

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9128

ORDER ADOPTING TEXAS RULE OF CIVIL PROCEDURE 21c AND AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 4, 21, 21a, AND 502.1, TEXAS RULES OF APPELLATE PROCEDURE 6 AND 9, AND THE SUPREME COURT ORDER DIRECTING THE FORM OF THE APPELLATE RECORD IN CIVIL CASES

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with Misc. Docket No. 12-9208, as amended by Misc. Docket No. 13-9092, 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, and 502.1, and Rules of Appellate Procedure 6 and 9, effective January 1, 2014.
2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Supreme Court orders that the appellate record in civil cases be in the form specified as attached.
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*.
4. These amendments may be changed in response to public comments received before October 31, 2013. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or rulescomments@txcourts.gov.

Dated: August 16, 2013.

Wallace B. Jefferson
Wallace B. Jefferson, Chief Justice

Nathan L. Hecht
Nathan L. Hecht, Justice

Paul W. Green
Paul W. Green, Justice

Phil Johnson
Phil Johnson, Justice

Don R. Willett
Don R. Willett, Justice

Eva M. Guzman
Eva M. Guzman, Justice

Debra H. Lehrmann
Debra H. Lehrmann, Justice

Jeffrey S. Boyd
Jeffrey S. Boyd, Justice

John P. Devine
John P. Devine, Justice

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 period s in Rules 21 and 21a, extending other periods by three days when service is made electronically, 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 therefore, ~~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, 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 and Confirmation.* Electronic filing must be done through TexFile, the electronic filing manager established by the Office of Court Administration. TexFile will send a filing confirmation notice to the filing party.

(4) *Exceptions.*

(A) *The following documents are not required to be filed electronically:*

(i) *wills; and*

(ii) *documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents.*

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

(i) *documents sealed pursuant to Tex.R.Civ. P. 76a; 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.* 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, it is deemed filed on the date the motion is granted.

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) 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, sworn, or requires the signature of opposing counsel; or
- (B) an electronic image or scanned image of the signature.

(7) 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 promulgated by the Judicial Committee on Information Technology and approved by the Supreme Court.

(8) Paper Copies. No paper copies of an electronically filed document must be filed unless otherwise required by local rule.

(9) Electronic Notices From the Court. If a party files documents electronically, the clerk may send any required notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

(10) Non-Conforming Documents. If a document fails to conform with this rule, the court may strike the document, identify the error to be corrected, and state a deadline for the party to resubmit the document in a conforming format. The substitute document must be deemed filed on the same day as the document that was struck.

(11) 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.

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. 12-9208, amended by Misc. Docket No. 13-9092 – 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 complete 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:

- (1) in person; or
- (2) by agent; or
- (3) by courier receipted delivery; or
- (4) by certified or registered mail, to the party's last known address; or
- (5) by telephonic document transfer to the recipient's current telecopier number;

- (6) electronically through TexFile using a certified electronic service provider, if the court allows electronic filing and the party being served has consented to electronic service with the party's electronic service provider; or
- (7) by such other manner as the court in its discretion may direct.

(b) Consent to Electronic Service. Attorneys required to electronically file documents in a court must consent to electronic service.

(c) When Complete.

- (1) Service by mail shall be complete upon deposit of the paper, 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 telephonic document transfer 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. TexFile will send confirmation of service to the serving party.

(d) 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, electronically, or by telephonic document transfer, three days shall be added to the prescribed period.

(e) 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.

(f) 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 notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in 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.

(g) Procedures Cumulative. The 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. 12-9208, amended by Misc. Docket No. 13-9092 – 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 social security or other taxpayer-identification number, except for the last three digits or characters;
- (2) numbers of bank accounts and other financial accounts, including credit cards, except for the last three digits or characters; and
- (3) identification numbers on driver's licenses, passports, and other similar government-issued personal identification cards, except for the last three digits or characters.

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of unredacted sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents sealed pursuant to Rule 76a, 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 unredacted 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 court may strike any document containing sensitive data in violation of this rule and require a redacted substitute document to be filed. The substitute document must be deemed filed on the same day as the document that was struck.

(f) Restriction on Remote Access. If a clerk is notified that a document contains unredacted sensitive data or strikes a document that contains sensitive data, the document must not be made available on the internet to anyone other than the parties and their attorneys, except through a public-access terminal located in the courthouse.

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

Amendment to Rule 502.1, Texas Rule of Civil Procedure

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.

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 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. If an unrepresented party files a document electronically, the document must also contain the party's 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, sworn, or requires the signature of opposing counsel; 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;
 - (B) it was placed in an envelope or wrapper properly addressed and stamped; and
 - (C) it was deposited in the mail 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.

(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 and parties in criminal cases and unrepresented parties in civil cases may electronically file documents, but it is not required.
- (2) Mechanism. Electronic filing must be done through TexFile, the electronic filing manager established 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. 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, it is deemed filed on the date the motion is granted.

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

(5) Confirmation of Filing. TexFile will send a filing confirmation notice to the filing party.

(6) Electronic Notices From the Court. If a party files documents electronically, the clerk may send any required 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 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 separator pages instead of tabs.

(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. No paper copies of an electronically filed document must be filed unless otherwise required by local rule or requested by the court.

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 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) **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. For a paper document, printing may be on both 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.* An 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). An 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.

- (i) 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 TexFile; and
 - (5) otherwise comply with the Technology Standards promulgated 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 and return all nonconforming paper copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. The substitute document must be deemed filed on the same day as the document that was struck. 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. 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, or electronically, if the party being served has consented to electronic service with the party's electronic service provider. Attorneys required to electronically file documents under these rules must consent to electronic service. Electronic service must be performed through TexFile, using a certified electronic service provider. 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. TexFile 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.

9.6. Communications With the Court

Parties and counsel may communicate with the appellate court about a case only through the clerk.

9.7. Adoption by Reference

Any party may join in or adopt by reference all or any part of a brief, petition, response, motion, or other document filed in an appellate court by another party in the same case.

9.8. Protection of Minor's Identity in Parental-Rights Termination Cases and Juvenile Court Cases

- (a) *Alias Defined.* For purposes of this rule, an alias means one or more of a person's initials or a fictitious name, used to refer to the person.
- (b) *Parental-Rights Termination Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case in which the termination of parental rights was at issue:
 - (1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:
 - (A) a minor must be identified only by an alias unless the court orders otherwise;
 - (B) the court may order that a minor's parent or other family member be identified only by an alias if necessary to protect a minor's identity; and
 - (C) all documents must be redacted accordingly;
 - (2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.
- (c) *Juvenile Court Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case under Title 3 of the Family Code:
 - (1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:
 - (A) a minor must be identified only by an alias;

- (B) a minor's parent or other family member must be identified only by an alias; and
- (C) all documents must be redacted accordingly;

- (2) the court must, in its opinion, use an alias to refer to a minor and to the minor's parent or other family member.

- (d) *No Alteration of Appellate Record.* Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.

9.9 Privacy Protection for Documents Filed in Civil Cases.

- (a) *Sensitive Data Defined.* Sensitive data consists of:
 - (1) a social security or other taxpayer-identification number, except for the last three digits or characters;
 - (2) numbers of bank accounts and other financial accounts, including credit cards, except for the last three digits or characters; and
 - (3) identification numbers on driver's licenses, passports, and other similar government-issued personal identification cards, except for the last three digits or characters.
- (b) *Filing of Documents Containing Sensitive Data Prohibited.* Unless the inclusion of unredacted sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for the record, 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 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 unredacted 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 court may strike any document containing sensitive data in violation of this rule and require a redacted substitute document to be refiled in accordance with Rule 9.4(k).

(f) *Restriction on Remote Access.* If a clerk is notified that a document contains unredacted sensitive data or strikes a document that contains sensitive data, the document must not be made available on the internet to anyone other than the parties and their attorneys, except through a public-access terminal located in the courthouse.

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. 12-9208, amended by Misc. Docket No. 13-9092 – 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.

**APPENDIX C
IN THE SUPREME COURT OF TEXAS
ORDER DIRECTING
THE FORM OF THE APPELLATE RECORD IN CIVIL CASES**

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 34.4, the Supreme Court orders that the appellate record in civil cases be in the form specified below:

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)

Misc. Docket No. 13- **9128**

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.

The clerk of a court subject to mandatory civil electronic filing must file the record electronically. The clerk of any other court must file the record electronically, if possible. 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 promulgated by the Judicial Committee on Information Technology;
- (f) include the following elements in the computer file name, exemplified as FortBend-DC-09-29-CLR-Vol001.pdf:
 - (1) county name without spaces between words;
 - (2) a hyphen;
 - (3) the trial-court cause number, preferably in the format the trial court uses for cause numbers;
 - (4) a hyphen;
 - (5) “CLR-Vol”;
 - (6) the volume number as three digits with leading zeroes if needed;
 - (7) a period; and
 - (8) “pdf”;
- (g) if there are multiple volumes in a clerk's record, use volume numbers pursuant to 1.2(f)(6) to identify the sequential order of the volumes (e.g., FortBend-DC-09-29-CLR-Vol001.pdf, FortBend-DC-09-29-CLR-Vol002.pdf, etc.);

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- (h) if filing a sealed document, include a hyphen, the number of the sealed document, and the term “Sealed” after the term “CLR” in the computer file name (e.g., FortBend-DC-09-29-CLR-1Sealed.pdf, FortBend-DC-09-29-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk’s record;
- (i) if filing a supplement to the clerk’s record, include a hyphen, the number of the supplement, the term “Supp,” and another hyphen after the term “CLR” in the computer file name (e.g., FortBend-DC-09-29-CLR-1Supp-Vol001.pdf, FortBend-DC-09-29-CLR-2Supp-Vol001.pdf);
- (j) 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
- (k) 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.