

By: Carona S.B. No. 894
(In the Senate - Filed March 2, 2005; March 10, 2005, read first time and referred to Committee on Jurisprudence; April 11, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 11, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 894 By: Wentworth

A BILL TO BE ENTITLED
AN ACT

relating to certain procedures for filing documents and service of process.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Code of Criminal Procedure, is amended by adding Articles 1.28 through 1.33 to read as follows:

Art. 1.28. COMPUTING TIME. (a) Notwithstanding other law, in a criminal case a period that a rule of procedure, court order, or statute provides will begin to run after an act, event, or default occurs does not include the day of the act, event, or default.

(b) The last day of the period, other than a Saturday, Sunday, or legal holiday, is included in computing the period.

(c) If the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday.

Art. 1.29. CLERK'S OFFICE CLOSED ON LAST DAY OF PERIOD.

(a) If the clerk's office where a document is to be filed is closed or inaccessible during regular business hours on the last day of a period for filing a document, the period for filing the document extends to the end of the next day that the clerk's office is open and accessible.

(b) The closing or inaccessibility of the clerk's office may be proved by a certificate of the clerk or counsel, by a party's affidavit, or by other satisfactory proof, and may be controverted in the same manner.

Art. 1.30. SIGNATURE REQUIREMENT. (a) A document filed by a party represented by counsel must be signed by one or more of the party's attorneys. The document must contain the state bar identification number, mailing address, telephone number, and fax number, if any, of any attorney whose name and signature appear on the document.

(b) A document filed by a party not represented by counsel must be signed by the party who filed the document and contain the party's mailing address, telephone number, and fax number, if any.

Art. 1.31. REQUIREMENTS FOR FILING DOCUMENTS. (a) A document is filed in a court by delivering the document to:

(1) the clerk of the court in which the document is to be filed; or

(2) a judge or justice of that court who is willing to accept delivery.

(b) A judge or justice who accepts delivery of a document shall write on the document the time the document is filed and promptly shall send the document to the clerk. For purposes of this subsection, the time of a document's filing is considered to be the date and time of delivery of the document.

(c) A document is considered timely filed if the document:

(1) was mailed in a properly addressed and stamped envelope or wrapper to the clerk of the court through United States Postal Service first-class, express, registered, or certified mail;

(2) was deposited in the mail on or before the last day for filing; and

(3) arrives not later than the 10th day after the filing deadline.

(d) The following are conclusive proof of the date of mailing:

(1) a legible postmark affixed by the United States Postal Service;

(2) a receipt for registered or certified mail that is endorsed by the United States Postal Service; or

(3) a certificate of mailing by the United States Postal Service.

(e) A court may consider other means of proof regarding the date of mailing of a document.

Art. 1.32. ELECTRONIC FILING. A court by rule may permit documents to be filed, signed, or verified by electronic means that are consistent with rules regarding electronic filing adopted by the supreme court under the court's authority under Section 74.024, Government Code.

Art. 1.33. SERVICE OF PROCESS. (a) At or before the time of a document's filing, the filing party must serve a copy on all other parties to the proceeding. The clerk or court reporter is not required to serve a copy of the record.

(b) Service on a party represented by counsel must be made to the party's lead counsel.

(c) Service may be personal or by mail, commercial delivery service, or facsimile. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served. Service is complete:

(1) on mailing, for service by mail;

(2) when the document is placed in the control of the service, for service by commercial delivery service; or

(3) on receipt, for service by facsimile.

(d) A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without a proof of service but shall require the proof to be filed promptly.

(e) A certificate of service must be signed by the person who made the service and must state:

(1) the date and manner of service;

(2) the name and address of each person served; and

(3) if the person served is a party's attorney, the name of the party represented by the attorney.

SECTION 2. This Act takes effect September 1, 2005.

* * * * *