

**Hidalgo County District Clerk's Office
Office of Laura Hinojosa**



**Preservation and Restoration of the District Court Records Archive
Government Code § 51.305**

Background

The purpose of this document is to provide a plan for the deterioration, restoration and preservation, digital capture, storage, retention and management of archived court documents accepted for filing or maintenance within the District Clerk's office. Government Code § 51.305 define the above mentioned as followed:

- Court document – means any instrument, document, paper, or other record that the district clerk is authorized to accept for filing or maintenance.
- Deterioration - means any naturally occurring process or a natural disaster that results in the destruction or partial destruction of a court document.
- Preservation - means any process that:
 - suspends or reduces the deterioration of a court document; or
 - provides public access to a court document in a manner that reduces the risk of deterioration.
- Restoration - means any process that permits the visual enhancement of a court document, including making the document more legible.

Many offices are moving records to a digital format to relieve storage problems as well as maintaining a form of digital preservation. In order to comply with retention and preservation statutes and State Library rules (see Bulletin B at <http://www.tsl.state.tx.us/slrn/recordspubs/lgbullb.html>), digital images must be maintained permanently and a plan in place to secure the future transition of digitized records to new media which will allow access to these records.

The State Library suggests a department head make a plan for future retention of the court records and have the appropriate person/body sign off on a guarantee the funding will be in place to upgrade the ability to retrieve permanent records. However, a commissioner's court is powerless to obligate a future court to any expenditure. Therefore, this dedicated fund will insure the funds are available to do the necessary preservation, restoration, and conversion work to preserve and restore archived records and this new legislation was designed to target archived records.

Purpose

Government Code § 51.305 (Texas Senate Bill 1685) creates a dedicated district court **records technology fund** and authorizes district clerks to collect an additional fee not to exceed \$5 per filing. The bill provides these funds be used only for the preservation and restoration of the district court records archive. The bill authorizes the district courts to effectively preserve and efficiently retrieve the large amount of legal documents required to be preserved.

This bill authorizes the commissioner's court to adopt a records archive fee for deposit in the District Court Records Technology Fund as part of the county's annual budget. Government Code § 51.305 has been implemented and the county will experience a revenue gain. This additional revenue will be dedicated to helping district clerk's focus on preserving records.

The effective date of this Act is June 19, 2009 and expires upon completion of the projects necessary to preserve and digitize the district court records (if possible).

Introduction

Since the inception of the District Clerk Office to the end of the previous administration, records were never preserved or imaged or destroyed as per Texas State Library and Archive Rules. As part of our strategic plan, our efforts with funds from Government Code § 51.305 shall be utilized for the overall goal of the imaging, archiving, and preservation of all cases in the possession of the District Clerk's Office. Moreover, with the collaboration of the courts, our goal would be to transition to a paperless system.

Process

As part of our policy and procedure, we would require all new cases be scanned at their respective court. To accomplish this goal, we plan to purchase scanners for every court so the clerk of the respective court is able to scan cases in real time. A portion of the plan is to hire scanning clerks and to purchase additional scanners to have scanning clerks work on cases from previous years. The procedure would be as follows:

- Active case documents are scanned into Ableterm/Odyssey Case Management System for Record Storage and retrieval convenience.
- Request old files from storage
- Once received, we would have these files placed in our scanning room/area
- All scanning clerks would verify if an event is placed in Ableterm/Odyssey Case Management System for Record Storage for files to be scanned
- Once scanned, the file is returned to our storage facility and placed indexed by case number.
- All cases which satisfy rules designated under Texas State Library and Archive Rules and adhere to office retention policies will be destroyed.
- The exception to destruction as per Texas State Library and Archive Rules are criminal judgments or docket sheets upon which defendant's finger prints have been placed. They remain as a permanent paper document.

Goal

Our primary focus for the utilization of these funds is a District Clerk Office Records Warehouse. Currently, all files are retained with a third party vendor and cost to the county is relatively high. With these funds and other related funds, we plan to purchase a warehouse facility, personnel, equipment, and supplies so we can maintain compliance with Texas State Library and Archive Rules. In addition, funds from Government Code § 51.305 would be used for future development of the archival process.

Another objective is to reproduce and archive all documents, regardless of type, as efficiently as possible. The District Clerk's office, through this plan, would also restore aged hand-written records, suspending their deterioration as well as improving public access.

To complete our efforts toward electronic storage of all case files, we foresee maintaining disposed cases in our storage facility for a short period of time and using computers to access all records.

With less cost to the county, we may continue this ongoing process by using the archive fee to cover the cost of scanning paper source documents. In addition to preserving the documents, the images will be added to our existing imaging system and improve customer service. Additionally, significant space savings will be realized once paper documents are destroyed.

Because this is a relatively new process to our office, the preliminary annual cost of continuing this ongoing project would be high. In the years following, cost would steadily decrease and could ultimately stay at a sustainable rate. Additional funds are available in other county records preservation funds which are being increased monthly from fees collected by all fee officers on court cases.

Expenditures include but are not limited to:

- All necessary computer hardware and peripherals,
- Computer software,
- Computer and peripheral repair as well as technical support
- Service Provider and other outsourcing services.
- Relevant staff salary
- Data storage supplies
- Travel expenses to and from a service provider to deliver and pickup case documents, if necessary.

AN ACT

relating to the creation of a district court records technology fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 51, Government Code, is amended by adding Section 51.305 to read as follows:

Sec. 51.305. DISTRICT COURT RECORDS TECHNOLOGY FUND. (a) In this section:

(1) "Court document" means any instrument, document, paper, or other record that the district clerk is authorized to accept for filing or maintenance.

(2) "Deterioration" means any naturally occurring process or a natural disaster that results in the destruction or partial destruction of a court document.

(3) "Preservation" means any process that:

(A) suspends or reduces the deterioration of a court document; or

(B) provides public access to a court document in a manner that reduces the risk of deterioration.

(4) "Restoration" means any process that permits the visual enhancement of a court document, including making the document more legible.

(b) The commissioners court of a county may adopt a district court records archive fee of not more than \$5 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, in a district court in the county as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process and must be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

(c) The county treasurer, or the official who discharges the duties commonly delegated to the county treasurer, in a county that adopts a fee under Subsection (b) shall establish a district court records technology fund in the general fund of the county for deposit of fees paid under Section 51.317(f).

(d) Subject to Subsection (f), money generated from the fee imposed under this section may be expended only for the preservation and restoration of the district court records archive.

(e) The district clerk shall designate the court documents that are part of the records archive for purposes of this section. The designation of court documents by the district clerk under this subsection is subject to approval by the commissioners court in a public meeting.

(f) The district clerk in a county that adopts a fee under this section shall prepare an annual written plan for the preservation and restoration of the district court records archive. The plan may include a proposal for entering into a contract with another person for preservation and restoration services. The commissioners court shall publish notice of a public hearing on the plan in a newspaper of general circulation in the county not later than the 15th day before the date of the hearing. After the public hearing, the plan shall be considered for approval by the commissioners court. Money in the district court records technology fund may be expended only as provided by the plan. All expenditures from the records technology fund must comply with Subchapter C, Chapter 262, Local Government Code.

(g) If a county imposes a fee under this section, a notice shall be posted in a conspicuous place in the district clerk's office. The notice must state the amount of the fee in the following form: "THE COMMISSIONERS COURT OF _____ (Insert name of county) COUNTY HAS DETERMINED THAT A RECORDS ARCHIVE FEE OF \$ _____ (Insert amount adopted by commissioners court) IS NEEDED TO PRESERVE AND RESTORE DISTRICT COURT RECORDS."

(h) Money remaining from the collection of fees imposed under this section after completion of a district court records archive preservation and restoration project may be expended for records management and preservation purposes in the manner provided by Section 51.317(d). The commissioners court of a county may not impose a fee under this section after the district court records archive preservation and restoration project is complete.

SECTION 2. Section 51.317, Government Code, is amended by amending Subsection (b) and adding Subsections (b-2) and (f) to read as follows:

(b) The fees are:

(1) except as provided by Subsection (b-1), for filing a suit, including an appeal from an inferior court, \$50;

(2) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, \$15;

(3) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed, \$8;

(4) for records management and preservation, \$10; and

(5) in addition to the other fees imposed under this section, for filing a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, the amount adopted by the county commissioners court, not to exceed \$5, for court records archiving.

(b-2) The fee imposed under Subsection (b)(5) does not apply to a filing by a state agency.

(f) The district clerk, after collecting a fee under Subsection (b)(5), shall pay the fee to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit to the district court records technology fund established under Section 51.305.

SECTION 3. Subchapter D, Chapter 101, Government Code, is amended by adding Section 101.06116 to read as follows:

Sec. 101.06116. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT CODE. The clerk of a district court shall collect a district court records archive fee of not more than \$5 under Section 51.317(b)(5), if adopted by the county commissioners court.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009**

****Passed each house by more than a two-thirds majority and signed by the governor June 19, 2009 (effective date).**