

“IT’S ALL IN THE DETAILS: MAKING TEXAS LOCAL RULES  
ACCESSIBLE, HELPFUL, AND SENSIBLE”

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Counties created local rules to facilitate access to courts and allow judges, attorneys, and parties to adapt to the local customs and practices. Unfortunately, the network of local rules has become difficult to access and contains potential traps

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for unwary litigants. Adding structure and a uniform organization to local rules, along with mandatory electronic disclosure of the local rules, will help ease the problems created by the current system. Local rules can be a useful process but only when readily accessible.

## I. INTRODUCTION

Local rules were intended to afford courts the ability to guide and target practice in a given jurisdiction. When used appropriately, local rules can streamline the litigation process, allow individual courts to operate efficiently, and account for specific circumstances in particular courts.<sup>2</sup> The current patchwork of local rules, however, creates significant barriers for litigants. Texas local rules can be difficult to locate because there is no centralized location where all local rules can be found.<sup>3</sup> Even within a given county, the *available* version of local rules may not be the current version, and the rules may or may not be available online at all. Local rules do not follow a standard format, requiring litigants and attorneys to review a court’s entire set of local rules to see if there is an applicable rule and what that rule requires.<sup>4</sup>

Rules of court, local or otherwise, should assist those seeking access to the courts rather than serve as a barrier to that access. The open courts provision of the Texas Constitution requires as much, and it specifically mandates that citizens have access to the courts without unreasonable financial barriers.<sup>5</sup> To this end, basic changes to the formatting, publishing, and accessibility of local rules could ensure that local rules are consistent with the open courts provision.

The irony of the current, somewhat byzantine local rule scheme is that local rules could provide a solution for dealing with rapidly changing technology, privacy laws, and administrative issues in a more nimble and accessible manner than by adapting the rules of civil procedure. The COVID-19 pandemic highlighted the need for flexible local rules, for example, in dealing with Zoom-based hearings. This article (1) introduces the problems with local rules, (2) reviews the Texas local rules framework, (3) examines the history of local rules in Texas, (4) explains the modern problems caused by local rules, and (5) proposes solutions.

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<sup>2</sup> *In re Adams*, 734 F.2d 1094, 1102 (5th Cir. 1984) (“Promoting the efficiency of the court is the central purpose of local rules[.]”).

<sup>3</sup> The only attempts at a centralized location are on the Supreme Court of Texas’s (Supreme Court) website. *Rules & Standards*, TEX. JUD. BRANCH, <http://www.txcourts.gov/rules-forms/rules-standards/> (last visited Nov. 1, 2020). However, these efforts fall short. *See infra* note 6.

<sup>4</sup> *See infra* Section IV.B.

<sup>5</sup> Tex. Const. art. I, § 13; *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993).

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**II. THE TEXAS COURT RULES FRAMEWORK**

The Texas Supreme Court promulgates court rules governing judicial administration, practice and procedure in civil actions, and rules governing lawyers and the state bar association.<sup>6</sup> The Supreme Court also permits courts of appeals, district courts, county courts, county courts at law, and probate courts to establish their own court rules.<sup>7</sup> Court rules adopted and enforced by these lower courts are called local rules, and they have the force of law.<sup>8</sup> Section 3a of the Texas Rules of Civil Procedure (TRCP) governs local rules in Texas trial courts<sup>9</sup> and their interplay with the rules of civil procedure:

Each administrative judicial region, district court, county court, county court at law, and probate court may make and amend local rules governing practice before such courts, provided:

- (1) that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located;
- (2) no time period provided by these rules may be altered by local rules;
- (3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;
- (4) any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;
- (5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to the members of the bar;

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<sup>6</sup> NATHAN L. HECHT ET AL., HOW TEXAS COURT RULES ARE MADE, at 2–4 (2016) <https://www.txcourts.gov/media/1374851/How-Court-Rules-Are-Made.pdf>. While a complete list of all adopted state court rules supposedly can be found on the Supreme Court’s website, the list is incomplete and inconsistent with other published versions of the local rules. *Rules & Standards*, *supra* note 3. The fact that all the local rules are not readily available in one place highlights the need for change.

<sup>7</sup> Tex. R. Civ. P. 3a. While Rule 3a is the largest grant of local rulemaking authority, there are other sources of authority for local rules. For example, the Texas Rules of Appellate Procedure grant the courts of appeals rulemaking authority. Tex. R. App. P. 1.2. The Government Code also permits county courts to adopt local rules regulating the transmission and receipt of documents electronically or by fax. Tex. Gov’t Code § 51.807(a). This article does not address the courts of appeals’ local rules because they, unlike the trial courts’ local rules, are not so numerous as to be problematic.

<sup>8</sup> *See* Tex. R. Civ. P. 3a.

<sup>9</sup> *Id.*

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- (6) no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a, shall ever be applied to determine the merits of any matter.<sup>10</sup>

Local rules reflect the courts’ authority to manage their own affairs, the goal being the orderly and expeditious disposition of cases.<sup>11</sup> Frequently, local rules attempt to provide docket control and standardize pretrial procedures within the adopting court.<sup>12</sup> They also, however, create unpredictable pockets of local custom or practice that can serve as a trap for the unwary.<sup>13</sup> Additionally, local rules may not conflict with statewide court rules or state statutes;<sup>14</sup> in case of a conflict, the local rule is ineffective.<sup>15</sup> Their ineffectiveness, however, may not be determined until after the case is appealed.<sup>16</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *In re Adams*, 734 F.2d 1094, 1102 (5th Cir. 1984).

<sup>12</sup> *Texas Court Rules: History and Process*, Excerpted from Nathan L. Hecht & E. Lee Parsley, *Procedural Reform: Whence and Whither*, at § 1.04 (Sept. 1997), updated by Robert H. Pemberton (Nov. 1998), available at <https://www.txcourts.gov/rules-forms/rules-standards/texas-court-rules-history-process/>. However, a local rule may address any issue so long as it complies with Rule 3a. Tex. R. Civ. P. 3a.

<sup>13</sup> See Elaine A. Carlson & Byron P. Davis, *Texas and Federal Local Rules—Their Promulgation, Administration, Future, and Demise*, 17 ST. MARY’S L.J. 775, 796–98 (1986).

<sup>14</sup> Tex. R. Civ. P. 3a(1).

<sup>15</sup> See, e.g., *Barnes v. Sulak*, No. 03-01-00159-CV, 2002 Tex. App. LEXIS 5727, at \*20 n.3 (Tex. App.—Austin Aug. 8, 2002) (holding that a local rule’s discovery timelines conflicted with the TRCP and therefore were ineffective). However, appellate courts do not generally conclude that local rules conflict with the TRCP or state statutes. For example, some appellate courts conclude that the apparently conflicting local rules are “purely procedural,” and there is no substantive conflict necessitating the appellate court to deem the local rule ineffective. See, e.g., *Christopher v. Echevarria*, No. 05-17-00800-CV, 2018 Tex. App. LEXIS 4861, at \*3–4 (Tex. App.—Dallas June 28, 2018). In *Echevarria*, the court of appeals examined a Dallas County local rule requiring certificates of conference for “any motion.” *Id.* at \*3. The plaintiff did not include a certificate of conference when it filed a motion to reinstate. *Id.* The court of appeals reasoned that since the rule requiring certificates of conference did not invalidate the motion, it was “purely procedural” and therefore not in conflict with the TRCP or Texas Constitution. *Id.*

<sup>16</sup> Parties must comply with court orders, including local rules, or the court may hold them in contempt. See *Peck v. Peck*, 172 S.W.3d 26, 36 (Tex. App.—Dallas 2005) (discussing direct and constructive contempt). Parties must comply even if the court order—or local rule—is unlawful. See *Ex parte Tucci*, 859 S.W.2d 1, 2 n.4 (Tex. 1993) (“[E]ven ‘transparently invalid’ orders or unconstitutional ones forming the basis for civil contempt must be appealed . . .”). Courts of appeals determine issues of law, including the legality of local rules, on appeal. See, e.g., *In re Alpert*, 276 S.W.3d 592, 598 (Tex. App.—Houston [1st Dist.] 2008) (court of appeals determined that reassignment orders were void because they conflicted with state statute and state rules of procedure); *Tex. Fire & Cas. Co. v. Harris Cty. Bail Bond Bd.*, 684 S.W.2d 177, 179 (Tex. App.—Houston [14th Dist.] 1984) (court of appeals held that local rule setting minimum bail bond requirements conflicted with state statute and was therefore void). Thus, parties must comply with local rules until an appellate court deems the local rule ineffective.

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### III. THE HISTORY OF LOCAL RULES IN TEXAS

The Constitution of the Republic of Texas and the first four state constitutions did not address court rules—let alone local rules—other than to say that trials shall be conducted according to the “rules and regulations prescribed by law.”<sup>17</sup> Historically, Texas trial courts have had inherent authority to maintain and control their dockets.<sup>18</sup> This inherent power existed well before the adoption of the TRCP<sup>19</sup> and included broad discretion to manage trials.<sup>20</sup> This inherent authority allowed individual courts and court systems to address issues and problems uniquely their own.<sup>21</sup> Local rules allowed counties of different sizes and with different needs to manage those issues.<sup>22</sup> The ad hoc nature of local rules and their inconsistent content and application provided the impetus for both the modern local rules and the TRCP.

In 1939, the Texas Legislature passed the Rules of Practice Act which vested rulemaking authority for civil cases in the Supreme Court.<sup>23</sup> The Supreme Court, with the help of an advisory committee, drafted and adopted the TRCP<sup>24</sup> which became effective September 1, 1941.<sup>25</sup> These rules expressly recognized the existence of local rules, and also attempted to coordinate with local rules. TRCP Rule 817 (amended and now Rule 3a) explicitly authorized trial courts to adopt local rules:<sup>26</sup>

The Commission of Appeals, each Court of Civil Appeals and each district and each county court may, from time to time, make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made shall be furnished

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<sup>17</sup> William V. Dorsaneo III, *The History of Texas Civil Procedure*, 65 BAYLOR L. REV. 713, 714–15 (2013).

<sup>18</sup> *See, e.g.*, *Goss v. Goss*, No. 04-16-00809-CV, 2018 Tex. App. LEXIS 246, at \*3–4 (Tex. App.—San Antonio Jan. 10, 2018); *Sellers v. Foster*, 199 S.W.3d 390 (Tex. App.—Fort Worth 2006).

<sup>19</sup> *See* *Hall v. Austin*, 73 S.W. 32 (Tex. Civ. App.—Austin 1903). Additionally, this inherent state trial court power mirrors the federal trial court system. *Landis v. N. American Co.*, 299 U.S. 248, 254 (1936).

<sup>20</sup> *Maasoumi v. Highland Park Indep. Sch. Dist.*, No. 05-95-00727-CV, 1997 Tex. App. LEXIS 5534, at \*6–7 (Tex. App.—Dallas Oct. 23, 1997) (explaining that the trial court’s discretion to handle trials is a subset of the trial court’s inherent power to control cases on the docket). For example, trial courts are afforded broad discretion to limit time at trial during examinations. *Goss*, 2018 Tex. App. LEXIS 246, at \*4.

<sup>21</sup> *See In re Adams*, 734 F.2d 1094, 1102 (5th Cir. 1984).

<sup>22</sup> *See, e.g.*, *Click v. State*, 745 S.W.2d 480, 482–83 (Tex. App.—Corpus Christi–Edinburg 1988, pet. ref’d) (acknowledging that larger counties are more capable of handling financial burdens).

<sup>23</sup> Tex. Gov’t Code Ann. § 22.004; Dorsaneo, *supra* note 17, at 715 (Notably, this process mirrored the federal process); *See also* *Carlson & Davis*, *supra* note 13, at 777 (1986).

<sup>24</sup> *Carlson & Davis*, *supra* note 13, at 777.

<sup>25</sup> *Id.*

<sup>26</sup> *See* Tex. R. Civ. P. 3a (rule and credits). Also, as originally enacted, mirrored its counterpart in the Federal Rules of Civil Procedure (FRCP). *See* Fed. R. Civ. P. 83 (2019).

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to the Supreme Court of Texas. In all cases not provided for by these rules, the Courts of Civil Appeals and district and county courts may regulate their practice not inconsistent with these rules.<sup>27</sup>

While the rules of civil procedure attempted to standardize practice in the state courts, Rule 817 recognized that the newly-adopted civil procedure rules were not comprehensive.<sup>28</sup> In other words, the Supreme Court of Texas expected trial courts to fill procedural gaps using their rulemaking powers.<sup>29</sup> However, some local rules did more than fill the gaps and because Rule 817 did not require approval by the Supreme Court, local rules often conflicted with statewide court rules.<sup>30</sup>

By the 1980s, the Texas legal community was dissatisfied with both the TRCP and the framework of local rules.<sup>31</sup> The Texas local rules system was heavily criticized by legal commentators who suggested that local rules created unfair traps for unwary litigants because local rules did not need to be approved or published.<sup>32</sup> Appellate courts likewise criticized the local rules.<sup>33</sup>

The Supreme Court reacted in 1984 by incorporating some local rules into the TRCP<sup>34</sup> and amending Rule 817.<sup>35</sup> The intentional renumbering from Rule 817 to Rule 3a emphasized the priority of the TRCP over the local rules of procedure.<sup>36</sup> Rule 3a eliminated trial courts’ power to enact local rules when the TRCP is silent and effectively requires the Supreme Court’s approval of local rules.<sup>37</sup>

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<sup>27</sup> Carlson & Davis, *supra* note 13, at 798.

<sup>28</sup> See Tex. R. Civ. P. 3a; see also Carlson & Davis, *supra* note 13, at 776–78. The advisory committee acknowledged the limits of the TRCP and the understanding that local rules would help fill the gaps. Carlson & Davis, *supra* note 13, at 777.

<sup>29</sup> See Carlson & Davis, *supra* note 13, at 776–78.

<sup>30</sup> See *supra* Section II.

<sup>31</sup> Dorsaneo, *supra* note 17, at 716.

<sup>32</sup> See, e.g., Carlson & Davis, *supra* note 13, at 796–98.

<sup>33</sup> In *Cornerstone Mun. Util. Dist. v. Monsanto Co.*, the court of appeals criticized the Texas Rules of Appellate Procedure (TRAP) for its failure to have a rule covering the filing of reply briefs. 845 S.W.2d 444, 446 (Tex. App.—Houston [14th Dist.] 1993, writ granted), *rev’d on other grounds*, 865 S.W.2d 937 (Tex. 1993). According to the court of appeals, “Although local rules might have some useful function in limited circumstances, they should not be used to bridge this gap provided by our rules.” *Id.* The court of appeals reasoned that TRAP should address the problem directly because “[t]he aims of appellate justice are better served by a uniform body of rules that do not require the appellate practitioner to search for traps set by the fourteen appeals courts . . . .” *Id.* This reasoning is all-the-more compelling when applied to approximately 1,000 trial courts in Texas.

<sup>34</sup> See Carlson & Davis, *supra* note 13, at 796–98.

<sup>35</sup> Tex. R. Civ. P. 3a (credits).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; See also Carlson & Davis, *supra* note 13, at 799.

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A 1990<sup>38</sup> overhaul of the TRCP created mandatory timetables and deadlines and prohibited the use of unpublished local rules or other “standing orders” to determine substantive matters.<sup>39</sup> While attempts at standardization via the TRCP have lessened the arbitrary nature of local rule practice, the problems have not disappeared.

Technological changes should have improved access to the local rules. The Internet began developing in the 1950s and by the early 1990s its modern variant—the World Wide Web—was widely used by the public.<sup>40</sup> Texas courts first utilized the internet for e-filing purposes in 1995<sup>41</sup> with the Texas Supreme Court starting implementation of e-filing statewide in 2003.<sup>42</sup> In 2012, with e-filing now required and available (to some degree) in every county, the Texas Supreme Court mandated e-filing in civil cases in all courts on a rolling schedule.<sup>43</sup>

Given the e-filing mandate, one might assume that local rules would be readily available on the internet either through a centralized repository or individual court or county websites.<sup>44</sup> And while many local rules are now available online, in an effort to centralize access to these rules, the Texas Supreme Court’s website provides links to each county’s website.<sup>45</sup> Unfortunately, many of these links are either incomplete or do not work. Moreover, many counties do not even post local rules on their websites.<sup>46</sup> It is difficult to understand a system of local rules that are binding law but which cannot actually be reliably located—even by the Supreme Court tasked with approving those rules. Locating the rules is but one problem with the current local rule scheme; others plague litigants and lawyers alike.

#### IV. THE PROBLEMS WITH LOCAL RULES

Despite the reforms noted in Section III, disparate local rules continue to proliferate and cause unnecessary confusion which stems in part from the fact that local rules among individual courts vary widely.<sup>47</sup> Texas has over 450 district

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<sup>38</sup> Tex. R. Civ. P. 3a (credits). Rule 3a was also amended in 1988, but the amendments were not substantive. *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Evan Andrews, *Who Invented the Internet?* (last updated Oct. 28, 2013), <https://www.history.com/news/who-invented-the-internet>.

<sup>41</sup> David Slayton & Megan LaVoie, *Paperless Courts: Are You Ready for the E-filing Mandate?*, 77 TEX. B.J. 24 (2014). Jefferson County, the first county to begin e-filing, began modernizing its filing procedures to deal with an overwhelming number of files in multi-party cases. *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See *infra* Appendix A.

<sup>45</sup> See *id.*; *Rules & Standards*, *supra* note 3. Unfortunately, many of the links on the Supreme Court’s website do not work. See *id.* Additionally, the links do not connect to the local rules’ location within individual counties’ websites, and many counties do not even post local rules on their websites. See *id.*

<sup>46</sup> See *id.*

<sup>47</sup> See *Texas Court Rules: History and Process*, *supra* note 12.

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courts alone, many of which have their own local rules.<sup>48</sup> County courts at law and appellate courts likewise can promulgate local rules, creating a significant network of ad hoc local rules.

This Section addresses the following problems with local rules: (A) local rules are difficult to find; (B) local rules are inconsistently organized; (C) local rules are often not complete and accurate; and (D) some local rules are illogical.

**A. Local Rules are Difficult to Find.**

In conducting research in order to understand what local Texas rules were available online for the average litigant and his or her counsel, it became apparent that local rules are exceedingly difficult to find. Even with the benefit of the Supreme Court’s website and each county’s website, it took approximately several hours to find the local rules, and it is not clear that the appendix attached is complete and current.

Many of the local rules posted on the counties’ and courts’ websites were out of date or difficult to access.<sup>49</sup> Because some local rules are not dated, it became difficult to determine if the posted rules were a current or a prior version of the rule.<sup>50</sup> Given that county and court websites do not consistently post the local rules,<sup>51</sup> prudent attorneys will always need to do additional research to ensure that they are complying with the local rules.<sup>52</sup>

Additionally, TRCP 3a is archaic in describing the requirement for disseminating local rules. TRCP 3a(5) only requires that courts make local rules available to members of the bar.<sup>53</sup> It does not require that courts provide self-represented parties with access to the local rules upon request. The rule provides no guidance for how courts are to make the rules “available.”<sup>54</sup>

If litigants cannot access the rules and can be penalized for not adhering to local rules, local rules create a trap for the unwary. This reality is inconsistent with

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<sup>48</sup> See Appendix A. Some of these local rules overlap with different district courts, and some district courts do not have local rules at all.

<sup>49</sup> See *infra* Section IV.C. For example, the Cooke County Local Rules are scanned in the wrong order. Cooke (Tex.) Civ. Dist. Ct. Loc. R.

<sup>50</sup> See *infra* Section IV.C.

<sup>51</sup> See, e.g., *52nd District Court, Coryell County Texas*, <https://www.coryellcounty.org/page/coryell.District%2052nd> (last visited Nov. 1, 2020) (failing to post the current local rules).

<sup>52</sup> Appendix A provides a full list of the courts and counties with and without local rules posted on their respective websites. See Appendix A.

<sup>53</sup> Tex. R. Civ. P. 3a(5).

<sup>54</sup> *Id.*



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the open-courts provision that guarantees citizens should not be unreasonably impeded in accessing Texas courts.<sup>55</sup>

The difficulty in finding local rules creates problems for attorneys, represented litigants, and self-represented litigants alike. First, difficult-to-find local rules unnecessarily require attorneys to spend additional time to simply find the local rules. While this is inconvenient for attorneys, represented clients bear the true cost when an attorney must perform additional legal research. Litigation is already expensive—sometimes prohibitively so.<sup>56</sup> For example, an average premises liability case involves between 112 and 198 hours to complete, varying by firm size, and can cost over \$50,000 to litigate if the case makes it past trial.<sup>57</sup> Local rules should not create an additional financial hurdle for clients, especially when there is no need to do so.

Additionally, inaccessible local rules disproportionately impact self-represented litigants who may not even know that local rules exist. If competent attorneys struggle to find local rules, self-represented litigants may find the local rules system a barrier to the courts.<sup>58</sup> In one study, researchers identified 193 tasks that self-represented litigants must perform in civil cases.<sup>59</sup>

Self-represented litigants do not typically understand the legal system but are bound by the same procedural rules as represented litigants’ attorneys.<sup>60</sup> While courts are encouraged to work with self-represented parties, judges are often concerned that this could appear unfair.<sup>61</sup> Difficult-to-find local rules should not add to this already complicated situation.

## **B. Local Rules Lack Consistent Structure and Organization.**

In the author’s review of the existing local rules, it is readily apparent that the rules do not follow a consistent format or structure, impeding their usefulness. The local rule governing withdrawal of counsel in one county is located in a

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<sup>55</sup> See Tex. Const. art. I, § 13; see also *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993).

<sup>56</sup> See Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 749–53 (2015) (explaining that in some states, as many as 80 to 90 percent of litigants are unrepresented).

<sup>57</sup> Paula Hannaford-Agor, *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers*, VOIR DIRE 22, 26–7 (Spring 2013).

<sup>58</sup> See *Nguyen v. Kuljis*, 414 S.W.3d 236, 241 (Tex. App.—Houston [1st Dist.] 2013,) (acknowledging that *pro se* litigants do not usually know what attorneys know).

<sup>59</sup> See Ronald W. Staudt & Paula L. Hannaford, *Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers*, 52 SYRACUSE L. REV. 1017, 1027 (2002).

<sup>60</sup> See *Nguyen*, 414 S.W.3d at 241 (“[P]ro se litigants are not exempt from the rules of procedure.” (quoting *Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005))).

<sup>61</sup> See, e.g., Staudt & Hannaford, *supra* note 59, at 1018.

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different section of the local rules in many other counties.<sup>62</sup> Some local rules are not numbered.<sup>63</sup> Most sets of local rules do not have the same major headings or use the same numbering system.<sup>64</sup> Many do not even have tables of contents.<sup>65</sup> This inconsistent approach to organization leads to the individual rules being difficult to find and creates unnecessary work for both attorneys and self-represented parties alike.

For example, the Local Rules of Dallas County are organized as follows:

PART I - FILING, ASSIGNMENT AND  
TRANSFER

- 1.01. RANDOM ASSIGNMENT
- 1.02. COLLATERAL ATTACK
- 1.03. ANCILLARY PROCEEDINGS (revised)
- 1.04. MOTION TO CONSOLIDATE
- 1.05. TRANSFER BY LOCAL  
ADMINISTRATIVE JUDGE
- 1.06. RELATED CASES
- 1.07. CASES SUBJECT TO TRANSFER (revised)
- 1.08. DISCLOSURE REGARDING CASES  
SUBJECT TO TRANSFER
- 1.09. SEVERANCE
- 1.10. SEVERANCE OF MULTIPLE PLAINTIFFS
- 1.11. TRANSFER OR APPEAL TO SPECIFIC  
DALLAS COURT INEFFECTIVE
- 1.12. PAYBACK OF TRANSFERRED CASES
- 1.13. SUGGESTION OF BANKRUPTCY

PART II- MOTIONS AND DISCOVERY

- 2.01. FILING WITH THE COURT IN  
EMERGENCY ONLY (revised)
- 2.02. APPLICATION FOR TRO AND OTHER EX  
PARTE ORDERS
- 2.03. JUDGMENTS AND DISMISSAL ORDERS
- 2.04. FILING OF PLEADINGS (revised)
- 2.05. SERVICE OF PAPERS FILED WITH THE  
COURT

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<sup>62</sup> For example, the rule governing withdrawal of counsel in the 220th District Court of Bosque County is Rule 6.2, whereas the same rule in the 5th, 102nd, and 202nd District Courts of Bowie County is Rule 10.12. *Compare* 220th (Tex.) Dist. Ct. Loc. R. 6.2 (Bosque County), *with* Bowie (Tex.) Civ. Dist. Ct. Loc. R. 10.12.

<sup>63</sup> *See, e.g.,* Coryell (Tex.) Civ. Dist. Ct. Loc. R.; Houston (Tex.) Civ. Dist. Ct. Loc. R.

<sup>64</sup> *Compare* Dallas (Tex.) Dist. Ct. Loc. R., *with* McLennan (Tex.) Civ. Dist. Ct. Loc. R., *with* Bexar (Tex.) Civ. Dist. Ct. Loc. R.

<sup>65</sup> *See, e.g.,* Harris (Tex.) Civ. Dist. Ct. Loc. R.

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- 2.06. UNCONTESTED OR AGREED MA TIERS  
(revised)
- 2.07. CONFERENCE REQUIREMENT (revised)
- 2.08. SUBMISSION OF PROPOSED ORDERS  
BY COUNSEL (revised)
- 2.09. BRIEFS (revised)
- 2.10. DEFAULT PROVE-UPS
- 2.11. NOTICE OF HEARING (new)
- 2.12. EFFECT OF MOTION TO QUASH. . .<sup>66</sup>

Dallas County has separate local rules for civil cases, criminal cases, and family law cases and do not appear in a combined format.<sup>67</sup>

Meanwhile, the Local Rules of McLennan County are organized as follows:

Local Rules of McLennan County

I – General

- A. Rule A
  - 1. [Subheading]
    - i. [Rule content here]
    - ii. [Rule content here]
    - iii. [Rule content here]
  - 2. [Subheading]
    - i. [Rule content here]
- B. Rule B  
[Rule content here]
- C. Rule C  
[Rule content here]

II – Local Criminal Rules

III – Local Civil Rules

IV – Rules of Decorum<sup>68</sup>

While both counties use appropriate organizational structure, that fact does not make the rules easily accessible to someone practicing in both counties. What utility is served in our mobile legal community by inconsistent and/or absent organizational structure in the local rules? One benefit of the Rules of Civil Procedure is its uniform structure and organization, making locating an applicable rule relatively effortless. Could the same wisdom not be applied to local rules?

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<sup>66</sup> This example approximates the template of Dallas County’s local rules. Dallas (Tex.) Civ. Dist. Ct. Loc. R.

<sup>67</sup> *Id.*; Dallas (Tex.) Fam. Dist. Ct. Loc. R.; Dallas (Tex.) Crim. Dist. Ct. Loc. R.

<sup>68</sup> This example approximates the template of McLennan County’s local rules. *See* McLennan (Tex.) Civ. Dist. Ct. Loc. R.

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Inconsistent local rule organization leads to the same open-courts concern outlined above by making it difficult to find local rules.<sup>69</sup> This, in turn, raises litigation costs by requiring attorneys to spend more time searching for rules than is necessary. This financial burden has the potential to unreasonably impede Texas citizens’ access to the courts.

Additionally, inconsistent local rule organization makes self-representation more challenging. Without clear headings and a more consistent local structure, self-represented parties are unlikely to recognize when a local rule applies to their situation. Even if they can find the *set* of local rules, they can easily miss *individual* rules when local rules are not organized in a clear, logical fashion.

### C. Confusion and Inconsistent Structure Within a County

#### 1. *Standing Orders*

Many Texas courts use standing orders to update or modify local rules, a practice which adds another layer of complexity.<sup>70</sup> For example, the Travis County local rules address procedures applicable to family law cases.<sup>71</sup> A standing order on Travis County’s website, however, provides the following:

5. INSURANCE IN DIVORCE CASE. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

. . .

5.2 Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or the parties’ children.<sup>72</sup>

While the issue addressed in Rule 5.2 is often the subject of a temporary restraining order, the question remains: Does it improve judicial efficiency to have rules of civil procedure and local rules and separate standing orders?<sup>73</sup> The routine

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<sup>69</sup> See *supra* Section IV.A.

<sup>70</sup> For example, DeWitt County has three different documents on the DeWitt County website dealing with local rules. Compare DeWitt (Tex.) Civ. Dist. Ct. Loc. R., with Order Amending Local Rules for 24th, 135th, 267th, and 377th District Courts, <http://www.co.dewitt.tx.us/upload/page/1628/Order%20Amending%20Local%20Rules.pdf>, and DeWitt County, Standing Order of the Court, <http://www.co.dewitt.tx.us/upload/page/1628/Standing%20Order%20of%20the%20Courts.pdf>.

<sup>71</sup> Travis (Tex.) Civ. Dist. Ct. Loc. R. 23.

<sup>72</sup> Travis County, Standing Order Regarding Children, Property and Conduct of the Parties R. 5.2.

<sup>73</sup> Many temporary restraining orders prohibit parties from “[t]erminating or in any other way adversely affecting the status quo or reducing the value of any insurance policies, such as health, life, and auto, which currently protect petitioner and respondent.” See, e.g., 22 WILLIAM V. DORSANEO III, TEXAS LITIGATION GUIDE § 360A.101 (2018).

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use of standing orders creates an additional, unnecessary hurdle for litigants. If a court deems standing orders necessary, could they not be explicitly included in or attached to the local rules? Conflicts or differences between local rules and standing orders confuse attorneys and self-represented litigants alike. For example, when a local rule does not address the requirements of a family law order or cross reference a separate standing order related to family law cases, a litigant would not know to look for a separate standing order or that it might apply to a given circumstance. Absent a specific reference or link to additional standing orders, local rules may affirmatively mislead represented or self-represented litigants to believe that the posted local rules comprise the entire local practice to which they must adhere. A self-represented party is unlikely to recognize the role standing orders play in modifying local rules.<sup>74</sup> Even if the self-represented party understands the significance of standing orders, those orders are often difficult to find. For many counties, standing orders are located at a different location than the local rules on the county’s website, if they are provided on the website at all.<sup>75</sup>

## 2. *Outdated Local Rules*

The problem with outdated local rules is twofold, either the current/updated local rules are not posted, or the local rules are not updated.<sup>76</sup> Failure to update online versions of local rules is inappropriate considering modern professional standards. As of 2012, the ABA Model Rules of Professional Conduct require attorneys to demonstrate technological competence.<sup>77</sup> By April of 2018, 31 states (including Texas) amended their rules of ethical conduct to include “technology competence” as a fundamental duty of practicing attorneys.<sup>78</sup> In one study, researchers identified 193 tasks that self-represented litigants must perform in civil cases.<sup>79</sup> Texas Rule of Disciplinary Conduct 1.01 states in its comments that “each

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<sup>74</sup> Self-represented parties are often unaware of legal procedures. *See, e.g.,* Wheeler v. Green, 157 S.W.3d 439, 442 (Tex. 2005) (*pro se* party was unaware of the proper application of the mailbox rule and the nature of a summary judgment hearing).

<sup>75</sup> For example, the local rules for Madison County are located at a different place on the county’s website than its standing orders. *Compare* Madison (Tex.) Civ. Dist. Ct. Loc. R., *with* Madison County, Standing Discovery Order, <http://www.co.madison.tx.us/upload/page/0387/docs/District/mad%20lr.pdf>. Furthermore, the 79th District Court provides a standing order on the Brooks County website, but it does not provide the local rules. Brooks County, Standing Orders for the 79th Judicial District Court Sitting in Brooks County, <http://www.co.brooks.tx.us/upload/page/5155/docs/20190115091601010.pdf>.

<sup>76</sup> *See* Appendix A.

<sup>77</sup> MODEL RULES OF PROF’L CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS’N 2018); *see also* Anthony E. Davis, *The Ethical Obligation to be Technologically Competent*, N.Y.L.J. (2016), <https://www.law.com/newyorklawjournal/almID/1202746527203/the-ethical-obligation-to-be-technologically-competent/>.

<sup>78</sup> Tad Simons, *For a Lawyer, What Does “Technology Competence” Really Mean?*, THOMSON REUTERS: LEGAL EXEC. INST. (Apr. 20, 2018), <http://www.legalexecutiveinstitute.com/lawyers-technological-competence>.

<sup>79</sup> Ronald W. Staudt & Paula L. Hannaford, *Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers*, 52 SYRACUSE L. REV. 1017, 1027 (2002).

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lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology.”<sup>80</sup> Should technological competence not apply to the courts in which these lawyers practice?

The rationale behind Rule 1.01 is that it promotes efficiency and fairness to the client.<sup>81</sup> Courts likewise have a responsibility to treat parties fairly.<sup>82</sup> To ensure fairness to the parties, courts should produce and post current, accurate, and complete versions of their local rules on the court’s or county’s website.

Further, some local rules are outdated; over 50 Texas district courts have local rules originating before 2000.<sup>83</sup> This figure includes both courts which adopted local rules before 2000 and never amended them as well as courts which last amended their local rules before 2000.<sup>84</sup> Fewer than 70 courts have adopted or amended their rules during or after 2015—nearly five years ago.<sup>85</sup> Other local rules are undated.<sup>86</sup>

Some old local rules rely on outdated technology or discuss obsolete procedures. For example, Tarrant County’s Local Rules for Family Courts require:

Pleadings Must Be Titled & Have Holes Punched.

All pleadings, motions, orders, and other papers, when offered for filing or entry shall comply with TRCP 45 and shall be descriptively titled and pre-punched at the top of the page to accommodate the Clerk’s filing system. Each instrument shall be numbered and titled at the bottom of each page.<sup>87</sup>

El Paso County’s local rules require a party to petition the court to use “voluntary” electronic filing:

Voluntary Electronic Filing. Any party may petition the court at any time to implement electronic filing of pleadings, motions, orders and other legal

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<sup>80</sup> Tex. Disciplinary Rules Prof’l Conduct R. 1.01 cmt. 8.

<sup>81</sup> See Tex. Disciplinary Rules Prof’l Conduct R. 1.01 & cmts.

<sup>82</sup> See Tex. Code of Jud. Conduct, Preamble & Canon 3(b)(9).

<sup>83</sup> See, e.g., Cooke (Tex.) Dist. Ct. Loc. R. (adopted Jan. 31, 1989); Angelina (Tex.) Dist. Ct. Loc. R. (adopted June 18, 1993); Hidalgo (Tex.) Dist. Ct. Loc. R. (adopted March 19, 1999); Midland (Tex.) Dist. Ct. Loc. R. (adopted May 29, 1998).

<sup>84</sup> See, e.g., *id.*

<sup>85</sup> See, e.g., Lamar (Tex.) Dist. Ct. Loc. R. (revised Feb. 4, 2013); Collin (Tex.) Dist. Ct. Loc. R. (amending the existing local rules on March 10, 2015); Hopkins (Tex.) Dist. Ct. Loc. R. (effective Oct. 1, 2019); Hunt (Tex.) Dist. Ct. Loc. R. (amended Apr. 28, 2015); Bexar (Tex.) Dist. Ct. Loc. R. (approved March 22, 2016).

<sup>86</sup> See, e.g., Bowie (Tex.) Dist. Ct. Loc. R.

<sup>87</sup> Tarrant (Tex.) Fam. Dist. Ct. Loc. R. 4.01(14).

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documents in civil cases maintained by the District  
Clerk of El Paso County.<sup>88</sup>

Because Texas mandates e-filing, such rules are antiquated and, in the case of the two-hole punch, impractical if not impossible.<sup>89</sup> The hole-punch rule and the voluntary electronic filing rule should not be included in the current versions of these local rules. While doubtless the result of mere oversight, the binding nature of local rules suggests there should be more diligence in keeping the rules current.<sup>90</sup>

## V. PROPOSED SOLUTIONS

Local rules should be accessible, helpful, and sensible but, under the current scheme, could be improved to meet these goals. In addition to being more user-friendly, local rules could become a nimble vehicle to address rapidly changing issues like privacy laws, e-discovery, and cybersecurity. To solve the problems discussed in Section IV, this article proposes the following solutions: (A) make local rules easier to find or access; (B) standardize the organizational structure of sets of local rules; (C) utilize local rules for rapidly evolving areas; (D) streamline the approval process; and (E) encourage/mandate routine updates of local rules.<sup>91</sup>

### A. Make Local Rules Easier to Find.

There currently does not appear to be a requirement that local rules be posted on the adopting court’s own website. Until that routinely occurs, the Texas Supreme Court’s central repository of rules via links to the various websites does not function effectively.<sup>92</sup> Requiring courts to certify annually to the Supreme Court that the rules on its website are complete and accurate copies of that court’s local rules seems an easy fix to access, assuming the requirement is enforced.

Tying local rules to e-filing procedures is another practical and effective way to ensure dissemination of the local rules. E-filing is now required and

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<sup>88</sup> El Paso (Tex.) Civ. Dist. Ct. Loc. R. 11.16.

<sup>89</sup> See Slayton & LaVoie, *supra* note 41, at 24.

<sup>90</sup> Trial Courts are required to file copies of their local rules with the supreme court for approval and publish the rules at least 30 days before they become effective. Tex. R. Civ. P. 3a(3) and (4). There is no prospective enforcement mechanism in the rule, however, and as noted elsewhere, many courts have not updated or provided their local rules. This leaves litigants with little ability to know whether the rules are current, unavailable or otherwise promulgated in accordance with Rule 3a. Sine litigants are charged with knowledge of the local rules, *Mayad v. Rizk*, 554 S.W.2d 835, 838-39 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1977, writ ref’d n.r.e.), the inability to find them renders litigants vulnerable.

<sup>91</sup> See *supra* Section IV.

<sup>92</sup> As mentioned earlier in this article, the Supreme Court currently provides a link on its website to each county’s website. *Rules & Standards*, *supra* note 3. This tool, however, can be improved. Hecht, *supra* note 6.

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available in every county in Texas.<sup>93</sup> When a party first e-files in a case, either the e-filing service or the district clerk of that court should respond (ideally via an automated response) with a link to or a PDF copy of the existing and current local rules. With an automated response, each litigant would be on notice of and have been provided the local rules applicable to their case.

This automatic notice process is even more necessary due to Rule 3a’s restricted dissemination of local rules to “the Bar.”<sup>94</sup> Given the increasingly large number of self-represented litigants today, particularly in consumer and debt collection cases, automatically and electronically providing the local rules would improve access to the court and streamline the number of questions and issues dealt with by court personnel.<sup>95</sup> If a given court does not have local rules and standing orders, the website and the response to the initial e-filing should clearly state that to be the case.<sup>96</sup>

## **B. Standardize the Structure of Local Rules.**

Another important step toward making the rules more accessible would be creating a uniform template or structure, complete with table of contents, for local rules providing a more stable and predictable local rule structure.<sup>97</sup> Ideally, the Supreme Court would create a templated or standardized model rule structure and either require or encourage its use to increase the uniformity, consistency, and sensibility of local rules across Texas trial courts. If each set of local rules on motions for continuance, for example, are always found in local rule 3, parties can more easily find whether there is a local rule governing continuances and how to comply with that rule.

This proposed uniformity may cause concern during the transition time.<sup>98</sup> Courts that have utilized a particular form and organization of local rules for a significant period of time may balk at being requested or required to change a structure that, no doubt, the courts have found satisfactory. This concern, although legitimate, does not address the great bar to access that inconsistent local rule

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<sup>93</sup> Slayton & LaVoie, *supra* note 41, at 24.

<sup>94</sup> Tex. R. Civ. P. 3a(5). The Supreme Court should revise this portion of Rule 3 to include self-represented parties. Currently, Rule 3 only mandates that courts make local rules available to members of the bar. *Id.* It does not require that courts provide self-represented parties with access to the local rules upon request. *Id.*

<sup>95</sup> This process would also provide the opportunity for courts to link self-represented litigants to “help desk” type sources, legal aid, and other *pro bono* options. While some might fairly question whether it is the court’s responsibility to guide self-represented litigants, the fact remains that better-informed litigants streamline the process for everyone—the court and represented litigants as well.

<sup>96</sup> A statement such as “The \_\_\_ the Judicial District Court does not have local rules for practice. All litigants, whether represented by counsel or self-represented, are directed to the Texas Rules of Civil Procedure which govern this case.”

<sup>97</sup> Slayton & LaVoie, *supra* note 41.

<sup>98</sup> Slayton & LaVoie, *supra* note 41, at 24.



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structure has. The pain points of transition to a consistent structure have been felt each time the rules of civil procedure are amended, forcing attorneys and judges alike to learn “new” rules and rule numbers. Just as lawyers must periodically adapt to updates in the rules of civil procedure, so would they adapt to a more consistent structure in local rules.

While the point of local rules is to provide for local practice, that service is not mooted by adopting a consistent structure for the rules. User ease would certainly be enhanced by knowing that, in every Texas county, if a local rule applies to motions for continuance, that rule will be in, for example, section 3 of the local rules. Adopting a templated format for rules helps provide predictability and structure throughout Texas courts. Moreover, for those courts in counties where resources have simply not allowed for the promulgation and adoption of local rules, providing a templated format and perhaps even proposed rules might simplify the process of adoption for that county.

Similarly, a templated format still allows for local rules to do what they were meant to do: outline and present local customs. Local rules contain requirements that seem to have been borne out of experience,<sup>99</sup> and that aspect of the local rules should be preserved—simply in a format that makes it easy to find and use.

The Supreme Court could and should require that each set of local rules have a clear and accurate table of contents; that the rules include all standing orders or other local rules, customs, practices and orders; and that all such items are provided electronically to all litigants and located in one area of the website. Once this practice is implemented, the Supreme Court’s website and repository of local rules could be complete and accurate. Many counties’ local rules do not have a table of contents.<sup>100</sup> This means that litigants must read through all of the rules to find whether any exist which would apply to their specific cause and what the requirements of that rule might be.

Finally, for courts and counties where there are no local rules of practice, both the Supreme Court and county websites should clearly state that to be the case. In addition to the Texas Supreme Court and the Court of Criminal Appeals, Texas

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<sup>99</sup> See, e.g., Harris (Tex.) Civ. Ct. Loc. R. 7 (creating a system of priority for attorneys dealing with conflicting engagements); Denton (Tex.) Stat. Prob. Ct. Loc. R. App. C (providing an “Agreed Scheduling Order Worksheet” for the parties to simply fill in to make the litigation process simpler); Garza County, Standing Order Regarding Language in Pleadings, <http://garzacounty.tripod.com/sitebuildercontent/sitebuilderfiles/standingorder.english.pdf> (requiring filings to be written in English). Furthermore, other local rules acknowledge and further worthy goals. For example, Dallas County Local Rule 4.08 acknowledges the importance of *pro bono* work and encourages attorneys to inform the court that representation is *pro bono* so that the court can help accommodate the attorney subject to the other scheduling needs of the court. Dallas (Tex.) Civ. Dist. Ct. Loc. R. 4.08.

<sup>100</sup> See, e.g., Tarrant (Tex.) Fam. Dist. Ct. Loc. R.

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has 448 district courts, 254 constitutional county courts,<sup>101</sup> 239 statutory county courts, 18 statutory probate courts, and 14 courts of appeals.<sup>102</sup> This means that nearly a thousand lower and intermediate Texas courts could have local rules which apply to the litigants practicing in those courts. Providing notice of which courts do not have local rules is in its own way as important as providing the local rules in courts which have adopted them because it streamlines access to justice and promotes better practices.

**C. Utilize Local Rules for Rapidly Changing Issues.**

Local rules are uniquely suited to adapting quickly to a changing legal landscape because they can be adopted and adapted in a fairly streamlined fashion. Given the ABA and Texas requirements of technological competence, local rules could provide specific guidance on technology issues such as e-discovery and cybersecurity. The Texas Rules of Civil Procedure do not yet address e-discovery despite its pervasive presence in litigation. Local rules could bridge this gap until the statewide rules evolve. For example, New York has a model rule designed to address e-discovery issues:

Where a case is reasonably likely to include electronic discovery, counsel shall, prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues. Further, counsel for all parties who appear at the preliminary conference must be sufficiently versed in matters relating to their clients’ technological systems to discuss competently all issues relating to electronic discovery; counsel may bring a client representative or outside expert to assist in such e-discovery discussions.<sup>103</sup>

Local rules in Texas could provide specific guidance for the attorneys practicing in a given court as to what they need to have done prior to discovery commencing in terms of protecting Electronically Stored Information (ESI) and investigating their client’s data issues.

Local rules are also well suited to address attorney and party responsibility with respect to cybersecurity. Newly adopted Model Rule 1.6(c) requires lawyers to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”<sup>104</sup> New comments advise lawyers to examine a number of factors when

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<sup>101</sup> Not all of these county courts exercise judicial functions. *About Texas Courts*, TEX. JUD. BRANCH, <http://www.txcourts.gov/about-texas-courts/trial-courts/> (last visited Nov. 9, 2020). County judges in highly populated counties may spend all their time dealing with the county government’s administration. *Id.*

<sup>102</sup> *Media*, TEX. JUD. BRANCH, <http://www.txcourts.gov/media> (last visited Nov. 9, 2020).

<sup>103</sup> N.Y. COMP. CODES R. & REGS. tit. 22, § 202.12(b) (2013).

<sup>104</sup> MODEL RULES OF PROF’L CONDUCT r. 1.6(c) (AM. BAR ASS’N 2019).

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determining whether their efforts are “reasonable,” including (but not limited to) “the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).”<sup>105</sup> Local rules could address reasonable protections lawyers should use with respect to cybersecurity while using court WIFI systems, etc.

Similarly, courts and lawyers can be slow to adapt and incorporate federal and state privacy laws and the implications on documents obtained during discovery and used at trial. Local rules could provide guidance about required redaction and handling of protected health information and other privacy protected information, both for filing and use as exhibits at trial. As General Data Protection Regulation (GDPR) privacy issues affect the U.S. legal system more, the rules could expand to address global privacy concerns as well. The very facility of local rules being adaptable with little bureaucratic fuss makes them ideal to address rapidly evolving technological and privacy issues.

**D. Streamline the Local Rule Approval Procedure.**

Courts must seek and receive approval by the Supreme Court for their local rules prior to becoming effective.<sup>106</sup> This rule is designed to ensure, among other things, that courts do not adopt local rules in conflict with statewide court rules.<sup>107</sup> For local rules to address evolving topics in a meaningful way, however, the Supreme Court should review and approve proposed rules in a timely manner.

**E. Mandate that Courts Maintain Updated Local Rules.**

Maintaining updated material is important, especially in the legal profession. Whether by rule or by custom, the version of the local rules for court should be updated each time a rule is changed and checked annually. Periodic updates and review processes are common practice in the legal profession; they ensure continued accuracy over time and the occurrence of necessary changes. For example, the jury wheel is constituted annually to ensure that courts have an accurate, up-to-date list of potential jurors.<sup>108</sup> As another example, the Sunset

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<sup>105</sup> *Id.* at cmt. 18.

<sup>106</sup> Tex. R. Civ. P. 3a(3).

<sup>107</sup> Subsection (3) of Rule 3a seems to be designed to be an enforcement mechanism for Rule 3a(1), which prohibits conflicts between the local rules and any other applicable court rules. *See* Tex. R. Civ. P. 3a(1), (3).

<sup>108</sup> *See* Tex. Gov’t Code Ann. § 62.001.

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Advisory Commission reviews the performance of and need for Texas agencies and prepares reports on their continued necessity and suggested changes.<sup>109</sup>

This rationale—ensuring accuracy and the occurrence of necessary changes—applies with equal force when procedural rules are involved. Indeed, one could infer the Texas Supreme Court’s recognition of the importance of updating statewide court rules from the creation of a Supreme Court Advisory Committee which periodically assists the Supreme Court in developing rules for Texas courts.<sup>110</sup> Thus, local rules should be updated annually to ensure litigants in that court are apprised of the court’s expectations and local customs of process.

If the rules do not need any changes, then the court should simply re-upload a new version of the existing local rules onto the court’s website and make a new notation that the local rules are “up-to-date as of” a particular date, as opposed to when they were “last revised.” While not currently required by TRCP 3a, this will help attorneys and self-represented parties understand that the local rules posted are accurate.<sup>111</sup> Currently, attorneys and self-represented parties cannot know just from reading the local rules whether there are any other controlling updates or modifications to the local rules.

## VI. CONCLUSION

The Texas Constitution mandates access to the courts for its citizens.<sup>112</sup> Burdensome and confusing local rules can unnecessarily impede citizens’ access to the courts.<sup>113</sup> To comply with the open courts provision, increase access to justice, and simplify Texas local rules practice, courts should standardize and update their local rules by adopting the form local rules provided in this article.<sup>114</sup> In addition to the other solutions to problems identified in this article, this will make local rules accessible, helpful, and sensible.

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<sup>109</sup> *Sunset in Texas*, TEX. SUNSET ADVISORY COMMISSION, 1, 2 (2019) <https://www.sunset.texas.gov/public/uploads/u64/Sunset%20in%20Texas%202017-2019.pdf>. *See also* *Tex. Educ. Agency v. Am. YouthWorks, Inc.*, 496 S.W.3d 244, 249–50 (Tex. App.—Austin 2016, pet. granted) (discussing the Sunset Advisory Commission’s 2004 report on the Texas Education Agency).

<sup>110</sup> *Supreme Court Advisory Committee*, TEX. JUD. BRANCH, <http://www.txcourts.gov/scac.aspx> (last visited Nov. 9, 2020).

<sup>111</sup> The authors suggest that the Supreme Court update Rule 3a to require courts to perform annual updates or certify that their rules are up-to-date annually.

<sup>112</sup> *Tex. Const. art. I, § 13*; *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993).

<sup>113</sup> *See supra* Section IV.

<sup>114</sup> *Supra* Section V.

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**APPENDIX A: LINKS TO LOCAL RULES**

Colored boxes indicate we have reason to believe the rules available online are either incomplete, outdated, or both.

District Court	County	Standing Orders
3rd, 87th, 349th, 369th	<u>Anderson</u>	
109th	Andrews	<i>No local rules.</i>
159th and 217th	<u>Angelina</u>	
36th, 156th, 343rd	<u>Aransas, Bee, Live Oak, McMullen, and San Patricio</u>	
97th	<u>Archer</u>	-
47th	Armstrong	<i>No local rules.</i>
81st, 218th	<u>Atascosa, Frio, Karnes, LaSalle, and Wilson</u>	<u>Standing Order</u>
155th	<u>Austin, Fayette, and Waller</u>	
287th	Bailey and Farmer	
198th	Bandera	<i>No local rules.</i>
198th and 216th	<u>Bandera, Gillespie, Kendall &amp; Kerr</u>	<u>Standing Orders</u>
21st, 335th, 423rd	<u>Bastrop, Burleson, Lee, and Washington</u>	
50th	Baylor, Cottle, King and Knox	
27th, 146th, 169th, 264th, and 426th	<u>Bell</u>	<u>Standing Order</u>

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37th, 45th, 57th, 73rd, 131st, 144th, 150th, 166th, 175th, 186th, 187th, 224th, 225th, 226th, 227th, 285th, 288th, 289th, 290th, 379th, 386th, 399th, 407th, 408th, 436th, 437th, and 438th	<u>Bexar</u>	
33rd, 424th	<u>Blanco</u>	<u>Standing Order</u>
132nd	Borden	<i>No local rules.</i>
220th	Bosque	<u>Standing Order</u>
5th, 102nd, and 202nd	<u>Bowie</u>	
23rd, 149th, 239th, 300th, and 412th	<u>Brazoria</u>	
85th, 272nd, and 361st	<u>Brazos</u>	<u>Standing Order</u>
394th	Brewster	<i>No local rules.</i>
110th	Briscoe	<i>No local rules.</i>
79th	Brooks	<u>Standing Orders</u>
35th	<u>Brown</u>	
21st	Burleson	<i>No local rules.</i>
33rd and 344th	Burnet	<i>See Blanco</i>
22nd, 207th, 421st, 428th, and 433rd	<u>Caldwell</u>	
24th, 135 <sup>th</sup> , and 267th	Calhoun	<i>See Dewitt</i>
42nd	Callahan	
103rd, 107th, 138th, 197th, 357th, 404th, 444th, and 445th	<u>Cameron</u>	-
76th and 276th	Camp	<u>Standing Order</u>
100th	Carson	<i>No local rules.</i>
5th	Cass	
64th and 242nd	<u>Castro</u>	
253rd and 344th	Chambers	<i>No local rules.</i>
2nd and 369th	Cherokee	<i>No local rules.</i>
100th	Childress	<i>No local rules.</i>
97th	Clay	<i>See Archer</i>
286th	<u>Cochran</u>	

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51st	Coke	<i>See Tom Green</i>
42nd	Coleman	<i>No local rules.</i>
199th, 219th, 296th, 366th, 380th, 401st, 416th, 417th, 429th, 469th and 470th	<u>Collin</u>	-
100th	Collingsworth	<i>No local rules.</i>
25th, 2nd 25th	<u>Colorado</u>	
22nd, 207th, 274th, and 433rd	<u>Comal</u>	
220th	Comanche	<i>See Bosque</i>
119th	Concho	<i>See Tom Green</i>
235th	<u>Cooke</u>	
52nd	Coryell	<u>Standing Order</u>
50th	Cottle	<i>See Baylor</i>
199th	Crane	<i>No local rules.</i>
112th	<u>Crockett</u>	
72nd	Crosby	
205th and 394th	Culberson	<i>No local rules.</i>
69th	Dallam	
14th, 44th, 68th, 95th, 101st, 116th, 134th, 160th, 162nd, 191st, 192nd, 193rd and 298th	<u>Dallas</u>	
106th	Dawson	<i>See Garza</i>
222nd	Deaf Smith	<i>No local rules.</i>
8th and 62nd	Delta	<u>Standing Order</u>
16th, 158th, 211th, 362nd, 367th, 393rd, 431st, 442nd and 462nd	<u>Denton</u>	
24th, 135th, 267th, and 377th	<u>Dewitt</u>	<u>Standing Order</u>
110th	Dickens	<i>No local rules.</i>
293rd, 365th	Dimmit	<i>No local rules.</i>
100th	Donley	<i>No local rules.</i>
229th	Duval	<i>No local rules.</i>
91st	Eastland	<i>No local rules.</i>

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70th, 161st, 244th, 358th and 446th	Ector	<i>No local rules.</i>
452nd	Edwards, Kimble, Mason, McCulloch and Menard	
63rd	<u>Edwards, Kinney, Terrell and Val Verde</u>	
34th, 41st, 65th, 120th, 168th, 171st, 205th, 210th, 243rd, 327th, 346th, 383rd, 384th, 388th, 409th and 448th	<u>El Paso</u>	
40th, 378th and 443rd	<u>Ellis</u>	<u>Written designation rules.</u>
266th	<u>Erath</u>	
82nd	Falls	<i>See Robertson</i>
336th	Fannin	<u>Standing Order</u>
155th	Fayette	<i>See Austin</i>
32nd	Fischer	<i>See Nolan</i>
110th	Floyd	
46th	Foard	<i>No local rules.</i>
240th, 268th, 328th, 387th, 400th, 434th, 458th and 505th	<u>Fort Bend</u>	<u>Standing Orders</u>
8th and 62nd	Franklin	<u>Standing Order</u>
77th and 87th	Freestone	<u>Standing Order</u>
81st, 218TH	Frio	<i>See Atascosa</i>
106th	Gaines	<i>See Garza</i>
10th, 56th, 122nd, 212, 306th, and 405th	<u>Galveston</u>	<u>Standing Order</u>
106th	Garza	<u>Standing Orders</u>
216th	Gillespie	<i>See Kerr</i>
118th	Glasscock	<i>No local rules.</i>
24th, 135th and 267th	Goliad	<i>See Dewitt</i>
25th and 2nd 25th	Gonzales	<i>See Colorado</i>
31st and 223rd	Gray	<u>Standing Order</u>
15th, 59th and 397th	<u>Grayson</u>	<u>Standing Order</u>
124th, 188th and 307th	<u>Gregg</u>	
12th and 506th	<u>Grimes</u>	<u>Standing Orders</u>
25th, 2nd, 25th and 274th	<u>Guadalupe</u>	<u>Standing Orders</u>



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64th and 242nd	Hale	<i>See Castro</i>
100th	Hall	<i>No local rules.</i>
220th	Hamilton	<i>See Bosque</i>
84th	Hansford	<i>See Hutchinson</i>
84th, and 316th	<u>Hansford, Hutchinson and Ochiltree</u>	<u>Standing Order</u>
46th	Hardeman	<i>No local rules.</i>
88th, 356th	Hardin	
Civil: 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, 157th, 164th, 165th, 189th, 190th, 215th, 234th, 269th, 270th, 281st, 295th, 333rd, 334th Criminal: 174th, 176th, 177th, 178th, 179th, 180th, 182nd, 183rd, 184th, 185th, 208th, 209th, 228th, 230th, 232nd, 248th, 262nd, 263rd, 337th, 338th, 339th, 351st Family: 245th, 246th, 247th, 257th, 280th, 308th, 309th, 310th, 311th, 312th, 507th Juvenile: 313th, 314th, 315th	<u>Harris</u>	
71st,	<u>Harrison</u>	
69th	Hartley	<i>See Dallam</i>
39th	Haskell	<i>No local rules.</i>
22nd, 20th, 274th, 428th and 453rd	Hays	<i>See Caldwell</i>
31st	Hemphill	<i>See Wheeler</i>
3rd, 173rd, 392nd	<u>Henderson</u>	
92nd, 93rd, 139th, 206th, 275th, 332nd, 370th, 389th, 398th, 449th and 464th	<u>Hidalgo</u>	
66th,	<u>Hill</u>	<u>Standing Order</u>
286th	Hockley	<i>See Cochran</i>
355th	<u>Hood</u>	
8th and 62nd	Hopkins	<u>Standing Order</u>
3rd, 349th	<u>Houston</u>	
118th	Howard	<i>No local rules.</i>
205th and 394th	Hudspeth	<i>No local rules.</i>
196th, 354th,	<u>Hunt</u>	

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51st	Irion	<i>See Tom Green</i>
271st	<u>Jack</u>	
24th, 135th and 267th	Jackson	<i>See Dewitt</i>
1st and 1-A	<u>Jasper and Newton</u>	<u>Standing Order</u>
394th	Jeff Davis	<i>No local rules.</i>
58th, 60th, 136th, 172nd, 252nd, 279th and 317th	<u>Jefferson</u>	<u>Standing Orders</u>
229th	Jim Hogg	<i>No local rules.</i>
79th	Jim Wells	<u>Standing Orders</u>
18th, 249th and 413th	<u>Johnson and Somervell</u>	
259th	Jones	<i>No local rules.</i>
46th	Judicial	<i>No local rules.</i>
81st, 218TH	Karnes	<i>See Atascosa</i>
86th and 422nd	<u>Kaufman</u>	<u>Standing Order</u>
451st	Kendal	<i>See Kerr</i>
105th	Kenedy	<i>No local rules.</i>
39th	Kent	<i>No local rules.</i>
452nd	Kimble	<i>See Edwards</i>
50th	King	<i>See Baylor</i>
105th	Kleberg	<i>See Nueces</i>
50th	Knox	<i>See Baylor</i>
81st, 218TH	La Salle	<i>See Atascosa</i>
6th and 62nd	<u>Lamar</u>	
154th	Lamb	<i>No local rules.</i>
27th	Lampasas	<i>See Bell</i>
25th, and 2nd 25th	Lavaca	<i>See Colorado</i>
21st and 335th	Lee	<i>See Bastrop</i>
87th, 278th and 369th	<u>Leon</u>	
75th and 253rd	<u>Liberty</u>	
77th and 87th	<u>Limestone</u>	
31st	Lipscomb	<i>See Wheeler</i>
36th, 156th, 343rd	Live Oak County	<i>See Aransas</i>
33rd and 424th	Llano	<i>See Blanco</i>
143rd	Loving	<i>No local rules.</i>
Civil: 72nd, 99th, and 237th Criminal: 137th, 140th, and 364th	<u>Lubbock</u>	

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106th	Lynn	<i>No local rules.</i>
12th and 278th	<u>Madison</u>	
115th and 276th	Marion	<i>See Upshur</i>
118th	Martin	<i>No local rules.</i>
452nd	Mason	<i>See Edwards</i>
23rd and 130th	<u>Matagorda</u>	
293rd and 365th	Maverick	<i>No local rules.</i>
452nd	McCulloch	<i>See Edwards</i>
19th, 54th, 74th, 170th and 414th	<u>McLennan</u>	<u>Standing Order</u>
36th, 156th, 343rd	McMullen	<i>See Aransas</i>
38th	Medina	<i>See Real</i>
452nd	Menard	<i>See Edwards</i>
142nd, 238th, 318th, 385th, 441st	<u>Midland</u>	
20th	Milam	
35th	Mills	<i>See Brown</i>
32nd	Mitchell	<i>See Nolan</i>
97th	Montague	<i>See Archer</i>
9th, 221st, 284th, 359th, 410th, 418th and 435th	<u>Montgomery</u>	
69th	Moore	<i>See Dallam</i>
110th	Motley	<i>No local rules.</i>
145th and 420th	Nacogdoches	<i>No local rules.</i>
13th	Navarro	<u>Standing Orders</u>
1st	Newton	<i>See Jasper</i>
32nd	Nolan	<u>Standing Orders</u>
28th, 94th, 105th, 117th, 148th, 214th, 319th, and 347th	<u>Nueces</u>	
84th	Ochiltree	<i>See Hutchinson</i>
222nd	Oldham	<i>No local rules.</i>
128th, 163rd, and 260th	<u>Orange</u>	
29th	Palo Pinto	<u>Local indigent defense rules</u>
123rd	<u>Panola</u>	Rules from 2002 online. Check Lexis.
43rd and 415th	<u>Parker</u>	Rules from 2009 online. Check Lexis.
287th	Parmer	<i>See Bailey</i>
83rd and 112th	Pecos	<i>See Crockett</i>
258th and 411th	<u>Polk</u>	Add to spreadsheet. Updated 2019.
47th, 181st, 251st, 320th	<u>Potter and Randall</u>	

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394th	Presidio	<i>No local rules.</i>
8th and 354th (check?)	Rains	<u>Standing Orders</u>
47th, 181st and 251st	Randall	<i>See Potter</i>
112th	Reagan	<i>See Crockett</i>
38th	<u>Real</u>	
6th	Red	<i>No local rules.</i>
143rd	Reeves	<i>No local rules.</i>
24th, 135th and 267th	Refugio	<i>See Dewitt County</i>
31st	Roberts	<i>See Wheeler</i>
82nd	Robertson	
382nd and 439th	<u>Rockwall</u>	
119th	Runnels	<i>See Tom Green</i>
4th	<u>Rusk</u>	
1st and 273rd	Sabine	<i>See San Augustine</i>
1st and 273rd	<u>San Augustine</u>	
258th and 411th	San Jacinto	<i>See Polk</i>
36th, 156th, 343rd	San Patricio	<i>See Aransas</i>
33rd and 424th	San Saba	<i>See Blanco</i>
51st	Schleicher	<i>See Tom Green and Tex. Gov't Code 24.153</i>
132nd	Scurry	<i>No local rules.</i>
259th	Shackelford	<i>See Jones</i>
123rd and 273rd	Shelby	<i>Contact the District Clerk</i>
69th	Sherman	<i>See Dallam</i>
7th, 114th, 241st and 321st	<u>Smith</u>	
18th and 249th	Somervell	<i>See Johnson</i>
229th and 381st	Starr	
90th	Stephens	<u>Standing Order</u>
51st	Sterling	<i>See Tom Green</i>
39th	Stonewall	<i>No local rules.</i>
112th	Sutton	<i>See Crockett</i>
64th and 242nd	Swisher	<i>See Castro</i>
17th, 48th, 67th, 96th, 141st, 153rd, 213th, 231st, 233rd, 236th, 297th, 322nd, 323rd, 324th, 325th, 348th, 352nd, 360th, 371st, 372nd, 396th, and 432nd	<u>Tarrant</u>	
42nd, 104th, 326th and 350th	<u>Taylor</u>	
63rd and 83rd	Terrell	<i>See Kinney</i>
121st	<u>Terry</u>	

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39th	Throckmorton	<i>No local rules.</i>
76th and 276th	Titus	<i>See Camp</i>
51st, 119th, 340th, and 391st	Tom Green	<u>Standing Orders</u>
53rd, 98th, 126th, 147th, 167th, 200th, 201st, 250th, 261st, 299th, 331st, 345th, 353rd, 390th, 403rd, 419th, 427th, 450th, 459th and 460th	<u>Travis</u>	
258th and 411th	Trinity	<i>See Polk</i>
1-A and 88th	Tyler	<i>Contact the District Clerk</i>
115th	<u>Upshur</u>	<u>Standing Orders</u>
112th	Upton	<i>See Crockett</i>
38th	Uvalde	<i>See Real</i>
63rd and 83rd	Val Verde	<i>See Kinney</i>
294th	Van Zandt	<i>No local rules.</i>
24th, 135th, 267th and 377th	Victoria	<i>See Dewitt</i>
12th and 278th	Walker	<u>Standing Orders</u>
155th and 506th	Waller	<i>See Grimes</i>
143rd	Ward	<i>No local rules.</i>
21st and 335th	Washington	<i>See Bastrop</i>
49th, 111th, 341st and 406th	<u>Webb</u>	
23rd and 329th	<u>Wharton</u>	
31st	Wheeler	
30th, 78th and 89th	<u>Wichita</u>	
46th	Wilbarger	<i>No local rules.</i>
197th	<u>Willacy</u>	-
277th, 368th, 395th, and 425th	<u>Williamson</u>	
81st and 218th	Wilson	<i>See Atascosa</i>
109th	Winkler	<i>No local rules.</i>
271st	Wise	<i>See Jack</i>
402nd	<u>Wood</u>	<u>Standing Order</u>
121st	Yoakum	<i>See Terry</i>
90th	Young	<i>See Stephens</i>
49th	Zapata	<i>No local rules.</i>
293rd and 365th	Zavala	<i>No local rules.</i>