



OFFICE OF COURT ADMINISTRATION

CARL REYNOLDS
Administrative Director

TO: Members, Supreme Court Advisory Committee

FROM: Mary Cowherd
Deputy Director and Director of Research and Court Services

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RE: Use of Civil Cover Sheets in Other State and Federal Courts

On November 22, 2008, the Supreme Court Advisory Committee discussed the promulgation of a Rule of Civil Procedure that requires an attorney or pro se litigant to submit a cover sheet (or case information sheet) when filing a civil or family law case in a district or county-level court. The Advisory Committee also discussed whether the attorney or pro se litigant filing a case should be required to sign the completed cover sheet and, if so, the appropriate consequence when the attorney or pro se litigant does not sign the cover sheet.

Currently, when a case is filed, the clerk must identify the case type. The purpose of the cover sheet is twofold: 1) to take the burden off clerks in categorizing cases and make the attorney or pro se litigant responsible for identifying what type of case is being filed, and 2) to increase the accuracy of monthly case activity reports that clerks must submit to the Office of Court Administration (OCA). Cover sheets would be particularly helpful to district and county clerks who will soon have to comply with more extensive reporting requirements in the reports that they submit to OCA. Last year, the Texas Judicial Council (TJC)¹ approved considerable changes to the monthly case activity reports, including an increase in the number of case type categories in the reports. The changes, which take effect September 1, 2010, are the result of a multi-year project—the Judicial Data Project—that involved many judges, clerks, and others who recommended changes to reflect more accurately the work of district and county-level courts.

¹ The Texas Judicial Council is the policy making body for the state judiciary. The Council was created in 1929 by the legislature to continuously study and report on the organization and practices of the Texas judicial system. One of the primary duties of the Council is to gather judicial statistics from judges and other court officials.

OCA staff believe that without accurate identification of the case type, the value of the case activity statistics reported to OCA is greatly reduced. Accuracy is important not only at the state level, but also the national level. The Court Statistics Project of the National Center for State Courts, Conference of State Court Administrators, and others have been involved in an ongoing national effort to encourage states to report case activity in a comparable and meaningful way.

Last fall, the TJC approved the attached current three cover sheets as model forms that can be modified for local use. There are two civil cover sheets – one for district courts and one for county-level courts – and there is one family law cover sheet for both district courts and county-level courts. At the request of district and county clerks, certain items on the cover sheets that the TJC approved were designated as optional items. These items are service type, discovery level, family law case management, whether the case has been previously filed or relates to a case previously filed, and type of procedure or remedy. The clerks said this is information that not all clerks may want or need. The minimum information that must be included on a cover sheet is the style of the case, name and contact information of the attorney or party filing the suit, state bar number of the attorney (if applicable), names of the parties, and case types (the case types to be used will be selected by the local jurisdictions but must allow the clerks to easily classify the cases into the case type categories used to report to OCA).

At its meeting on November 22, the Advisory Committee suggested that the three cover sheets be consolidated into one single cover sheet. Pursuant to that suggestion, OCA developed the attached proposed consolidated cover sheet. The contents are the same, except for the following two changes: 1) the categories for enforcements and modifications in family law cases were slightly modified so those categories would match the categories that are in the new monthly reports; and 2) at the at the request of district and county clerks, children's initials in family law cases were eliminated.

OCA presented the proposed consolidated cover sheet to the TJC at its meeting on August 28, 2009. The TJC approved a motion to post the proposed consolidated sheet that covers both civil and family law cases filed in both district and county-level courts as a model form, which can be modified for local use, on the OCA website for comments. The motion was approved with the understanding that service type, discovery level, family law case management, whether the case has been previously filed or relates to a case that has been previously filed, and type of procedure or remedy are optional items.

At the conclusion of the November 22 meeting of the Advisory Committee, Chair Chip Babcock referred the matter concerning the promulgation of a Rule of Civil Procedure requiring cover sheets to the Rule 15-165a Subcommittee for further study.

To assist the Rule 15-165a Subcommittee and Advisory Committee in deciding whether to require an attorney or pro se litigant to sign cover sheets, OCA: 1) contacted a group of district and county clerks to get their input on whether a signature should be required; 2) conducted a survey of other states to determine how many states use cover sheets, whether they require a signature, and the consequences if a signature is required and the cover sheet is not signed; and 3) contacted federal courts to determine the consequences if a civil cover sheet is not submitted or signed, as required.

District and County Clerk Input Regarding Signature Requirement

In April 2009, OCA sent an email to a team of clerks that we previously assembled to assist us in understanding the issues and problems faced by the clerks in the implementation of the new reporting changes and to develop answers and solutions to them. We asked those clerks whether they think a signature should be required on the cover sheets. In addition, we explained our belief that requiring an attorney's signature will increase the accuracy of the identification of the case type by preventing a runner or administrative assistant who does not know anything about the case being filed from completing a cover sheet without the filing attorney's oversight.

The clerks responded that they do not believe that a signature should be required. They said there is no reason to require a signature because the petition already has a signature, the cover sheet is only for their information, and a signature serves no purpose. The clerks' primary concern about requiring a signature seems to relate to whether a clerk can accept a filing if the cover sheet is not signed by an attorney or pro se litigant. In the email we sent to the clerks, we discussed attached AG Opinion JM 727 (1987), which provides a clerk should not reject a document if it is unsigned. Specifically, the opinion provides, "Documents are filed when they are tendered to the district clerk. . . . The clerk should file the pleading even though the signature of the attorney (or the party not represented by an attorney) is not on the pleadings"

Use of Civil Cover Sheets in Other States

OCA conducted a survey in June 2009 to determine the use of civil cover sheets in other states, including whether a signature is required and, if so, the consequences when the cover sheet is not signed. OCA sent surveys to each of the other 49 states. OCA received responses to the surveys and to direct requests for the information solicited in the surveys from 46 states. OCA obtained data on the remaining three states through internet research.

The survey results are, as follows:

- A majority of states (27 states, 55 percent) require the use of civil cover sheets statewide. Another 6 states (12 percent) leave it to local jurisdictions to decide whether to require them.
- Among the 27 states requiring cover sheets statewide, policies vary regarding the filing of a case for which a cover sheet has not been submitted:
 - In 15 states, a case cannot be filed;
 - In 3 states, a case can be filed but a cover sheet must be submitted later;
 - In 7 states, a case can be filed regardless of subsequent submission;
 - In 1 state, each court sets its own rules about what happens when a cover sheet is not provided with the initiating document; and
 - One state could not provide a definitive answer as to whether the courts have a right to refuse a filing on the basis of not having a cover sheet.

- Of the 27 states that require the statewide use of cover sheets, 14 states require the attorney or pro se litigant to sign the cover sheet.
- Among the 14 states that require a cover sheet to be signed by an attorney or pro se litigant, policies vary regarding the filing of a case for which a cover sheet has not been signed:
 - In 7 states, a case cannot be filed;
 - In 6 states, a case is filed regardless of subsequent signature; and
 - In 1 state, a case could be dismissed if the cover sheet is not signed.

Use of Civil Cover Sheets in Federal Courts

Federal courts require that a cover sheet signed by the attorney be submitted when a civil case is filed. Civil cover sheets have been used in the federal courts since 1974. I contacted William Putnicki, the clerk of court for the United States District Court for the Western District of Texas (Western District), who referred me to David O'Toole, the divisional office manager for the Austin Division of the Western District, to determine the policies and practices regarding the use of civil cover sheets in the federal courts in the Western District. Mr. O'Toole relayed the following information to me:

- A case will be filed even though a cover sheet has not been submitted or signed. The only time the clerk would refuse to file a case is if the filing fee is not paid.
- If a cover sheet has not been submitted or signed, the attorney is sent a deficiency notice. The attorney is required to cure the deficiency.
- It is within the court's discretion whether to move forward with a case if a cover sheet has not been submitted or signed.
- If the clerk can determine from a case filed without a cover sheet the information needed (primarily the case type), then the court would most likely move forward with the case. If the clerk is not able to determine the needed information from the case, then there is a possibility the court would not move forward with the case until the cover sheet is submitted. Mr. O'Toole is not personally aware of a court refusing to move forward with a case in which the cover sheet was not signed.
- No one else can sign the cover sheet on behalf of the attorney (e.g., paralegal or secretary). However, electronic signatures are accepted.
- Policies and practices regarding the use of civil cover sheets probably vary among federal courts.

Conclusion and Recommendations

A majority of states require the use of civil cover sheets statewide; and, in slightly more than half of those states, a case cannot be filed when a cover sheet has not been submitted. Further, a majority of the states that require the use of civil cover sheets statewide also require the cover sheet to be signed by an attorney or pro se litigant; and, in half of those states, a case cannot be filed if a cover sheet has not been signed.

The federal courts require a cover sheet signed by an attorney to be submitted when a civil case is filed. In the Western District, a case will be filed even though a cover sheet has not been submitted or signed, but that practice may vary among federal courts.

The multi-year effort involving many judges, clerks and others, which culminated in considerable revisions to the monthly case activity reports submitted to OCA to have them reflect more accurately the work of the district and county-level courts, will be greatly enhanced through the use of cover sheets. If an attorney or pro se litigant, rather than the clerk, is made responsible for identifying the type of case being filed, this will result in more accurate identification of the case type and the increased value of the case activity statistics reported to OCA. Moreover, OCA staff believe that requiring an attorney's signature on the cover sheet will encourage attorney oversight of the completion of the cover sheets, thereby resulting in greater accuracy of the identification of case type.

In sum, we recommend that the Advisory Committee promulgate a proposed Rule of Civil Procedure requiring an attorney or pro se litigant to submit a cover sheet when filing a civil or family law case, and that the attorney or pro se litigant be required to sign the cover sheet.