

# URGENT FAMILY LAW MATTERS

# WHAT DOES THAT MEAN?!

EX PARTE TRO – Divorce or  
SAPCR

WRITS

PROTECTIVE ORDERS

RECUSALS/DISQUALIFICATION  
S

DE NOVO REQUESTS

MOTIONS FOR NEW TRIAL

# EX PARTE TRO

## NOT INCLUDING PROTECTIVE ORDERS

MOST COMMON SCENARIO IS A DISPUTE THAT REQUIRES IMMEDIATE ATTENTION FROM THE COURT BECAUSE SOMETHING/SOMEONE THREATENS THE CHILDS SAFETY OR THE WELL-BEING OF THE FAMILY.

- Physical, sexual or emotional abuse
- Neglect or abandonment
- Drug or alcohol abuse
- Exposure to a dangerous environment
- Hazardous living conditions
- Lack of necessary medical treatment
- Homelessness

TFC § 6.501(a) Once a suit for the dissolution of marriage has been filed, on motion of a party or *sua sponte*, the court may grant a TRO without notice to the adverse party for the preservation of property and for the protection of parties as necessary, including an order prohibiting one or both parties from all items listed in TFC § 6.501 (a)(1)-(26).

\*\*\*PROPERTY ISSUES\*\*\*

TFC § 105.001(a) In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child . . . \*\*\*KIDDO ISSUES\*\*\*

TFC § 156.006 MODIFICATION RULE! Statute requires best interest standard AND (1) significant impairment to child's physical health or emotional development; (2) the person designated in the final order has relinquished primary care and possession for more than six months; or (3) the kiddo is over 12 and has expressed to the court in chambers their preference.



# PRACTICE TIPS

In cases regarding kiddos and requested *ex parte* relief, the party requesting same must have executed an affidavit to support the requests made!

There must be an accompanying order with the TRO language, signed by the court, and subsequently served on the Respondent.

**CHECK YOUR COUNTY!!** Some counties have local rules and/or standing orders in place that will automatically apply when a suit is filed!!

Make sure the Court has filled in the section for the date and time of the temporary hearing. The notice is coming from you! ☺

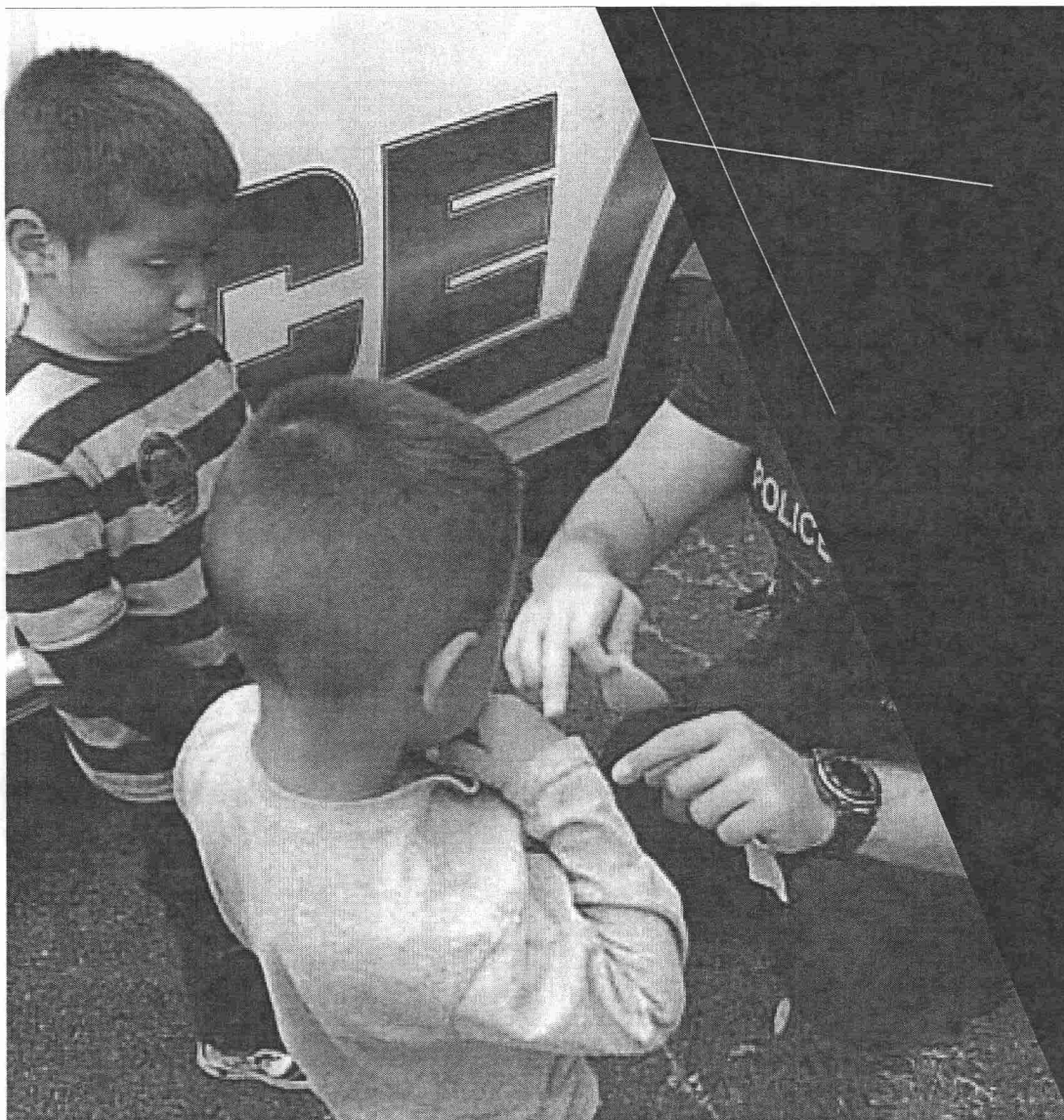
The Respondent has a statutory right to three days notice from you!!

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"The divorce judge wasn't very impressed with either of us. Our dog got custody of the kids!"





WRITS &  
KIDDOS

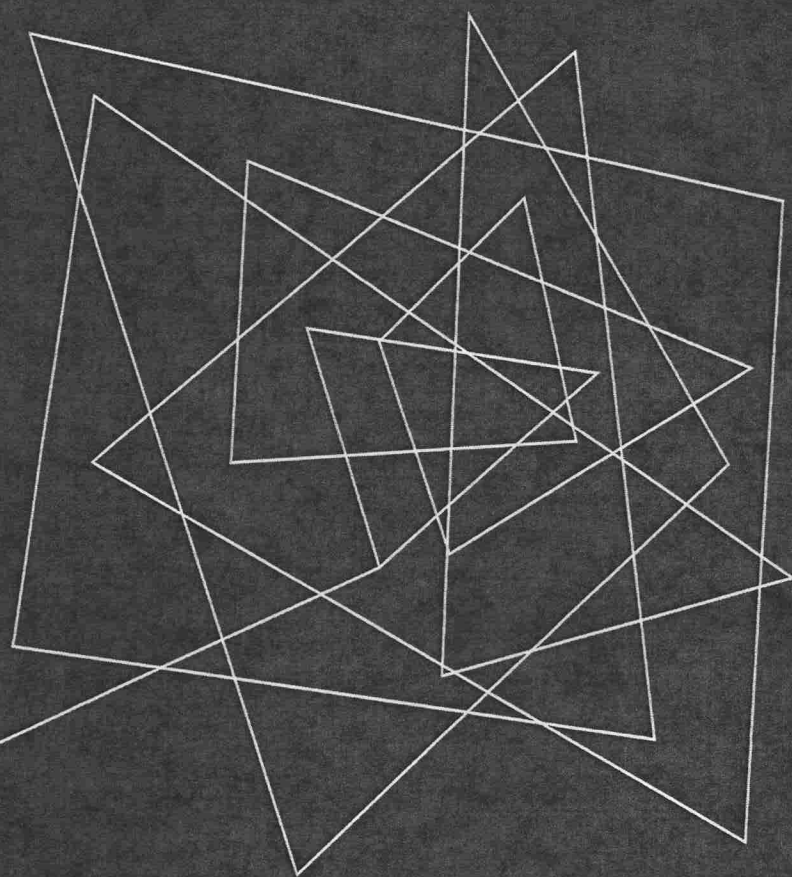
# WRITS OF ATTACHMENT AND/OR HABEAS

A Petition for Writ of Habeas Corpus is a lawsuit where the person with the court-ordered or legal right to possession of a child (realtor) asks the judge to sign an order that the relator has superior right to possession of a child to secure a child's return.

A Writ of Habeas Corpus requires the person with the child to come to court with the child at a specific date and time so that the judge can decide who has a superior right to possession of the child.

## TFC § 152.311 WRIT OF ATTACHMENT

- Pleading must be verified – WARRANT IS ISSUED if court finds child will likely suffer serious physical harm or be removed from the state.
- Court must hold hearing on the next judicial day after warrant issued. If not possible, must be heard as soon as practicable.
- A warrant to take physical custody must:
  - Recite facts of serious physical harm or removal, direct law enforcement to take physical custody of kiddo, state date and time of hearing on petition and provide for safe interim placement of kiddo pending further order of the court.
- Respondent must be served with petition, warrant, and order immediately after the child is taken into physical custody.



# PROTECTIVE ORDERS





# PROTECTIVE ORDERS

RESTRAINING ORDER v. PROTECTIVE ORDER

SEPARATE DOCKET

ISOLATE/SEPARATE PARTIES

DISTRICT ATTORNEYS OFFICE / PRIVATE ATTORNEY  
FILINGS

PROTECTIVE ORDER PROCESS

- Initial Meeting and Affidavit
- *Ex Parte* Temporary Protective Order
- Hearing on Final Order
- Service on Respondent



# PROTECTIVE ORDERS

## WHO MAY APPLY FOR A PROTECTIVE ORDER IN TEXAS??

Texas Family Code §82.002 lists the people who may apply for a PO. This includes adult members of the family, adult members of the household, ANY adult to protect a child from family violence, any adult or minor in a dating relationship, a prosecuting attorney, Department of Family and Protective Services, victims or parents of victims of sexual abuse, indecency of a child, sexual assault, stalking, human trafficking, compelled prostitution, and law enforcement.

**PRACTICE TIP :** An applicant may not be assessed a fee, cost, or charge in connection with filing, serving, or entering a protective order.





# PROTECTIVE ORDERS

## AFFIDAVITS

Must contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for the immediate protective order.

Texas Family Code §82.009(a)(1).

Must be signed by each applicant under oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant. Texas Family Code §82.009(a)(2).



# PROTECTIVE ORDERS

## NOTICE AND SERVICE – PRACTICE TIPS

The Clerk of the court MUST provide the following in the notice to a Respondent:

Name and location of the Court;

Date the application was filed;

Date that notice of the application was issued;

Date, time and place of hearing, file number;

Name of each applicant;

Name of each person alleged to have committed family violence; and

Address of the clerk of Court.



SERVICE BY  
PUBLICATION IS NOT  
AUTHORIZED BY  
STATUTE



# PROTECTIVE ORDERS

## TEMPORARY *EX PARTE* ORDERS

If the court finds there is a CLEAR AND PRESENT DANGER of family violence, the court may without further notice to the individual and without a hearing, enter a temporary *ex parte* order for the protection of the applicant or any other member of the family or household of the applicant. Texas Family Code §83.001(a).

PRACTICE TIP-  
Respondent is entitled to  
48 hours notice of the  
hearing for Protective  
Order.

The Temporary XP Order is valid for the period specified in the order, not to exceed 20 days. Texas Family Code §83.002(a).

At the request of the Applicant, or by the courts own motion, a temporary *ex parte* order may be extended for additional 20-day periods. Texas Family Code §83.002(b).



# PROTECTIVE ORDERS

## THE HEARING

A court shall render a protective order...  
IF THE COURT FINDS THAT FAMILY VIOLENCE HAS OCCURRED  
~~AND IS LIKELY TO OCCUR IN THE FUTURE.~~ Texas Family Code §85.001.

If the Court finds that family violence has occurred, the court SHALL RENDER a protective order applying only to the person found to have committed family violence.

Warnings are given verbally.

In the 446TH DC, Respondent ordered to wait for final protective order and served at the courthouse because Clarissa Webster is the absolute BEST DISTRICT CLERK on the planet.



# PROTECTIVE ORDERS

## THE WARNINGS

A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.

IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

- (1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR
- (2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS.

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.

# PROTECTIVE ORDERS

UNITED STATES v. RAHIMI





# PROTECTIVE ORDERS

## 446<sup>TH</sup> PROTECTIVE ORDERS

Project ADAM (Battering Intervention and Prevention Program)

Anger Management Counseling- DISLIKE

Couples Counseling- DISLIKE

Safety Plans for persons protected

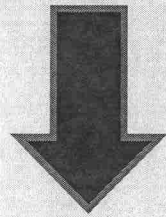
Gun Inventory, Suspend CHL

Attorneys Fees

Court Costs

2 Year Duration

Compliance Hearings



### PRACTICE TIPS

1. Respondent has filing requirements with the clerk, EVEN AFTER the final order has been rendered.
2. All fifty states acknowledge out-of-state protective orders.



# PROTECTIVE ORDERS

## OTHER NEW LEGISLATION



### OFFICE OF COURT ADMINISTRATION

MELISSA LAYNE  
Administrative Director

#### Protective Order Forms Project

(October 2023)

The 88<sup>th</sup> Texas Legislature passed SB 48 which requires the Office of Court Administration to create standardized forms for the application and issuance of protective orders (Chapters 71- 85, Family Code; Chapter 78, Subchapter A, Code of Criminal Procedure); magistrate's orders for emergency protection (Article 17.292, Code of Criminal Procedure); and temporary ex parte orders (Chapter 83, Family Code; Article 78.002, Code of Criminal Procedure). The deadline for the creation and posting of the forms on the OCA website is **June 1, 2024** (SB 48, Section 9).

In the meantime, to find the most current protective order kit approved by the Supreme Court of Texas, please go to <https://www.txcourts.gov/media/1457024/protective-order-kit-english.pdf>.

Forms for Magistrate's Orders for Emergency Protection can be found on the following websites:

Texas Justice Courts Training Center: <https://www.tjctc.org/tjctc-resources/forms.html>

Emergency Protective Order (EPO)

EPO Modification Hearing - Order

Texas Municipal Courts Education Center:

[https://www.tmcce.com/resources/books/forms\\_book/](https://www.tmcce.com/resources/books/forms_book/)  
(Part V, Magistrate Duties, starting on page 57)

Magistrate's Order of Emergency Protection .....	57
Magistrate's Record of Service of Order of Emergency Protection.....	61
Clerk's Letter: Copy of Magistrate's Order of Emergency Protection .....	62
Motion to Modify Magistrate's Order of Emergency Protection .....	63
Order Modifying Magistrate's Order of Emergency Protection .....	64
Magistrate's Order of Confidentiality of Certain Information in Order For Emergency Protection .....	65

For more information on OCA's Protective Order Forms project, please contact our Domestic Violence Training Attorney, Kimberly Piechowiak, at [kim.piechowiak@txcourts.gov](mailto:kim.piechowiak@txcourts.gov) or (512) 936-6390.

Texas Family Code §82.004 A person filing an application under this chapter shall use the protective order application for created by the Office of Court Administration of the Texas Judicial System under Section 72.039, Government Code, that is available on the office's Internet website, and shall include in the application: (remainder unchanged).

# PROTECTIVE ORDERS

Sec. 82.011. CONFIDENTIALITY OF CERTAIN INFORMATION. On request by an applicant, the court may protect the applicant's mailing address and county of residence by rendering an order:

(1) requiring the applicant to:

(A) disclose the applicant's mailing address and county of residence to the court;

(B) designate a person to receive on behalf of the applicant any notice or documents filed with the court related to the application; and

(C) disclose the designated person's mailing address to the court;

(2) requiring the court clerk to:

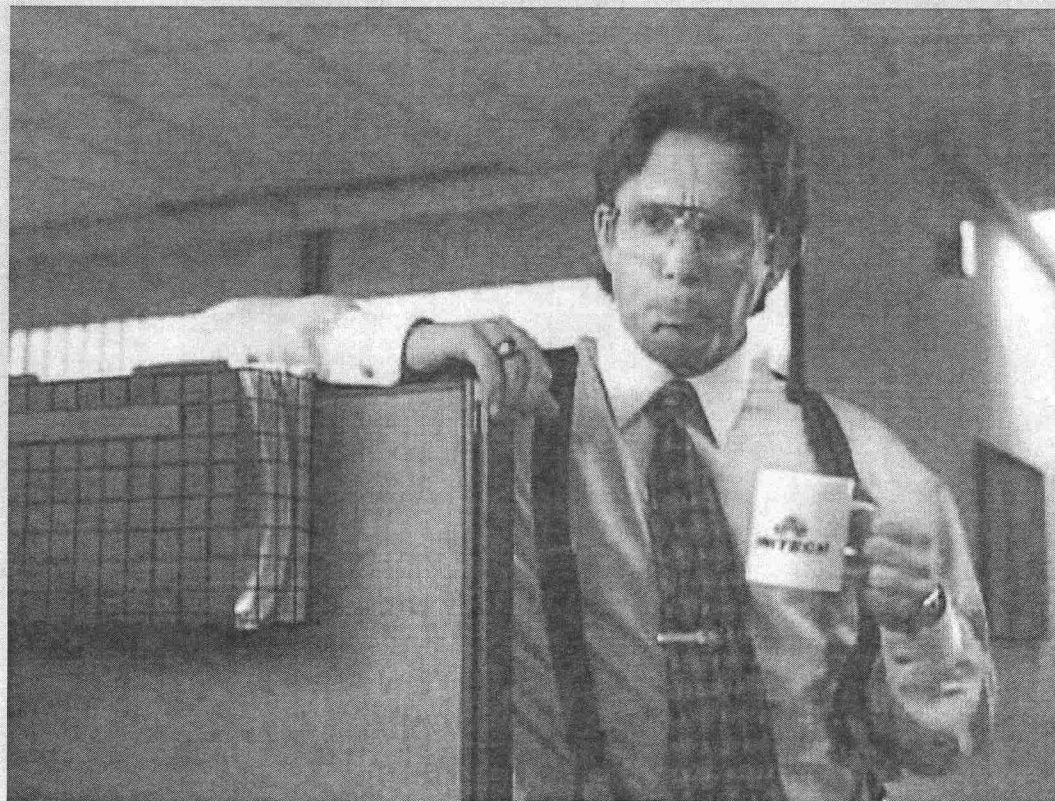
(A) strike the applicant's mailing address and county of residence from the public records of the court, if applicable; and

(B) maintain a confidential record of the applicant's mailing address and county of residence for use only by the court; and

(3) prohibiting the release of the information to the respondent.



# PROTECTIVE ORDERS





# PROTECTIVE ORDERS

## TXCOURTS.GOV - FORMS

TFC Sec. 83.007. STANDARD TEMPORARY EX PARTE ORDER FORM. (a) The court shall use the standardized temporary ex parte order form created by the Office of Court Administration of the Texas Judicial System under Section 72.039, Government Code, to issue a temporary ex parte order under this chapter.

(b) A court's failure to use the standardized temporary ex parte order form as required under Subsection (a) does not affect the validity or enforceability of the temporary ex parte order issued.

TFC Sec. 85.0221. STANDARD PROTECTIVE ORDER FORM. (a) The court shall use the standardized protective order form created by the Office of Court Administration of the Texas Judicial System under Section 72.039, Government Code, to issue a protective order under this chapter.

(b) A court's failure to use the standardized protective order form as required under Subsection (a) does not affect the validity or enforceability of the protective order issued.

PRACTICE TIP! If a Respondent to an application for protective order wishes to file for their own protective order, the Respondent MUST file a separate application! Texas Family Code §82.022

# PROTECTIVE ORDERS IMPORTANT TO THE CLERK

Sec. 85.062. APPLICATION FILED WHILE SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP PENDING. (a) If a suit for dissolution of a marriage or suit affecting the parent-child relationship is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application:

(1) in the court in which the suit is pending; or

(2) in a court in the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending.

(b) An applicant subject to this section shall inform the clerk of the court that renders a protective order that a suit for dissolution of a marriage or a suit affecting the parent-child relationship is pending in which the applicant is party.

(c) If a final protective order is rendered by a court other than the court in which a suit for dissolution of a marriage or a suit affecting the parent-child relationship is pending, the clerk of the court that rendered the protective order shall:

(1) inform the clerk of the court in which the suit is pending that a final protective order has been rendered; and

(2) forward a copy of the final protective order to the court in which the suit is pending.

(d) A protective order rendered by a court in which an application is filed under Subsection (a)(2) is subject to transfer under Section 85.064.


# RECUSALS AND DISQUALIFICATIONS

Texas Rules of Civil Procedure Rule 18A - Recusal and Disqualification of Judges

Rule 18A(e) *Duty of the Clerk.*

- (1) Delivery of a Motion of Response. When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative region in which the court is located (“the regional presiding judge”).
- (2) Delivery of Order of Recusal or Referral. When a respondent judge signs and files an order of recusal or referral, the clerk of the court must immediately deliver a copy to the regional presiding judge.





# DE NOVO REQUESTS

A party requesting a de novo review (appeal to referring court) has three judicial days from date of signature on temporary order or final order to notify clerk in writing of the de novo request.

WE ARE ALL ON TIMELINES FOR THE DE NOVO REVIEW. Please do not sit on those requests.

# MOTION FOR NEW TRIAL

In Texas, a trial court has 30 days to grant or rule on a motion for new trial after the judgment is signed!

- Filing deadline: The motion for new trial must be filed within 30 days of the final judgment.
- Overruling: If the motion is not ruled on within 75 days, it is considered overruled by operation of law.
- Setting aside a judgment: A judgment can only be set aside by a bill of review for sufficient cause.

THE COURTS PLENARY POWER TO GRANT A NEW TRIAL ENDS 30 DAYS AFTER ALL TIMELY-FILED MOTIONS ARE OVERRULED. The deadline to file a motion for new trial is strict, and failing to file within the time frame can result in the motion being denied.



# THANK YOU

Sara Kate Billingsley, Presiding Judge, 446<sup>TH</sup> Judicial District Court

432.498.4393

[REDACTED]  
Sara.billingsley@ectorcountytexas.gov