
NO. 15-24-00106-CV

**IN THE COURT OF APPEALS FOR THE
FIFTEENTH JUDICIAL DISTRICT
AUSTIN, TEXAS**

*In re Office of the Attorney General of the State of Texas,
Relator*

On Petition for Writ of Mandamus
to the 200th Judicial District Court, Travis County

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

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“App.” Refers to the appendix to this Response. “MR.” refers to the mandamus record as filed by Relator, the Office of the Attorney General of the State of Texas (“OAG”).

STATEMENT OF JURISDICTION

Real Party in Interest Team Brownsville, Inc. (“Team Brownsville”) objects to the jurisdiction of this Court of Appeals as this matter is not a matter over which the Court has exclusive intermediate jurisdiction under Texas Government Code Section 22.220(d). The Third Court of Appeals has jurisdiction over this matter. On October 23, 2024, this Court denied Team Brownsville’s Motion to Abate based on jurisdiction.

ISSUES PRESENTED

Did the trial court clearly abuse its discretion in denying the OAG’s Rule 202 Petition when no witnesses testified and the only admitted evidence related generally to federal government programs concerning humanitarian relief and did not contain information regarding Team Brownsville?

INTRODUCTION

Although the OAG submits a “Mandamus Record,” that record is deeply flawed. Instead of relying on admitted evidence or testimony, the OAG submits and relies on voluminous documents, including a press release and an affidavit with assorted exhibits, which were not admitted into evidence at the hearing. The entirety of the OAG’s mandamus petition is based on hearsay, unadmitted evidence, and arguments of counsel. On the actual record, the trial court did not clearly abuse its discretion in denying the Rule 202 Petition for deposition.

STATEMENT OF FACTS

A. The Actual Trial Court Record.

In its Statement of Facts, the OAG recites almost verbatim the allegations it made in its Verified Rule 202 Petition. This is hearsay and was not admitted at the hearing. “[N]either verified pleadings nor argument of counsel are generally considered competent evidence to prove the basis for granting a Rule 202 petition.” *In re Heaven Sent Floor Care*, No. 05-16-00628-CV, 2017 WL 462352, *2 (Tex. App.—Dallas Jan. 30, 2017, orig. proceeding) (citing *In re Dallas Cnty. Hosp. Dist.*, No. 05-14-00249-CV, 2014 WL 1407415, *2 (Tex. App.—Dallas Apr. 1, 2014) (orig. proceeding)).

The OAG ignores that no witnesses testified at the hearing to explain the evidence it sought to admit. And, without explanation, almost none of the exhibits it now relies upon were admitted into evidence. The offered and admitted record is limited to the following three exhibits:¹

- Ex. 3 (a/k/a Ex. C): Printout of FEMA’s Emergency Food and Shelter Program (EFSP) (MR. 215-217);
- Ex. 4 (a/k/a Ex. D): Printout of FEMA’s Emergency Food and Shelter Program (MR. 219-222); and
- EX. MM: Printout of Emergency Food and Shelter National Board Program (MR. 508-569).

¹ As explained below, the OAG improperly labeled its proposed exhibits in violation of the Travis County Local Rules. As a result, most exhibits have a letter and a number reference.

In addition, the OAG specifically challenges the exclusion of the following exhibits, and none other:

- Ex. H (a/k/a Ex. 8): USAspending.gov printout (MR. 426-430);
- Ex. I (a/k/a Ex. 9): USAspending.gov printout (MR. 432-436); and
- Ex. II (a/k/a Ex. 35): Chase Bank Records (MR. 499-506).

Yet, in its Mandamus Petition, the OAG relies on extensive documents it improperly includes in the Mandamus Record that were not admitted to the court below.

In a mandamus proceeding, the appellate court must focus on the record that was before the trial court. *In re Taylor*, 113 S.W.3d 385, 392 (Tex. App.—Houston [1st Dist.] 2003, orig. proceeding). The reviewing court will not consider exhibits that were not part of the trial court record at the time the court heard and ruled on the motion. *Id.* See also *In re Liberty Cnty. Mut. Ins. Co.*, 606 S.W.3d 866, 874 (Tex. App.—Houston [14th Dist.] 2020, no pet.)).

B. The OAG did not comply with Rules for admitting evidence.

As noted in its Mandamus Petition, the OAG submitted an affidavit with a binder of exhibits in advance of the hearing. (OAG Br. at 7). The binder of materials was not submitted in accordance with the Travis County Local Rules. (MR. 578-583). Specifically:

- The first page of each exhibit was not pre-marked with an exhibit number;
- Each exhibit label did not contain a designation letter or word along with the exhibit number;

- The exhibits did not use three-digit numbering;
- The OAG did not submit an exhibit list; and
- Not all exhibits were exchanged prior to the hearing. (MR. 579: “Mr. McKENNEY: The vast majority of these are the same as the documents tab as the exhibits that we submitted through the Box system and were filed with the court, as well as served on opposing counsel.”).

See App. A: “Instructions and Guidance for Electronic Exhibits,” available at <https://www.traviscountytexas.gov/courts/files/civil-district>. On this basis alone, the trial court was within its discretion to sustain the broad objection to the wholesale admission of the entire binder of exhibits that the OAG sought at the hearing: “THE COURT: I can’t issue a ruling other than sustained on a broad, here is a stack of things I would like admitted.” (MR. 582).

Then, in the course of its presentation at the hearing, and without witnesses, the OAG offered exhibits 3 (a/k/a Ex. C), 4 (a/k/a Ex. D), and MM, which were admitted without objection. These exhibits facially have no reference to Team Brownsville. Instead, these exhibits describe federal programs for the distribution of humanitarian funds. The OAG also offered exhibits H (a/k/a Ex. 8), I (a/k/a Ex. 9), and II (a/k/a Ex. 35). Without a witness to explain what these documents contained, the trial court sustained objections: “I’m not admitting 8 and 9. I don’t know what they are exactly, I don’t know what USAspending.gov is, you haven’t really tied it together.” (MR. 603).

The OAG's attempt to admit Exhibit II (a/k/a Ex. 35) was met with similar procedural failures. In violation of Texas Rule of Civil Procedure 21c, the OAG offered unredacted bank statements containing "a bank account number, credit card number, or other financial account number." TEX. R. CIV. P. 21c(a)(2). Redacted copies have now been submitted to this Court in the Mandamus Record (MR. 499-502), contrary to the Verification stating that "true and correct copies" of the underlying documents are contained in the record.² Apart from these failures, as with the previous exhibits, without a witness there is no explanation for the relevance of these exhibits to the Rule 202 Petition.

The OAG's extensive reliance in this Court on facts not presented in admissible form to the trial court violates basic rules of procedure. Throughout its Mandamus Petition, the OAG cites its Verified Petition and exhibits to the affidavit of Levi T. Fuller. The Court did not admit these materials into evidence, the OAG does not challenge their exclusion in this proceeding, and those records cannot support the reversal of the trial court's ruling below. *See In re Taylor*, 113 S.W.3d at 392; *In re Liberty Cnty. Mut. Ins. Co.*, 606 S.W.3d at 874.

² Rather than submit the unredacted records to this Court, Team Brownsville requests that the Court take judicial notice of the records in the underlying proceeding. Submitting the unredacted bank statements to establish OAG's violation of Rule 21c would defeat the purpose of the Rule.

STANDARD OF REVIEW

This is a mandamus proceeding. This Court may issue a writ of mandamus to correct a trial court's **clear abuse of discretion** or violation of duty imposed by law when no "adequate" remedy by appeal exists. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). A clear abuse of discretion occurs when the trial court's decision is so arbitrary and capricious that it amounts to clear error. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992).

As with any abuse of discretion standard, a realtor requesting a Writ of Mandamus faces a high burden—to establish that there is only one result the trial court could have reasonably reached. *Id.* Judges are permitted to have reasonable disagreements and to make varying rulings—a ruling only crosses the threshold of an abuse of discretion when it is arbitrary and unreasonable. *Id.* at 840 (citing *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985)).

ARGUMENT

A. The OAG is not entitled to pre-suit discovery as a matter of law.

The OAG states that the trial court abused its discretion in refusing to grant a deposition under Rule 202 of the Texas Rules of Civil Procedure ("Rule 202") because the OAG is "always entitled to conduct presuit depositions." (OAG Br. at 9). The OAG now claims that Chapter 12 of the Texas Business Organizations Code ("Chapter 12") gives it the unfettered right to a deposition upon demand. In doing

so, the OAG stretches the language and context of its authority beyond recognition. This extreme and novel interpretation Chapter 12 and Rule 202 has no basis in law, no precedent, and should be rejected by this Court as the trial court held.

i. The OAG did not raise this argument to the trial court in the manner it does now.

The OAG's blanket assertion that it is entitled to a Rule 202 deposition pursuant to Chapter 12 is inconsistent with the way it presented the issue to the trial court. Though the OAG spends the better part of four pages in the Mandamus Petition asserting that a right to a Rule 202 deposition as a matter of law (OAG Br. At 9-13), just one paragraph briefly touches on this argument in the Rule 202 Petition. (MR. 4, ¶13). Further, the OAG did not raise this argument at the Rule 202 hearing, except to mention its "visitorial power" once in relation to the power of *Quo Warranto*, a power given to the OAG separate and apart from Chapter 12. (MR. at 588). And Chapter 12 was only briefly mentioned on two occasions at the hearing: (1) in response to the trial court's questions about the ability to subpoena Team Brownsville's bank without prior notice (MR. 606-07), and (2) in rebuttal argument concerning Team Brownsville's challenges to the constitutionality of Chapter 12 under *City of Los Angeles v. Patel*, 576 U.S. 409 (2015).

In doing so, and in direct contradiction to the position now taken before this Court, counsel for the OAG told the trial court that considering Chapter 12 was "premature" and not for the court to consider:

And in any event, considerations about Chapter 12 [of the Texas Business Organizations Code] are premature. Yes, that is the goal, potentially, to get to the point where we would bring a claim under Chapter 12 in *quo warranto*, but today we're just simply evaluating whether there is a cause of action. And that's the -- and whether it's a benefit -- benefit to taking a deposition outweighs the burden.

(MR. 630). Counsel for the OAG made clear: the trial court need not consider Chapter 12 and asserted that the issue before the court was to evaluate the matter under Rule 202. *See* TEX. R. CIV. P. 202.4(a)(2) (“The court must order a deposition to be taken if, but only if, it finds that: . . . the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.”).

The OAG has now changed its tune and asks this Court to find that the trial court clearly abused its discretion in not granting a deposition as a matter of law under Chapter 12, not Rule 202, as it asserted to the trial court at the Rule 202 hearing below.

ii. The OAG’s position renders Texas Rule of Civil Procedure 202 obsolete.

Nothing in Chapter 12, or any other statute, entitles the OAG to a Rule 202 deposition as a matter of law. The OAG’s position ignores the text of Rule 202 and the precedent interpreting it. (OAG Br. at 9) (The OAG “is always entitled to conduct presuit depositions . . . as a matter of law because the Business Organizations Code authorizes such presuit depositions.”). If that were the case (which it is not), then the

OAG should have moved to compel the demand for a sworn statement that it issued to Team Brownsville directing a representative of the entity “to appear for purpose of an examination under oath” on July 8, 2024. (MR. 175-77). It did not. Instead, the OAG chose to seek a deposition under Rule 202. And, as set forth below, under Rule 202, the OAG is not entitled to a deposition as a matter of law, has not met its burden, and has not shown the trial court clearly abused its discretion.

The position that any party, governmental or otherwise, is entitled as a matter of law to a Rule 202 deposition would entirely override Rule 202 and the judicial review process contained therein. For instance, Rule 202 requires that each petitioner present actual evidence before a court can grant such a deposition. *See, e.g., In re East*, 476 S.W.3d 61, 68 (Tex. App.—Corpus Christi 2014, no pet.) (citations omitted) (“ . . . we are cognizant that sworn, verified pleadings are generally not considered competent evidence to prove the facts asserted in the pleading”). The OAG asks this Court to completely ignore these requirements based on its reading of the Texas Business Organizations Code. Such an interpretation, which has never been accepted by a Texas court, would carve out a privileged place for the OAG as a Rule 202 petitioner. There is no support for the OAG’s extreme position here. Doing so would make the procedural requirements of Rule 202 inapplicable to the OAG and would run completely contrary to the judicial review process explicitly required by Rule 202.

In addition, the OAG’s broad assertions about its right to a presuit deposition as a matter of law contradict what Texas Courts have consistently held: Rule 202 depositions “are not now and have never been intended for routine use.” *In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008); *see also In re Does*, 337 S.W.3d 862, 865 (Tex. 2011).

Finally, the OAG’s reliance on Chapter 12 is also misplaced because the chapter is constitutionally infirm as a violation of Team Brownsville’s Fourth Amendment rights. Chapter 12 contains no precompliance review provision. *See City of Los Angeles v. Patel*, 576 U.S. 409, 410 (2015) (holding a similar municipal provision facially invalid because it failed to afford any opportunity for precompliance review: “To be clear, a hotel owner must only be afforded an opportunity for precompliance review; actual review need occur only when a hotel operator objects to turning over the records.”).

The OAG’s argument that Chapter 12 of the Texas Business Organizations Code makes it exempt from Texas Rule of Civil Procedure 202 is unsupportable and should be rejected.

iii. Chapter 12, by its terms, does not give the OAG the power to take a deposition.

In addition to asking this Court to ignore Rule 202’s text and case precedent, the OAG proposes a tortured reading of Chapter 12 that stretches the meaning of the word “investigate” under Section 12.153 to new lengths, including that “investigate”

must mean the ability to take a presuit deposition. (OAG Br. at 10-13). Neither the text nor structure of Chapter 12, nor the OAG’s “visitorial power” to supervise corporations, support these sweeping claims.

The OAG attempts to justify the state’s power to compel testimony from corporations from one single word in Chapter 12 – the authority to “investigate” corporations under Section 12.153. (OAG Br. at 10). To support this position, the OAG reaches back over a century to the case of *Hammond Packing Co. v. State of Ark.*, 212 U.S. 322 (1909). But the *Hammond* case has no application here.³ *Hammond* dealt with an Arkansas insurance statute that expressly allowed for the power to take oral testimony. *Id.* at 354 (quoting in full Section 8 of the Rector Act (1905) that sets forth the process for seeking “testimony” of insurers).

In contrast, the statutory scheme at issue here (Chapter 12) contains no reference to “testimony,” a “deposition,” or the power to seek testimony. The Supreme Court of Texas has made clear that it will not read a term into a statute that is not there. *See Coming Attractions Bridal & Formal, Inc. v. Tex. Health Res.*, 595

³ The OAG also cites for the first time on appeal to two cases that are inapplicable here: *Stanger v. State*, a case involving police officers’ ability to ask initial questions about a person’s medical condition while investigating possible criminal offenses and whether this qualified as a “custodial interrogation.” 1995 WL 221965, *3 (Tex. App.—Dallas Apr. 14, 1995, pet. ref’d), and *Ayati-Ghaffari v. Farmers Insurance Exchange*, 2018 WL 6498643 (Tex. App.—Dallas Dec. 11, 2018, pet. denied), involving an insurer taking its insured party’s examination under oath. Neither of these cases are applicable to the OAG’s civil investigative capacity, as it is neither investigating a potential criminal offense or an insurer who has bargained for the right to take an examination under oath in an insurance policy.

S.W.3d 659, 666 (Tex. 2020) (“We do not imply [a] term where the [L]egislature did not use it.”); *R.R. Comm’n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011) (same); *Leland v. Brandal*, 257 S.W.3d 204, 207 (Tex. 2008) (rejecting reading that “would require us to read additional words into the statute”).

The authority to “investigate” corporations under Section 12.153 is more specifically described in various other sections of Chapter 12 and is limited in each of those sections to the ability to examine a corporation’s documents. *See, e.g.*, TEX. BUS. ORGS. CODE § 12.151 (setting out express authority to examine books and records only); *id.* § 12.152 (a manager at a filing entity “shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity.”); *id.* § 12.154 (information “derived in the course of an examination of an entity’s records or documents is not public information”); *id.* § 12.156 (an entity “that fails or refuses to permit the attorney general to examine or make copies of a record” forfeits its rights to do business in the state). *See Clint Independent School Dist. v. Cash Invs., Inc.*, 970 S.W.2d 535, 539 (Tex. 1998) (“[C]ourts should not assign a meaning to a provision that would be inconsistent with other provisions of the act.”).

The Texas Legislature chose not to give the OAG the ability to take sworn testimony when it codified its visitorial power in Chapter 12. In sharp contrast,

however, the Legislature has given the express permission to other regulatory authorities to take sworn testimony. *See, e.g.*, TEX. UTIL. CODE § 102.204 (providing explicit permission to civil regulatory authorities to conduct “examinations under oath” of utility representatives). If the Legislature had intended to give the OAG such a power when codifying that office’s visitorial powers in Chapter 12, it knew how to do so, and chose not to. Instead, the Legislature chose to limit that power to document review. *See*, TEX. BUS. ORGS. CODE §§ 12.151, 12.152, 12.154, 12.155.

In sum, the OAG’s ability to “investigate” an entity under Section 12.151 of the Texas Business and Organizations Code does not mean it is entitled to a Rule 202 presuit deposition as a matter of law.

iv. The OAG’s visitorial powers do not allow it to bypass the requirements of Rule 202.

Finally, the OAG tries to bolster its argument that Chapter 12 provides the unfettered right to compel depositions by referring to “visitorial power” derived from the Texas Constitution. (OAG Br. at 10-12). In support thereof, the OAG cites two cases that are more than 100 years old. *Id.* (citing *Wilson v. United States*, 221 U.S. 361 (1911) and *Esgee Co. of China v. United States*, 262 U.S. 151 (1923)). As noted in the Mandamus Petition, these cases recognize the ability of the state to “demand the production of the corporate books and papers” of an organization (OAG Br. at 12 (citing *Wilson*, 221 U.S. at 383)), and to require an entity to “submit its

books and papers . . . when demand is suitably made.” *Id.* (citing *Esgee*, 262 U.S. at 155-56). Nothing more.

For instance, in *Wilson*, a criminal case, the United State Supreme Court concluded that the corporation at issue must produce its books and records under a *subpoena duces tecum*. *Wilson*, 221 U.S. at 372. In *Esgee*, the Court addressed whether the government had to return documents to a corporation that were produced in response to a *subpoena duces tecum*, after an officer of that corporation had *voluntarily* testified before a grand jury. *Esgee*, 262 U.S. at 157. Neither case addressed whether the corporation was *compelled* to testify in a civil context. Indeed, neither subpoena at issue included a real *ad testificandum* clause because a corporation could not testify. *Esgee*, 262 U.S. at 157; *Wilson*, 221 U.S. at 372.

Thus, these cases relied upon by the OAG have no bearing here, except to emphasize that a corporation must comply when it is properly served a request within the bounds of a governing body’s power to do so – which the OAG fails to do here. *See, Esgee* 262 U.S. at 157. As the OAG does with the plain language of Chapter 12, which only requires entities to produce their records for inspection, the OAG attempts to import a power from *Wilson* and *Esgee* that is simply not there.

B. The OAG’s proffered evidence was properly excluded, but, in any event, does not establish the right to a presuit deposition.

The OAG attempted to introduce “two printouts from a federal government website” (Ex. H, a/k/a Ex. 8, and Ex. I, a/k/a Ex. 9), and a “bank statement” from

Team Brownsville (Ex. II, a/k/a Ex. 35). (MR. 601-603 (Transcript); MR. 426-430 (Ex. H); MR. 432-436 (Ex. I); MR. 499-502 (Ex. II)). It is unclear what these documents show. “[I]t is well-settled that the argument of counsel is not evidence.” *In re Berrenberg*, 605 S.W.3d 922, 927 (Tex. App.—El Paso 2020, no pet.) (citing *Grant v. Espiritu*, 470 S.W.3d 198, 203 (Tex. App.—El Paso 2015, no pet.)).

The printouts, Exhibits H and I, from government websites were not excluded solely on the basis as hearsay, as the OAG contends. (OAG Br. at 14) These exhibits were excluded because, without a witness to testify to facts linking the documents to Team Brownsville and the OAG’s Rule 202 Petition, the Court didn’t “know what USAspending.gov is . . .” (MR. 603). The OAG’s argument in its brief is not evidence and does not show clear abuse of discretion in excluding stand-alone documents without explanation. At best, on the face of the documents, the exhibits indicate that Team Brownsville had the right to receive funding to “serve noncitizen migrants recently released from DHS custody.” (MR. 434). How this relates to the OAG’s attempt to prove illegal conduct in the use of these funds by Team Brownsville is unclear and was not presented to the trial court.

The Chase bank statement is also unpersuasive. (MR. 499-502). To begin with, the OAG raises new arguments for the first time in the Mandamus Petition for the admissibility of Exhibit II, asserting that the OAG is exempt from the Finance Code’s requirement that the subject of a discovery request be given notice and an

opportunity to object. (OAG Br. at 15-16). At the hearing, the OAG had no such response, and the Court is not obligated to consider unraised arguments. *In re East*, 476 S.W.3d 61, 67 (Tex. App.—Corpus Christi—Edinburg 2014, no pet.) (“It is well established that arguments not presented to the trial court will not be considered in a petition for writ of mandamus.”) (citing *In re Am. Optical Corp.*, 988 S.W.2d at 714; *In re Advance Payroll Funding, Ltd.*, 254 S.W.3d 710, 714 (Tex. App.—Dallas 2008, orig. proceeding)).

The OAG also makes reference to “an authorizing affidavit from TBI’s bank” which was Exhibit JJ. (OAG Br. at 7). Exhibit JJ was not before the trial court and, in any event, is not properly verified under Texas law. It is not notarized and does not qualify as an unsworn declaration. TEX. CIV. PRAC. & REM. CODE 132.001 (mandating the form of an unsworn declaration).

Even assuming Exhibit II was admitted, it is unclear what it proves. It is a bank statement. There is nothing illegal about Team Brownsville sending funds to Mexico. There was no witness who testified under oath with personal knowledge as to what the entries mean. And the records submitted in this mandamus record are not the same as what was offered in the trial court. (MR. 604) (noting that bank statements should be redacted).

Exhibits H, I, and II were properly excluded from evidence. The justifications and evidence that the OAG now points to as reasons why the documents should have

been admitted were not presented to the trial court. On the record and arguments before it, the trial court did not clearly abuse its discretion in not admitting the three exhibits. And even if the documents were improperly excluded (which they were not), the documents do not show any benefit to the presuit discovery sought by the OAG under Rule 202.

C. The OAG did not meet its burden under Rule 202.

Without evidence, the OAG argues that the “benefits of a presuit deposition to investigate OAG’s potential claims outweigh any burden.” (OAG Br. at 16). No evidence admitted at the Rule 202 hearing supports this argument. The allegations—not evidence—against Team Brownsville relied upon both at the hearing and in the Rule 202 Petition were conclusory, vague, ambiguous, and patently based on hearsay. Based on the record before the trial court, it was unclear what claim the OAG intended to further with the requested deposition.

Although Rule 202 “does not require a potential litigant to expressly state a viable claim before being permitted to take a pre-suit deposition,” *see In re Emergency Consultants, Inc.*, 292 S.W.3d 78, 79 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding), a petitioner must put forth some kind of “facts regarding the anticipated suit or potential claim,” *see, e.g., In re Reassure Am. Life Ins. Co.*, 421 S.W.3d 165, 173–75 (Tex. App.—Corpus Christi 2013, no pet.), and must provide more than “sketchy” factual allegations to do so. *In re Does*, 337 S.W.3d at 865.

The OAG wholly failed to meet its burden and cannot now try to supplement a paltry record in an attempt to do so.

PRAYER

WHEREFORE, Real Party in Interest Team Brownsville, Inc. respectfully requests that this honorable Court deny the OAG's Petition for Writ of Mandamus.

Respectfully submitted,

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MANDAMUS CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this response and that every factual statement in the response is supported by competent evidence included in the appendix or record.

/s/ Neil R. Burger
Neil R. Burger

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all attorneys of record via efileTexas.gov on the 31st day of October, 2024.

/s/ Neil R. Burger
Neil R. Burger

CERTIFICATE OF COMPLIANCE

I certify pursuant to Tex. R. App. P. 9.4(i)(3) that this document complies with the length limitations of Rule 9.4(i) and the typeface requirements of Rule 9.4(e).

1. Exclusive of the contents identified by Rule 9.4(i)(1) and inclusive of all textboxes, footnotes, and endnotes, this document contains 4321 words as counted by the Word Count function of Microsoft Word 2010.

2. This document has been prepared in proportionally spaced typeface using:

Software Name and Version: Microsoft Word 2010

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/s/ Neil R. Burger

Neil R. Burger

APPENDIX

Tab A: Instructions and Guidance for Electronic Exhibits

TAB A

Instructions and Guidance for Electronic Exhibits

These are the standard rules for electronic exhibits in the Civil District Courts. These procedures apply to any hearing where a party will be offering exhibits into evidence on the record with the court reporter present.

- 1) **Each exhibit must be uploaded as a separate PDF** (unless the document is an audio or video recording). Do not combine multiple exhibits into a single PDF.
- 2) **The first page of each exhibit must be premarked with the exhibit number** (electronic label or handwritten).
- 3) **Each exhibit label must contain a designation letter or word along with the exhibit number (no letters)**. “P” for Petitioner or Plaintiff; “R” for Respondent; “D” for Defendant; “I” for Intervenor (i.e., P-001, P-002, R-001, R-002, D-001, D-002).
- 4) **Upload your exhibits to the correct folder, whether you are Plaintiff/Petitioner or Defendant/Respondent in the current suit (regardless of your designation for any particular motion)**. Do not label exhibits as Movant’s. If there is more than one party with the same designation, use last names, e.g., Respondent Smith, Intervenor Jones, etc.
- 5) **Use three-digit numbering** to ensure that exhibits are displayed in numerical order (i.e., 001 through 009, 010 through 099, 100 through 999).
- 6) **The pages of each premarked exhibit should be separately numbered** so that the Court can quickly locate specific pages of each exhibit.
- 7) **Uploading premarked exhibits to Box does not constitute an offer or admission of the exhibit**. Any premarked exhibit not offered during the hearing will be deleted and not included in the record.
- 8) **Uploading documents to Box does not constitute filing with the District Clerk’s Office**. Any document required to be filed must be filed with the District Clerk’s Office.
- 9) **Exhibit lists and witness lists should be uploaded to the premarked exhibits folder in Box** with three leading zeros at the beginning of the file name, such as “000 Plaintiff’s Exhibit List” or “000 Defendant’s Witness List.” The leading zeros will keep those documents at the top of the list.
- 10) **Exhibits should be exchanged with opposing counsel prior to the hearing or trial**. Exhibits may not be downloaded from Box. Box is only for uploading and viewing.