which must not be plastic or be red, black, or dark blue.

(g) *Contents of Cover.* A document's front cover, if any, must contain the case style, the case number, the title of the document being filed, the name of the party filing the document, and the name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number of the lead counsel for the filing party. If a party requests oral argument in the court of appeals, the request must appear on the front cover of that party's first brief.

(h) *Appendix and Original Proceeding Record.* A paper appendix may be bound either with the document to which it is related or separately. If separately bound, the appendix must comply with paragraph (f). A paper record in an original proceeding or a paper appendix should must be tabbed and indexed. An electronically filed record in an original proceeding or an electronically filed appendix that includes more than one item must contain bookmarks to assist in locating each item.

(i) *Length.*

(1) *Contents Included and Excluded.* In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) *Maximum Length.* The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if

not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review ~~and response~~ in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply ~~to a response~~ to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(j) Electronically Filed Documents. An electronically filed document must:

(1) be in text-searchable portable document format (PDF);

(2) be directly converted to PDF rather than scanned, if possible;

(3) not be locked;

(4) be combined with any appendix into one computer file, unless that file would exceed the size limit prescribed by the electronic filing manager; and

(5) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

~~(j)(k) Nonconforming Documents. Unless every copy of a document conforms to these rules~~ If a document fails to conform with these rules, the court may strike the document or and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for and permit the party to resubmit the document in a conforming format by a specified deadline. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind.

9.5. Service

(a) *Service of All Documents Required.* At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding. Service on a party represented by counsel must be made on that party's lead counsel. Except in original proceedings, But a party need not serve a copy of the record.

(b) *Manner of Service.* ~~Service on a party represented by counsel must be made on that party's lead counsel. Service may be personal, by mail, by commercial delivery service, or by fax. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served.~~

(1) Documents Filed Electronically. A document filed electronically under Rule 9.2 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 under subparagraph (2).

(2) Documents Not Filed Electronically. A document that is not filed electronically may be served in person, by mail, by commercial delivery service, by fax, or by email. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served.

(c) *When Complete.*

(1) Service by mail is complete on mailing.

(2) Service by commercial delivery service is complete when the document is placed in the control of the delivery service.

(3) Service by fax is complete on receipt.

(4) 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.

(d) *Proof of Service.* A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.

(e) *Certificate Requirements.* A certificate of service must be signed by the person who made the service and must state:

(1) the date and manner of service;

(2) the name and address of each person served; and

(3) if the person served is a party's attorney, the name of the party represented by that attorney.

...

9.9 Privacy Protection for Documents Filed in Civil Cases.

(a) *Sensitive Data Defined.* Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) *Filing of Documents Containing Sensitive Data Prohibited.* Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative

regulation, an electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted, except for the record in an appeal under Section Two.

(c) *Redaction of Sensitive Data; Retention Requirement.* Sensitive data must be redacted by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed.

(d) *Notice to Clerk.* If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.”

(e) *Restriction on Remote Access.* Documents that contain unredacted sensitive data in violation of this rule must not be posted on the Internet.

Notes and Comments

Comment to 1997 change: This is former Rule 4. Subdivision 9.4, prescribing the form of documents filed in the appellate courts, is changed and the form to be used is stated in significantly more detail. Former subdivisions (f) and (g), regarding service of documents, are merged into subdivision 9.5. Former Rule 6 is included as subdivision 9.6, but no substantive change is made. Other changes are made throughout the rule. Electronic filing is authorized by §§ 51.801-.807 of the Government Code.

Comment to 2002 change: The change [to Rule 9.5(a)] clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing *parties*. Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7.

Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.

Comment to 2008 change: Subdivision 9.3 is amended to reduce the number of copies of a motion for extension of time or response filed in the Supreme Court. Subdivision 9.8 is new. To protect the privacy of minors in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights, Section 109.002(d) of the Family Code authorizes appellate courts, in their opinions, to identify parties only by fictitious names or by initials. Similarly, Section 56.01(j) of the Family Code prohibits identification of a minor or a minor's family in an appellate opinion related to juvenile court proceedings. But as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minors' privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides protection from such disclosures. Any fictitious name should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases. Although appellate courts are authorized to enforce the rule's provisions requiring redaction, parties and amici curiae are responsible for ensuring that briefs and other papers submitted to the court fully comply with the rule.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Comment to 2013 Change: Rule 9 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order – Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 – mandating electronic filing in civil cases in appellate courts, effective January 1, 2014. In addition, Rule 9.9 is added to provide privacy protection for all documents, both paper and electronic, filed in civil cases in appellate courts.

9.10 Privacy Protection for Documents Filed in Criminal Cases.

(a) Sensitive Data Defined. Sensitive data consists of:

- (1) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;
- (2) bank account number, credit card number, and other financial account number;

(3) a birth date, a home address, and the name of any person who was a minor at the time the offense was committed.

(b) Redacted Filings. Unless a court orders otherwise, an electronic or paper filing with the court, including the contents of any appendices, must not contain sensitive data.

(c) Redaction procedures. Sensitive data must be redacted by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filer must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within three years of the date the judgment is signed. If a district court clerk or appellate court clerk discovers unredacted sensitive data in the record, the clerk shall notify the parties and seek a ruling from the court.

(d) Certification. The filing of a document constitutes a certification by the filer that the document complies with paragraphs (a) and (b) of this rule.

(e) Reference List. If a filer believes any information described in paragraph (a) of this rule is essential to a document or that the document would be confusing without the information, the filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the document to a listed identifier will be construed to refer to the corresponding item of information. If the filer provides a reference list pursuant to this rule, the front page of the document containing the redacted information must indicate that the reference list has been, or will be, provided. On its own initiative, the court may order a sealed reference list in any case.

(f) Sealed materials. Materials that are required by statute to be sealed, redacted, or kept confidential, such as the items set out in Articles 35.29 (Personal Information About Jurors), 38.45 (Evidence Depicting or Describing Abuse of or Sexual Conduct by Child or Minor), and 42.12, § 9(j), must be treated in accordance with the pertinent statutes and shall not be publicly available on the Internet. A court may also order that a document be filed under seal in paper form or electronic form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record. If a court orders material sealed, whether it be sensitive data or other materials, the court’s sealing order must be affixed to the outside of the sealed container if the sealed material is filed in paper form, or be the first document that appears if filed in electronic form. Sealed portions of the clerk's and reporter's records should be clearly marked and separated from unsealed portions and tendered as separate records, whether

in paper form or electronic form. Sealed material shall not be available either on the Internet or in other form without court order.

Amendments to Rule 37, Texas Rule of Appellate Procedure

Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record

37.2. On Receiving the Record

On receiving the clerk's record ~~from the trial court clerk~~ or the reporter's record ~~from the reporter~~, the appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record. If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. If not, the clerk must endorse on the clerk's record or reporter's record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date. In a criminal case, the record must not be posted on the Internet.

Amendments to Rule 48, Texas Rule of Appellate Procedure

Rule 48. Copy of Opinion and Judgment to Interested Parties and Other Courts

48.1. ~~Mailing~~ Recipients of Opinion and Judgment in All Cases

On the date when an appellate court's opinion is handed down, the appellate clerk must ~~mail~~send or deliver copies of the opinion and judgment to the following persons:

- (a) the trial judge;
- (b) the trial court clerk;
- (c) the regional administrative judge; and
- (d) all parties to the appeal.

...

Amendments to Rule 68, Texas Rule of Appellate Procedure

Rule 68.4 Contents of Petition

A petition for discretionary review must be as brief as possible. It must be addressed to the “Court of Criminal Appeals of Texas” and must state the name of the party or parties applying for review. The petition must contain the following items:

(a) *Identity of Judge, Parties, and Counsel.* The petition must list the trial court judge, all parties to the judgment or order appealed from, and the names and addresses of all trial and appellate counsel.

~~(a)~~ (b) *Table of Contents.* The petition must include a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each ground or question presented for review.

~~(b)~~ (c) *Index of Authorities.* The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

~~(c)~~ (d) *Statement Regarding Oral Argument.* The petition must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived. If a reply or cross-petition is filed, it likewise must include a statement of why oral argument should or should not be heard.

~~(d)~~ (e) *Statement of the Case.* The petition must state briefly the nature of the case. This statement should seldom exceed half a page. The details of the case should be reserved and stated with the pertinent grounds or questions.

~~(e)~~ (f) *Statement of Procedural History.* The petition must state:

(1) the date any opinion of the court of appeals was handed down, or the date of any order of the court of appeals disposing of the case without an opinion;

(2) the date any motion for rehearing was filed (or a statement that none was filed); and

- (3) the date the motion for rehearing was overruled or otherwise disposed of.

~~(g)~~ (g) *Grounds for Review.* The petition must state briefly, without argument, the grounds on which the petition is based. The grounds must be separately numbered. If the petitioner has access to the record, the petitioner must (after each ground) refer to the page of the record where the matter complained of is found. Instead of listing grounds for review, the petition may contain the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions should be short and concise, not argumentative or repetitious.

~~(g)~~ (h) *Argument.* The petition must contain a direct and concise argument, with supporting authorities, amplifying the reasons for granting review. See Rule 66.3. The court of appeals' opinions will be considered with the petition, and statements in those opinions need not be repeated if counsel accepts them as correct.

~~(h)~~ (i) *Prayer for Relief.* The petition must state clearly the nature of the relief sought.

~~(h)~~ (j) *Appendix.* The petition must contain a copy of any opinion of the court of appeals.

Amendments to Rule 70, Texas Rule of Appellate Procedure

Rule 70. Brief on the Merits

70.2. Reply Respondent's Brief

70.4 Other Briefs

The Court of Criminal Appeals may direct that a party file a brief, or an additional brief, in a particular case. Additionally, upon motion by a party the Court may permit the filing of additional briefs.

Amendments to Rule 71, Texas Rule of Appellate Procedure

Rule 71. Direct Appeals

71.4. Additional Briefs

Upon motion by a party the Court may permit the filing of additional briefs other than those provided for in Rule 38.

Amendments to Rule 73, Texas Rule of Appellate Procedure

Rule 73. Postconviction Applications for Writs of Habeas Corpus

73.1. Form ~~of~~ for Application in ~~Felony Case (Other Than Capital)~~ Filed Under Article 11.07 of the Code of Criminal Procedure

(a) *Prescribed Form.* An application filed under Article 11.07 ~~for post-conviction habeas corpus relief in a felony case without a death penalty, under Code of Criminal Procedure article 11.07,~~ must be ~~made in~~ on the form prescribed by the Court of Criminal Appeals ~~in an order entered for that purpose.~~

(b) *Availability of Form.* The district clerk of the convicting court county of conviction will shall make the forms available to applicants on request, without charge.

(c) *Contents.* The person making the application applicant or petitioner must provide all information required by the form. The application form must include specify all grounds for relief; and must set forth in summary fashion the facts supporting each ground. Any ground not raised on the form will not be considered. The application must not cite cases or other law. Legal citations and arguments may be made in a separate memorandum. The application form must be computer-generated, typewritten, or legibly handwritten legibly.

(d) *Length.* Each ground for relief and supporting facts raised on the form shall not exceed the two pages provided for each ground in the form. The applicant or petitioner may file a separate memorandum. This memorandum shall comply with these rules and shall not exceed 15,000 words if computer-generated or 50 pages if not. If the total number of pages, including those in the original and any additional memoranda, exceed the word or page limits, an application may be dismissed unless the convicting court for good cause shown grants leave to exceed the prescribed limits. The prescribed limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate of compliance.

(e) *Typeface.* A computer-generated memorandum must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

(f) *Certificate of compliance.* A computer-generated memorandum, including any additional memoranda, must include a certificate by the applicant or petitioner stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(dg) *Verification.* The application must be verified by either:

(1) oath made before a notary public or other officer authorized to administer oaths;
or

(2) if the person making the application is an inmate in the Institutional Division of the Department of Criminal Justice or in a county jail, an unsworn declaration in substantially the form required in Civil Practices and Remedies Code chapter 132.

73.2. Non-complianceet Applications

~~The clerk of the convicting court will not file an application that is not on the form prescribed by the Court of Criminal Appeals, and will return the application to the person who filed it, with a copy of the official form. The clerk of the Court of Criminal Appeals may, without filing an application that does not comply with this rule, return it to the clerk of the convicting court, with a notation of the defect, and the clerk of the convicting court will return the application to the person who filed it, with a copy of the official form~~ dismiss an application that does not comply with these rules.

73.3. State's Response

Any response by the State must comply with length, typeface, and certificate of compliance requirements set out in rule 73.1 (d),(e) and (f).

73.34. ~~Summary Sheet~~Duties of District Clerk. Filing and Transmission of Habeas Record

(a) The district clerk of the county of conviction shall accept and file all Code of Criminal Procedure article 11.07 applications.

(b) In addition to the duties set out in Article 11.07, the clerk shall do the following:

(1) If the convicting court enters an order designating issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of that order and proof of the date the district attorney received the habeas application.

(2) When findings of fact and conclusions of law are made, a copy of those findings and conclusions shall immediately be sent to all parties in the case. A party has ten days from the date he receives the findings to file objections, but the trial court may, nevertheless, transmit the record to the Court of Criminal Appeals before the expiration of the ten days.

(3) When a district clerk transmits the record in a postconviction application for a writ of habeas corpus under Code of Criminal Procedure articles 11.07 or

11.071, the district clerk must prepare and transmit a summary sheet that includes the following information:

(aA) the convicting court's name and county, and the name of the judge who tried the case;

(bB) the applicant's name, the offense, the plea, the cause number, the sentence, and the date of sentence, as shown in the judgment of conviction;

(cC) the cause number of any appeal from the conviction and the citation to any published report;

(dD) whether a hearing was held on the application, whether findings of fact were made, any recommendation of the convicting court, and the name of the judge who presided over the application;

(E) the name of counsel if applicant is represented.

The Court of Criminal Appeals may by order adopt a form of summary sheet that the district clerks must use.

(4) The district clerk shall also include in the record transmitted to the Court of Criminal Appeals, among any other pertinent papers or supplements, the indictment or information, any plea papers, the court's docket sheet, the court's charge and the jury's verdict, any proposed findings of fact and conclusions of law, the court's findings of fact and conclusions of law, any objections to the court's findings of fact and conclusions of law filed by either party, and the transcript of any hearings held.

(5) On the 181st day from the date of receipt of the application by the State of a postconviction application for writ of habeas corpus under Article 11.07, the district clerk shall forward the writ record to this Court unless the district court has received an extension of time from the Court of Criminal Appeals pursuant to Rule 73.4.5.

73.5. Time Frame for Resolution of Claims Raised in Application

Within 180 days from the date of receipt of the application by the State, the convicting court shall resolve any issues that the court has timely designated for resolution. Any motion for extension of time must be filed in the Court of Criminal Appeals before the expiration of the 180-day period.

73.46. Action on Application

The Court may deny relief based upon its own review of the application or may issue such other instructions or orders as may be appropriate.

Amendments to Appendix C, Texas Rules of Appellate Procedure

APPENDIX C
IN THE SUPREME COURT OF TEXAS
IN THE COURT OF CRIMINAL APPEALS
ORDER DIRECTING
THE FORM OF THE APPELLATE RECORD

RULE 1 CLERK'S RECORD

1.1. Preparation of Electronic or Paper Clerk's Record.

The trial court clerk must prepare and file the clerk's record in accordance with Rules of Appellate Procedure 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one consolidated record in a case. To prepare the clerk's record, the trial court clerk must:

- (a) gather the documents required by Rule of Appellate Procedure 34.5(a) and those requested by a party under Rule of Appellate Procedure 34.5(b);
- (b) start each document on a new page;
- (c) include the date of filing on each document;
- (d) arrange the documents in ascending chronological order, by date of filing or occurrence;
- (e) start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively – including the front and back covers, tables of contents, certification page, and separator pages, if any – until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page;

- (f) prepare, label, and certify the clerk’s record as required by this rule;
- (g) as far as practicable, include the date of signing by the judge on each order and judgment;
- (h) include on the front cover of the first volume, and any subsequent volumes, of the clerk’s record, whether filed in paper or electronic form, the following information, in substantially the following form:

CLERK’S RECORD

VOLUME ____ of ____

Trial Court Cause No. _____

In the _____ (District or County) Court

of _____ County, Texas,

Honorable _____, Judge Presiding

_____, Plaintiff(s)

vs.

_____, Defendant(s)

Appealed to the

(Supreme Court of Texas at Austin, Texas,

or Court of Criminal Appeals of Texas at Austin, Texas,

or Court of Appeals for the _____ District of Texas, at _____, Texas).

Attorney for Appellant(s):

Name _____

Address _____

Telephone no.: _____

Fax no.: _____

E-mail address: _____

SBOT no.: _____

Attorney for: _____, Appellant(s)

Name of clerk preparing the clerk's record: _____

(i) prepare and include after the front cover of the clerk's record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk's record, rather than in alphabetical order. If the clerk's record consists of multiple volumes, the table of contents must indicate the page on which each volume begins. If the clerk's record is filed in electronic form, the clerk must use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins; and

(j) conclude the clerk's record with a certificate in substantially the following form:

The State of Texas)

County of _____)

I, _____, Clerk of the _____ Court of _____ County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in _____, County, Texas this ____ day of _____.

signature of clerk _____

name of clerk _____

title _____

If the clerk's record is filed in electronic form, the trial court clerk must include either a scanned image of the clerk's signature or "/s/" and the clerk's name typed in the space where the signature would otherwise appear.

1.2. Filing an Electronic Clerk's Record.

Unless the clerk receives permission from the appellate court to file the record in paper form, the clerk must file the record electronically. When filing a clerk's record in electronic form, the trial court clerk must:

- (a) file each computer file in text-searchable Portable Document Format (PDF);
- (b) create electronic bookmarks to mark the first page of each document in the clerk's record;
- (c) limit the size of each computer file to 100 MB or less, if possible;
- (d) directly convert, rather than scan, the record to PDF, if possible;
- (e) comply with the Technology Standards set by the Judicial Committee on Information Technology;
- (f) include the following elements in the computer file name, exemplified as CR (01 of 02).pdf:
 - (1) "CR";
 - (2) the volume number, using at least two digits, with leading zeroes if needed; "of"; and the total number of volumes;
 - (3) a period; and

- (4) “pdf”;

- (g) file each sealed document separately from the remainder of the clerk’s record and include the word “sealed” in the computer file name;

- (h) if filing a supplement to the clerk’s record, include the number of the supplement and “Supp”;

- (i) submit each computer file to the Texas Appeals Management and E-filing System (TAMES) web portal using the instructions provided on the appellate court’s website; and

- (j) not lock any document that is part of the record.

1.3. Filing a Paper Clerk’s Record.

When filing a paper record with the appellate court, the trial court clerk must:

- (a) bind the documents together in one or more volumes with a top bound, two-inch capacity, two-and-three-quarter-inch, center-to-center removable fastener and no other binding materials, like wax, ribbon, glue, staples, tape, etc.;

- (b) include no more than 500 pages in each volume, or limit the thickness of each volume to a maximum of two inches;

- (c) include only one-sided copies in the clerk’s record;

- (d) number the first volume “1” and each succeeding volume sequentially;

- (e) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and

- (f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

1.4. Non-Conforming Records and Supplements.

In the event of a material violation of this rule in the preparation or filing of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the trial court clerk to amend the clerk's record or to prepare a new clerk's record in proper form – and provide it to any party who has previously made a copy of the original, defective clerk's record – at the trial clerk's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

RULE 2. ELECTRONIC REPORTER'S RECORD.

- (a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules of Appellate Procedure 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records, and the court's local rules. Even if more than one notice of appeal or request for preparation of the record is filed, the court reporter or court recorder should prepare only one consolidated record in the case.
- (b) If proceedings were recorded stenographically, the court reporter or recorder must file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System (TAMES) web portal and in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records, the court's local rules, and any guidelines posted on the appellate court's website.
- (c) If the record is filed in electronic format, the court reporter or recorder must include either a scanned image of any required signature or “/s/” and name typed in the space where the signature would otherwise appear.
- (d) A court reporter or recorder must not lock any document that is part of the record.
- (e) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(f) In the event of a material violation of this rule in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter or court recorder to amend the reporter's record or to prepare a new reporter's record in proper form – and provide it to any party who has previously made a copy of the original, defective reporter's record – at the reporter's or recorder's expense. A court reporter who fails to comply with the requirements of the Uniform Format Manual for Texas Reporters' Records is also subject to discipline by the Court Reporters Certification Board.

Repeal of Appendix E, Texas Rules of Appellate Procedure

~~**APPENDIX E**~~
~~**IN THE COURT OF CRIMINAL APPEALS OF TEXAS**~~
~~**ORDER DIRECTING**~~
~~**THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES**~~

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 34.4, the Court of Criminal Appeals of Texas orders that the appellate record in criminal cases be in the form specified below. All references in this Order to a rule are to the Texas Rules of Appellate Procedure unless otherwise stated:

~~A. Clerk's Record~~

~~1. The trial court clerk must prepare and file the clerk's record in accordance with Rules 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one record in a case. To prepare the clerk's record, the trial court clerk must:~~

- ~~(a) gather the documents required by Rule 34.5(a) and those requested by a party under Rule 34.5(b);~~
- ~~(b) make a legible copy of the documents on opaque, white, 8½ X 11 inch paper, if practicable;~~
- ~~(c) arrange the documents in ascending chronological order, by date of filing or occurrence;~~
- ~~(d) consecutively number the pages in the bottom right hand corner;~~
- ~~(e) bind the documents together in one or more group under a heavy cover;~~
- ~~(f) prepare, label, and certify the clerk's record as required by this Order.~~

~~2. The clerk's record should be in the following form:~~

- ~~(a) It is preferred that the clerk's record lie flat when opened.~~
- ~~(b) If the clerk's record will lie flat when opened, two-sided copies may be included in the clerk's record; otherwise, only one-sided copies may be included.~~
- ~~(c) Each individual document must start on a new page.~~

- (d) ~~— The first volume should be numbered “1” and each succeeding volume numbered sequentially.~~
- (e) ~~— Page numbering should start on the first page of the first volume of the clerk’s record and continue to the final page of the clerk’s record without regard for the number of volumes in the clerk’s record.~~
- (f) ~~— It is preferred that the clerk’s record be tabbed to show the beginning of each document.~~
- (g) ~~— Each document must show the date of filing.~~
- (h) ~~— As far as practicable, each order and judgment must show the date of signing by the judge.~~
- (i) ~~— The front cover of the first volume of the clerk’s record must include the following information and be in substantially the following form:~~

~~CLERK’S RECORD~~

~~VOLUME _____ of _____~~

~~Trial Court Cause No. _____~~

~~In the _____ (District or County) Court~~

~~of _____ County, Texas,~~

~~Honorable _____, Judge Presiding~~

~~_____~~

~~_____, Plaintiff(s)~~

~~vs.~~

~~_____, Defendant(s)~~

~~_____~~

~~Appealed to the
(Supreme Court of Texas at Austin, Texas,
or Court of Criminal Appeals of Texas at Austin, Texas,
or Court of Appeals for the _____ District of Texas, at _____, Texas).~~

Attorney for Appellant(s):
 Name _____
 Address _____
 Telephone no. _____
 Fax no. _____
 SBOT no. _____
 Attorney for: _____, Appellant(s)

Delivered to the (Supreme Court of Texas at Austin, Texas,
 or Court of Criminal Appeals of Texas at Austin, Texas,
 or Court of Appeals for the _____ District of Texas, at _____, Texas)
 on the _____ day of _____, _____

signature of clerk _____
 name of clerk _____
 title _____

Appellate Court Cause No. _____
 Filed in the (Supreme Court of Texas at Austin, Texas,
 or Court of Criminal Appeals of Texas at Austin, Texas,
 or Court of Appeals for the _____ District of Texas, at _____, Texas)
 this _____ day of _____, _____.

_____, Clerk
 By _____, Deputy

(j) — The front cover of the second and subsequent volumes of the clerk's record must include the same information and be in substantially the same form except that second and subsequent volumes may, but need not, include statements of delivery and filing.

(k) — The clerk must prepare and include on the first pages of the clerk's record a detailed index identifying each document included in the clerk's record, the date of filing, and the page where it first appears. The index must be double spaced and conform to the order in which matters appear in the clerk's record, rather than in alphabetical order.

_____ (l) — After the index, the clerk must include the following:

~~_____ The State of Texas _____)
_____ County of _____)~~

~~— In the _____ (County Court or Judicial District Court) of _____ County, Texas, the Honorable _____, Judge Presiding, the following proceedings were held and the following instruments and other papers were filed in this cause, to wit:~~

~~Trial Court Cause No. _____~~

~~_____)
vs. _____)
_____)~~

~~_____ (m) _____ The clerk's record must conclude with a certificate in substantially the following form:~~

~~_____ The State of Texas _____)
_____ County of _____)~~

~~— I, _____, Clerk of the _____ Court of _____ County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).~~

~~— GIVEN UNDER MY HAND AND SEAL at my office in _____, County, Texas this _____ day of _____
— signature of clerk _____
— name of clerk _____
— title _____~~

~~3. A supplement must be prepared in conformity with this Order.~~

~~4. In the event of a flagrant violation of this Order in the preparation of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the clerk to amend the clerk's record or to prepare new clerk's record in proper form and provide it to any party who has previously made a copy of the original, defective clerk's record at the clerk's expense.~~

~~B. Reporter's Record~~

~~1. The court reporter must prepare and file the reporter's record in accordance with Rules 34.6 and 35 and the Uniform Format Manual for Texas Court Reporters. Even if more than one notice of appeal or request for preparation of the record is filed, the reporter should prepare only one record in a case.~~

~~2. In the event of a flagrant violation of this Order in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter to amend the reporter's record or to prepare a new reporter's record in proper form and provide it to any party who has previously made a copy of the original, defective reporter's record at the reporter's expense. Failure of a reporter to comply with the requirements of the Uniform Format Manual for Texas Court Reporters is also subject to discipline by the Court Reporters Certification Board.~~

~~Amended April 12, 1999, effective May 1, 1999.~~

Amendments to Appendix F, Texas Rules of Appellate Procedure

APPENDIX F
COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

INSTRUCTIONS

1. You must use the complete form, which begins on the following page, to file an application for a writ of habeas corpus seeking relief from a final felony conviction under Article 11.07 of the Code of Criminal Procedure. (This form is not for death-penalty cases, probated sentences which have not been revoked, or misdemeanors.)
2. The district clerk of the trial court in which you were convicted will make this form available to you; on request, without charge.
3. You must file the entire writ application form, including those sections that do not apply to you. If any pages are missing from the form, or if ~~the form has been downloaded and~~ the questions have been renumbered or omitted, your entire application ~~will~~ may be ~~returned~~ dismissed as non-compliant. ~~If your application is returned as non-compliant, the clerk of the trial court will write a note of the defect on your application and return the form to you without filing it.~~

4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.
5. Answer every item that applies to you on the form. ~~You may use additional pages only if you need them for item 17, the facts supporting your ground for relief.~~ Do not attach any additional pages for any ~~other~~ item.
6. You must include all grounds for relief on the application form as provided by the instructions under item 17. You must also briefly summarize the facts of your claim on the application form as provided by the instructions under item 17. Each ground shall begin on a new page, and the recitation of the facts supporting the ground shall be no longer than the two pages provided for the claim in the form.
7. ~~Do not cite cases or other law in this application form. Do not make legal arguments in this form.~~ Legal citations and arguments may be made in a separate memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not.
8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form on pages 11 and 12. You may be prosecuted and convicted for aggravated perjury if you make any false statement of a material fact in this application.
9. When the application is fully completed, mail the original to the district clerk of the convicting district court county of conviction. Keep a copy of the application for your records.
10. You must notify the district clerk of the convicting district court county of conviction of any change in address after you have filed your application.

Case No. _____
(The Clerk of the convicting court will fill this line in.)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

NAME: _____

DATE OF BIRTH: _____

PLACE OF CONFINEMENT: _____

TDCJ-CID NUMBER: _____ SID NUMBER: _____

(1) This application concerns (check all that apply):

- a conviction
- a sentence
- time credit
- parole
- mandatory supervision
- out-of-time appeal or petition for discretionary review

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

(3) What was the case number in the trial court?

(4) What was the name of the trial judge?

(5) Were you represented by counsel? If yes, provide the attorney's name:

(6) What was the date that the judgment was entered?

(7) For what offense were you convicted and what was the sentence?

(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

(9) What was the plea you entered? (Check one.)

- guilty-open plea
- guilty-plea bargain
- not guilty
- nolo contendere*/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

(10) What kind of trial did you have?

- no jury
- jury for guilt and punishment
- jury for guilt, judge for punishment

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

(15) Do you currently have any petition or appeal pending in any other state or federal court?

- yes**
- no**

If you answered yes, please provide the name of the court and the case number:

(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

- yes**
- no**

If you answered yes, answer the following questions:

(A) What date did you present the claim? _____

(B) Did you receive a decision and, if yes, what was the date of the decision?

If you answered no, please explain why you have not submitted your claim:

- (17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.*

If you have more than four grounds, use pages ~~10~~14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

You may ~~attach~~include with the form a memorandum of law ~~to the form application~~ if you want to present legal authorities, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not ~~stated~~raised on the form application. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.

FACTS SUPPORTING GROUND FOUR:

GROUND:

WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant’s attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the “Oath Before a Notary Public” before a notary public or the “Inmate’s Declaration” without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the “Oath Before a Notary Public” as petitioner and then complete “Petitioner’s Information.” A non-inmate applicant must sign the “Oath Before a Notary Public” before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the “Oath Before a Notary Public” before a notary public and must also complete “Petitioner’s Information.” An inmate petitioner must sign either the “Oath Before a Notary Public” before a notary public or the “Inmate’s Declaration” without a notary public and must also complete the appropriate “Petitioner’s Information.”

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: “I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true.”

Signature of Applicant / Petitioner (circle one)

20____. SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____,

Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name: _____

State bar number, if applicable: _____

Address: _____

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, _____, am the applicant / petitioner (circle one) and being presently incarcerated in _____, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on _____, 20____.

Signature of Applicant / Petitioner (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name: _____

Address: _____

Telephone: _____

Fax: _____

Signed on _____, 20____.

Signature of Petitioner

Amendments to Appendix G, Texas Rules of Appellate Procedure

APPENDIX ~~GE~~

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

ORDER ADOPTING SUMMARY SHEET

FOR POSTCONVICTION APPLICATIONS FOR

WRIT OF HABEAS CORPUS

~~ORDERED that:~~

~~Pursuant to Texas Rules of Appellate Procedure 73, the Court of Criminal Appeals hereby orders that the attached form to be used when a postconviction application for writ of habeas corpus is transmitted to the Court of Criminal Appeals.~~

Application for Writ of Habeas Corpus

Ex Parte _____ from _____ County
(Name of Applicant) _____ Court

TRIAL COURT WRIT NO. _____

CLERK’S SUMMARY SHEET

APPLICANT’S NAME: _____

(As reflected in judgment)

OFFENSE: _____

(As reflected in judgment)

CAUSE NO: _____

(As reflected in judgment)

PLEA: GUILTY NOT GUILTY

SENTENCE: _____ DATE: _____
(Terms of years reflected in judgment)

TRIAL DATE: _____

JUDGE'S NAME: _____
(Judge presiding at trial)

APPEAL NO: _____
(If applicable)

CITATION TO OPINION: _____ S.W.3d _____
(If applicable)

HEARING HELD: _____ YES _____ NO
(Pertaining to the application for writ of habeas corpus)

FINDINGS & CONCLUSIONS FILED: _____ YES _____ NO
(Pertaining to the application for writ of habeas corpus)

RECOMMENDATION: _____ GRANT _____ DENY _____ NONE
(Trial court's recommendation regarding application for writ of habeas corpus)

JUDGE'S NAME:
(Judge presiding over habeas corpus proceeding)

NAME OF COUNSEL IF APPLICANT IS REPRESENTED: _____

Repeal of Appendix H, Texas Rules of Appellate Procedure

~~APPENDIX H~~

~~IN THE COURT OF CRIMINAL APPEALS OF TEXAS~~

~~ORDER REGARDING COURT OF APPEALS CLERK PREPARING THE
RECORD TO SEND TO THE COURT OF CRIMINAL APPEALS~~

ORDERED that:

~~The court of appeals clerk must gather together the appellate record and the papers filed in the court of appeals and file them with the clerk of the Court of Criminal Appeals in one or more envelopes that conform to the following specifications:~~

- ~~(1) extra heavyweight stock;~~
- ~~(2) one piece construction with flaps;~~
- ~~(3) congress tie, noncollapsing style construction with closed corners;~~
- ~~(4) dimensions of 11½ inches in width, 9 inches in height, and a thickness of 1, 1½, 2, 3, or 4 inches; and~~
- ~~(5) the front of each envelope must show the trial court style and case number and the court of appeals style and case number.~~

IN THE SUPREME COURT OF TEXAS

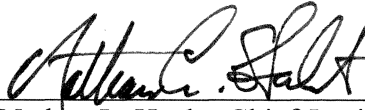
Misc. Docket No. 14-9079

**APPROVAL OF TECHNOLOGY STANDARDS, VERSION 1.3, SET BY
THE JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY**

ORDERED that:

The Supreme Court of Texas hereby approves the attached Technology Standards, Version 1.3, set by the Judicial Committee on Information Technology. These standards apply to documents filed electronically under Texas Rule of Civil Procedure 21 and Texas Rule of Appellate Procedure 9.

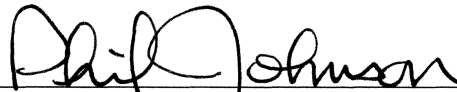
Dated: March 21, 2014.



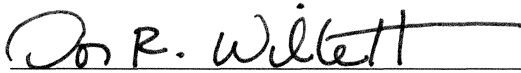
Nathan L. Hecht, Chief Justice



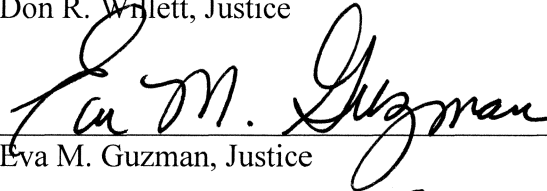
Paul W. Green, Justice



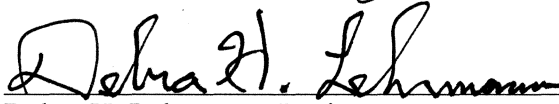
Phil Johnson, Justice



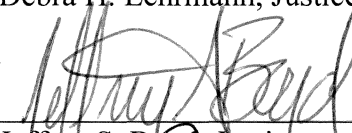
Don R. Willett, Justice



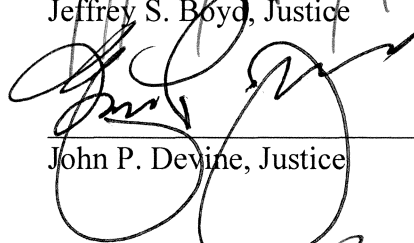
Eva M. Guzman, Justice



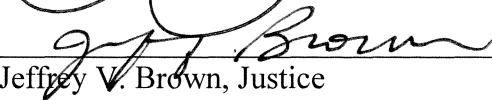
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

TECHNOLOGY STANDARDS

JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

Version 1.3

Released: March 21, 2014

Technology Standards v1.3

1 INTRODUCTION

1.1 PURPOSE

Pursuant to Texas Government Code, Chapter 77, Section 77.031, this document delineates standards for the technological needs of the judicial system. This document is approved by the Judicial Committee on Information Technology (JCIT) that was created by the 74th Texas Legislature. Changes to this document are effective sixty (60) days after adoption and publication by the JCIT.

1.2 VERSIONS

Version	Action	Release Date
1.0	Initial Draft	April 11, 2012
1.1	Added Audio/Video Standards	July 25, 2012
1.2	Added eFiling Filing Types	November 12, 2013
1.3	Added additional eFiling Types	March 21, 2014

1.3 DEFINITIONS

Attachment – any unique supporting document including exhibits and proposed orders that are not defined in Rule 21 (a) of the Texas Rules of Civil Procedure.

Digital Media - any files stored in an electronic format. This can include (but is not limited to) text, audio and video files.

Document – a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, or other instrument in electronic form.

DPI – Dots per inch

Lead Document – a document as defined by Rule 21 (a) of the Texas Rules of Civil Procedure. If filing a single document, it is the lead document.

NARA - National Archives and Records Administration

NIEM – National Information Exchange Model – a partnership of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the U.S. Department of Health and Human Services designed to develop, disseminate and support enterprise-wide information exchange standards and processes that can enable jurisdictions to effectively share critical information in emergency situations, as well as support the day-to-day operations of agencies throughout the nation. NIEM was adopted formally by JCIT and is promulgated in data exchanges in Texas Administrative Code, Title 1, Part 8, Chapter 177.

Electronic Court Filing (ECF) standards - a set of non-proprietary extensible markup language (XML) and Web services specifications, along with clarifying explanations and amendments to those specifications that have been added for the purpose of promoting interoperability among electronic court filing vendors and systems.

OCA – Office of Court Administration

OCR – Optical Character Recognition

PDF – Portable Document Format – for the purpose of these standards this is PDF 1.4 (ISO 19005-1:2005 – Revised as ISP/NP 19005-1). This standard specifies how to use PDF for long-term preservation of electronic documents and is applicable to documents containing

Technology Standards v1.3

combinations of character, raster and vector data.

PDF Software – software that conforms to International Organization for Standardization (ISO) 32000-1:2008. This standard specifies standards for creating (writing), reading, displaying and interacting with PDF documents.

JCIT – Judicial Committee on Information Technology

1.4 REFERENCES

- Apple QuickTime supported formats - <http://support.apple.com/kb/HT3775>
- NIEM – <http://www.niem.gov>
- OASIS LegalXML Electronic Court Filing (ECF) specifications - <http://www.oasis-open.org/committees/legalxml-courtfilings/>
- OASIS Digital Signature Services specifications - <http://www.oasis-open.org/committees/dss/>
- VLC media player supported formats - <http://www.videolan.org/vlc/features.html>
- Windows media player supported formats - <http://support.microsoft.com/kb/316992>

2 SYSTEM DATA EXCHANGE STANDARDS

In accordance with Texas Administrative Code, Title 1, Part 8, Chapter 177, information exchanges that occur between the various systems (electronic filing manager, case management, document management, etc.) should occur using the current OASIS LegalXML specifications. The OASIS LegalXML specification is a subset to NIEM.

3 DIGITAL MEDIA STANDARDS

In addition to content and formatting promulgated by the Texas Rules of Civil Procedure, Texas Code of Criminal Procedure, and Texas Rules of Appellate Procedure, the following standards apply to digital media filed electronically or scanned from source records (filed after the effective date of these standards) by the clerk.

3.1 DOCUMENTS

- A. An e-filed document must be in text-searchable PDF, using fonts specified in the PDF specification, on 8.5x11 page size, with the content appropriately rotated.
- B. When possible, the document should be generated directly from the originating software using a PDF distiller.
- C. Prior to being filed electronically, a scanned document must have a resolution of 300 DPI. Preferably, scanned documents should be made searchable using OCR technology.
- D. An e-filed document may not contain any security or feature restrictions including password protection or encryption and may not contain embedded multi-media video, audio, or programming.

Technology Standards v1.3

- E. Documents may not contain package PDFs. PDFs should not be embedded inside of another PDF. Documents may not contain embedded fonts. Each Document must be a single PDF. An appellate court may require that multiple PDF documents be combined into a single PDF document and bookmarks used to separate content appropriately. The content of the document should not depend on bookmarks.
- F. Any e-filed document filename should contain only alphanumeric characters that are part of the Latin1_General character set. No special characters are allowed and the length of the filename should be restricted to 50 characters.

3.2 AUDIO/VIDEO

- A. When an audio/video file is natively supported by at least one media player listed in these standards, the file must not be converted into another format.
- B. If modifications are needed to enhance the native audio/video, a copy of the original must be made. The modified copy (submitted in addition to the original audio/video) must also be generated in a format supported by at least one media player listed in these standards.
- C. The following media players are supported (specific audio/video formats can be found on each media player's website):
 - a. QuickTime (Apple)
 - b. VLC media player (VideoLAN Organization)
 - c. Windows media player (Microsoft)

4 DIGITAL SIGNATURES

Digital signatures applied to an electronic artifact shall conform to a digital signature profile as described by the OASIS Digital Signature Services (DSS) Specification version 1.0.

5 EFILING FILING CONFIGURATIONS

Below are the standard filing configurations to be used in the eFiling system for district, county court at law, probate, and county courts. This list of filing configurations must be accepted in each court. Courts and clerks may not add to this configuration, but may eliminate codes if not needed in a particular jurisdiction.

These standards only apply to the electronic filing system which is a delivery system and are NOT standards for a county case management or document management system.

Technology Standards v1.3

5.1 CHILD SUPPORT CASES (TITLE IV-D)

The following configurations are used in support of the Office of Attorney General’s Child Support Division.

5.1.1 CASE CATEGORIES/TYPES

Case Category Code	Case Type Code
Title IV-D (OAG Use Only)	(Title IV-D OAG Use Only)Establishment
	(Title IV-D OAG Use Only)Paternity
	(Title IV-D OAG Use Only)Interstate – No TX Cause
	(Title IV-D OAG Use Only)Interstate – Existing TX Cause
	(Title IV-D OAG Use Only)Enforcement
	(Title IV-D OAG Use Only)Intervention
	(Title IV-D OAG Use Only)Other – Billed
	(Title IV-D OAG Use Only)Other – Not Billed
	(Title IV-D OAG Use Only)Capias/Writ
	(Title IV-D OAG Use Only)Service Documents

5.1.2 FILING TYPES

New Cases	Subsequent Filings
(Title IV-D OAG Use Only)Establishment	(Title IV-D OAG Use Only)Establishment
(Title IV-D OAG Use Only)Paternity	(Title IV-D OAG Use Only)Paternity
(Title IV-D OAG Use Only)Interstate – No TX Cause	(Title IV-D OAG Use Only)Interstate – No TX Cause
(Title IV-D OAG Use Only)Interstate – Existing TX Cause	(Title IV-D OAG Use Only)Interstate – Existing TX Cause
(Title IV-D OAG Use Only)Enforcement	(Title IV-D OAG Use Only)Enforcement
(Title IV-D OAG Use Only)Intervention	(Title IV-D OAG Use Only)Intervention
(Title IV-D OAG Use Only)Other – Billed	(Title IV-D OAG Use Only)Other – Billed
(Title IV-D OAG Use Only)Other – Not Billed	(Title IV-D OAG Use Only)Other – Not Billed
(Title IV-D OAG Use Only)Capias/Writ	(Title IV-D OAG Use Only)Capias/Writ
(Title IV-D OAG Use Only)Service Documents	(Title IV-D OAG Use Only)Service Documents

5.1.3 PARTY TYPES

For each Title IV-D case type, the court will list one (1) Petitioner and two (2) Respondents as required party types.

Technology Standards v1.3

5.2 CIVIL CASES

5.2.1 CASE CATEGORIES/TYPES

Case Category Code	Case Type Codes
Civil - Contract	Debt/Contract - Consumer/DTPA
	Debt/Contract - Debt/Contract
	Debt/Contract - Fraud/Misrepresentation
	Debt/Contract - Other
	Foreclosure - Home Equity-Expedited
	Foreclosure - Other
	Franchise
	Insurance
	Landlord/Tenant
	Non-Competition
	Partnership
	Other Contract
Civil - Employment	Discrimination
	Retaliation
	Termination
	Workers' Compensation
	Other Employment
Civil - Injury or Damage	Assault/Battery
	Construction
	Defamation
	Malpractice - Accounting
	Malpractice - Medical
	Malpractice - Other Professional Liability
	Motor Vehicle Accident
	Premises
	Product Liability - Asbestos/Silica
	Product Liability - Other
Other Injury or Damage	
Civil - Other Civil	Administrative Appeal
	Antitrust/Unfair Competition
	Code Violations
	Communicable Disease (H&S Code Sec. 81.151)
	Foreign Judgment
	Garnishment
	Intellectual Property
	Lawyer Discipline
	Perpetuate Testimony
	Securities/Stock
	Tortious Interference
	Toll Road
	Other Civil
Civil - Real Property	Eminent Domain/Condemnation

Technology Standards v1.3

	Partition
	Quiet Title
	Trespass to Try Title
	Other Property
Civil - Related to Criminal Matters	Expunction
	Judgment Nisi
	Non-Disclosure
	Seizure/Forfeiture
	Writ of Habeas Corpus - Pre-indictment
	Other
Civil - Tax	Tax Appraisal
	Tax Delinquency
	Other Tax

5.2.2 FILING TYPES

New Case	Subsequent Filings
Affidavit of Indigency	Affidavit of Indigency
Application	Amended Filing
Petition	Answer/Contest/Response
Transfer (County Use Only)	Bond
	Counter Claim/Intervention/Third Party
	Filing of Action other than Original (LGC 118.054)
	Motion (No Fee)
	Motion for Contempt
	Motion for Enforcement
	Motion for New Trial
	Motion to Modify
	Motion to Reinstate
	Motion to Terminate Wage Withholding
	Motion to Transfer
	Notice
	Notice of Appeal
	No Fee Documents
	Proposed Order
	Request

Technology Standards v1.3

5.3 FAMILY/JUVENILE CASES

5.3.1 CASE CATEGORIES/TYPES

Case Category Code	Case Type Codes
Family/Juvenile - Marriage Relationship	Annulment
	Declare Marriage Void
	Divorce with Children
	Divorce No Children
Family/Juvenile - Other Family Law	Enforce Foreign Judgment
	Habeas Corpus
	Name Change
	Protective Order
	Removal of Disabilities of Minority
	Other
Family/Juvenile - Parent-Child Relationship	Adoption/Adoption with Termination
	Child Protection
	Child Support
	Custody or Visitation
	Gestational Parenting
	Grandparent Access
	Parentage/Paternity
	Termination of Parental Rights
	Other Parent-Child
Family/Juvenile - Post-judgment Actions	Enforcement
	Modification - Custody
	Modification - Other

5.3.2 FILING TYPES

New Case	Subsequent Filings
Affidavit of Indigency	Affidavit of Indigency
Application	Amended Filing
Petition	Answer/Contest/Response/Waiver
Transfer (County Use Only)	Bond
	Counter Claim/Intervention/ Third Party Motion (No Fee)
	Motion for Contempt
	Motion for Enforcement
	Motion for New Trial
	Motion to Modify
	Motion to Reinstate
	Motion to Revoke/Suspend/Withhold
	Motion to Stay
	Motion to Terminate Wage Withholding
	Motion to Transfer
	Notice

Technology Standards v1.3

	Notice of Appeal Notice of Delinquency No Fee Documents Proposed Order Request
--	--

Technology Standards v1.3

5.4 PROBATE AND MENTAL HEALTH CASES

5.4.1 CASE CATEGORIES/TYPES

Case Category Code	Case Type Codes
Probate/Mental Health	Dependent Administration
	Independent Administration
	Other Estate Proceedings
	Guardianship - Adult
	Guardianship - Minor
	Mental Health
	Other

5.4.2 FILING TYPES

New Case	Subsequent Filings
Affidavit of Indigency	Affidavit of Indigency
Application	Annual Account (before 120 days)
Petition	Annual Account (after 120 days)
Will/Codicil	Annual Report (before 120 days)
	Annual Report (after 120 days)
	Answer/Contest/Response
	Application for Removal – Chapter 48
	Application in an Existing Estate
	Application on Sale of Personal Property (before 120 days)
	Application on Sale of Personal Property (after 120 days)
	Application on Sale of Real Property (before 120 days)
	Application on Sale of Real Property (after 120 days)
	Bond (before 120 days)
	Bond (after 120 days)
	Claim
	Counter Claim
	Final Account (before 120 days)
	Final Account (after 120 days)
	Final Report (before 120 days)
	Final Report (after 120 days)
	Inventory
	Inventory – (filed after the 90th day after the date the personal rep has qualified)
	Jury Demand
	Motion
	No Fee Documents
	Notice
	Oath (before 120 days)
	Oath (after 120 days)
	Proposed Order
	Request
	Suggestion of Need for Guardian – Sec 683
	Will/Codicil

5.5 MULTI-DISTRICT LITIGATION (MDL) CASES

5.5.1 CASE CATEGORIES/TYPES

Case Category Code	Case Type Codes
Multi-District Litigation (MDL)	MDL - Asbestosis
	MDL - Hurricane Ike
	MDL - Product Liability

5.5.2 FILING TYPES

New Case	Subsequent Filings
Affidavit of Indigency	Affidavit of Indigency
Application	Amended Filing
Petition	Answer/Contest/Response
Transfer (County Use Only)	Bond
	Counter Claim/Intervention/ Third Party
	Motion (No Fee)
	Motion for Contempt
	Motion for Enforcement
	Motion for New Trial
	Motion to Modify
	Motion to Reinstate
	Motion to Terminate Wage Withholding
	Motion to Transfer
	Notice
	Notice of Appeal
	No Fee Documents
	Proposed Order
	Request

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5.6 OTHER STANDARD SYSTEM CONFIGURATIONS

5.6.1 ACCEPTANCE OF DOCUMENTS TENDERED FOR FILING

A clerk must accept a document tendered for e-filing unless specifically authorized not to accept the document(s) by statute or by the Rules of Civil Procedure for the reasons listed below.

Category	Reason	Authority
Sealed Documents	Documents filed under seal or presented to court <i>in camera</i> cannot be eFiled.	TRCP 21(f)(4)
Vexatious Litigant	Filer has been found to be a vexatious litigant and has not presented an order from the local administrative judge permitting the filing.	CPRC §11.103

5.6.2 REQUEST FOR CORRECTION

A clerk may request a filer to correct an e-filed document only for the following reasons. The request must state the reason and reference any supporting authority as follows:

Category	Reason	Authority
Insufficient Fees	Fees submitted are insufficient. Please resubmit your filing with the correct case type/filing type. <provide short summary as to what fees were not included>	TRCP 99(d) and Gov't Code, §51.318(b)(7) and (8) Gov't Code §51.317(a) Local Gov't Code §118.052; §118.121; or §118.131
Insufficient Funds	Credit Card was declined. Please resubmit with a valid method of payment.	TRCP 99(d) and Gov't Code, §51.318(b)(7) and (8) Gov't Code §51.317(a) Local Gov't Code §118.052; §118.121; or §118.131
Document Addressed to Wrong Clerk	The document is addressed to a court for which this clerk's office does not accept filings. Please correct or re-file with the appropriate clerk's office.	

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Incorrect/Incomplete Information	Please resubmit using the correct <ul style="list-style-type: none"> • Cause number • Case Type • Case Category • Filing Code • Party Names on document(s) 	
Incorrect Formatting	Please resubmit the document <ul style="list-style-type: none"> • By rotating the document so that the file mark will appear in the upper right corner • In text searchable PDF • Directly converted to PDF if possible. • With a 300dpi resolution • With a page size of 8.5"x11" • With no embedded fonts 	TRCP 21 (f)(8)
PDF Documents Combined	You have submitted multiple documents for filing in a single PDF. The file-mark will only appear on documents submitted as lead documents. Please file all lead documents as separate PDF documents.	
Illegible/Unreadable	Please resubmit in a format that is legible.	
Sensitive Data	Please resubmit in five (5) business days with all sensitive data redacted: <ul style="list-style-type: none"> • DL, SSN, Passport Number, Tax ID Number, Government Issued ID Number • Bank Account Number, Credit Card Number, Financial Account Number • Birth Date, Home Address and name of any person who was a minor when the suit was filed. 	TRCP 21c (a-f) NOTE: Family Code §102.008 and §105.006 require identification of children by name and DOB