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OPINION COMMITTEE

June 12, 2014

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RQ-1206-GA

VIA EMAIL: Opinion_committee@texasattorneygeneral.gov

The Honorable Gregg Abbott
Texas Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: May a third-party collections vendor or private law firm make informative, but non-substantive, notes, such as status codes, to the court's records or docket, and may such third-party collectors make substantive changes to the court's original documents, docket, records, or original electronic records?

Dear General Abbott:

Pursuant to the authority to issue advisory opinions granted to the Attorney General in § 22 of Article IV of the Texas Constitution and § 402.041, *et. seq.* of the Texas Government Code, this letter is being submitted to you to request an opinion regarding certain provisions of the Texas Code of Criminal Procedure and the ability of non-judicial personnel to make informative, but non-substantive, notes, such as status codes, to the court's records or docket, and determine the permissibility of third-party collectors to make substantive changes to the court's original documents, docket, records, or original electronic records.

Facts

Texas Code of Criminal Procedure article 103.003(a) authorizes "[d]istrict and county attorneys, clerks of district and county courts, sheriffs, constables, and justices of the peace" to collect monies for which an officer has produced a written bill. Tex. Code Crim. Proc. Ann. art. 103.003 (West 2014); *see also id.* art. 103.001 (defining payable costs). Subsection (c) indicates that the commissioners' court has authority to contract for the collection of the fines, fees, court costs, and restitution: "This article does not limit the authority of a commissioners court to contract with a private vendor or private attorney" to provide "collection services under Article 103.0031." *Id.* art. 103.003(c). Article 103.0031(a) expressly authorizes a county commissioners court to "enter into a contract with a private attorney or a public or private vendor for the provision of

collection services for: (1) debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid by: (A) a court serving the county.” *Id.* art. 103.0031(a)(1)(A).

The Commissioners Court of Palo Pinto County has contracted with a third party to assist with the collection of unpaid fines and fees. Last fall, the Commissioners Court terminated its relationship with a private vendor and hired a Texas law firm to provide collection services. As part of the transition, a disagreement has arisen about what is permissible or what may be done to a court’s docket and official records by the private vendor or law firm.

As part of such collection services, almost all vendors and private attorneys either maintain copies of the court’s records on their own computer systems or have direct electronic access to the court’s records. Although such access is necessary for the efficient implementation of a collection program, some vendors are able to not simply read the court’s records, but are also able to make notes in the court’s records, update status codes, and in some instances, make substantive changes to the court’s records at their own discretion. Some vendors go so far as to put accounts into a warrant status.

Examples of such changes are notes or comments, notations, address changes and status codes amending the court’s dockets. Status codes indicate the particular stage a case is at in the process; i.e. the matter is under collections, a warrant has been issued, a first letter has been sent, a second letter sent, etc. These codes are helpful to the vendor and to the court staff to know the particular status of a case and aid them in prioritizing additional collection efforts.

Occasionally, after skip tracing, vendors have modified court records and made substantive changes to the records or dockets at their own discretion. Such changes include, but are not limited to, names, addresses, and dates of birth. In one particular instance, a vendor found a person with a name similar to a criminal defendant but with a different address, and the vendor changed the address in the court’s records and a warrant was issued against the individual at the new address without the court’s knowledge or involvement. There is a concern that such changes could call into question the integrity of the records and the basis of the collected fines.

Legal Authority at Issue

The terms “document” “docket” or “record” do not appear to be defined in the Texas Code of Criminal Procedure. If a term is not defined, a court will look to the term’s common meaning and the context in which it is used for guidance. Tex. Code Crim. Proc. Ann. art. 3.01 (West 2014) (words and terms used in this Code are to be taken and understood in their usual acceptability in common language, except where specially defined.); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008); *Ramos v. State*, 303 S.W.3d 302, 306 (Tex. Crim. App. 2009)(when determining the fair, objective meaning of an undefined statutory term, our Court may consult

standard dictionaries).

A “document” is defined as “[a]n instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidently used.” Black’s Law Dictionary 481 (6th ed. 2009). A “docket” can be defined both as a “formal record [of] all the proceedings and filings in a court case” and as a “schedule of pending cases.” Black’s Law Dictionary 552 (9th ed. 2009). A “record” is defined as “[t]he official report of the proceedings in a case, including the filed papers, a verbatim transcript of the trial or hearing (if any), and tangible exhibits.” *Id.* at 1387. The “formal record” definition of docket is also analogous to “file,” defined as “[a] court’s complete and official record of a case.” *Id.* at 704.

Texas Code of Criminal Procedure article 45.012, in regard to electronically created records, states:

- (a) Notwithstanding any other provision of law, a **document** that is issued or maintained by a justice or municipal court or a notice or a citation issued by a law enforcement officer may be created by electronic means, including optical imaging, optical disk, digital imaging, or other electronic reproduction technique **that does not permit changes, additions, or deletions to the originally created document.**
- (b) The court **may use electronic means to:**
 - (1) produce a document required by law to be written;
 - (2) record an instrument, paper, or notice that is permitted or required by law to be recorded or filed; or
 - (3) **maintain a docket.**
- (c) **The court shall maintain original documents as provided by law.**
- (d) An electronically recorded judgment has the same force and effect as a written signed judgment.
- (e) **A record created by electronic means is an original record or a certification of the original record.**
- (f) A printed copy of an optical image of the original record printed from an optical disk system is an accurate copy of the original record.
- (g) A justice or municipal court shall have a court seal, the impression of which must be attached to all papers issued out of the court except subpoenas, and which must be used to authenticate the official acts of the clerk and of the recorder. A court seal may be created by electronic

means, including optical imaging, optical disk, or other electronic reproduction technique **that does not permit changes, additions, or deletions to an original document created by the same type of system.**

- (h) A statutory requirement that a document contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains that signature as captured on an electronic device.

Tex. Code Crim. Proc. Ann. art. 45.012 (West 2014)(emphasis added).

Texas Code of Criminal Procedure article 45.017 also states:

- (a) **The justice or judge of each court, or, if directed by the justice or judge, the clerk of the court, shall keep a docket containing the following information:**
- (1) the style and file number of each criminal action;
 - (2) the nature of the offense charged;
 - (3) the plea offered by the defendant and the date the plea was entered;
 - (4) the date the warrant, if any, was issued and the return made thereon;
 - (5) the date the examination or trial was held, and if a trial was held, whether it was by a jury or by the justice or judge;
 - (6) the verdict of the jury, if any, and the date of the verdict;
 - (7) the judgment and sentence of the court, and the date each was given;
 - (8) the motion for new trial, if any, and the decision thereon; and
 - (9) whether an appeal was taken and the date of that action.
- (b) The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the justice of the peace or the municipal court judge.

Tex. Code Crim. Proc. Ann. art. 45.017 (West 2014)(emphasis added).

It appears that article 45.012 acknowledges the requirement for the integrity of the court's original documents and specifically its docket. Article 45.017 also necessitates integrity by only allowing the court or its only delegate, the clerk of the court, to keep the

docket.

Questions

Please provide an opinion regarding the following questions:

- 1) What constitutes court records and a court docket?
- 2) May a private attorney or third-party vendor make informative, but non-substantive notes or changes, such as status codes, to the court's records or docket?
- 3) Does a contract for collection services of fines, fees, court costs, and restitution, pursuant to Texas Code of Criminal Procedure article 103.0031, impliedly allow non-judicial personnel, such as private attorneys and third-party vendors, to modify or change, add or delete data entries to the court's original documents, docket, records, or original electronic records?

Thank you in advance for your consideration.

Sincerely,



Steven E. Watson
County Auditor
Palo Pinto County