



## TARRANT COUNTY

THOMAS A. WILDER  
DISTRICT CLERK

October 25, 2004

Lisa Hobbs  
Rules Attorney  
Supreme Court Building  
Room 104  
201 W. 14<sup>th</sup>  
Austin, Texas 78701

Dear Lisa:

Pursuant to our phone conversation, I am offering some comments for your consideration in drafting a rule for access to court records.

The 16-3 vote taken at the Judicial Council meeting was posited as a vote for "free and unrestricted access" to court records as proposed by County Clerk Dianne Wilson vs. restricted access with a subscriber agreement as we do here in Tarrant County. Ms. Wilson and I both testified and answered questions about our respective systems.

However, the document sent to me from Elizabeth Kilgo presents several problems that would negatively impact our current system in Tarrant County which was approved by our judiciary as evidenced by court orders included with the brief I sent you from Senator Chris Harris. Harris County would also have problems for the same reasons as I and should be contacting you as they are planning and have funded a system similar to mine which recently won a "Best Practices" award from the Texas Association of Counties.

I am appreciative of the opportunity for input and offer the following comments that track what Ms. Kilgo sent you titled "Rule 14".

### Areas of major concern:

#### 14.5 (d)(1)

##### Case records other than Court Created records

This section seems to create a two tiered system that treats court-created records differently than other records filed in the case. If adopted, this would create real problems for the clerk who would have to split the imaged case file into two parts: one to be open with no subscriber agreement and the rest of the file to be under a subscriber agreement. This is not only unworkable due to backfile conversions that convert microfilm to imaged product and which contain the whole case file, at least that which is open to the public at the courthouse. It requires

a clerk to separate the paper case file into two parts which could result in confusion and inaccuracies. Also, a viewer of the documents would have to go to two places to view the whole file which is inefficient and more costly. Please consider making the whole case file that is open at the courthouse accessible from a remote computer only with a subscriber agreement and application that has appropriate information about the subscriber as we do here in Tarrant County. This system has been used for ten years with no misuse of court data and no breach of security.

14.5 (d)(3)

Family Code proceedings:

Please consider deleting this section because if the paper file can be accessed at the courthouse, why penalize the remote user if they are required to sign a subscriber agreement, fill out an application and pay a reasonable fee. The doctrine of "practical obscurity" is maintained with this method and yet keeps the burden off the clerk of having to split the paper file when being imaged.

14.6 (a)(5)

Date of Birth: Prohibiting use of the date of birth creates another large problem. When someone searches a record especially a criminal record, date of birth is essential because we need a unique identifier to distinguish between people of the same name. No matter how unusual the name, we will have multiple "hits". Using date of birth allows us to select the appropriate individual and the remote user needs this even more. Court clerks have SS #'s in many cases but outside subscribers do not hence the need for date of birth so a subscriber won't pick the wrong person. Subscribers like employers, landlords, military recruiters and others wouldn't want to deny someone a job or apartment because they couldn't differentiate between criminal histories of people having the same name. Also, there are many places to obtain date of birth so raising a barrier to the identity there in this way isn't very effective. Even allowing the use of the month and year as expressed in 14.6 (d)(2) would lower the accurate identification of criminal history searches since we could easily have people with the same name, month/year. The further delineation using the day is really needed.

14.10

Costs for copies of case records:

Currently, we do not charge for copies of case records downloaded through our web access subscriber system since that privilege is included in our price of \$35.00 per month that each subscriber pays. However, if it becomes the Supreme Court's decision to impose the cost contained in this section, our copy cost at the courthouse would be reduced from .35 to .12 resulting in an immediate loss to Tarrant County of over \$150,000 each year. Our authority to charge .35 per paper copy is derived from Government Code 51.318 and 51.319 and our work flow study. Our cost is less than what the study says to be cautious. We have always taken the position that since judicial records are exempt from the Public Information Act, then they are also exempt from the fee schedule mandated by the Act. This fee schedule doesn't come close to the actual cost of copies and would cause an unfunded mandate that is both unfair and unnecessary. Why would the court want to inject itself into a local matter? Please consider deleting this section or simply provide wording that would allow counties to set costs for remote access and/or paper copies that are consistent with 51.318 (8) and 51.319 (3). My judges require me to make a recommendation to Commissioner's Court each year about the price of the remote computer access. Commissioners' Court has accepted this recommendation for the last 10 years. Of course, we make every effort to only break even at best on our paper copy charge and our charge for web access by our subscribers.

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Finally, it should be noted that our county has probably had the most experience with remote access to court records and has successfully merged the interests of the legitimate information seekers with reasonable barriers to the "casual snoop" as one of my judges phrased it. We have spent a great deal of time studying and planning for our system to meet the needs of the employer, landlord, news media, law firms, non-profit groups needing background checks on volunteers, title companies, lenders and more with the concerns over identify theft. The other measures mentioned in the draft document from the Judicial Council also furthers this goal many of which I proposed or supported. By modifying the draft in the fashion that I have suggested, we can continue to refine the system and provide a good road map for other counties to follow as well as resolve in advance the contests that Tarrant County and others have had on a regular basis over access to court records.

Regards,



Tom Wilder