

Supreme Court of Texas

Misc. Docket No. 24-9030

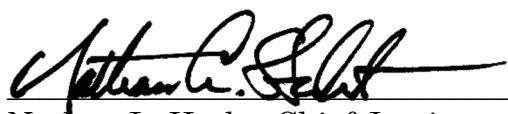
Final Approval of Amendments to Texas Rules of Civil Procedure 21, 165a, 239a, 246, 297, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases

ORDERED that:

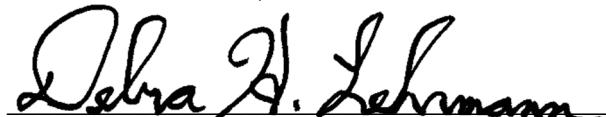
1. On September 8, 2023, in Misc. Dkt. No. 23-9071, the Court preliminarily approved amendments to Texas Rules of Civil Procedure 21, 165a, 239a, 246, 297, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases, effective immediately. The Court invited public comment and directed the Judicial Committee on Information Technology (“JCIT”) to study and make recommendations on copying court orders, notices, and other documents in civil cases to re:SearchTX.
2. The comment period expired on January 1, 2024. JCIT submitted its recommendations on March 5, 2024. Those recommendations are attached as Exhibit 1 to this Order.
3. Following the comment period and the receipt of JCIT’s recommendations, the Court made revisions to the rules. Those revisions are shown in redline. This Order incorporates the revisions and contains the final version of the amended rules, effective immediately.
4. This Order also mandates district and county clerks to integrate their local case management systems with re:SearchTX. Integration will be mandatory according to the following implementation schedule based on the counties’ 2020 Federal Census population:
 - a. Courts in counties with a population of 250,000 or more – October 1, 2024;
 - b. Courts in counties with a population of 60,000 to 249,999 – March 1, 2025;
 - c. Courts in counties with a population less than 60,000 – November 1, 2025.

5. Clerks who believe they cannot comply with paragraph 4 of this Order by the implementation date specified may petition the Supreme Court for an extension, which may be granted for good cause shown. The petition must explain why an extension is needed and propose an alternative integration date.
6. Before integration, clerks are excused from complying with Texas Rule of Civil Procedure 21(f)(10) and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases. However, clerks must send orders and judgments to the parties electronically within 24 hours after the order or judgment is signed.
7. For purposes of the Texas Rule of Civil Procedure, the Statewide Rules Governing Electronic Filing in Criminal Cases, and the Texas Rules of Appellate Procedure, re:SearchTX and the Texas Appeals Management and E-filing System (“TAMES”) are approved e-filing systems.
8. 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 this Order for publication in the *Texas Register*.

Dated: May 28, 2024.



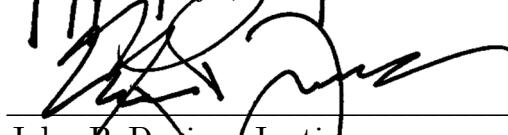
Nathan L. Hecht, Chief Justice



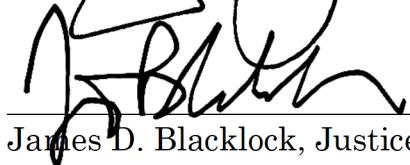
Debra H. Lehrmann, Justice



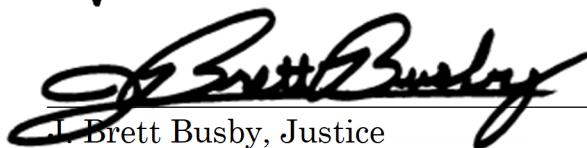
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



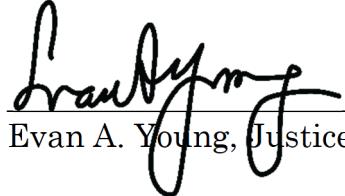
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

Court of Criminal Appeals of Texas

Misc. Docket No. 24-004

Final Approval of Amendments to Texas Rule of Appellate Procedure 9.2 and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases

ORDERED that:

1. On September 8, 2023, the Court of Criminal Appeals (in Misc. Dkt. No. 23-004) and the Supreme Court of Texas (in Misc. Dkt. No. 23-9071) preliminarily approved amendments to Texas Rule of Appellate Procedure 9.2 and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases and invited public comment.
2. Following the comment period, the Courts revised the rules. Those revisions are shown in redline. This Order incorporates the revisions and contains the final version of the amended rules, effective immediately.
3. By the accompanying Texas Supreme Court order, district and county clerks are ordered to integrate their local case management systems with re:SearchTX as set out in that order.
4. By the same accompanying Texas Supreme Court order, for purposes of the Texas Rules of Civil Procedure, the Texas Rules of Appellate Procedure, and the Statewide Rules Governing Electronic Filing in Criminal Cases, the Texas Appeals Management and E-filing System (TAMES) and re:SearchTX are approved e-filing systems.
5. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of this Order for publication in the *Texas Register*.

Dated: May 28, 2024.

Sharon Keller

Sharon Keller, Presiding Judge

Barbara Hervey

Barbara P. Hervey, Judge

Bert Richardson

Bert Richardson, Judge

Kevin Patrick Yeary

Kevin P. Yeary, Judge

David Newell

David Newell, Judge

Mary Lou Keel

Mary Lou Keel, Judge

Scott Walker

Scott Walker, Judge

Michelle Slaughter

Michelle Slaughter, Judge

Jesse F. McClure III

Jesse F. McClure, Judge

TEXAS RULES OF CIVIL PROCEDURE

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

(f) Electronic Filing.

(10) Electronic Orders, Notices, and Other Documents From the Court.

- (A) Except as provided in (B), the clerk must send orders, notices, and other documents to the parties electronically through an electronic filing ~~service provider certified by the Office of Court Administrationsystem approved by the Supreme Court~~. A court seal may be electronic.
- (B) The clerk need not send orders, notices, or other documents electronically:
 - (i) when sealed or when access is otherwise restricted by law or court order; or
 - (ii) when an unrepresented party has not provided an e-mail address.

Notes and Comments

Comment to 2023 changes: Rule 21(b) is amended to clarify requirements for notices. Rule 21(f)(10) is amended to implement section 80.002(b) of the Government Code. Clerks are encouraged to coordinate and work with other court staff to effectuate this rule. Nothing in Rule 21(f)(10) prohibits the court from sending orders, notices, and documents to parties by additional methods and the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 21(f)(10) is impossible, then the clerk should use an alternative method to send orders, notices, and documents to that party.

RULE 165a. DISMISSAL FOR WANT OF PROSECUTION

1. **Failure to Appear.** A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice. Notice of the court's intention to dismiss and the date and place of the dismissal hearing must be sent by the clerk to the parties as provided in Rule 21(f)(10). At the dismissal hearing, the court must dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket. If the court determines to maintain the case on the docket, it must render a pretrial order assigning a trial date for the case and setting deadlines for the joining of new parties, all discovery, filing of all pleadings, the making of a response or supplemental responses to discovery and other pretrial matters. The case may be continued thereafter only for valid and compelling reasons specifically determined by court order. The clerk must send any order to the parties as provided in Rule 21(f)(10). Failure to send notices and orders as required by this rule does not affect any of the periods mentioned in Rule 306a except as provided in that rule.

RULE 239a. NOTICE OF DEFAULT JUDGMENT

At or immediately prior to the time an interlocutory or final default judgment is rendered, the party taking the same or his attorney must certify to the clerk in writing the last known email address and mailing address of the party against whom the judgment is taken, which certificate shall be filed among the papers in the cause. Immediately upon the signing of a default judgment, the clerk must send written notice thereof to the party against whom the judgment was rendered as provided in Rule 21(f)(10) and to the mailing address shown in the certificate, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

RULE 246. CLERK TO GIVE NOTICE OF SETTINGS

The clerk must keep a record of all cases set for trial and, upon written request, must send the parties the date of setting as provided in Rule 21(f)(10). Failure of the clerk to send such information on proper request is sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented a party from preparing or presenting the party's claim or defense.

RULE 297. TIME TO SEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Within twenty days after a timely request is filed, the court must send its findings of fact and conclusions of law to the parties as provided in Rule 21(f)(10).

If the court fails to send timely findings of fact and conclusions of law, the party making the request must, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which must be immediately called to the attention of the court by the clerk. Such notice must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to send findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

Notes and Comments

Comment to 1990 change: To revise the practice and times for findings of fact and conclusion of law. See also Rules 296 and 298.

RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

After the court sends original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings must be made within ten days after the court sends the original findings and conclusions. Each request made pursuant to this rule must be served on each party to the suit in accordance with Rule 21a.

Within ten days after such request is filed, the court must send any additional or amended findings and conclusions to the parties as provided in Rule 21(f)(10). No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

RULE 299. OMITTED FINDINGS

When findings of fact are sent by the trial court they must form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption

in support of the judgment. Refusal of the court to make a finding requested is reviewable on appeal.

RULE 299a. FINDINGS OF FACT TO BE SEPARATELY SENT AND NOT RECITED IN A JUDGMENT

Findings of fact must not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact must be sent as a document or documents separate and apart from the judgment.

Notes and Comments

Comment to 1990 change: To require that findings of fact be separate from the judgment and that such separate findings of fact are controlling on appeal.

RULE 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT

3. **Notice of Judgment.** When the final judgment or other appealable order is signed, the clerk of the court must immediately send the judgment or order to the parties as provided in Rule 21(f)(10). If the judgment awards monetary damages, the noticejudgment must state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

TEXAS RULES OF APPELLATE PROCEDURE

Rule 9. Documents Generally

9.2. Filing

(c) *Electronic Filing.*

(7) Electronic Orders, Notices, and Other Documents From the Court.

(A) In Civil Cases.

(i) Except as provided in (ii), the clerk must send orders, notices, and other documents to the parties electronically through ~~an electronic filing service provider certified by the Office of Court Administration or~~ an electronic filing system approved by the Supreme Court. A court seal may be electronic.

(ii) The clerk need not send orders, notices, or other documents electronically:

(a) when sealed or when access is otherwise restricted by law or court order; or

(b) when an unrepresented party has not provided an e-mail address.

(B) In Criminal Cases.

(i) The clerk may electronically send notices and other documents to the parties. A court seal may be electronic.

- (ii) Except as provided in (iii), the clerk must send orders to the parties electronically through ~~an electronic filing service provider certified by the Office of Court Administration or~~ an electronic filing system approved by the Supreme Court. A court seal may be electronic.
- (iii) The clerk need not send orders electronically:
 - (a) when sealed or when access is otherwise restricted by law or court order; or
 - (b) when an unrepresented party has not provided an e-mail address.

Notes and Comments

Comment to 2023 Change: Rule 9.2(c)(7) is amended to implement section 80.002 of the Government Code. Nothing in Rule 9.2(c)(7) prohibits the clerk from sending orders, notices, and documents to parties by additional methods other than through ~~an electronic filing service provider certified by the Office of Court Administration or~~ an electronic filing system approved by the Supreme Court. Indeed, the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 9.2(c)(7) is impossible, then the clerk should use an alternative method to send orders, notices, and documents to that party.

STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

PART 2. FILING MECHANISM

Rule 2.7 Electronic Orders, Notices, and Other Documents from the Court

- (a) **Notices and Other Documents.** The clerk may electronically send notices and other documents to the parties. A court seal may be electronic.
- (b) **Orders from the Court.** Except as provided in (c), the clerk must send orders to the parties electronically through an electronic filing ~~service provider certified by the Office of Court Administration system approved by the Supreme Court of Texas.~~
- (c) **Exceptions to Electronic Delivery of Orders from the Court.** The clerk need not send orders electronically:
 - (1) when sealed or when access is otherwise restricted by law or court order; or
 - (2) when an unrepresented party has not provided an e-mail address.

Comment to Rule 2.7: This rule is amended to implement section 80.002 of the Government Code. Nothing in Rule 2.7(b) prohibits the clerk from sending orders by additional methods, and the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 2.7(b) is impossible, then the clerk should use an alternative method to send orders to that party.

Exhibit 1

JCIT Subcommittee Recommendation – Orders on re:SearchTX

The Supreme Court has directed JCIT to study and make recommendations on copying court orders, notices, and other documents in civil cases to re:SearchTX. See Misc. Docket No. 23-9071 ¶ 5 (Preliminary Approval of Amendments to Texas Rules of Civil Procedure 21, 165a, 239a, 246, 297, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases).

As amended to implement Texas Government Code section 80.002(b), Texas Rule of Civil Procedure 21(f) (10) generally requires the clerk to send orders, notices, and other documents to the parties electronically through an Office of Court Administration-approved electronic filing service provider (“EFSP”). But when an order, notice, or other document is sent using an EFSP’s “service only” option rather than by e-filing, the document is not captured into the re:SearchTX database. Thus, despite a clerk’s compliance with Rule 21(f)(10), orders, notices, and other documents pertinent to a case may or may not be found in re:SearchTX, depending on how the clerk sent them to the parties.

The goal of re:SearchTX is to establish a robust system that would allow parties and the public access to public records, including orders, notices, and other court-generated documents. JCIT has the following recommendations that would facilitate the copying of court orders, notices, and other documents in civil cases into re:SearchTX.

Integration of the clerks’ respective Case Management Systems (“CMS”) with re:SearchTX presents the easiest solution. All CMS software currently in use statewide can integrate with re:SearchTX on the back end. This option would allow clerks’ offices to docket and store documents using their current systems and processes while maintaining appropriate security. Through integration, once a docket entry and document are uploaded into the CMS, they would automatically appear in re:SearchTX within the permissions provided by existing technology standards. Additionally, if a case or specific documents are sealed, re:SearchTX would recognize and follow the security level provided by the CMS. A date-forward view of dockets and document entries could also be implemented on a case-by-case basis in the event a jurisdiction did not previously have security implemented in its CMS.

For notifications to parties, Tyler Technologies has committed to making its case alerts in re:SearchTX, which currently come at an additional cost to attorneys, free for parties and attorneys on the case. The case alerts combined with the clerk’s integration, means that orders and notices would appear on re:SearchTX when docketed by the clerk and parties/attorneys would be notified, accomplishing the letter and intent of the law and Supreme Court orders.

The integration of CMS systems supports public access to court records and provides an easily accessible backup for court records in the event of a natural disaster. The federal Public Access to Court Electronic Records (“PACER”) system has been extremely beneficial to the administration of justice and public access, and the integration solution would help make the Texas eFiling system similar to PACER, as originally intended.

Recommendation 1 - Require clerks to integrate with re:SearchTX according to a reasonable schedule. Integration would allow clerk offices to continue operating in the same way they do today with no extra

steps involved. A reasonable schedule of integration is set forth below. An exception process should be put into place for clerk's offices needing additional time to integrate. Of the 20 most populous Texas counties, all district and county clerks, except for Harris DC and Tarrant DC, use Tyler's CMS and are able to integrate with re:SearchTX. Integration capability for Harris DC and Tarrant DC is in process.

If the Supreme Court adopts this recommendation, clerks should be required to integrate on the following schedule, a detailed version of which is attached:

- Top 20 most populous counties: within five months of the Supreme Court's order adopting this recommendation.
- Counties with a population over 60,000: within ten months of the Supreme Court's order adopting this recommendation.
- All other counties: within eighteen months of the Supreme Court's order adopting this recommendation.

Recommendation 2 – Include re:SearchTX as part of the definition of an e-filing system in the Final Approval Order. Texas Government Code section 72.031(a) gives the Supreme Court the power to determine what is included in the definition of the eFiling system. The Court has previously defined the Texas Appeals Management and E-filing System ("TAMES") as an approved e-filing system for purposes of Texas Rule of Appellate Procedure 9.2. *See, e.g.*, Misc. Docket No. 23-9071 ¶ 4. Doing so has allowed notices generated through TAMES to serve as notices from the appellate clerk in compliance with TRAP 9.2(7), which imposes a requirement substantially similar to new TRCP 21(f)(10). Including re:SearchTX within the definition of an e-filing system would benefit trial court clerks much the same way.

JCIT recommends including the following language in the Final Order approving the amendment to TRCP 21:

For purposes of Texas Rule of Civil Procedure 21(f)(10), re:SearchTX is an approved e-filing system.

If recommendations 1 and 2 are adopted, trial court clerks using integrated CMSs would be compliant with amended Rule 21(f)(10).

Recommendation 3 – Consistent with the intent of Texas Government Code section 80.002, until a clerk's office is integrated, orders shall be sent to parties and attorneys electronically within two business days of the clerk receiving the order, without request from the parties or attorneys, and at no cost to the parties or attorneys. This recommendation would act as a stopgap to ensure that parties and attorneys receive timely notice of court orders until full integration is accomplished. This recommendation should be implemented within 30 days of adoption by the Supreme Court.