

# Supreme Court of Texas

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Misc. Docket No. 23-9068

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## Preliminary Approval of Amendments to Texas Rule of Judicial Administration 7

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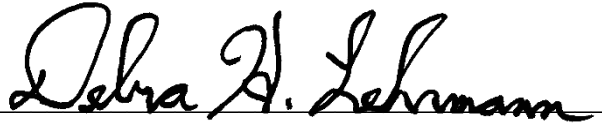
**ORDERED** that:

1. In accordance with Act of May 19, 2023, 88th Leg., R.S., ch. 1054 (S.B. 372, codified at TEX. GOV'T CODE § 21.013), the Court invites public comments on proposed amendments to Texas Rule of Judicial Administration 7. The proposed amendments are shown in clean and redline form.
2. Comments regarding the proposed amendments should be submitted in writing to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov) by February 1, 2024.
3. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect on March 1, 2024.
4. Each court must adopt a confidentiality policy, as required by Rule of Judicial Administration 7.1, by May 1, 2024. Each court must also provide that policy to current court staff members and train them on it by May 1, 2024.
5. The Court's confidentiality policy is attached to this Order and may serve as a model.
6. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of this Order for publication in the *Texas Register*.

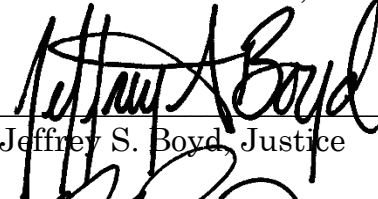
Dated: August 25, 2023.



Nathan L. Hecht, Chief Justice



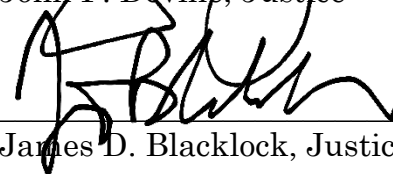
Debra H. Lehrmann, Justice



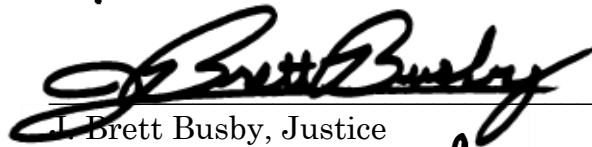
Jeffrey S. Boyd, Justice



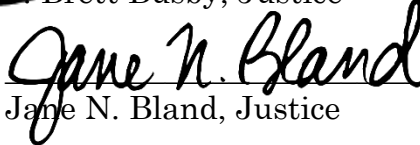
John P. Devine, Justice



James D. Blacklock, Justice



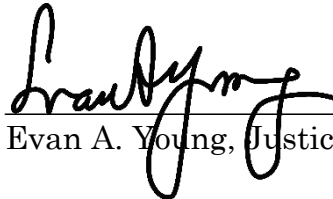
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

## TEXAS RULES OF JUDICIAL ADMINISTRATION

### Rule 7. Administrative Responsibilities. (Clean Version)

#### Rule 7.1. All Courts.

(a) *Court Confidentiality Policy Required.* A court, including an appellate court, district court, statutory county court, statutory probate court, constitutional county court, justice court, and municipal court, must adopt a policy governing court confidentiality.

(b) *Policy Contents.* The policy must:

- (1) define who the policy applies to;
- (2) define confidential information;
- (3) impose a duty of confidentiality on all court staff that continues after employment at the court ends;
- (4) address when, if ever, the disclosure of confidential information is authorized;
- (5) provide the language of relevant laws, including section 21.013 of the Texas Government Code and section 39.06 of the Texas Penal Code;
- (6) address negligent or accidental disclosure of confidential information;
- (7) warn of potential penalties for the unauthorized disclosure of confidential information, including:
  - (A) referral to relevant law enforcement agencies for investigation and prosecution;
  - (B) termination of employment;
  - (C) for attorneys, referral to the State Bar of Texas for discipline;
  - (D) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law in Texas; and

(8) require all court staff to acknowledge receipt of the policy in writing.

(c) *Distribution and Training Required.* The court must:

(1) for all new court staff members, provide the policy and train on it before the new staff member begins any substantive work for the court;

(2) provide the policy to all existing court staff at least biannually.

### **Rule 7.2. District and County Courts.**

A district or statutory county court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(f) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:

(1) adherence to firm trial dates with strict continuance policies;

(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;

(3) pretrial conferences to encourage settlements and to narrow trial issues;

(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.

## **Rule 7. Administrative Responsibilities. (Redline)**

### **Rule 7.1. All Courts.**

(a) Court Confidentiality Policy Required. A court, including an appellate court, district court, statutory county court, statutory probate court, constitutional county court, justice court, and municipal court, must adopt a policy governing court confidentiality.

(b) Policy Contents. The policy must:

(1) define who the policy applies to;

(2) define confidential information;

(3) impose a duty of confidentiality on all court staff that continues after employment at the court ends;

(4) address when, if ever, the disclosure of confidential information is authorized;

(5) provide the language of relevant laws, including section 21.013 of the Texas Government Code and section 39.06 of the Texas Penal Code;

(6) address negligent or accidental disclosure of confidential information;

(7) warn of potential penalties for the unauthorized disclosure of confidential information, including:

(A) referral to relevant law enforcement agencies for investigation and prosecution;

(B) termination of employment;

(C) for attorneys, referral to the State Bar of Texas for discipline;

(D) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law in Texas; and

(8) require all court staff to acknowledge receipt of the policy in writing.

(c) *Distribution and Training Required.* The court must:

(1) for all new court staff members, provide the policy and train on it before the new staff member begins any substantive work for the court;

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### **Rule 7.2. District and County Courts.**

A district or statutory county court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(f) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:

(1) adherence to firm trial dates with strict continuance policies;

(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;

(3) pretrial conferences to encourage settlements and to narrow trial issues;

(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.

## **Supreme Court of Texas Confidentiality Policy and Agreement**

Employees of this Court occupy positions of public trust. In the course of your duties, you will encounter confidential information about the prospective disposition of cases and the inner workings of the Court.

Preserving the confidentiality of the Court's documents and private deliberations is **crucial to the Court's work**. More specifically, confidentiality furthers the ability of judges and judicial staff to communicate openly and honestly and to reach the most legally correct outcomes for litigants. Confidentiality also builds public respect for the judiciary and impresses on others the gravity of the judicial process. Any breach of confidentiality would betray not only the Court and the individuals who work here, but also the public's interest in thorough, considered justice.

Confidentiality has long been an expectation within Texas courts. Canon 3B(10) of the Texas Code of Judicial Conduct demands that judges and court staff refrain from "public comment about a pending or impending proceeding which may come before the judge's court." Canon 3B(11) of the Texas Code of Judicial Conduct provides that "[t]he discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project."

Texas Government Code Section 21.013 creates a Class A misdemeanor criminal offense for the unauthorized disclosure of non-public judicial work product, stating "[a] person . . . with access to non-public judicial work product commits an offense if the person knowingly discloses, wholly or partly, the contents of any non-public judicial work product . . . ." Additionally, Texas Penal Code Section 39.06 criminalizes the misuse of official information by a public servant who "discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) has not been made public", with penalties ranging from a Class C misdemeanor to a felony of the third degree.

This confidentiality policy incorporates the Canons as well as the statutory penalties of both Texas Government Code Section 21.013 and Texas Penal Code Section 39.06. This policy applies to all Court staff, including interns.



**1. Protection of information.** Confidential information must not be shared with persons not employed within the Court, except as provided in Section 3 below. Employees must refrain from commenting about cases that are or may come before the Court to family, friends, or acquaintances.

**2. Confidential information defined.** Confidential information includes:

- a) drafts of opinions not yet released, internal memoranda, emails between judges or staff, and any other document not intended for public use;
- b) conversations between judges or court staff about litigants or cases before, previously before, or expected to come before the Court;
- c) the private views of judges or court staff concerning the disposition of cases, litigants, anticipated cases, or each other;
- d) the authorship of per curiam opinions or orders, the timing of opinion or order release, and any other procedural mechanism not ordinarily public;
- e) documents submitted by litigants under seal; and
- f) other information, however communicated, that is not authorized to be made public.

**3. Disclosures of confidential information.**

- a) **Intentional disclosure** of confidential information outside of the boundaries of (1) above may be met with maximum disciplinary action. See (5) below.
- b) **Negligent or accidental disclosure** is an extremely serious matter that may, but will not necessarily, be met with penalties as described in (5) below. Employees who accidentally disclose confidential information have a duty to promptly report the disclosure to their supervisor, appointing authority, or human resources department so that mitigation can be attempted.

Employees are expected to exercise their discretion and judgment to minimize the risk of inadvertent disclosure. For example, employees should refrain from communicating about sensitive matters in crowded or public spaces where

others may overhear, even within the public areas of the Court. Employees should use court-issued, password-protected equipment to transmit confidential documents. Employees should be mindful of who can see their screen when working at home, on aircraft, public transit, or in public spaces. Employees should carefully keep track of and password protect electronic devices containing confidential information and immediately report any loss or theft of those devices.

- c) **Authorized disclosure** occurs when the Chief Justice or a Justice who supervises the employee authorizes the employee to share work product with a specific person or organization. For example, employees may be authorized to share draft rules or administrative orders with other judicial branch entities for review and comment before they are released to the public, and the Clerk of Court may be authorized to disclose information relating to case status as part of their job duties, provided the Court's internal, confidential deliberations are not disclosed.
- d) **Disclosure as necessary to report misconduct or illegal acts** is permitted. Employees may disclose confidential information when such disclosure is necessary to adequately report to an appropriate authority the misconduct or illegal acts of any person, including sexual or other forms of harassment.

**4. Continuing confidentiality obligation.** An employee's duty to preserve confidentiality survives the employee's departure from the Court. An employee who leaves the Court has the same ongoing duty to protect confidential information that they had during their employment.

Further, the duty to protect information related to the disposition of cases, such as the substance of the Court's deliberations, persists even after an opinion or order is publicly released. Employees asked about a decision of the Court should offer no comment beyond a referral to the released opinion or order.

Finally, employees who depart from Court employment may not retain confidential materials. Employees should return or securely dispose of materials, such as in designated Court shredding bins, prior to an anticipated departure, or as soon as possible after an unanticipated departure.

**5. Penalties for unauthorized disclosure:** In the event of an unauthorized disclosure of confidential information, the Court will investigate the circumstances and take appropriate disciplinary action, as necessary. Potential disciplinary actions may include but are not limited to:

- a) referral of the matter to the relevant law enforcement agency for investigation and prosecution. *See* Texas Government Code Section 21.013 and Texas Penal Code Section 39.06;
- b) termination of employment;
- c) for attorneys, referral to the State Bar of Texas or of other states for discipline and possible loss of the privilege to practice before Texas or other courts; and
- d) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law.

**6. Acknowledgement.** Please acknowledge your understanding and agreement to this policy by signing below.

\_\_\_\_\_  
Employee's or Intern's Signature

\_\_\_\_\_  
Date