

**Proposed Resolutions**  
for consideration by the  
**Legislative Committee**  
of the  
**Texas Judicial Council**

August 7, 2008

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Appellate Court Filing Fees – Revise Statutes to  
Reflect Current Appellate Terminology**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to revising certain statutes concerning appellate court filing fees to reflect current appellate terminology;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Sections 51.005 and 51.207 of the Texas Government Code set out the filing fees to be charged in the Supreme Court of Texas and the courts of appeals. The terminology used in the statutes is not up to date. The Supreme Court of Texas made changes to the Texas Rules of Appellate Procedure in 1997 that altered certain appellate procedures and terminology. In 1998, the Supreme Court of Texas issued an order regarding the filing fees to be charged in the Supreme Court and in the courts of appeals. While the order did not change the amount of the filing fees, the order reflected the 1997 changes to the Texas Rules of Appellate Procedure and, accordingly, uses different terminology than the Government Code provisions setting the fees.

Purpose

Sections 51.005 and 51.207 of the Texas Government Code should be amended so as to use current terminology in regard to appellate procedures and documents.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**District Judges and Appellate Justices Salary Cap and Longevity Pay**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to longevity pay for district judges and appellate justices and the salary limitations imposed by Section 659.012 of the Texas Government Code;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The 80<sup>th</sup> Legislature provided longevity pay for district judges and appellate justices who have completed 16 years of service. The longevity pay consists of \$20 for each year of service up to \$320. Section 659.012 of the Texas Government Code provides salary limitations for district judges and appellate justices. If a judge's or justice's combined state salary and county supplement exceeds the salary limitation imposed by Section 659.012, the Comptroller of Public Accounts reduces the judge's or justice's state salary by the amount of the excess. Currently, there is no specific provision exempting longevity pay from the salary limitations imposed by Section 659.012.

Purpose

Amending the judicial longevity pay provision enacted by the 80<sup>th</sup> Legislature will clarify that judicial longevity pay should not be considered part of a judge's or justice's salary when determining whether the salary limitations imposed by Section 659.012 have been maintained.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Visiting Associate Judges**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the qualifications of visiting associate judges appointed under subchapters B and C of Texas Family Code chapter 201.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The presiding judges of the administrative judicial regions appoint associate judges to hear Title IV-D cases and child protection cases under Subchapters B and C, respectively, of Chapter 201, Texas Family Code. From time to time, an associate judge temporarily may be unable to work or hear the docket because of illness, injury, disability, family circumstances, military service or a vacancy in the office. Current law allows a presiding judge to appoint a visiting associate judge, providing the appointee has served as an associate judge for at least two years before the date of the appointment.

Purpose

The presiding judges should be able to appoint persons who have previously served at least two years as a judge of a district or statutory county court to serve in the temporary position of a visiting associate judge under Subchapters B and C of Chapter 201 because such former judges have the requisite experience to be able to quickly and efficiently assume the duties of the associate judge.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Qualifications of Child Support and Child Protection Associate Judges**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the qualifications of associate judges appointed under Subchapters B and C of Texas Family Code Chapter 201.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The presiding judges of the administrative judicial regions appoint associate judges to hear Title IV-D cases and child protection cases under Subchapters B and C, respectively, of Chapter 201, Texas Family Code. The associate judges are employed by the Office of Court Administration and supervised by the presiding judges. Current law requires that a person so appointed must be a citizen of the United States and have resided in the administrative judicial region to be served or in an adjacent county for the two years preceding the date of the appointment, and that the person live in the region or adjacent county during the term of service. An additional qualification for appointment is that the person be licensed to practice law in this state and have been a practicing lawyer or a judge of a court in this state for the four years preceding the appointment.

Unlike associate judges who are county employees appointed under Subchapter A of Chapter 201 of the Texas Family Code, the child support and child protection associate judges appointed under Subchapters B and C are state employees of the Office of Court Administration who work on statewide programs, and the presiding judges should be able to appoint the person with the best qualifications and experience for the position, regardless of where the person resided before the appointment. The post-appointment residency requirement does serve a legitimate purpose of promoting efficiency and ties to the local community and does not need amending.

In addition, clarification is needed that a person who is qualified to serve on assignment under the provisions of Chapter 74 of the Texas Government Code is

qualified for appointment as an associate judge under Subchapters B and C of Chapter 201 of the Texas Family Code.

Purpose

The presiding judges will have more flexibility in appointing associate judges under Subchapters B and C of the Texas Family Code if the residency requirements are amended to require that a person have resided in this state for the two years preceding their appointment, be licensed to practice law and have been a practicing lawyer or a judge of a court in this state or have been qualified to serve on assignment under Chapter 74 of the Texas Government Code for the four years preceding the appointment. This change will also clarify that a person who is qualified to serve on assignment under the provisions of Chapter 74 of the Texas Government Code is qualified for appointment as an associate judge under Subchapters B and C of Chapter 201 of the Texas Family Code.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Continuing Education Requirements for Court Reporting Firms**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to authority for the Texas Supreme Court and Court Reporters Certification Board (CRCB or Board) to adopt and enforce rules requiring court reporting firms to designate a representative who would obtain continuing education in rules and ethics;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Government Code Section 52.015 provides that the Supreme Court may authorize and the Board by rule may require continuing professional education for persons certified as court reporters. The Board's rules require certified shorthand reporters (CSRs) to obtain 2.5 hours of continuing education in ethics within each two-year period. Firms and their affiliate offices are required to register with the Board and comply with the Board's rules and Code of Professional Conduct. However, Section 52.015 does not address adoption of continuing education requirements for court reporting firms.

Some firms employ CSRs to manage their offices; because those individuals must obtain continuing education in ethics to maintain their certification, they are familiar with the rules and Code of Professional Conduct. On the other hand, if a firm is not managed by a CSR, there is no mechanism to ensure that those who are responsible for managing the day-to-day activities of the firm are aware of the firm's obligations under the rules and Code of Professional Conduct. Requiring all firms to designate a compliance officer who must obtain the same amount of continuing education in ethics as a CSR would provide this assurance.

Purpose

The change to Section 52.015 would authorize the Supreme Court and the Board to adopt rules to require court reporting firms in Texas to designate in each registered office a compliance officer who must obtain the same amount of continuing education in ethics as a CSR. CSRs who own firms would not be required to obtain double ethics hours if they



are designated as the firm's compliance officer. The change would provide assurance that those who manage a firm's offices are aware of the firm's obligations under the Board's rules and Code of Professional Conduct.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Evidence in Hearings of Court Reporters Certification Board  
And Time for Appealing Board Orders**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the evidence in disciplinary hearings before the Court Reporters Certification Board (CRCB or Board) and the time for appealing a disciplinary action taken by the Board;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

When the CRCB holds a hearing on a complaint against a certified court reporter or registered court reporting firm, Government Code Section 52.028(d) requires the Board to apply the general rules of evidence applicable in a district court. Many complaints filed with the Board are accompanied by affidavits and other documents, which are inadmissible hearsay under the rules of evidence. The proposed change would permit the Board to consider such documentary evidence if the documents are pre-filed with the Board and provided to all parties no later than two weeks prior to the hearing. The documentary evidence would be subject to relevance objections.

Section 52.030 currently provides that an appeal from a disciplinary action taken by the Board must be filed in district court in Travis County or in the county where the reporter resides or the firm is located. However, the statute does not provide a deadline for filing an appeal. The proposed change would require that an appeal must be filed with the court no later than the 30<sup>th</sup> day after the effective date of the Board's order.

Purpose

The change to Section 52.028(d) would give the CRCB the flexibility to consider documentary evidence that is pre-filed with the Board and provided to the parties. The change to Section 52.030 would provide finality for Board disciplinary actions.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Receipt of Criminal History Record Information  
by Court Reporters Certification Board**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to authorizing the Court Reporters Certification Board (CRCB or Board) to receive criminal history record information from the Department of Public Safety (DPS);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The CRCB has authority to consider certain final convictions of applicants and holders of certificates. Currently, the Board requires applicants and certified shorthand reporters (CSRs) to report their own criminal history because it does not have authority to receive such information from the DPS. Permitting the CRCB to receive this information directly from the DPS will improve the Board's ability to ensure that only qualified individuals are certified.

The amendment would be a new provision in Government Code Chapter 411, Subchapter F, which addresses the DPS' dissemination of criminal history record information. The amendment would authorize the CRCB to obtain such information from the DPS and require that the CRCB use the information only for purposes related to the issuance, denial, suspension, revocation, or renewal of a certificate. The amendment would prohibit the CRCB from disclosing the information and require that the information be destroyed once its purpose has been served.

The change would also add the CRCB to the list of entities in Government Code Section 411.081(i) which may receive criminal history record information that is the subject of a non-disclosure order.

Purpose

The amendments would strengthen the CRCB's ability to monitor the qualifications of applicants for certification and CSRs.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Staggering Terms of Court Reporters Certification Board Members**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to staggering the terms of members of the Court Reporters Certification Board (CRCB or Board);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Government Code Section 52.011(a) and (f) provide that the thirteen members of the CRCB are appointed by the Supreme Court of Texas and serve six-year terms. The statute, however, does not explicitly stagger the terms of Board members. As a result of the timing of expansion of the Board in the past, the terms of five Board members expire in one year. The loss of five members at one time impacts the overall experience level of the Board and is potentially disruptive of the Board's ability to carry out its business efficiently.

Purpose

Section 52.011 should be amended to stagger Board member terms so that in a six-year period, two members' terms would expire every year for five years, and three members' terms would expire in the sixth year. Staggering terms so that they expire evenly would help preserve Board continuity. Any amendment to Section 52.011 would also address the transition to staggered terms, such as the drawing of lots.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Technical Corrections and Changes to Government Code Chapter 52**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal relating to certain technical corrections and changes to Government Code Chapter 52, which addresses the Court Reporters Certification Board (CRCB or Board);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The following changes are corrections and clarifications to Government Code Chapter 52:

- Section 52.0111(b)(7) (Board Member Training) – Delete references to Government Code Chapters 551, 552, and 2001, which are not applicable to the judiciary.
- Section 52.026(c), (d), (e), (f), (h) (Renewal of Certifications and Registrations) – Add “or firm” after references to “person” since each subsection refers to registration as well as certification.
- Section 52.028 (Board Hearings) – Delete “verified” from subsection (a). The term was overlooked when the requirement that complaints filed with the Board must be verified was eliminated from Section 52.027 in a prior legislative enactment. Add “chair” to subsection (e) and “board chair” to subsection (f) to give the Board Chair authority to grant continuances and designate Board members who may issue subpoenas and require the production of records. These latter changes reflect current Board practice implemented by delegation of authority to the Chair in order to streamline hearing procedures; without these changes, the Board must hold a meeting to grant a continuance or request the production of documents.
- Section 52.029(a) (Disciplinary Actions against Court Reporters) – Reword the list of sanctions the CRCB may impose against a certified shorthand reporter to make it parallel to the list contained in Section 52.0295(a) and clarify that the CRCB may assess an administrative penalty under Section 52.0321.

- Section 52.047(c), (e), (g) (Transcripts of the Evidence in a Case) – Replace references to Rules 40(a)(3) and 53(j) of the Texas Rules of Appellate Procedure with Rule 20 to reflect the 1997 revision of the rules.

Purpose

The changes correct certain anomalies in Chapter 52, clarify ambiguous language, and codify existing Board procedures.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council



STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Persons Disqualified to Serve as Guardians Because of Lack of Certification**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 681 to add lack of required certification by the Guardianship Certification Board (GCB) to the list of reasons a person may not be appointed guardian, and amend Probate Code Section 761(c) to give the GCB the authority to bring a guardian's lack of certification to a court's attention in a removal motion.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Certain individuals who provide guardianship services must be certified by the GCB, as required by Probate Code Section 697B and Government Code Section 111.042(a). However, there are no provisions for the GCB to enforce the certification requirement. Moreover, Probate Code 681, which lists reasons a person is not qualified to be appointed guardian, does not list lack of certification.

Probate Code Section 761(c)(10) provides that an interested person may file a motion to remove a guardian based on the guardian's ineligibility under Section 681, but the GCB is not an "interested person" and therefore under current law could not file a removal motion based on lack of certification.

Purpose

These changes are needed to help enforce existing statutory requirements that a person who must be certified by the GCB may not serve as a guardian if s/he does not have the required certification. Under the amendments, lack of certification would be added to the list in Probate Code Section 681 of reasons a person is ineligible to be appointed guardian, and the GCB would be authorized by Probate Code Section 761(c) to bring lack of certification to a court's attention in a removal motion filed under subsection (c)(10).

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

Appointment of Private Professional Guardians

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 696 to require private professional guardians to comply with both the registration requirements in Probate Code 697 and the certification requirements in Probate Code 697B.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Probate Code Section 696 states that a private professional guardian may not be appointed if s/he has not met the registration requirements of Probate Code 697 or is not certified as required by Probate Code 697B. Changing the conjunction separating the two subsections from "or" to "and" would clearly show that both requirements must be met.

Purpose

This change is needed to clarify that both elements of Probate Code 696 - registration with the county clerk and certification by the GCB - are required in order for a private professional guardian to be appointed.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Criminal History Subject to Non-Disclosure**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Section 411.081(i) to add the Guardianship Certification Board (GCB) and county clerks to the list of entities who may receive criminal history reports even when the incident is subject to non-disclosure.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The GCB received authority to obtain criminal history records during the 80th Legislature, R.S. (Senate Bill 505) by fingerprint search of both national records by the Federal Bureau of Investigation and Texas records by the Department of Public Safety. However, if an applicant to the GCB has a criminal history but has obtained an order of nondisclosure under Section 411.081, the GCB will not receive information about the criminal history covered by the order unless the GCB is included in the list of agencies in Section 411.081(i) that may receive such information.

County clerks need to be added to Section 411.081(i) because they can obtain criminal history information under Section 411.1386 in connection with the appointment of a guardian.

Purpose

This change is needed to allow the GCB and court clerks to have a complete criminal history on applicants for certification and potential guardians, respectively. This is particularly important if the crimes involved abuse, neglect, financial exploitation or moral turpitude.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Reduction of Criminal History Check Requirements**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Probate Code Section 698 and Government Code Section 411.1386 to eliminate the requirement for county clerks to perform a criminal history background check if the person subject to the check is certified by the Guardianship Certification Board (GCB).

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

There is an interim legislative charge to examine criminal history background check requirements, including licensed professionals, to determine best practices, develop cross-agency standards, make recommendations to reduce costs and streamline the process.

County clerks are required to obtain criminal history records for those serving as guardians, proposed guardians, and local guardianship program employees and volunteers who provide guardianship services to the program's wards. This requirement does not apply to family members, attorneys, and individuals who are or will be providing guardianship services to wards of the Department of Aging and Disability Services (DADS).

The GCB and DADS also obtain criminal history information. The GCB obtains criminal history information on applicants for certification. DADS obtains pre-employment criminal history searches for employees in its guardianship program; and beginning September 1, 2008, the GCB will have access to these results when the DADS employee applies for certification.

The proposal to amend Probate Code Section 698 and Government Code Section 411.1386 will eliminate the redundant requirement for county clerks to perform a

criminal history background check if the person subject to the check is certified by the GCB.

Purpose

This change is needed to help reduce costs for local guardianship programs, DADS and county clerks. It would eliminate some of the financial burden on programs and would save time and effort for county clerks if the requirement for clerks to obtain criminal history background checks on certified guardians was eliminated.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

Reporting Requirements for Private Professional Guardians, Local Guardianship Programs, the Department of Aging and Disability Services and County Clerks

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to amending Government Code Chapter 111 and Probate Code Sections 697 and 697A to streamline reporting requirements, to eliminate duplicate reporting and to provide for consistent reporting dates for reports filed with the Guardianship Certification Board (GCB) by private professional guardians, local guardianship programs, the Department of Aging and Disability Services (DADS) and county clerks, and reports filed with county clerks by private professional guardians and local guardianship programs.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Some entities are required by statute to report the same or similar information to more than one entity. Some reporting deadlines are January 31 and some are February 1. Some information would be added to required reports, and some reporting requirements would be eliminated.

Purpose

This change is needed to help reduce costs, provide better, more useful information to the GCB, and eliminate duplicate reporting. Benefits to each reporting entity:

DADS: the reporting due date would be consistent with all others.

Local Guardianship Programs: Each program would be required to prepare only one report to be filed with the GCB and county clerks. Adding an element that indicates in which county(ies) a program employee, volunteer or contractor provides or is authorized to provide guardianship services could reduce costs of criminal history background checks to the program, as well as providing the GCB with better information on counties where wards are served by certified guardians.

Private Professional Guardians: Some duplicative reporting is eliminated by requiring a copy of the application for certificate of registration.

County Clerks: Costs would be reduced by eliminating the need to submit information on local guardianship programs to the GCB. The reporting due date for information on private professional guardians would be consistent with all others.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council



**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Appointment of Presiding Judges by the  
Chief Justice of the Supreme Court of Texas**

**WHEREAS**, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71 of the Texas Government Code, and

**WHEREAS**, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to appointment of the presiding judges of the administrative judicial regions;

**NOW, THEREFORE, BE IT RESOLVED** that the Texas Judicial Council supports and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

The state is divided into nine administrative judicial regions, with a presiding judge for each region. The presiding judges are the backbone of trial court administration in the state with duties including promulgating and implementing regional rules of administration, advising local judges on judicial management, recommending changes to the Supreme Court for the improvement of judicial administration, acting for local administrative judges in their absence, and assigning visiting judges to hold court when necessary to dispose of accumulated business in the region.

Currently, section 74.005 of the Texas Government Code provides that the Governor appoints the presiding judges for the nine administrative judicial regions. The Texas Constitution places in the Supreme Court the responsibility of ensuring that justice in Texas is efficient. Similarly, the Legislature has statutorily charged the Court, under Texas Government Code section 74.021, with "administrative control over the judicial branch and . . . the orderly and efficient administration of justice." Further, under section 74.049 of the Texas Government Code, the Chief Justice of the Supreme Court of Texas has the obligation to perform the duties of a regional presiding judge in the absence of that judge.

**Purpose**

Judicial independence and the coherent administration of the Judicial Branch strongly suggest that section 74.005 should be amended to provide that the Chief Justice appoints the presiding judges to the administrative judicial regions.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Crime Victim Information in Criminal Judgments**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to crime victim information in criminal judgments;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 42.01 of the Code of Criminal Procedure requires criminal judgments to contain the name and address of crime victims in cases in which the court has ordered restitution to be paid to the victims. Section 552.1325 makes information filed with a court and contained in a victim impact statement confidential. In light of these two statutes, court clerks must redact crime victim information from criminal judgments before the judgments can be released to the public. This puts a burden on court clerks.

Article 42.01 permits a judge to determine that inclusion of a crime victim's name and address in the judgment is not in the victim's best interest and that, therefore, a defendant pay restitution to a person or agency instead of directly to the victim. If the judge makes such a determination, the victim's name is not to be listed in the judgment.

Purpose

The requirement that a judge make an independent determination that inclusion of a victim's name and address in the judgment is not in the best interest of the victim before the judge may order a defendant to pay restitution to a person or agency instead of directly to the crime victim is unnecessary. Article 42.01 should be amended to permit a judge to order that restitution be paid to a crime victim indirectly through a person or agency without the need for the judge to make such an independent determination.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Jury Note-taking and Discussion of Evidence During Recesses**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to jury note-taking and written question submission;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current Texas law does not explicitly authorize note-taking by jurors. Nor does current Texas law permit jurors to discuss the evidence among themselves in the jury room during recesses in the trial when all the jurors are present.

Purpose

Jurors would be better able to fulfill their duty to decide fact issues in the cases in which they serve if they were permitted to take notes during trial and to discuss the evidence among themselves in the jury room during recesses in the trial when all jurors are present. Accordingly, statutes permitting jurors to take notes and to discuss evidence during recesses in the trial should be enacted.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Salary for District Judges Presiding over Multidistrict Litigation**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the process for paying additional compensation to a district judge who presides over multidistrict litigation involving claims for asbestos-related or silica-related injuries.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

In 2007, the Texas Legislature enacted Section 659.0125, Texas Government Code, which provides that a district judge who presides over multidistrict litigation involving claims for asbestos-related or silica-related injuries will be paid additional compensation by the Texas Judicial Council. The Office of Court Administration received an appropriation for this purpose.

Because all judicial salaries are paid through the Judiciary Section of the Comptroller of Public Accounts, OCA and the Comptroller entered into an interagency contract in which the Comptroller pays the additional compensation to the applicable district judges along with their regular district judge salary and OCA reimburses the Comptroller for this expense.

**Purpose**

Section 659.0125 should be amended to require that payment of the additional compensation for district judges who preside over multidistrict litigation involving claims for asbestos-related or silica-related injuries should be paid by the Comptroller of Public Accounts instead of by the Texas Judicial Council. This provision will make the multidistrict judge salary payment process more efficient.

BE IT FURTHER RESOLVED that the Texas Judicial Council supports the transfer of the appropriation for the additional compensation for multi-district litigation judges from OCA to the Office of the Comptroller of Public Accounts.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Constitutional County Court Judge State Salary Supplements**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the process for paying a state salary supplement to certain constitutional county court judges.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 1997, the Texas Legislature enacted Section 26.006, Texas Government Code, which provides that a constitutional county court judge is entitled to an annual salary supplement from the state if at least 40% of the functions that the judge performs are judicial functions. The supplement was originally \$10,000, but was raised to \$15,000 in fiscal year 2005. In order to receive a salary supplement a county judge is required to file an affidavit with the Office of Court Administration (OCA) stating that at least 40% of the functions that the judge performs are judicial functions. OCA sends the affidavits it receives to the Comptroller of Public Accounts for payment. OCA has no other role in the salary supplement payment process.

Purpose

Section 26.006 should be amended to require that the affidavits completed by eligible constitutional county court judges be filed with the office of the Comptroller of Public Accounts rather than with OCA. This amendment would make the salary supplement payment process more efficient.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Revised References to Code Provisions for Candidates for Judicial Office**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to revised references to citations to the Code of Judicial Conduct in Chapter 34, Texas Government Code for candidates for judicial office;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Chapter 34, Texas Government Code requires candidates for judicial office to comply with the provisions of Canon 7 of the Code of Judicial Conduct, which was the former citation to the code provisions prohibiting inappropriate political activity of a candidate for judicial office. Those code provisions are now found in Canon 5 of the Code of Judicial Conduct, thereby rendering the citations in the statute inaccurate.

Purpose

The incorrect statutory references in Chapter 34, Texas Government Code to the provisions of the Code of Judicial Conduct prohibiting inappropriate political activity of a candidate for judicial office should be revised.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Procedural Rules of Judicial Disciplinary Enforcement**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to procedural rules of judicial disciplinary enforcement;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Article V, Section 1-a of the Texas Constitution establishes the State Commission on Judicial Conduct and contains substantive provisions regarding mechanisms and requirements for judicial disciplinary actions by the commission. Subsection 11 provides that the supreme court shall by rule provide for the procedures before the commission, masters, review tribunal, and the supreme court, and specifies the requirements to be met in the procedural rules. Chapter 33, Texas Government Code contains both substantive and specific procedural provisions for proceedings involving the commission. The Supreme Court of Texas has promulgated Rules for Removal or Retirement of Judges which also contain specific procedural provisions for proceedings involving the commission. Having different procedural rules contained in statute and in supreme court rules can be confusing to judges, the bar, and the public. Furthermore, having procedural rules in statute rather than only in rule renders them less flexible and less easily changed to conform to changing model rules or to court opinions or evolving circumstances that render existing rules unconstitutional or inadvisable. In other situations involving the interaction of constitutional and statutory provisions with court procedural rules, the constitution and statutes establish the parameters of the rules, and direct the supreme court to enact specific procedural rules in conformity with those parameters.

**Purpose**

Chapter 33 of the Texas Government Code should be amended to remove specific procedural rules from the statute and to direct the supreme court by rule to provide for the following: (1) procedures before the commission, special masters, review tribunals and the supreme court that comply with the procedural requirements of Section 1-a, Article V, Texas Constitution, and (2) procedures for special courts of review that provide for the



mechanism of selection of the three-appellate-judge panel; procedures and deadlines for the filing of the charging document by the examiner and for the respondent judge's answer; procedures and deadlines for conducting the trial of the matter; procedures establishing the standard of review to be employed by the special court of review; procedures and deadlines for issuing the decision of the case; and procedures that prohibit (a) jury trials and (b) a right to appeal the decision of the special court of review. The legislation should direct the supreme court to promulgate the procedural rules with an effective date which would be the same date as the removal of the statutory procedural provisions from Chapter 33.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Confidentiality of State Commission on Judicial Conduct Matters**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to confidentiality of certain matters involving the State Commission on Judicial Conduct;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of Section 33.027 of the Texas Government Code, certain matters may not be the subject of a discovery request in formal proceedings or in a proceeding before a special court of review in matters involving the State Commission on Judicial Conduct. Those matters include the discussions, thought processes, or individual votes of members of the commission, the discussions or thought processes of commission employees, and the identity of a complainant or informant who has requested confidentiality. However, there is no analogous provision that such matters may not be compelled to be produced at trial in formal proceedings or in a proceeding before a special court of review.

Purpose

Chapter 33, Texas Government Code should be amended to provide for confidentiality of the discussions, thought processes, or individual votes of members of the commission, the discussions or thought processes of commission employees, and the identity of a complainant or informant who has requested confidentiality unless waived in writing by the commission or the complainant.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Criminal Offenses by Judge**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to criminal offenses by judges;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Generally, Chapter 33 of the Texas Government Code contains statutes related to the jurisdiction and proceedings of the State Commission on Judicial Conduct. The Commission has no jurisdiction to prosecute criminal complaints. However, Section 33.051 of the Texas Government Code provides that solicitation or acceptance of referral fees or gifts by judges constitutes a criminal offense, and specifies a criminal penalty for such an offense. Title 8 of the Texas Penal Code specifies offenses against public administration that constitute a crime, including bribery and corrupt influences offenses and abuse of office offenses, and would be a more appropriate location for the statutes prohibiting solicitation or acceptance by judges of unlawful referral fees or gifts. Provisions in Section 33.051 regarding the commission's ability to investigate and sanction a judge who commits a particular kind of crime are unnecessary, as the commission already has this authority.

Purpose

Provisions in Section 33.051 of the Government Code establishing a criminal offense and penalties for certain conduct by judges should be moved to Title 8 of the Penal Code, and provisions in Section 33.051 regarding commission authority should be deleted.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Automatic Removal of Judge Following Criminal Conviction and  
Automatic Suspension Pending Appeal of Conviction**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to automatic removal of a judge following criminal conviction and suspension pending appeal of a conviction;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 33.038 of the Texas Government Code provides for the automatic removal of a judge if the judge is convicted of or is granted deferred adjudication for a felony or a for a misdemeanor involving official misconduct, but is silent as to how and by whom the automatic removal is to be effected. Sections 87.031 and 87.032 of the Local Government Code require the convicting court in a criminal case involving a county-level judge to enter an order removing the judge from office upon conviction of a felony or a misdemeanor involving official misconduct, and also allow the convicting court to suspend the judge pending appeal of the conviction. No similar mechanism or procedure exists for the entry of a removal order for types of judges who are convicted of a crime. The State Commission on Judicial Conduct cannot be aware of every pending criminal case against a judge, but the judge of the convicting court is in the best position to enter an order of removal upon conviction following trial or the acceptance of a plea agreement.

Section 33.037 of the Texas Government Code requires the Commission to issue an order suspending a judge from office, without pay, pending final disposition of an appeal of the judge's conviction. If the judge appeals the conviction, the judge of the convicting court is in the best position to stay or abate the removal order and enter an order suspending the judge without pay pending the final disposition of the appeal.

Purpose

Sections 33.037 and 33.038 of the Texas Government Code should be amended to require the judge of the convicting court to enter the order of removal in any case where a judge is convicted of or is granted deferred adjudication for a felony or for a misdemeanor involving official misconduct and to stay or abate the removal order and enter an order suspending the judge without pay pending the final disposition of the appeal.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Adjust Insurance Needed to Obtain Release of Impounded Vehicle**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to adjusting the insurance needed to obtain the release of an impounded vehicle;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Under current state law, a person commits an offense by operating a vehicle without insurance or other proof of financial responsibility. This offense is commonly known as "no-insurance." If a defendant is convicted a second or subsequent time for a no-insurance offense, the court must order the sheriff to impound the defendant's vehicle. A court may not release the vehicle from impoundment unless the defendant provides evidence of financial responsibility covering the two-year period immediately following the date the defendant applies for the vehicle's release.

The problem is that most insurance policies are written to cover a six-month period of time as opposed to a two-year time period. Accordingly, the typical defendant is unable to obtain the necessary insurance to allow for the release of his or her vehicle from impoundment.

**Purpose**

Section 601.262(c) of the Transportation Code should be amended to require a defendant to provide proof of financial responsibility for a six-month time period in order to obtain the release of his or her vehicle from impoundment. Proving financial responsibility for the currently-required two-year period is a practical impossibility.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Allow Capias Pro Fine Hearings by Video Teleconference**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to allowing capias pro fine hearings to be conducted by electronic means;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

A defendant arrested pursuant to a capias pro fine must be brought before the court that issued the capias pro fine for a hearing. Ideally, the defendant is to be brought before the court immediately after the arrest. If this is not possible, the defendant is to be placed in jail until the next business day at which time he or she is to be brought before the court.

The hearing must be held before a judge of the court that issued the capias pro fine. The hearing is not to be conducted by a judge acting as a magistrate. Often, getting the defendant to the judge's courtroom for the required hearing presents a logistical challenge because some courtrooms are located many miles away from the jail. This difficulty discourages some judges from issuing capias pro fines in the first place.

**Purpose**

New provisions should be added to the Code of Criminal Procedure that would permit judges to conduct the statutorily-required capias pro fine hearings by electronic means.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Allow Courts of Appeals to Hear Appeals that Originated in Small Claims Court**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to authorizing the courts of appeals to hear appeals from small claims court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

In *Sultan v. Mathew*, 178 S.W.3d 747 (Tex. 2005), the Supreme Court of Texas interpreted Section 28.053 of the Government Code to make the decision of the county-level court on an appeal from small claims court final in the sense that no appeal of the county-level court's decision could be made to the court of appeals. The statute in question applies only to judgments from small claims courts. The decisions of county-level courts on appeals from justice courts may be appealed to the courts of appeals.

**Purpose**

The decisions of county-level courts on appeals from judgments in small claims courts should be capable of being appealed to the courts of appeals. Section 28.053 should be amended to authorize such appeals.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council



**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Allow Posting of Bond to Secure Payment of Special Expense**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to allowing a criminal defendant to post a bond in the amount of any special expense assessed to secure payment of the special expense;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Article 45.051 of the Code of Criminal Procedure authorizes a judge in a fine-only misdemeanor case to place the defendant on deferred disposition. The judge may order the defendant to pay a fine. If so, the judge may order the defendant to post a bond in the amount of the fine to secure payment of the fine.

Often, however, the defendant is ordered to pay a special expense instead of a fine. The statute does not authorize the court to order the defendant to post a bond to secure payment of the special expense. In spite of this lack of statutory authority, judges commonly order defendants to post a bond to secure payment of the special expense.

**Purpose**

Article 45.051 should be amended to authorize a judge to order a defendant placed on deferred disposition to post a bond to secure the payment of a special expense.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Correction of Court Identification Language in Magistration Statute**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to correction of court identification language in Article 15.17 of the Code of Criminal Procedure (the magistration statute);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Article 15.17 of the Code of Criminal Procedure details the duties that a magistrate is to perform upon the arrest of an individual. The process of performing these duties is informally known as magistration. Part (b) of the statute instructs the magistrate to release the accused without bond and order him or her to appear at a later date for arraignment "in the county court or statutory county court." This language is problematic because the accused may need to be ordered to appear in a justice court, municipal court, or district court.

**Purpose**

Article 15.17(b) should be amended to authorize a magistrate to direct an accused person to appear at a later date in any type of court.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Eliminate Requirement that Defendants and Prosecutors be Charged for Copies**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to eliminating the requirement that criminal defendants be charged for copies of documents in their criminal case files in justice court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Section 118.121 of the Local Government Code directs justices of the peace to collect fees for providing documents held by the court. Specifically, the fees are \$1.00 for the first page of a non-certified copy and \$0.25 for each additional page. In practice, many justices of the peace do not charge criminal defendants or their attorneys for copies of papers in their court files, yet the statute seems to command that copy charges be assessed. A strict reading of the statute would also appear to require that prosecutors be charged for copies of court documents although the common practice is not to assess such charges.

**Purpose**

Section 118.121 of the Local Government Code should be amended so as not to require criminal defendants or their attorneys to pay costs for copies of papers in their court files. Similarly, the statute should be amended so as not to require prosecutors to pay such costs.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Expand State's Restitution Lien to Include Misdemeanors**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to expanding the scope of the State's restitution lien to secure the amount of fines and costs owed by a criminal defendant to include misdemeanors;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Article 42.22, Section 2(b)(1) of the Code of Criminal Procedure gives the State a restitution lien to secure the amount of fines or costs entered against a defendant in the judgment in a felony case. The statute does not give the State a restitution lien to secure the amount of fines and costs ordered to be paid in a misdemeanor case.

**Purpose**

A restitution lien in favor of the State is a valuable tool that aids in the collection of fines and court costs owed by defendants who have been found guilty in criminal cases. The State should have a restitution lien in misdemeanor cases as well as felony cases. Accordingly, Article 42.22, Section 2(b)(1) should be amended to give the State a restitution lien in misdemeanor cases.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Prohibit the Evaluation of Municipal Judges on the basis of Money Collected**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to prohibiting the evaluation of municipal judges on the basis of money collected;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Section 720.002(c) of the Transportation Code explicitly states that a municipality is not prohibited from considering the source and amount of money collected from a municipal court when evaluating the performance of a municipal judge. This provision is contrary to Section 720.002(b) which prohibits a political subdivision of the State of Texas from requiring or suggesting that a municipal judge collect a predetermined amount of money from persons convicted of traffic offenses within a specific period of time.

**Purpose**

Section 720.002(c) of the Transportation Code should be repealed. The statute essentially permits municipalities to pressure judges to assess higher fines to collect more money for the municipality. This practice is inimical to the important goal of an independent judiciary.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Require Complaint to be Filed if Defendant Fails to Appear**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring the filing of a complaint in the underlying Class C misdemeanor if the defendant fails to appear and enter a plea to a citation;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The charging instrument in Class C misdemeanor cases is the complaint. But complaints are not filed in most Class C cases because a defendant may enter a plea to a citation. Only if a defendant pleads "not guilty" to the citation is the State required to prepare and file a complaint. *See* Code of Criminal Procedure, Article 27.04(d). The filing of the complaint tolls the statute of limitations.

Currently, if a defendant fails to appear in response to a citation for a Class C offense and therefore does not enter any plea, the law does not require the State to file a complaint for the Class C offense. The statute of limitations is not tolled. Once the generally-accepted two-year limitations period has run, the Class C offense can longer be prosecuted.

Purpose

Article 27.04(d) should be amended to require the State to file a complaint when a defendant fails to appear and enter a plea to a citation in a Class C misdemeanor case. The requirement that a complaint be filed would serve to toll the statute of limitations and permit prosecutions for the Class C offenses more than two years after the date of the offense.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Require Four-year Terms for all Municipal Judges**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring four-year terms for all municipal judges;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

**Background**

Municipal judges are presently appointed to serve terms of either two years or four years. In most cities, the term of office is two years. All other types of Texas judges serve terms of at least four years.

**Purpose**

Sections 29.005 and 30.00006(d) of the Government Code should be amended to mandate four-year terms for all municipal judges in Texas. This would result in all judges in Texas serving terms of at least four years.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Set Statute of Limitations in Class C Misdemeanor Cases**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the establishment of a statute of limitations in Class C misdemeanor cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 12.02 of the Code of Criminal Procedure is the only Texas statute that addresses the statute of limitations in misdemeanor cases. The statute states that an indictment or information for any misdemeanor must be presented within two years from the date of the commission of the offense. Indictments and informations serve as charging instruments in Class A and Class B misdemeanor cases. The charging instrument in Class C misdemeanor cases, however, is the complaint. The statute does not address complaints.

Currently, the prevailing view is that despite the statute's failure to mention complaints, Class C misdemeanor cases are subject to a two-year statute of limitations. However, a cogent legal argument can be made that the statute's failure to mention complaints means that there is no statute of limitations in Class C misdemeanor cases. The idea that there is no statute of limitations in Class C misdemeanor cases is inconsistent with current Texas law that sets statutes of limitations in all but the most serious criminal matters.

Purpose

There should be an explicit two-year statute of limitations in Class C misdemeanor cases. Article 12.02 should be amended to require that complaints be presented within two years from the date of the commission of an offense.

---

Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council



**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

Process Server Review Board Funding, Board Member Reimbursement, and  
Office of Court Administration Certification Division

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal to amend Government Code Chapter 51 to authorize the Process Server Review Board (PSRB) to set certification fees, subject to approval of the Supreme Court of Texas, and to amend Government Code Chapter 72 to authorize the Office of Court Administration (OCA) to collect the certification fees, reimburse PSRB members for travel expenses, and operate a certification division to oversee the PSRB and other regulatory programs assigned to OCA.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The PSRB was established by order of the Supreme Court in 2005 to certify process servers on a statewide basis on behalf of the Court. OCA provides administrative assistance to the PSRB. The Supreme Court and PSRB do not have specific statutory authority to set fees that applicants must pay in order to be certified as process servers. The amendment to Government Code Chapter 51 authorizes the PSRB to set certification fees, subject to approval by the Supreme Court, and authorizes OCA to collect the fees.

In addition to the PSRB, OCA provides administrative support to the Court Reporters Certification Board (CRCB) and the Guardianship Certification Board (GCB) and already collects fees on behalf of those programs. The amendment authorizing OCA to collect fees on behalf of the PSRB will provide that those fees may be used only for the support of certification programs of the Supreme Court, the PSRB, and OCA. The amendment to Government Code Chapter 72 authorizes OCA to operate a certification division to oversee the regulatory programs assigned to it by statute or by the Supreme Court.

Finally, current law does not address reimbursement of members of the PSRB for their expenses incurred in traveling and performing official board duties. The amendment to Chapter 72 authorizes OCA to make such reimbursements.

Purpose

The changes will provide funding for the PSRB and will allow PSRB members to be reimbursed for expenses incurred as board members. The change will also permit OCA to operate the certification programs assigned to it as one division, permitting increased efficiency and coordination of functions.

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Honorable Wallace B. Jefferson  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council