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Attention Opinion Committee
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Pursuant to Texas Government Code Sections 402.042 and 402.043, I hereby request a Texas Attorney General's Opinion concerning the following question:

Whether the District Clerk may refuse to file a document submitted by the District Attorney based on the District Clerk's opinion that the document fails to comply with the Judicial Committee on Information Technology Standards?

Respectfully submitted,

/s/ *James D. Granberry*

James D. Granberry

BRIEF IN SUPPORT OF REQUEST

The Nueces County District Attorney has attempted to efile numerous documents with the Nueces County District Clerk's Office regarding criminal cases pending in Nueces County courts. Often, the Clerk's Office returns such documents for technical defects, such as the misspelling of a party's name or incorrect court designation. Upon further inquiry, the District Attorney has learned that the District Clerk is not only notifying the District Attorney's Office of the perceived defect, but is refusing to file the document in the papers of the case until the District Attorney submits a corrected document. The District Attorney believes that this is contrary to the duty of the District Clerk to file documents tendered to it, and specifically violates the Texas Rules Governing Electronic Filing in Criminal Cases.

In a criminal case, the District Clerk is required, among other things, to "receive and file all papers." Tex. Code Crim. Proc. art. 2.21(a)(1). The Court of Criminal Appeals has generally held that District Clerks have a ministerial duty to file documents tendered to them without making judgments about those documents. *See Benson v. District Clerk*, 331 S.W.3d 431- 432 (Tex. Crim. App. 2011); *Aranda v. District Clerk*, 207 S.W.3d 785, 786-87 (Tex. Crim. App.

2006) (district clerk not allowed to decline to file habeas application because he deems it to be vexatious or because another application was pending).

With the advent of efilng, the Supreme Court of Texas and the Texas Court of Criminal Appeals have approved certain rules to guide clerks in the filing of electronic documents. In particular, the Court of Criminal Appeals has approved the Texas Rules Governing Electronic Filing in Criminal Cases, including specifically a provision that “The clerk may not refuse a document that fails to conform to these rules. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.” Tex. R. Crim. Efilng Rule 2.6. The commentary to that rule further clarifies:

The intent of this rule is to establish that a clerk *may not* refuse a document for any perceived violation of these rules. However, the rule permits a clerk the limited authority to identify errors the clerk perceives with whether a filing complies with the Judicial Committee on Information Technology Standards currently in effect. When a clerk notifies a filer of an error, it is inconsequential to a judicial determination regarding whether the document submitted actually violates these rules, and it does not constitute an extension of time to file the document. The purpose of the deadline is to allow for a non-conforming document to be conformed to these rules. The deadline for correction established by the clerk should permit only a reasonable amount of time to allow for the filing to be conformed to the requirements of these rules, and, in general, the deadline should not exceed 72 hours.

Id., Comment to Rule 2.6. The District Attorney interprets this rule to mean that the District Clerk must file a document properly tendered to it, even if the

District Clerk believes that there are certain mistakes therein. While the District Clerk may identify such errors, which the party filing the document may in its discretion choose to correct with a re-filing, it does not appear that the District Clerk may refuse to file the document until such errors are corrected to its satisfaction.

The policy of the District Clerk refusing to file documents with perceived errors, moreover, extends beyond the District Attorney to any party, civil or criminal, represented or *pro se*, and encroaches upon the right of that party to conduct legal matters in the way he or she deems most appropriate.