

RESOLUTION #2016-08

WHEREAS, the Panola County Commissioners Court recognizes that the Texas Office of Court Administration (OCA), under The Supreme Court of Texas's direction, has created re:SearchTX, a web portal to allow judges secure access to a consolidated database of case information that has been e-Filed, and

WHEREAS, the sole purpose of the e-File system developed by the OCA was to provide a delivery system for attorneys to file documents electronically to the courts and it was represented that the e-File system would retain the information for only thirty days; and

WHEREAS, the OCA is now retaining information filed within the e-File system and plans to make it available to attorneys and the public (for a fee) through re SearchTX in the near future, and

WHEREAS, as required by the Texas Constitution and state statutes, the county and district clerks of each Texas county are the designated custodians of court records, responsible for the management, preservation and access of court records, and

WHEREAS, Texas counties are responsible for providing resources to clerks for the management, preservation and access of court records by the public including having the option of offering county records through an electronic information system and may provide (on a contractual basis) direct access to the public, by statute,

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS' COURT OF PANOLA COUNTY, by virtue of the authority vested in us, do hereby state that for the foregoing reasons, it is in the best interest of Panola County and our taxpayers to oppose any change to the current statutes regarding care, custody and control of records held by the county and district clerks and to any actions that would result in those records being centralized within any other entity, be it public or private

BE IT FURTHER RESOLVED, we are opposed to the amendment and/or repeal of any current statutes or rules that authorize local control by commissioners' court in the administration of our duties concerning records held by the county and district clerk or how the county chooses to offer those records to the public

BE IT FURTHER RESOLVED, finally, we oppose any diversion of existing or future County revenue to any other private or governmental entity for records held under local control by statute

PASSED, APPROVED AND ADOPTED this 30th day of December, 2016, in Open Court

Lee Ann Jones

Lee Ann Jones
County Judge

Ronnie LaGrone

Honorable Ronnie LaGrone
Commissioner, Precinct One

Absent

Honorable Frank R. Langley, Jr
Commissioner, Precinct Three

John Gradberg

Honorable John Gradberg
Commissioner, Precinct Two

Dale LaGrone

Honorable Dale LaGrone
Commissioner, Precinct Four

ATTEST

Bobbie Davis
Bobbie Davis, County Clerk



Debra Johnson
Debra Johnson, District Clerk



BOBBIE DAVIS
COUNTY CLERK
PANOLA COUNTY

December 21, 2016

Honorable Judge LeeAnn Jones
Panola County Commissioners
110 South Sycamore
Carthage, Texas 75633

Dear Judge Jones and Commissioners,

There is a move by the Texas Supreme Court and Office of Court Administration to provide a statewide database of Texas court records. These records would be accessible for a fee, initially by judges, and eventually by attorneys and the public. The records in the database will be court records that were electronically filed in the e-filing system in Texas, beginning with optional e-filing (late 2013-2014). Optional electronic filing of civil and probate court records began in the fall of 2014 in Panola County, and mandatory e-filing went into effect on January 1, 2016. Criminal e-filing will be mandatory in Panola County on July 1, 2019.

At the inception of e-filing, Texas County and District Clerks were told that the information, including the images of documents, in the electronic filing portal would be stored for only 30 days after filing, and then would disappear. In that scenario, the records could only be accessed and copied through each county's case management system or physical case files, thus providing some security for the information contained in the court record, and generating revenue for the county. However, the current push by the Texas Supreme Court and Office of Court Administration has made it apparent that all information electronically filed to date into the e-filing system has been preserved, and the plan is for that information to be published and sold online for a fee. *Those fees, which would have been collected by Panola County, will now generate income for the private vendor that provides and maintains the electronic filing system in Texas.* County and District Clerks will continue to be responsible for the maintenance and security of the files with less revenue to support these services.

In the last three years (in a depressed economy), the Panola County Clerk's office has receipted more than \$150,000 for copies of documents relating to land records and court records. Of that total, I estimate that approximately 25-30% of that revenue was for copies of court records. My concern is that a statewide database for Texas court records will negatively impact the revenues the Clerk's office relies on to maintain and preserve the records already in our care, and that in the future, all county records may be taken, published and sold online for a fee, which will not benefit Panola County at all.

In an effort to present opposition to this proposal, the County and District Clerk's Association of Texas is asking that each County adopt a resolution addressing our concerns. I am asking that you adopt and sign the following resolution, opposing the current attempt by the Texas Supreme Court and Office of Court Administration to provide a statewide database of court records, future legislation that would remove control of the county records from Panola County, and any diversion of existing county revenue to any other entity that may be proposed.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Bobbie Davis". The signature is written in black ink and is positioned above the typed name.

Bobbie Davis
Panola County Clerk



DEBRA JOHNSON
DISTRICT CLERK
PANOLA COUNTY

December 22, 2016

Honorable Judge LeeAnn Jones
Panola County Commissioners
110 South Sycamore
Carthage, Texas 75633

Dear Judge Jones and Commissioners,

I respectfully request your consideration in adopting Resolution #2016-08 in relation to the re:SearchTX System.

A similar resolution has been adopted by the County and District Clerk's Association of Texas in coordination with Jim Allison, Legal Council for County Judges and Commissioners. The Texas Supreme Court (and the Office Court Administration) have been collecting documents filed to District and County Courts via E-file Texas. When e-filing began, clerks, courts and attorneys were assured documents would only be maintained on the state's E-file server for 30 days. However, beginning in January of this year, without any notice to clerks, courts, and judges, the Supreme Court (OCA) began keeping ALL documents e-filed with the intent to provide the public with a system (re:SearchTX) to purchase copies of records from all courts across the state.

The clerks' association has met with representatives from the OCA and the JCIT committee to express concerns. However, these concerns have been discounted and implementation of re:SearchTX is moving forward. A brief summary of the clerks' concerns are:

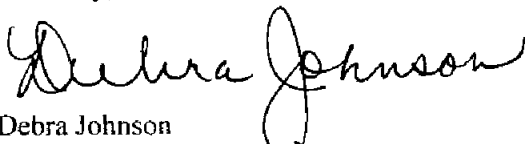
1. By the Texas Constitution and state laws, the clerks are the custodians of all court records. The Supreme Court and OCA have no statutory authority to create a system for purchase of court records without the consent of the custodian and counties to whom those records belong
2. Local Government Code §191.008 vests authority with Commissioners' Court to decide how and if documents are made available to the public for purchase via the internet. By Opinion GA-0566, the Attorney General confirmed that Commissioners' Court have and retain this authority
3. Texas statutes allow clerks to charge \$1/page for copies of court records which is deposited to the General Fund. The Supreme Court intends to offer documents for a smaller fee and "share" the proceeds with the county.

4. The Supreme Court's intent for this system is for the convenience of the public. Clerks make all of the court records available to the public during regular business hours. Some counties have decided to place all, some, or no records or case indices on the internet. The Clerks take the position that this decision should be left to the counties and 24 hour "convenience" is not sufficient reason to take away or undermine the authority of the county's elected officials.
5. At this time, there are no provisions in place that the Supreme Court/OCA is utilizing to redact confidential information contained in court records. Under current rules, clerks are charged with the responsibility to make sure sealed, confidential or expunged information is not made available to the public pursuant to various statutes and/or court orders for the records they keep in their offices. The clerks fulfill this duty by ensuring their paper case files and electronic files are secured. Currently, clerks must remove any record from the ReSearchTX in order to comply with orders that make a filing confidential. This is in addition to data entry in our own system. This raises concern of liability to the county as well as utilizing county staff to maintain a state system.
6. The OCA has indicated that the Supreme Court will seek to amend or change various statutes regarding confidential information. For example, information such as childrens' names and birthdates are required to be in divorce and custody papers per the Family Code. However, under the Texas Rules of Civil Procedure, such information must be redacted by the clerk if the **clerk chooses** to make the document available to the public **on the internet**. Such information does not need to be redacted if the clerk has the document/information available in the office as part of the public record of the case.

I, along with the County and District Clerks' Association oppose the development and implementation of the re:SearchTX system for these stated reasons. I am asking that you, the Commissioners' Court, adopt a resolution opposing the re:SearchTX system as well. The implementation of this system has a direct impact on the sphere of authority granted to elected clerks, undermines the authority of Commissioners' Court regarding the sale of documents owned by the county, and may cause funds to be diverted from the county.

I respectfully request that you consider signing the resolution, and will be happy to provide additional information and any background of this issue and answer any questions from the Court.

Sincerely,



Debra Johnson
Panola County District Clerk



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 27, 2007

The Honorable Tracy King
Chair, Committee on Border and
International Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. GA-0566

Re. Authority of the El Paso County District
or County Clerk to establish an online
electronic database accessible to the public
(RQ-0498-GA)

Dear Representative King:

Your predecessor as Chair of the Committee on Border and International Affairs inquired whether the El Paso County District Clerk or County Clerk may store court documents on an electronic database and make them accessible to the public via the Internet.⁽¹⁾ She asked the following questions:

Under current state law, may the El Paso [County] District Clerk or County Clerk create an electronic database accessible online to display civil, family and criminal case docket information in its entirety and all document images pertaining to all cases filed regardless of case disposition or status?

If such a database can be created, should access to the electronic database be limited to certain parties?

Furthermore, should personal identifiers on the documents to be displayed, such as Social Security numbers and/or bank account[] [numbers], be redacted?

Lastly, could the El Paso [County] District Clerk or County Clerk assess a reasonable fee to the public in order to retrieve information?

Request Letter, *supra* note 1, at 1.

Your predecessor inquired about court case documents held by the district and county clerks. Accordingly, we do not address other kinds of documents filed with the county clerk in his capacity as county recorder. *See* Tex. Const. art V, § 20; Tex. Loc Gov't Code Ann. § 192.001 (Vernon 1999) (county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded).

I. Authority of El Paso County District or County Clerk to Maintain Online Database of Court Records

Pursuant to Local Government Code section 191.008, the El Paso County Commissioners Court may provide for online access to case information maintained by the district and county clerks. Section 191.008(a) provides as follows:

The commissioners court of a county by order may provide for the establishment and operation of a computerized electronic information system through which it may provide on a contractual basis direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, *that is public information*, and that is stored or processed in the system. The commissioners court may make records available through the system only if the custodian of the records agrees in writing to allow public access under this section to the records.

Tex. Loc. Gov't Code Ann. § 191.008(a) (Vernon 1999) (emphasis added). Under this provision, the El Paso County Commissioners Court may establish an electronic database that includes court case records maintained by the district and county clerks. Subject to the clerk's written agreement and the other requirements of section 191.008, a commissioners court may provide access to the clerk's records from a computer terminal in the clerk's office or in a remote location.

Only information "that is public information" may be made available online. *See id* The "El Paso County Local Rules of the District and County Courts concerning the Electronic Filing of Court Documents" include a similar limitation, providing that "the district clerk shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free." El Paso County, Local Rules of the District and County Courts, Electronic Filing of Court Documents R. 6.2(a) (2003), *available at* <http://www.co.el-paso.tx.us/districtclerk/e-file-info.pdf> (adopted pursuant to Tex. Gov't Code Ann. § 51.807) (last visited Aug. 14, 2007) (hereinafter El Paso County E-Filing).⁽²⁾ Section 191.006 of the Local Government Code also provides that "[a]ll records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times." Tex. Loc. Gov't Code Ann. § 191.006 (Vernon 1999).

We conclude in answer to the first question that the Commissioners Court may adopt an order pursuant to Local Government Code section 191.008 authorizing the El Paso County District Clerk and County Clerk to create electronic databases that may be accessible online to display information in civil, family, and criminal cases, as long as the information is public information. *See id* §§ 191.006, .008(a); *see also* El Paso County E-Filing R. 6.2(b). The District or County Clerk must agree in writing to allow public access to records under this section, and the Commissioners Court and the Clerks must comply with other requirements of this provision. *See* Tex. Loc. Gov't Code Ann. § 191.008(a) (Vernon 1999).

II. Whether the District or County Clerk May Make Criminal Case Information Accessible Online

A brief from the El Paso County Attorney raises a concern that confidential criminal history record information may be accessible from the clerks' Internet sites.⁽³⁾ It states that the El Paso County District and County Clerk have Internet websites that allow members of the public to access, without charge, certain information from criminal and civil cases

Rodríguez Brief, *supra* note 3, at 1. A search on the public website using an individual defendant's name will bring up a list of all open and closed cases involving that defendant, including the indictment number, indictment date, court, charge, and disposition. *See id* The brief also states that El Paso County has established a password-protected website accessible only by certain government agencies, such as the Federal Bureau of Investigation (the "FBI") *See id* A search of the password-protected website, in addition to yielding the same basic information available from the public website, allows the user to view and print any documents filed in a case. *See id* at 1–2. The brief raises the possibility that allowing members of the public to access a list of all El Paso County criminal cases involving a particular defendant would be a release of a compiled criminal history in violation of a common-law privacy right. *See id* at 2 (citing *United States Dep't of Justice v Reporters Comm for Freedom of the Press*, 489 U.S. 749 (1989); *Houston Chronicle Publ'g Co v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n r e.*, 536 S.W.2d 559 (Tex. 1976)).

The court in *Houston Chronicle Publishing Co* considered whether a Personal History and Arrest Record, or "rap sheet," maintained by the City of Houston Police Department was available under the Texas Open Records Act, now the Public Information Act (the "PIA"). *See Houston Chronicle Publ'g Co.*, 531 S.W.2d 177, *see also* Tex. Gov't Code Ann. ch. 552 (Vernon 2004 & Supp. 2006) (Public Information Act); Act of May 19, 1973, 63d Leg., R.S., ch. 424, 1973 Tex. Gen. Laws 1112 (adopting Open Records Act). The rap sheet showed each previous arrest and other data relating to individuals and included crimes that they had been suspected of committing, and the court determined that individual privacy rights prevented the disclosure of this information. *See Houston Chronicle Publ'g Co.*, 531 S.W.2d at 181, 186. The rap sheet in *Houston Chronicle Publishing Co.* included criminal history information, including unverified suspicions, that is not available from a district or county clerk's files on court cases.

The United States Supreme Court, in *United States Department of Justice v Reporters Committee for Freedom of the Press*, addressed an issue similar to that in *Houston Chronicle Publishing Co v City of Houston* *See Reporters Comm.*, 489 U.S. 749. The *Reporters Committee* case arose from a request under the Federal Freedom of Information Act ("FOIA") for criminal identification records, or "rap sheets," stored electronically by the FBI. *See id* at 751; *see also* 5 U.S.C.A. § 552 (2007) (Freedom of Information Act). The rap sheets, primarily used to aid in detecting and prosecuting offenders, contained information describing individuals, such as birth date and physical characteristics, as well as a history of arrests, charges, convictions, and incarcerations. *See Reporters Comm.*, 489 U.S. at 752. Because of the large number of rap sheets collected, they were sometimes incorrect or incomplete. *See id* The Court addressed the FOIA provision that excepts from disclosure to the public "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy," or to harm various other specific interests. 5 U.S.C.A. § 552(b)(7)(C) (2007). The Court found a high privacy interest in the "compiled computerized information" derived from rap sheets and held that they were not subject to disclosure under FOIA. *Reporters Comm.*, 489 U.S. at 766.

Houston Chronicle Publishing Co and *Reporters Committee* both deal with criminal history information held by a law enforcement agency, not information about cases held by a court

clerk. The information addressed in those cases included conviction information, but it also included information about arrests that never resulted in indictment and incorrect or unverified information that might cast suspicion on a person who in reality had never been arrested. However, we find no authority indicating that the privacy interests in criminal history information articulated in these two cases would apply to case records made available online by the El Paso County District or County Clerk.

III. Limits on Public Access to Online Database of Court Records Maintained by District or County Clerk

Your predecessor raised a broad issue about the confidentiality of information in an online database of court records--whether access must be limited to certain parties. *See* Request Letter, *supra* note 1, at 1. Records in the district or county clerk's office are as a general rule available to everyone. *See* Tex. Loc. Gov't Code Ann. § 191.006 (Vernon 1999) (county clerk records shall be open "to the public"); Tex. R. Civ. Proc. 76a.1 (presumption that court records are open); El Paso County E-Filing R. 6.2(a)-(b) (district clerk records may be viewed "by all persons" and may be made available "for both filers and the general public"). Of course, the general public may not have access to confidential or privileged records. *See* Tex. Loc. Gov't Code Ann. § 191.006 (Vernon 1999) (county clerk records are accessible only if "not otherwise restricted by law or by court order"); Tex. R. Civ. Proc. 76a (procedure for sealing court records); El Paso County E-Filing R. 6.2(c) (district clerk records not accessible if "legally confidential"). Section 191.008 of the Local Government Code authorizes a commissioners court to establish eligibility criteria for users and to "delineate the public information to be available through the system." Tex. Loc. Gov't Code Ann. § 191.008(b)(2)-(3) (Vernon 1999). Pursuant to this authority, a commissioners court may assist the clerks in determining whether specific kinds of information may be made available to the general public or only to a narrow class of persons.

Your predecessor also asked whether identifiers, such as social security numbers and bank account numbers, *should* be redacted from documents made available online.⁽⁴⁾ Our advice will thus go beyond the limits that the law places on district and county clerks.

Court clerks are not required to place social security or bank account numbers online. A commissioners court, in providing for a computerized electronic information system pursuant to Local Government Code section 191.008, may "delineate the public information to be available through the system." Tex. Loc. Gov't Code Ann. § 191.008((b)(3) (Vernon 1999). The commissioners court and the court clerks, in deciding what information should not go online, have an opportunity to combat the serious and growing crime of identity theft. Social security numbers are much sought-after by identity thieves because these numbers can be used to locate other information about a person. *See* Social Security Administration, Identity Theft and Your Social Security Number (Jan. 2006) (Publ'n No. 05-10064), available at <http://www.ssa.gov/pubs/10064.pdf> (last visited Aug. 14, 2007). We urge commissioners courts and court clerks to help prevent identity theft by ensuring that social security numbers and bank account numbers from court case documents will not be available online. Court clerks should anticipate and prepare for new laws directed toward greater privacy for social security numbers and other personal identifiers.⁽⁵⁾

IV. Authority of Clerk to Charge a Fee to Access Online Database

Your predecessor finally asked whether the El Paso County District Clerk or County Clerk may assess a reasonable fee to the public for access to electronically-stored case information. *See* Request Letter, *supra* note 1, at 1. The El Paso County E-Filing Rules provide that the district clerk "shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free." *See* El Paso County E-Filing R. 6.2(a). Section 118.066 of the Local Government Code provides that "[a] county clerk is not entitled to a fee for . . . the examination of a paper or record in the clerk's office." Tex. Loc. Gov't Code Ann. § 118.066 (1) (Vernon 1999); *see id* § 191.006 (records of county clerk to which access is not restricted by law or by court order shall be open to the public). Section 51.606 of the Government Code moreover provides that "[a] clerk is not entitled to a fee for . . . the examination of a paper or record in the clerk's office." Tex. Gov't Code Ann. § 51.606(1) (Vernon 2005). The El Paso County Attorney states that "in El Paso County, both the District Clerk and the County Clerk have . . . online access and terminals set up in their offices for use by the public." Rodríguez Brief, *supra* note 3, at 3. If a clerk provides for public access to records in his office by providing online access, as the El Paso County District and County Clerks have done, he may not charge a fee for this service.

Section 191.008(b)(4), however, permits a commissioners court to "set a reasonable fee, charged under a contract" to use the computerized electronic information system. Tex. Loc. Gov't Code Ann. § 191.008(b)(4) (Vernon 1999). As long as district and county clerks provide free onsite access to records maintained by their offices, persons who contract with the county pursuant to section 191.008 for electronic access to such information may be charged a fee as set by the commissioners court.

S U M M A R Y

Pursuant to Local Government Code section 191.008, the El Paso County Commissioners Court may adopt an order authorizing the District Clerk and County Clerk to create electronic databases of public information in court case documents and to provide online access to that information. Records maintained by each clerk must be available to the public without charge in the clerk's office, but persons who contract with the county for electronic access to such information may be charged a fee as set by the Commissioners Court. A court clerk should redact social security numbers and bank account numbers from documents made available online.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

NANCY S. FULLER
Chair, Opinion Committee

Susan L. Garrison
Assistant Attorney General, Opinion Committee

Footnotes

1. Letter from Honorable Norma Chávez, Chair, House Committee on Border and International Affairs, to Honorable Greg Abbott, Attorney General of Texas, at 1 (June 5, 2006) (on file with the Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].
2. Government Code sections 51.801 through 51.807 apply to the electronic filing of court documents with a district or county court clerk. *See* Tex. Gov't Code Ann. §§ 51.801-.807 (Vernon 2005).
3. Brief from Honorable José R. Rodríguez, El Paso County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (July 14, 2006) (on file with the Opinion Committee) [hereinafter Rodríguez Brief].
4. The Eightieth Legislature amended section 552.147 of the PIA, overruling the analysis of this provision set out in Attorney General Opinion GA-0519 (2007). *See* Act of Mar. 19, 2007, 80th Leg., R.S., ch. 3, § 1, 2007 Tex. Sess. Law Serv. 3, 4 (effective immediately) (to be codified at Tex. Gov't Code Ann. § 552.147); *see also* Tex. Att'y Gen. Op. No. GA-0519 (2007) (addressing former version of Government Code section 552.147(a)).

Section 552.147(d) requires district and county clerks to redact the first five digits of an individual's social security number from its records upon the individual's request. *See* Act of Mar. 19, 2007, *supra*, 2007 Tex. Sess. Law Serv. 3, 4 (to be codified at Tex. Gov't Code Ann. § 552.147(d)). The PIA does not govern "[a]ccess to information collected, assembled, or maintained by or for the judiciary." Tex. Gov't Code Ann. § 552.0035(a) (Vernon 2004). The obligation to redact part of a social security number applies to information subject to disclosure under the PIA, and it thus does not apply to the court case documents that your predecessor inquired about. *See* Tex. Att'y Gen. ORD-671 (2001) (the PIA does not apply to records of the judiciary maintained by a district clerk).
5. *See* Texas Judicial Council, Public Access to Court Case Records in Texas (2004) (proposing Rule of Judicial Administration on public access to case records), *available at* <http://www.courts.state.tx.us/tjc/reports.asp> (last visited Aug. 14, 2007).

EASY ACCESS

Achieving a statewide system for electronic court records.

BY BLAKE HAWTHORNE

Many Texas lawyers want statewide access to court records, similar to the federal Public Access to Court Electronic Records service known as PACER—and such a system is currently in the works.

A recent poll conducted by the Office of Court Administration found that 98 percent of the 3,000-plus Texas attorneys who responded said they would use a statewide public records access system. The survey also showed that many Texas attorneys and their staffs want to be able to search the court records of all 254 counties at once, with the ability to immediately download those records 24 hours a day, seven days a week. Their minimum expectations for available information would include basic case details like party names, court name and location, the judge assigned to the case, the attorneys on the case, and the docket sheet—much like the PACER service.

Many Texas attorneys are also frustrated by a lack of uniformity in online access to court records. While some counties provide online access to their court records, others do not. Some counties that provide access require attorneys to pay subscription fees, which can be expensive when an attorney does not regularly work in that county and needs to access only one case. Other counties provide access without a subscription but charge \$1 per page—which can quickly add up to a large bill.

Members of the Judicial Committee on Information Technology—a committee of Texas lawyers, judges, clerks, and court administrators appointed by the Texas Supreme Court to study and recommend improvements to court technology—have long heard the familiar refrain, “Why doesn’t Texas just use the federal PACER system?”

Many years ago, members of the committee met with the

Administrative Office of the United States Courts to discuss whether Texas courts could adopt PACER. An effort was already underway in Mississippi to see if its state courts could use the federal system.¹ But PACER’s technology was aging at the time, and the federal judiciary was preparing for a major overhaul of the service. Texas’s method of local funding for

and local control of court technology would have made it difficult to implement PACER in all counties, each with varying levels and types of court technology.

Instead of attempting to shoehorn PACER into technologically diverse and locally controlled court case management systems, the Judicial Committee on Information Technology pursued a different course for Texas. To achieve statewide public access to court electronic records, it first advocated for mandating electronic filing in all Texas courts. Without mandatory e-filing, there could be no statewide access to electronic court records,

and Texas courts had been slow to adopt voluntary e-filing.

With the committee’s urging, the Texas Supreme Court mandated e-filing first for itself, then for civil cases in the courts of appeals, and finally for civil cases in county and district trial courts. The Court of Criminal Appeals recently followed suit and mandated e-filing for criminal cases in Texas appellate, district, statutory county, and constitutional county courts.

Committee members also proposed requiring the Texas e-filing vendor to implement a statewide access system for Texas court records. When the former vendor announced it would not renew its contract, the new vendor, Texas-based Tyler Technologies, agreed to provide a statewide access system.

But how does one implement a single electronic access service for 254 counties that use a variety of case management



systems? Fortunately, regardless of the local case management system, each Texas court uses the eFileTexas system to review and accept e-filed documents. When the clerk accepts a document for filing, eFileTexas file-stamps the document and returns a file-stamped copy to the filer. And eFileTexas has basic case information about each filing (e.g., court name, judge assigned, case number, attorneys on the case). By saving the file-stamped documents and their associated case information through eFileTexas, a searchable statewide access system can be created.

Not only is a statewide access system for court records possible but Tyler Technologies is currently beta-testing such a system. Once a user is registered and logged in with a username and a password, the service provides a search function for looking up documents and docket information. It then returns search results along with suggestions on how to refine the results (like narrowing them to certain counties or case types). Because the system is web-based and uses HTML5 computer coding, it can be used on any device, including tablets and smartphones. The beta version appears to quickly return search results and users can create and organize folders for saving cases or search results. It also alerts the user on the screen when new items are filed in a case. Future improvements may include the ability to e-file case documents with the click of a button.

Judges who hear cases in multiple jurisdictions will particularly benefit from the features of the new system. Instead of learning to use multiple county systems, they will be able to access their cases through one website on the device of their choosing and organize their cases into their own electronic folders, making it easier to keep track of cases filed in different counties. For traveling judges—and lawyers too—the ability to look up cases on mobile devices will be a great help.

Judges can access the beta system now by submitting a form to the OCA at research.txcourts.gov. Once it is received, the office will provide judges with a username and a password.

Attorneys can expect to have access to the system this fall. Initially, attorney access will be limited to cases that they have made an appearance in. But once rules are put into place for the types of cases that can be accessed through the system, members of the public will be allowed to register, and attorneys will be granted the same access rights as registered public members. Registered public access should be available by next summer.

The system won't be perfect, of course. Self-represented litigants are not required to e-file documents (although some do). Also, because judges are not required to e-file their orders, most orders will not be available through the system (orders in some counties, however, are filed electronically). This problem could be remedied if judges agreed to transmit their signed orders to clerks through eFileTexas.

Other issues remain to be resolved as well, such as how the system should be funded, if users should be required to pay a monthly subscription fee, and if a PACER-like funding model should be adopted, charging \$0.10 per page with the cost of a single document capped at \$3 or charging a combination of subscription fees and per page fees. Lawyers seem to prefer the PACER model because they are familiar with it. The Judicial

Committee on Information Technology will study the fee structure and make a recommendation to the Texas Supreme Court.

The committee and others will also study and make recommendations about the case types, document types, and other case information that should be available through the statewide access system and whether certain types of cases and documents should be viewable by persons who are not counsel of record in the case. Further study and improvement of the rules regarding the redaction of sensitive data (e.g., bank account numbers, social security numbers, etc.) will be needed. Enforcement of these rules will continue to be an important topic for the committee and the courts.

Despite these challenges, the new statewide public access service for electronic court records promises to be a major advance for the transparency and efficiency of the Texas court system. **TBJ**

Note

1. Mississippi still has not mandated electronic filing in all of its courts and does not have statewide access to court records.



BLAKE HAWTHORNE

has served as the clerk of the Texas Supreme Court since 2006. Prior to his appointment, Hawthorne served as the court's staff attorney for original proceedings. Before joining the court, he was an assistant attorney general for the state of Texas and an associate of Wiley, Rein & Fielding in Washington, D.C., and Jackson Walker in Fort Worth.

PUBLIC NOTICE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS BROWNSVILLE DIVISION

REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE RONALD G. MORGAN

The current term of the office of United States Magistrate Judge Ronald G. Morgan at Brownsville, Texas, is due to expire May 2, 2017. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of Magistrate Judge Morgan to a new 8 year term.

The duties of a Magistrate Judge position include the following:

1. Conducting most preliminary proceedings in criminal cases,
2. Trial and disposition of misdemeanor cases,
3. Conducting various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and,
4. Trial and disposition of civil cases upon consent of the litigants.

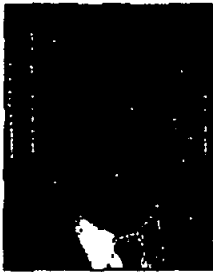
The court invites comments from members of the bar and the public as to whether the panel should recommend the reappointment of Magistrate Judge Morgan to the court. Direct comments under confidential cover to:

RONALD G. MORGAN REAPPOINTMENT PANEL
Attention: David J. Bradley, U.S. District Clerk
PO Box 61010 • Houston, Texas 77208

Comments must be received no later than **November 4, 2016, 5:00 p.m.**

GENERAL COUNSEL'S REPORT

State Agencies Squeeze County Revenues



Jim Allison
General Counsel

While legislators are proposing to limit county property tax revenue, some state agencies are adopting rules to further restrict the ability to fund county services. The Texas Department of Motor Vehicles (DMV) has adopted new rules to increase agency funding while reducing the title registration fees retained by the county tax assessor-collector. These rules will result in less county revenues, leaving the tax assessor-collector with the responsibility for the difficult and complex title transfers. Rep. Joe Pickett, Chairman of the House Committee on Transportation, has protested these changes

and has submitted an alternative plan that would meet the state objectives while preserving county revenues. Please contact your legislators and Gov. Abbott and request that they urge the DMV to adopt the Pickett Plan for title registration and transfers.

On a similar note, the Office of Court Administration has proposed to allow its private E-filing vendor to sell copies of all legal documents stored in the electronic filing system. This proposal will provide additional revenue to the vendor while reducing the revenue collected by the district clerk and county clerk. The clerks will continue to be responsible for the maintenance and security of the files with less revenue to support these services. Please contact your legislators and the members of the Texas Judicial Council and object to the Office of the Court Administration's proposal to allow a private vendor to collect these fees while reducing county revenue.

Road Repair Grants Begin to Expire

Finally, counties need to complete the county road repair grant projects. The Legislature provided \$225 million in road repair grants through the Texas Department of Transportation (TxDOT) in 2013. Of the 191 counties that received grants, 134 counties have remaining funds available for reimbursement. The TxDOT grant agreement requires that projects must begin within three years from the May 2014 execution date. This means that 105 counties have 6-9 months to commence work on projects eligible for reimbursement of \$47.2 million. Projects may be commenced by submitting an invoice for a project contract or county work. Let's keep these projects moving and demonstrate that this assistance is needed and appreciated.

For additional information, please call me at 1-800-733-0699. ★

RESOLUTIONS FOR CONSIDERATION:

Resolutions from the County Board of Commissioners and other organizations are effective means of conveying local concerns on legislative issues. The County Judges and Council members are occasion of their local government resolutions concerning 1) Unfunded Mandates, 2) State Funding for Judicial Officers, and 3) Opposition to Revenue Cuts on the 140th Legislative Cycle. All these sample resolutions are on page 88 at the page of County Reports. If your County Judges and other local organizations adopt any resolution on these matters, please send a copy to your local Judge, Gov. Abbott, Lt. Gov. Palfrey, Senator Glenn, and me.

State Association Officers



Grover "Tiger" Worshan
President
County Commissioner
Tarrant County



Woodrow W. "Woody" Gossom Jr.
First Vice President
County Judge
Wichita County



Neil Fritsch
Second Vice President
County Commissioner
Caldwell County



Terry Simpson
Immediate Past President
County Judge
San Patricio County

Regional Associations



Everett "Bo" Alfred

NORTH & EAST TEXAS
Everett "Bo" Alfred, President
Jefferson County Commissioner

Byron Ryder
First Vice President
Leon County Judge
Rick Bailey
Second Vice President
Johnson County Commissioner

Sydney Murphy, Secretary/Treasurer
Polk County Judge

Robert Johnson,
Immediate Past President
Anderson County Judge



Ben Zeller

SOUTH TEXAS
Ben Zeller, President
Victoria County Judge

Joseph Palacios
First Vice President
Hidalgo County Commissioner

Jamie Coxles
Second Vice President
Webb County Commissioner

Roger Galvan
Immediate Past President
Caldwell County Commissioner



Bill McCoy

WEST TEXAS
Bill McCoy, President
Lubbock County Commissioner

Shari Hamilton
First Vice President
Bailey County Judge

Tim Addison
Second Vice President
Yoakum County Commissioner

Kim Heltmann
Immediate Past President
Glasscock County Judge

Directors: John Haring, Tarrant County Commissioner; Rex Fields, Eastland County Judge; and Glen Whitby, Tarrant County Judge

August 2, 2016

A STATEWIDE ACCESS SYSTEM FOR COURT ELECTRONIC RECORDS

Blake Hawthorne, Clerk, Texas Supreme Court

Texas lawyers want a statewide access system for Texas court records similar to the federal PACER system. A recent poll conducted by the Office of Court Administration (OCA) showed that 98% of the over three thousand Texas attorneys who responded said they would use a statewide public access system. The survey also showed that Texas attorneys and their staff want to be able to search the court records of all 254 Texas counties at once, with the ability to immediately search and download those records 24 hours a day, 7 days a week. And their minimum expectations for the information available through a statewide access system include basic case information like party names, the court name and location, the judge assigned to the case, the attorneys on the case, and the docket sheet—like the federal PACER system.

Many Texas attorneys are also frustrated by the lack of uniformity in online access to court records. Some counties provide online access to their court records, while others do not. Some counties that provide access require attorneys to pay subscription fees, which can be expensive when an attorney does not regularly work in that county and only needs access to one case. Other counties provide access without a subscription, but charge \$1.00 per page—which can quickly add up to a large bill.

Members of the Judicial Committee on Information Technology (JCIT), a committee of Texas lawyers, judges, clerks, and court administrators appointed by the Supreme Court of Texas to study and recommend improvements to court technology, have long heard the familiar refrain “why doesn’t Texas just use the federal PACER system?” Many years ago, members of JCIT met with the Administrative Office of the United States Courts to discuss whether Texas courts could adopt the federal the PACER system. An effort was already underway in Mississippi to see if state courts there could adopt the federal PACER system.¹ But

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PACER's technology was aging at that time and the federal judiciary was preparing for a major rewrite of the system. Texas' system of local funding for and local control of court technology would have made it extremely difficult, if not impossible, to implement the federal judiciary's technology in all 254 Texas counties, each with varying levels and types of court technology.

Instead of attempting to shoehorn the unified federal PACER system into technologically-diverse and locally-controlled Texas court case management systems, JCIT pursued a different course. To achieve statewide public access to court electronic records, JCIT first advocated for mandating electronic filing in all Texas courts. Without mandatory electronic filing, there could be no statewide access to Texas electronic court records. Texas courts had been slow to adopt electronic filing. With JCIT's urging, however, the Supreme Court of Texas mandated electronic filing first for itself, then in the courts of appeals, and finally for civil cases in Texas district, county and probate courts. The Court of Criminal Appeals recently followed suit and mandated electronic filing for criminal cases in Texas trial courts.

Besides supporting mandatory electronic filing, JCIT members also proposed requiring the e-filing vendor to implement a statewide access system for Texas court records. When the former vendor of the Texas court electronic filing system announced it would not renew its contract, the new vendor, Texas-based Tyler Technologies, agreed to provide a statewide access system.

But how does one implement a single electronic access system for 254 counties, which use a variety of different case management systems? Fortunately, regardless of the local case management system they use, all Texas courts use the eFileTexas system to review and accept electronically filed documents. When the clerk accepts a document for filing, eFileTexas file-stamps the document and returns a file-stamped copy to the filer. And eFileTexas also has basic case information about each filing (e.g. court name, judge assigned, case number, attorneys on the case). By saving the filed-stamped documents and their associated case information through eFileTexas, a searchable statewide access system can be created.

Not only is it possible, but it has actually been accomplished. Tyler Technologies is currently beta-testing a statewide access system. Once a

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registered user is logged in with a user name and a password, the system provides a Google-type search bar for searching documents and docket information. The system returns search results along with suggestions on how to refine the results (like narrowing search results to certain counties or case types). Because the system is web-based and uses HTML 5, it can be used on any device, including tablets and smart phones. The beta version appears to be fast and quickly returns search results. Folders can be created to save cases or search results, and these folders can be organized and labeled by the user. Future improvements may include the ability to electronically file documents into a case through the electronic access system with the click of a button.

Judges that hear cases in multiple jurisdictions will particularly benefit from the features of the new system. Instead of learning to use multiple different county systems, these judges will be able to access their cases through one website on the device of their choosing. And they will be able to organize their cases into their own electronic folders, making it easier to keep track of cases filed in different counties. For traveling judges (and lawyers too), the ability to look up cases on mobile devices will be a great help.

Judges can get access to the system now by submitting a form to OCA. The form can be found at research.txcourts.gov. Once the form is received, OCA will provide judges with a username and a password.

Attorneys can expect to have access to the system beginning this fall. Initially, attorney access will be limited to cases that they have made an appearance in. But once rules are put into place for the types of cases that can be accessed through the system, members of the public will be allowed to register for access—and attorneys will be granted the same access rights as registered public members. Registered public access should be available summer 2017.

The system won't be perfect, of course. Because self-represented litigants are not required to electronically file documents, their filings will not be available through the statewide access system unless they are electronically filed (some self-represented litigants file electronically). Also, because judges are not required to electronically file their orders, most orders will not be available through the system either (in some counties, however, orders are filed electronically). This problem could be remedied if judges agreed to transmit their signed orders to the

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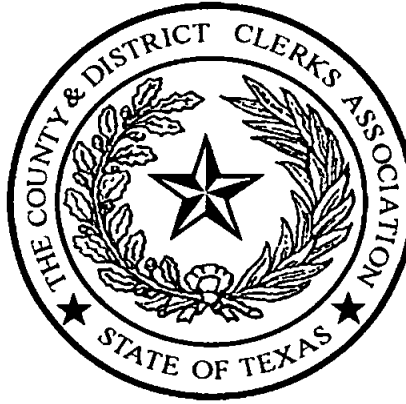
clerk through eFileTexas. Then file-stamped copies of their orders would be available through the access system.

There are other issues that remain to be resolved as well. For example, how should the system be funded? Should users be required to pay a monthly subscription fee? Or should a PACER-like funding model be adopted, charging \$0.10 per page with the cost of a single document capped at \$3.00? Or a combination of subscription fees and per page fees? Lawyers seem to prefer the PACER model because it is one that they are familiar with and have become accustomed to. JCIT will study the fee structure and make a recommendation to the Supreme Court of Texas.

JCIT and others will also study and make recommendations about the case types, document types, and other case information that should be available through the statewide access system. Decisions will be made about whether certain types of cases and documents should be viewable by persons that are not counsel of record in the case. And there will need to be further study and improvement of the rules regarding the redaction of sensitive data (e.g. bank account numbers, social security numbers, etc.) from court records. Enforcement of these rules will continue to be an important topic for JCIT and the courts.

Despite these challenges, the new statewide public access for court electronic records promises to be a major advance for the transparency and efficiency of the Texas court system. The Texas court system presents some unique challenges to providing a uniform access system. But with the support of the Supreme Court of Texas and the Court of Criminal Appeals, JCIT, OCA, judges, and clerks are overcoming those unique challenges to provide what attorneys have long demanded—a uniform statewide system for accessing Texas court records.

¹ Mississippi still has not mandated electronic filing in all of its courts and does not have statewide access to court records.



RESOLUTION

A Resolution of the County & District Clerk's Association of Texas
Opposition to re SearchTX, 22, November, 2016

WHEREAS, the County & District Clerk's Association of Texas recognizes that the Texas Office of Court Administration (OCA), under The Supreme Court of Texas's direction, has created re SearchTX, a web portal to allow judges secure access to a consolidated database of case information that has been e-Filed, and

WHEREAS, the sole purpose of the e-File system developed by the OCA was to provide a delivery system for attorneys to file documents electronically to the courts and that the information would only be retained for thirty days, and

WHEREAS, the OCA is now retaining information filed within the e-File system and plans to make it available to attorneys and the public (for a fee) through re SearchTX in the near future, and

WHEREAS, as required by the Texas Constitution and state statutes, the county and district clerks of each Texas county are the designated custodians of court records, responsible for the management, preservation and access of court records, and

WHEREAS, Texas counties are responsible for providing resources to clerks for the management, preservation and access of court records by the public including having the option of offering county records through an electronic information system and may provide (on a contractual basis) direct access to the public, by statute,

NOW THEREFORE, BE IT RESOLVED BY THE COUNTY & DISTRICT CLERKS ASSOCIATION OF TEXAS and its 254 current member counties that for the foregoing reasons, it is in the best interest of Texas counties and their taxpayers to oppose any change to current statutes regarding care, custody and control of records held by the county and district clerks and to any actions that would result in those records being centralized within any other entity, be it public or private

BE IT FURTHER RESOLVED, we are opposed to the amendment and/or repeal of any current statutes or rules that authorize local control by commissioner's court in the administration of their duties concerning records held by the county and district clerk or how the counties choose to offer those records to the public.

BE IT FURTHER RESOLVED, finally, we oppose any diversion of existing County revenue to any other government entity concerning records held under local control by statute

PASSED AND APPROVED by the County & District Clerks
Association of Texas on this the 22nd day of November, 2016

Celeste Bichsel

Celeste Bichsel, President

District and County Clerks – offices created and set out in Texas Constitution

Texas Constitution

Article V

Sec. 9. CLERK OF DISTRICT COURT. There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election.

Sec. 20. COUNTY CLERK. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks

Clerk is the Custodian of Records

Texas Government Code

Sec. 51.303. DUTIES AND POWERS. (a) The clerk of a district court has custody of and shall carefully maintain and arrange the records relating to or lawfully deposited in the clerk's office.

(b) The clerk of a district court shall

- (1) record the acts and proceedings of the court,
- (2) enter all judgments of the court under the direction of the judge, and
- (3) record all executions issued and the returns on the executions.

(c) The district clerk shall keep an index of the parties to all suits filed in the court. The index must list the parties alphabetically using their full names and must be cross-referenced to the other parties to the suit. In addition, a reference must be made opposite each name to the minutes on which is entered the judgment in the case.

(d) Repealed by Acts 1995, 74th Leg., ch 641, Sec. 1.05, eff. Sept. 1, 1995.

(e) The clerk of a district court may:

- (1) take the depositions of witnesses; and
- (2) perform other duties imposed on the clerk by law.

(f) In addition to the other powers and duties of this section, a district clerk shall accept applications for protective orders under Chapter 71, Family Code.

Texas Local Government Code

Sect. 192.006 COUNTY COURT RECORDS. (a) The county clerk is the custodian of the records of the county court in civil and criminal cases and in matters of probate. The county clerk shall record each act and proceeding of the county court, record under direction of the judge each judgment of the court, and record the issuance of and return on each execution issued by the court.

(b) The county clerk shall keep the records of the county court properly indexed and arranged.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 52, eff. Sept. 1, 1989.

Commissioners' Court authority re: Online Documents

Local Government Code

Sect. 191.008. AUTHORITY TO ESTABLISH COMPUTERIZED ELECTRONIC INFORMATION SYSTEM. (a) The commissioners court of a county by order may provide for the establishment and operation of a computerized electronic information system through which it may provide on a contractual basis direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, that is public information, and that is stored or processed in the system. The commissioners court may make records available through the system only if the custodian of the records agrees in writing to allow public access under this section to the records.

(b) The commissioners court may:

- (1) provide procedures for the establishment, maintenance, and operation of the information system;
- (2) establish eligibility criteria for users;
- (3) delineate the public information to be available through the system,
- (4) set a reasonable fee, charged under a contract, for use of the system; and
- (5) consolidate billing and collection of fees and payments under one county department or office.

(c) The commissioners court may contract with a person or other governmental agency for the development, acquisition, maintenance, or operation of:

- (1) the information system or any component of the information system, including telecommunication services necessary for access to the system; and
- (2) billing and collection services for the system.