ORIGINAL

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MELANIE REED
CLERK DISTRICT COURT
ELLIS COUNTY, TEXAS

40TH DISTRICT COURT
378TH DISTRICT COURT
443RD DISTRICT COURT
ELLIS COUNTY COURT AT LAW
ELLIS COUNTY COURT AT LAW NO. 2

ELLIS COUNTY COURTS BUILDING
109 S. JACKSON
WAXAHACHIE, TX 75165

ASSIGNMENT AND DOCKETING PROCEDURES FOR USE BY THE ELLIS COUNTY DISTRICT CLERK FOR CASES TO BE HEARD BY THE 40TH JUDICIAL DISTRICT COURT AND 443RD JUDICIAL DISTRICT COURT

These *Assignment and Docketing Procedures* are for use by the Ellis County District Clerk[1] for cases to be heard by and among the 40th Judicial District Court and the 443rd Judicial District Court, and shall supplement the Court Rules of Administration for Ellis County, Texas, dated August 1, 2012 ("Court Rules of Administration"), and the Interim Caseload Assignment dated October 18, 2013 ("Interim Caseload Assignment").

Subject to jurisdictional limitations, the Ellis County District Clerk shall receive for filing, assign, docket, and process all those cases assigned to be heard by the 40th Judicial District Court and the 443rd Judicial District Court by virtue of the Court Rules of Administration and the Interim Caseload Assignment as follows:

1. Pending Felony Criminal Cases. The Judges of the 40th and 443rd Judicial District Courts shall jointly specify in writing to the Ellis County District Clerk ("District Clerk") those pending felony criminal cases to be assigned and heard by the 40th District Court and the 443rd District Court, taking into consideration (i) the existence of multiple indictments pending against a particular defendant; (ii) whether a defendant has a probation revocation pending; (iii) the presence of co-defendants alleged to be involved in the same criminal episode; (iv) the familiarity of either Judge with the particular facts of a given case; (v) whether prior procedural or substantive legal matters of a material nature have been ruled upon by the Judge; (vi) the existence of any judicial disqualification issues; and (vii) any other factors determined to be relevant in the sole discretion of the Judges.

   a. Specific Cases Docketed to 40th and 443rd. At the conclusion of the preceding procedure, those felony criminal cases assigned to be heard by the 40th Judicial District Court shall remain docketed with the 40th and those assigned to be heard by the 443rd Judicial District Court shall be re-docketed to the 443rd.

[1] These *Assignment and Docketing Procedures* are also applicable to the Ellis County Clerk as to the juvenile matters only which are contained in Section 5 herein-below.

b. Randomizing & Equalizing Processes. After culling out all those cases specifically assigned to be heard by the 40th and 443rd Judicial District Courts in the preceding manner, the District Clerk shall randomly assign and docket all remaining pending felony criminal cases (i.e. – the *randomizing process*), in such a manner as to mathematically balance out the overall number of defendants (not cases) being handled by the Judge of the 443rd Judicial District Court with the overall number of defendants (not cases) being handled by the Judge of the 40th Judicial District Court (i.e. – the *equalizing process*). For purposes of these randomizing and equalizing processes, the District Clerk is instructed to utilize a computer software program specially designed for such functions which shall be referred to here-in as the "case distribution program."

2. Future Filed Felony Criminal Cases. When an indictment is returned by an Ellis County grand jury against any individual – in order to better serve the ends of justice, economize resources, and better protect the community – it is the policy of the 40th and 443rd Judicial District Courts to identify and seamlessly handle those situations where-in a criminal defendant has (i) multiple newly filed criminal cases; (ii) older pending felony cases; (iii) currently pending felony probation revocations, and/or (iv) felony community supervisions wherein no felony revocations are pending. At the time of the filing of any and all indictments returned by the grand jury, and after assigning a cause number to each indictment, the District Clerk shall either *randomly assign* and docket, or *specifically assign* and docket, all such cases between the 40th Judicial District Court and the 443rd Judicial District Court using the case distribution program, and shall perform the equalizing process just as to each newly filed batch of cases, subject to the following:

a. Cases Against Co-Defendants to be Grouped and *Randomly Assigned* to the Same District Court. The District Clerk is instructed to work together with the County & District Attorney of Ellis County to establish a system to identify the presence of co-defendants alleged to be involved in the same criminal episode. All cases filed against co-defendants involved in the same criminal episode shall be grouped together and randomly assigned to either the 40th or 443rd District Court. Thereafter, an equal number of defendants (not cases) shall be randomly selected, assigned, and docketed to the other District Court so as to mathematically balance out the overall number of newly indicted defendants (not cases) being handled by the Judge of the 40th District Court and the Judge of the 443rd District Courts.

b. Where No Old Case is Pending Against Defendant – New Cases Against Same Defendant to be Grouped and *Randomly Assigned* to Same District Court. At the time of the filing of each new batch of indictments returned by the grand jury, in those instances where multiple indictments are filed against the same defendant, the District Clerk is instructed to identify and group together all such newly filed cases, and assuming that no previously filed case (an "old case") is currently pending against the specific defendant, the District Clerk shall randomly assign the newly filed group of cases against said defendant to either the 40th or 443rd District Court. In terms of the equalizing process as to each new batch of indictments filed, regardless of whether one new case or several new cases are filed against a given defendant, both situations count as a *single* defendant in terms of equalizing the caseload between the District Courts.

c. Where Old Case is Pending Against Defendant – New Case (or Cases) Filed Against Defendant to be *Specifically Assigned* to the District Court Where Old Case is Pending. At the time of the filing of a new batch of indictments returned by the grand jury, as to each defendant, the District Clerk is instructed to determine whether or not a previously filed case (an "old case") is currently pending against any of said defendants. In the event there exist one or more old cases pending against any defendant who is the subject of a newly filed indictment, then the newly filed case shall be assigned and docketed by the District Clerk to be heard by the District Court which is hearing the older case. In terms of the equalizing process as to each new batch of indictments filed, the assignment and docketing of a newly filed case to the District Court hearing an older case against the same defendant shall not impact the equalizing process. In other words, the assignment and docketing of cases pursuant to this section 2.c. shall be considered as adding "zero" defendants to the District Court receiving the new case.

d. Probation Revocations. Probation revocations will be heard by the District Court to which the case was originally assigned and docketed by virtue of these *Assignment and Docketing Procedures*.

(1) New Case to be *Specifically Assigned* to District Court Where Probation Revocation is Pending. At the time of the filing of a new indictment returned by the grand jury, the District Clerk is instructed to identify whether or not there exists a felony probation revocation pending against the named defendant. In the event a felony probation revocation exists, then the newly filed case shall be

assigned and docketed to be heard by the District Court in which the felony probation revocation is pending. In terms of the equalizing process for each new batch of indictments filed, the assignment and docketing of a newly filed case to the District Court hearing the pending revocation case shall not impact the equalizing process. In other words, like in the preceding section 2.c., the assignment and docketing of a case pursuant to this section 2.d.(1) shall be considered as adding "zero" defendants to the District Court receiving the new case.

(2) New Case to be *Specifically Assigned* to District Court Which is Supervising Defendant's Probation (Even if No Revocation is Pending). At the time of the filing of a new indictment returned by the grand jury, the District Clerk is instructed to identify whether or not the Defendant is currently on felony probation. In the event the defendant is on felony probation, then the newly filed case shall be assigned and docketed to be heard by the District Court which is supervising the felony probation. In terms of the equalizing process for each new batch of indictments filed, the assignment and docketing of a newly filed case to the District Court supervising the felony probation shall not impact the equalizing process. In other words, like in the preceding section 2.c., the assignment and docketing of a case pursuant to this section 2.d.(2) shall be considered as adding "zero" defendants to the District Court receiving the new case.

3. Writs of Habeas Corpus. All writs of habeas corpus filed in connection with any pending felony criminal case on a post-indictment basis shall be heard by the District Court in which the underlying felony is pending. With respect to any post-judgment writ and/or appellate related issue, all such matters shall be handled by the District Court which was assigned to hear the underlying criminal case in the trial court. All writs of habeas corpus filed on a pre-indictment basis shall be (i) docketed with a Pre Indictment Motion ("PIM") number; (ii) both District Court designations, to-wit – *40th/443rd* shall be included or appear within the case style; and (iii) the District Clerk shall refer all "odd" numbered PIM's to the 443rd District Court and "even" numbered PIM's to the 40th District Court. Regarding those instances where a defendant files multiple writs, each referencing a separate felony offense, the District Clerk shall utilize a PIM numbering system which includes an alphabetic letter behind the number in order to preserve the odd/even numbering system, so all related writs filed by the same defendant are heard by the same Judge. So for example, if a defendant files three writs and the next PIM number in the system is "PIM-101," then the writs shall be numbered as follows: PIM-101A, PIM-101B, and PIM-101C. Notwithstanding the preceding writ assignment system, the Judge who hears the first writ (or writs), may at his/her discretion request the

District Clerk to assign all writs filed by any co-defendants for hearing by the same Judge. The fact that a particular Judge has heard a pre-indictment writ filed by a particular defendant will not be used as a factor by the District Clerk in assigning and docketing the case in the event the grand jury returns an indictment.

4. Grand Jury Organization. Pursuant to current law, the District Courts shall be responsible for handling the supervision and organization of two regular grand juries annually, one in January, and one in July. The 40th Judicial District Court shall be responsible for handling the organization and supervision of one of the grand juries, and the 443rd Judicial District Court the other.

5. Juvenile Cases. As a result of the resolution passed by the Juvenile Board on December 10, 2014 – on the effective date below, the 443rd Judicial District Court shall be the primary juvenile court for Ellis County, Texas, and the District Clerk[2] is instructed to docket and assign all juvenile cases to the 443rd, including without limitation (i) all pending or open juvenile cases awaiting final disposition; (ii) all juvenile cases currently under formal supervision by the Ellis County Juvenile Services Department; (iii) all future filed juvenile cases; (iv) any pending juvenile cases involving determinate sentencing; (v) any determinate sentencing cases currently under adult supervision; (vi) all future juvenile cases wherein certification is sought to try the juvenile as an adult; and (vii) all future filed felony criminal cases against a juvenile who has been certified to stand trial as an adult. As of the effective date below, the District Clerk shall produce a docket or written list of all juvenile cases docketed in accordance with the preceding categories for which the 443rd Judicial District Court is responsible.

6. Civil Proceedings, Civil Cases, and Lawsuits. Both the 40th Judicial District Court and the 443rd Judicial District Court are courts of competent jurisdiction to hear civil proceedings, civil cases, and lawsuits (collectively "civil matters"). All civil matters shall be assigned and docketed by the District Clerk, and heard by the District Courts, as follows –

a. Newly Filed Civil Matters to be Divided by Subject Area. Those civil matters assigned to the 40th Judicial District Court and the 443rd Judicial District Court by virtue of the *Court Rules of Administration* and *Interim Caseload Assignment* shall be divided by subject area between the two District Courts in accordance with a joint written designation furnished to the District Clerk by the presiding Judges of the 40th and 443rd Judicial District Courts, and as of the effective date below all newly filed civil matters shall be assigned and docketed by subject area in accordance with the joint written designation.

[2] On the effective date herein-below, the Ellis County Clerk is instructed to transfer all juvenile files to the District Clerk which fall into categories 5.(i) and 5.(ii).

b. Pending Civil Matters to be Divided by Subject Area. All civil matters pending in the 40th Judicial District Court on the effective date below shall be assigned and docketed by the District Clerk among the 40th and 443rd District Courts according to the subject area division contained within the joint written designation referenced in the preceding section 6.a., except for those pending civil matters identified in writing as needing to remain on the docket of the 40th District Court due to the Judge's prior involvement with the case.

7. Effective Date. These *Assignment and Docketing Procedures* shall become effective and applicable to all criminal cases, juvenile cases, and civil matters which are pending on January 1, 2015 (the "effective date"), as well as those criminal cases, juvenile cases, and civil matters filed on or after the effective date. The District Clerk shall publish a list (or lists) reflecting each pending criminal, juvenile, and civil matter which has been assigned and docketed with the 40th Judicial District Court and the 443rd Judicial District Court, as of the effective date.

Nothing within these *Assignment and Docketing Procedures* is intended to do away with, or override, the flexibility and authority of the Judges of the 40th Judicial District Court and 443rd Judicial District Court in transferring cases among themselves, or by mutual consent, exchanging cases and benches without the necessity of transfer in accordance with the statutes of the State of Texas, for the purposes of providing prompt disposition of cases and accommodation to the parties, bench, and bar. The Judges of the 40th Judicial District Court and 443rd Judicial District Court are permitted to issue joint written instructions to the District Clerk to fulfill the purposes and intentions of these *Assignment and Docketing Procedures*.

Signed this 18 of December, 2014.

40th Judicial District Court

Judge Bob Carroll

378th Judicial District Court

Judge Joe F. Grubbs

443rd Judicial District Court

Judge Cindy Ermatinger

Ellis County Court at Law

Judge Jim Chapman

Ellis County Court at Law No. 2

Judge Gene Calvert