

ORAL ARGUMENT REQUESTED

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No. 15-26-00132-CV

IN THE FIFTEENTH COURT OF APPEALS
AUSTIN, TEXAS

KEVIN N. BASS,
Appellant,

v.

DARRIN D'AGOSTINO, D.O., M.P.H., M.B.A., in his official capacity as Provost
and Executive Vice President of Academics of Texas Tech University Health
Sciences Center; and AMANDA McSWEEN, in her official capacity as Managing
Director of Enrollment Services and University Registrar of Texas Tech University
Health Sciences Center,
Appellees.

On Appeal from the 237th Judicial District Court
Lubbock County, Texas
Trial Court Cause No. DC-2025-CV-1817
Honorable Les Hatch, Judge Presiding

APPELLANT'S BRIEF

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IDENTITY OF PARTIES AND COUNSEL

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Appellees (defendants below):

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Executive Vice President of Academics of Texas Tech University Health Sciences
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Amanda McSween, in her official capacity as Managing Director of Enrollment
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Other parties to the trial court's judgment: Lori Rice-Spearman, Lauren Cobbs, Tamara Mancini, Simon Williams, Mia Myers, and John C. DeToledo were named as defendants and were nonsuited on January 22, 2026 (CR 41–42). They are not parties to this appeal.

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STATEMENT OF THE CASE

This is a suit for prospective injunctive relief against two state university officials in their official capacities, seeking to compel performance of the record-correction procedure that Tex. Gov't Code § 559.004 requires every state governmental body to establish and that Texas Tech University Health Sciences Center has published

as HSC OP 77.13 (CR 103–19) (Fourth Amended Verified Original Petition, filed Mar. 3, 2026). Appellant sought no damages and no ruling on the accuracy of any record. Appellees filed a plea to the jurisdiction (CR 43–102); Appellant responded with a seventy-eight-page response (CR 120–97). The trial court granted the plea and dismissed the case by order signed March 26, 2026 (CR 214–15). The trial court struck the order's alternative plea-in-abatement paragraph, so the order disposed of the case rather than abating it (CR 214). Appellant filed a timely sworn motion under Rule 306a(5) and motion for new trial under Rule 329b on April 3, 2026 (CR 218–70). After a hearing on May 21, 2026 at which the trial court declined to receive evidence (RR 5, 13), the court denied the motion by a reasoned order signed May 27, 2026 (CR 435–36). Appellant timely perfected this appeal on June 24, 2026 (CR 438–41) — the ninetieth day after the judgment, the timely motion for new trial having extended the deadline. Tex. R. App. P. 26.1(a)(1).

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument. The record establishes that an appearing party did not receive a dispositive paper-submission setting, Appellees' proposed judgment, or Appellees' reply, yet had previously filed a substantial response to the plea. That combination does not fit neatly within either the default-judgment cases or the cases holding that a full postjudgment hearing can cure missing prejudgment notice. The Court would benefit from argument on three focused questions: which

service and notice rules govern a paper-only submission; whether the May 21 proceeding cured the earlier exclusion when the court refused evidence and declared that a surreply would not have been considered; and whether losing the chance to seek leave to answer Appellees' application of their defenses to the live pleading probably affected the jurisdictional ruling. The reporter's record is only fifteen pages, allowing the Court to examine the rulings in full.

ISSUES PRESENTED

Issue One. Appellant did not receive the paper-submission notices, Appellees' filed reply, or Appellees' proposed judgment. Rule 305 unquestionably required service of the proposed judgment, and Rules 21(a) and 21a governed the filed reply. Rule 21(b)'s application to a paper-only submission is less certain because it incorporates Rule 21d's definition of a court proceeding as an appearance before the court. Did the trial court apply the governing service rules and ordinary-harm standard correctly?

Issue Two. Appellant timely moved for a new trial, filed sworn proof, and asked to offer exhibits and testimony concerning nonreceipt, fault, and the opportunity lost. The court refused all evidence (RR 7, 12–13). Did the May 21 proceeding cure the earlier lack of notice when it did not reopen the plea submission or recreate the opportunity to seek leave to answer the reply before judgment?

Issue Three. Texas cases require notice of dispositive settings, including paper summary-judgment proceedings, while recognizing that some notice defects may be cured by a full postjudgment hearing. Appellant received and answered the original plea and anticipated several defenses, but did not receive the submission setting or Appellees' first paper applying those defenses and futility to the live petition. On this record, did the exclusion violate due process or, at minimum, constitute harmful ordinary error?

Issue Four. Section 559.004 requires a state governmental body to establish a reasonable record-correction procedure that may not unduly burden its user. Both the live petition and a postjudgment proposed Fifth Amended Petition requested implementation details that may exceed an ultra vires court's role. If the pleadings did not identify a sufficiently discrete duty of a proper official, should the cause be remanded for one materially narrower amendment limited to the policy's written-disposition step, with operational details and the substantive result left to TTUHSC?

STATEMENT OF FACTS

The suit. Appellant sued two TTUHSC officials in their official capacities, seeking prospective injunctive relief only. The Fourth Amended Verified Original Petition pleads that Tex. Gov't Code § 559.004 obliges each state governmental body to "establish a reasonable procedure under which an individual is entitled to have the

state governmental body correct information about the individual," and that the "procedure may not unduly burden an individual using the procedure"; that TTUHSC published HSC OP 77.13 as its education-records procedure; and that the procedure, as implemented after Appellant's December 30, 2025 request, was not workable within its own time limits (CR 104–05, 111–14) (Fourth Am. Pet. ¶¶ 4–8, 31–37, filed Mar. 3, 2026). The petition disclaims damages and any request that the court decide the accuracy of a record or the merits of an academic decision (CR 105, 112–13) (*id.* ¶¶ 7, 33, 36). Its prayer nevertheless asks for detailed implementation terms, including deadlines, scheduling, organization, pagination, an inventory, tolling, preservation, and a compliance notice (CR 115–16). Appellant addresses that breadth candidly in Part IV.

The plea and the submission setting. Appellees filed a plea to the jurisdiction, or in the alternative a plea in abatement, on February 9, 2026 (CR 43–102). Appellant filed a seventy-eight-page response on March 3, 2026 (CR 120–97), the same day he filed the Fourth Amended Petition (CR 103–19).

On March 13, 2026, Appellees filed a notice of submission and, the same day, an amended notice of submission (CR 198–200, 201–03). The first setting was defective: as the trial court explained on the record, it "was actually set for hearing before the order setting hearing was signed. So, that couldn't have happened," and "somebody on behalf of the Defendants realized that and promptly submitted . . .

an amended order setting hearing, setting it for hearing again, by submission, at a date after the order setting hearing" (RR 8). Appellees also tendered a proposed order granting the plea, which the trial court later signed (CR 214–16). On March 18, 2026, Appellees filed a reply in support of the plea (CR 204–13). The submission date was March 19, 2026, which closed the paper record.

The timing made the reply material, but not because every subject was new. The February 9 plea preceded the live Fourth Amended Petition and did not analyze § 559.004 or HSC OP 77.13 (CR 43–102). Bass's March 3 response presented the statutory theory and anticipated several defenses, including discretion, internal-policy status, academic deference, access, ripeness, proper officials, and leave to amend (CR 121–44). The March 18 reply did not originate those subjects; it sharpened Appellees' answers to the live pleading and asserted futility as applied to it (CR 205–10). The dismissal order states that the court considered the reply (CR 214).

The challenged papers were not received. Appellant did not receive the notice of submission, the amended notice, the proposed order, or the reply. His correct address appears in his filed papers, on the clerk's record cover (CR 1), and in the certificate of service Appellees' counsel typed on the notice of submission itself (CR 199), but the automated service entries for these documents use kbassphiladelphi@gmail.com—one character short of

kbassphiladelphia@gmail.com. The certificates report **ERROR** on the Notice of Submission (CR 200), **ERROR** on the Amended Notice of Submission (CR 203), and **ERROR** on the proposed order (CR 216). The March 18 reply is reported SENT (CR 213), but the reported destination is still the truncated address, not Appellant's. That entry is the outlier: from March 3 forward, every other automated service entry for the truncated address in the record reports ERROR — on Appellant's own filings (e.g., CR 119, 197, 274, 312, 396), on Appellees' filings (CR 283, 405), and on the court's orders, including the order setting the May 21 hearing (CR 400) and the order denying the new-trial motion (CR 437). The trial court later acknowledged that the papers were not received because of the email-address issue (RR 7–8).

Appellant does not conceal the diligence fact Appellees emphasized below. His postjudgment reply states that on March 3 he received two automated undeliverable-service notices displaying the truncated address, but he did not then understand that the e-service contact itself was wrong (CR 294). Knowledge of that warning bears on fault and remedy; it did not give actual notice of filings made ten and fifteen days later. The record also shows that Appellees' counsel possessed and used Appellant's correct email address outside the automated contact (CR 294, 313–90).

The trial court stated the fact of non-receipt in its own words from the bench:

"What you didn't get, because of the email address issue, you didn't get the notice of the hearing on the plea, which was by submission, not oral argument. You didn't get the proposed order granting the plea. You didn't get the Defendants' reply to your response to the plea."

(RR 7.) The court then itself identified the fourth item — the second of the two orders setting hearing — and recited that "those were two documents you didn't get, and then the proposed order granting the plea to the jurisdiction and then the reply by the Defendants to your response" (RR 8).

The judgment. The trial court signed the order granting the plea to the jurisdiction on March 26, 2026, dismissing Appellant's claims (CR 214–15). The alternative abatement paragraph is visibly struck through on CR 214. The clerk issued a Rule 306a(3) notice dated April 2; it is addressed to eight recipients—the two Appellees and six nonsuited defendants—but not Appellant (CR 217; nonsuit at CR 41–42). Appellant nevertheless learned of the order on April 2 and filed his sworn Rule 306a(5)/new-trial motion on April 3, within Rule 329b(a)'s thirty-day window (CR 218–70; erratum CR 271–74). Appellees responded (CR 275–83). On April 14, Appellant filed a notice of correction of case contact information, identifying the truncated entry and stating that his own eFileTexas profile had at all relevant times reflected the correct address (CR 284–87); the automated certificates nevertheless continued to report ERROR at the truncated address through the May 27 order (CR 400, 405, 434, 437). Appellant replied (CR 288–312), with Exhibits A–L (CR 313–90). That reply tendered a proposed Fifth Amended Petition (CR 304, 366–89). It

attempted to sharpen the official-capacity theory, but its prayer still requested implementation details—including scheduling, organized and paginated presentation, response deadlines, an inventory, tolling, preservation and logging, and a compliance notice (CR 386–88). Appellant does not ask this Court to approve that version or order it refiled. Rule 306a did not restart any deadline because Appellant learned of the order within twenty days; this appeal does not challenge that conclusion.

The request for an evidentiary hearing. On April 28, 2026, Appellant moved to set an evidentiary hearing (CR 391–96). Appellees did not oppose disposition "for hearing or submission at the Court's convenience"; if a hearing was set, they asked that it be limited to the Rule 306a issues of notice and actual knowledge (CR 401–02). They did not affirmatively agree that live evidence should be taken on the new-trial grounds. The court set the matter for May 21 (CR 397–400), and Appellant requested an official reporter (CR 432–34).

The May 21 hearing. The court opened by announcing that it would not reach the evidence. "[B]efore we have an evidentiary hearing on the 306a motion as to when the Plaintiff got notice of the . . . order granting the plea to the jurisdiction, the Court finds that 306a does not apply because the Plaintiff, pursuant to his pleadings, acknowledges notice of the order granting the plea to the jurisdiction

within either seven or eight days . . . and that 306a(4) only applies if you did not receive notice within 20 days" (RR 4). The court continued:

"As a result of that finding by the Court, the Court finds that whether or not the Plaintiff received notice and why he didn't receive it of the order granting the plea to the jurisdiction is irrelevant because the Motion for New Trial was filed, I think, on day eight of the signing of the order granting the plea to the jurisdiction."

(RR 4.) It then denied the Rule 306a(5) motion "without hearing evidence" (RR 5), and added:

"And I know, Dr. Bass, that you're ready to put on all kinds of evidence about when you received the notice, and — and I know that the Defense is ready to argue why you should have corrected the reason why you didn't receive the notice earlier. But for purposes of the 306a motion, the Court finds none of that to be relevant, and that the Plaintiff has timely perfected the ability to complain about the order granting the plea to the jurisdiction."

(RR 5.)

Appellant excepted on the record: "for the record, I respectfully except to the denial of the Rule 306a motion to have an evidentiary hearing" (RR 6). He then argued the motion for new trial on two grounds — that under *Peralta* a judgment entered without notice and without an opportunity to be heard cannot stand, and that service under Rule 21a was defective — and asked the court to receive evidence: "these are contested factual questions. I ask the Court to take evidence on them today, to admit my exhibits and hear my testimony" (RR 7).

The court asked Appellant "[w]hat would you have done differently had you had notice of those four documents?" (RR 8). Appellant answered specifically: as to the

notice of submission, he would have objected and requested oral argument; as to the proposed order, he would have objected to form and substance; as to the reply, he would have moved for leave to file a surreply; and before the March 19 submission closed the record, he would have filed that surreply (RR 8–9). He added that under *Peralta* no such showing is required at all (RR 9).

The postjudgment papers also identified the response he had been prepared to make: § 559.004 itself supplies an external statutory limit; the claim sought implementation of a correction procedure rather than adjudication of academic merits; and the live pleading alleged specific unperformed steps despite the access sessions Appellees invoked (CR 299–304). HSC OP 77.13 identifies one concrete later-stage step: after the written amendment request and custodian statement, the Executive Vice President for Academic Affairs or designee "will provide written notification" whether TTUHSC will implement the requested change and, if not, notify the student of the right to a hearing (CR 154–55). The question here is not whether Bass had an absolute right to a surreply. It is whether denying him notice also denied him a meaningful chance to seek leave to answer the closing paper or tender a materially narrower amendment before judgment.

Appellees argued that the seventy-eight-page response was itself the notice and opportunity to be heard; that there is no right to file a surreply absent leave; and

that a motion for new trial "requires showing that the alleged error . . . probably caused the rendition of an improper judgment" (RR 9–10).

The court closed by ruling that it would receive no evidence at all: "I think the Court has discretion as to whether or not to entertain evidence at a Motion for New Trial hearing. The Court finds that the Plaintiff has sufficiently briefed everything that's necessary to support his argument here today . . . that there's no factual evidence that would bolster or be germane to the Motion for New Trial. It's a procedural issue. . . . And the Court finds that evidence is — is not necessary and will not entertain evidence" (RR 12–13). No witness was sworn and no exhibit was admitted; the reporter's certificate reflects that the volume contains all proceedings requested (RR 14).

The court denied the motion by written order signed May 27, 2026, giving four numbered grounds (CR 435–36). The certificate of service on that order reports the transmission to Appellant — again at the truncated address — as ERROR (CR 437). Appellant filed his notice of appeal on June 24, 2026 (CR 438–41).

SUMMARY OF THE ARGUMENT

This appeal does not claim a right to oral argument in the trial court or an automatic right to file a surreply. Appellant received Appellees' original plea, filed a substantial response, and anticipated several defenses. The narrower error is that

he did not receive the paper-submission notices, the proposed judgment, or Appellees' closing reply applying those defenses and futility to the live petition. The ordinary rules supply the starting point. Rule 305 unquestionably required service of the proposed judgment, and Rules 21(a) and 21a governed the filed reply. Rule 21(b) presents an additional but unsettled question because it incorporates Rule 21d's definition of a court proceeding as an "appearance before the court," while the March 19 setting was expressly by submission without oral hearing. Tex. R. Civ. P. 21(b), 21d(a). Appellant therefore does not claim a square holding that Rule 21(b) itself covers this paper-only setting. The submission notice nevertheless mattered because it identified when the paper record would close. CR 200, 203, and 216 report ERROR to an address that is not Appellant's; the reply went to that same wrong address; and the trial court acknowledged nonreceipt (RR 7–8). Rule 21a(b)(3)'s completion-on-transmission provision does not make a wrong address the address "of the party" under Rule 21a(a)(1). Rule 21a(e), however, is discretionary: upon proof of nonreceipt, the court *may* grant relief it deems just. The claim is not that subsection (e) mandates a new trial, but that the acknowledged failure, Rule 305's command, cure, and material harm had to be evaluated under the correct framework.

The May 21 proceeding did not recreate the omitted opportunity. *Texas Sting, Ltd. v. R.B. Foods, Inc.*, 82 S.W.3d 644, 648–50 (Tex. App.—San Antonio 2002, pet.

denied), recognizes that a full post-dismissal hearing while plenary power remains can cure missing predissmissal notice. Here the court refused all evidence (RR 7, 12–13), did not reopen the plea submission, and later stated that a surreply would not have been considered (CR 435–36). *Union Carbide Corp. v. Moye*, 798 S.W.2d 792, 793–94 (Tex. 1990), is not factually identical, but confirms that a last-minute switch to a paper record cannot deprive a party of a reasonable opportunity to supplement what the court will decide.

The default and summary-judgment notice cases are also not identical. They supply a principle and close paper-disposition analogies, not an automatic result: an appearing party is entitled to notice of a dispositive setting, *LBL Oil Co. v. International Power Services, Inc.*, 777 S.W.2d 390, 390–91 (Tex. 1989) (per curiam); a wrong electronic address does not establish service, *Cruz v. Sanchez*, 528 S.W.3d 104, 110–14 (Tex. App.—El Paso 2017, no pet.); and due-process notice principles extend to a default no-evidence summary judgment, *Limestone Construction, Inc. v. Summit Commercial Industrial Properties, Inc.*, 143 S.W.3d 538, 543–45 (Tex. App.—Austin 2004, no pet.).

Ordinary harm is the safer route. Bass's March 3 response already presented the statutory theory and anticipated several defenses (CR 121–44). The unseen reply did not originate those subjects; it sharpened Appellees' application of them to the live pleading and asserted futility (CR 205–10). The order says the court

considered that reply (CR 214). The record therefore permits a finding of probable harm from closing the paper record before Bass could seek leave to answer that formulation or tender a materially narrower amendment. Tex. R. App. P. 44.1(a) (1).

On jurisdiction, candor requires confronting both prayers. The Fourth Amended Petition sought court-managed implementation details (CR 115–16), and the postjudgment proposed Fifth Amended Petition remained overbroad (CR 304, 366–89, 386–88). Bass does not seek appellate approval of either prayer. He seeks, at most, one opportunity to identify the proper official and request only prospective performance of the written-disposition step assigned in HSC OP 77.13, leaving procedure, timing, record accuracy, and the substantive result to TTUHSC (CR 154–55). *Matzen v. McLane*, 659 S.W.3d 381, 396 & n.18 (Tex. 2021), makes the amendment history a serious obstacle. The exact one-step formulation was not in the tendered Fifth; Bass's answer is that it is a reduction of the same pleaded statutory transaction, not a new claim, and that the live defects were sharpened only in the unreceived closing reply.

The Court should reverse and remand for a noticed adjudication of the plea or, alternatively, permit that single materially narrower amendment.

ARGUMENT

I. The failed service of the reply and proposed judgment violated Rules 21, 21a, and 305; the missing submission notice independently bears on due process and harm.

Standard of review. A trial court's ruling on a motion for new trial is reviewed for abuse of discretion, which means discretion exercised with reference to guiding rules and principles. *Strackbein v. Prewitt*, 671 S.W.2d 37, 38 (Tex. 1984).

Whether the court applied the governing rules correctly is a legal component of that review.

A. The filed reply and proposed judgment were subject to direct service duties; Rule 21(b)'s application to the paper-only setting is uncertain. Rule 21(a) requires service of a filed pleading, plea, motion, or application to the court for an order, and Rule 21a supplies the method. Those provisions governed Appellees' filed reply in support of their plea. Rule 305 addresses the exact document that became the judgment:

"Each party who submits a proposed judgment for signature shall serve the proposed judgment on all other parties to the suit who have appeared and remain in the case, in accordance with Rule 21a."

Tex. R. Civ. P. 305. The rule cautions that noncompliance does not alter the appellate timetable; Appellant does not claim otherwise. But that limitation does not erase the mandatory word "shall" or the right to service before signature.

Rule 21a supplies the method. An electronically filed document must be served through the electronic filing manager if "the email address of the party or attorney

to be served is on file." Tex. R. Civ. P. 21a(a)(1). Electronic service is complete upon transmission to the serving party's provider, *id.* 21a(b)(3), while subsection (e) preserves proof that the document was not received and authorizes the court, "upon so finding," to grant relief it deems just.

Rule 21(b) separately requires advance service of notice of a "court proceeding, as defined in Rule 21d(a)." Rule 21d(a) defines a court proceeding as "an appearance before the court, such as a hearing or trial." The March 19 setting was expressly by submission without oral hearing, and no one appeared. Appellant has found no square holding that Rule 21(b) covers that paper-only event and does not ask the Court to assume one. If the setting qualifies, the three-day command applies. If it does not, the absence of notice still matters under the paper-disposition authorities because Bass otherwise did not know when the record would close.

B. The record establishes failed service and nonreceipt. Appellant's correct email appears on his filed papers and CR 1. The challenged automated certificates instead use kbassphiladelphi@gmail.com. The contrast is visible within a single filing: on the notice of submission, counsel's typed certificate of service lists the correct kbassphiladelphia@gmail.com (CR 199), while the automated certificate for the same document reports **ERROR** at the truncated address (CR 200). The automated certificates likewise report ERROR for the amended notice and the proposed order (CR 203, 216). The reply's certificate reports SENT, but the listed

destination is still the truncated address, not Appellant's (CR 213). The trial judge acknowledged the resulting nonreceipt:

"What you didn't get, because of the email address issue, you didn't get the notice of the hearing on the plea, which was by submission, not oral argument. You didn't get the proposed order granting the plea. You didn't get the Defendants' reply to your response to the plea."

(RR 7.) The court then identified the second submission notice as another document Appellant did not receive (RR 8). This is not an inference from a certificate alone.

Cruz v. Sanchez is the closest confirmed electronic-service authority. It holds that a movant did not establish service when he attempted service at an incorrect email address and could not show actual or constructive notice. 528 S.W.3d 104, 110–14 (Tex. App.—El Paso 2017, no pet.). *Cruz* involved parties who did not receive the summary-judgment motion at all, while Appellant received the original plea here. That difference affects remedy and harm; it does not make service to a wrong address proper. Rule 21a(a)(1) refers to the address "of the party," and *Cruz* treats receipt as an element of service. *Id.* at 111–12.

Rule 21a(b)(3) does not change that conclusion. It fixes the time at which properly directed electronic service is complete. Reading it to make any transmission service on anyone—regardless of destination—would sever subsection (b)(3) from subsection (a)(1)'s addressee requirement and subsection (e)'s express treatment of nonreceipt. At minimum, the ERROR certificates, the unbroken pattern of ERROR

entries surrounding the reply's lone SENT notation (CR 119, 197, 200, 203, 216, 274), and the trial court's own recital rebut any prima facie showing of receipt. *See Cliff v. Huggins*, 724 S.W.2d 778, 780 (Tex. 1987) (the Rule 21a presumption vanishes upon contrary proof); *Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005) (per curiam) ("we cannot presume that notice was properly sent").

C. Rule 21a(e) is discretionary, but the discretion must address the right

question. Appellant does not contend that Rule 21a(e)'s word "may" means "must," that subsection (e) compels a finding whenever proof is tendered, or that it automatically requires a new trial. It permits a just remedy after nonreceipt is found. The relevant complaint is that the court acknowledged nonreceipt but did not analyze the failed service of the reply under Rules 21(a) and 21a, Rule 305's direct command, the missing submission setting, and material harm together.

The separate Rule 306a ruling was correct. Appellant learned of the signed order within twenty days, so Rule 306a(4) did not restart any deadline; the trial court expressly limited its irrelevance finding to "purposes of the 306a motion" (RR 5).

But a correct ruling about the postjudgment clock did not resolve the separate new-trial complaint concerning service before judgment. The May 27 order did address that complaint through four grounds (CR 435–36). Those grounds, rather than Rule 306a alone, must be tested against the service rules, cure, and harm.

D. The complaint was preserved in substance. The sworn motion did not cite Rule 305 by number. It did, however, identify the unreceived proposed order, allege the defective Rule 21a service mechanism, explain the lost chance to object, and request that the March 26 judgment be vacated and a new trial granted (CR 218–27). At the hearing Appellant again identified the proposed order, said he would have objected to form and substance, and requested evidence and new-trial relief (RR 6–9). Thus the factual complaint and requested ruling were presented; Rule 305 supplies the governing law for that preserved complaint. Tex. R. App. P. 33.1(a).

E. The record permits a finding of probable harm without pretending the reply introduced wholly new subjects. Appellant does not base harm on a supposed absolute right to oral argument or a surreply. The original plea preceded the Fourth Amended Petition and did not analyze its § 559.004/OP 77.13 theory (CR 43–102). But Bass's March 3 response had already presented the statutory theory and anticipated several defenses, including discretion, internal-policy status, academic deference, access, ripeness, proper officials, and leave to amend (CR 121–44). The unseen reply did not originate those subjects. It was nevertheless Appellees' first focused application of them to the live pleading:

1. the words "reasonable" and "unduly burden" preserve discretion (CR 205–07);

2. OP 77.13 is internal policy, not enabling law (CR 207);
3. administration of academic records warrants deference (CR 208);
4. the access already offered defeated the pleaded ripeness and burden theory (CR 208–09); and
5. further amendment would be futile (CR 210).

The order granting the plea says the court considered Appellees' reply (CR 214). Appellant's postjudgment papers supplied the answers he would have sought leave to present before submission: the statute itself is the external legal limit; the claim concerns a correction procedure rather than an academic merits decision; and the live petition alleges specific unperformed procedural steps despite the access sessions (CR 299–304). They also tendered an amendment, but its continuing breadth is a weakness, not something to hide (CR 304, 366–89, 386–88). The court later declared that no surreply "was necessary and would not have been considered" (CR 436). That statement confirms that the court did not reopen the prejudgment submission to receive a focused answer or consider leave for a narrower cure.

Rule 44.1(a)(1) asks whether the error probably caused an improper judgment, not whether Appellant can prove in advance that the answer would prevail. On a plea decided from competing papers, the combination of a material closing reply, the order's express consideration of it, and the lost chance to seek leave to address

futility supports a finding that the error probably affected the decision. The proposed-judgment violation is cumulative: the record identifies no particular wording objection that by itself probably changed the jurisdictional result. It corroborates the exclusion but is not an independent shortcut around Rule 44.1. The March 3 warning does not disappear from the analysis. Appellant acknowledged that two automated notices on that date displayed the truncated contact, though he did not understand that the e-service profile was wrong (CR 294). A factfinder could weigh that warning against diligence. It is not actual notice of the later documents, and it does not negate that Appellees' counsel possessed the correct address (CR 294, 299, 313–90) or that the later certificates themselves show failure. Nor did the warning stand uncorrected: Appellant's April 14 notice of correction identified the truncated entry and stated that his own eFileTexas profile had at all relevant times reflected the correct address (CR 284–87), yet the automated certificates continued to report ERROR at the truncated address — including on the May 27 order denying relief (CR 434, 437). The absence of findings on intentional evasion or fault makes categorical blame inappropriate. And even where a party bears a duty to keep an address current, "unless noncompliance was intentional rather than a mistake, due process requires some lesser sanction than trial without notice or an opportunity to be heard." *Mathis*, 166 S.W.3d at 746.

II. The May 21 proceeding did not cure the earlier exclusion because it did not recreate the lost opportunity.

Appellees' strongest answer is cure. *Texas Sting, Ltd. v. R.B. Foods, Inc.* held that a post-dismissal hearing while the court retained plenary power remedied lack of notice of a dismissal setting. 82 S.W.3d 644, 648–50 (Tex. App.—San Antonio 2002, pet. denied). The post-dismissal hearing there gave the plaintiffs the same opportunity and burden they would have had before dismissal: to present evidence of diligent prosecution and good cause. *Id.* at 648–50. That authority must be confronted, not ignored.

Union Carbide Corp. v. Moya illustrates the fair-opportunity principle outside the default setting. The trial court led a party to expect a live evidentiary hearing, then on the hearing date switched to decision on a written record and denied a continuance to supplement it. The Supreme Court held that the party had not received a reasonable opportunity to develop the record. 798 S.W.2d 792, 793–94 (Tex. 1990). The differences matter: the court itself created the expectation there, the governing venue rule expressly supplied a discovery right, and Bass had already filed a seventy-eight-page response. *Union Carbide* therefore does not dictate reversal. It does show that calling a proceeding a "hearing" is not curative if the party lacks a reasonable chance to supply the material the court will decide. The May 21 proceeding was materially different from the curative hearing in *Texas Sting*. Appellant requested that the court admit his exhibits and hear testimony on

disputed matters including the service contact, fault, diligence, and the practical opportunity lost (RR 7). The court refused: "there's no factual evidence that would bolster or be germane," and it would "not entertain evidence" (RR 12–13). The sworn papers already documented much of nonreceipt, so Appellant does not claim every issue required live proof. But to the extent the court or Appellees relied on what Appellant should have corrected—an issue the judge recognized at RR 5—the requested factual opportunity was not supplied.

Nor did the court reopen the plea submission. The written order says Appellant had been "heard" through his March 3 response, that a surreply would not have been considered, and that inability to object to the proposed order did not warrant a new trial (CR 435–36). The order states that Appellant's reply was considered, but it does not explain whether the statutory answers or tendered amendment could cure the jurisdictional defects; it instead concludes that a prejudgment surreply would not have been considered (CR 435–36). That did not recreate the omitted chance to seek leave before the record closed.

Hensley v. Salinas provides supporting context when a properly requested new-trial hearing presents a material factual question and facts that, if true, would entitle the movant to relief. 583 S.W.2d 617, 618–19 (Tex. 1979) (per curiam). Appellant requested evidence in writing (CR 391–96), renewed the request in a written reply (CR 406–14), and asked again in open court (RR 7). But no witness

was sworn, no exhibit was marked and rejected, and no formal offer of proof itemized the proposed testimony. That preservation gap makes *Hensley* a weak stand-alone route to reversal. The refusal is stronger as part of the cure analysis: unlike *Texas Sting*, the later proceeding neither reopened the plea record nor supplied the process Bass says he lost.

III. The no-notice authorities support relief by close analogy, and ordinary harm is independently shown.

Standard of review. Constitutional questions are reviewed de novo. *State v. Hodges*, 92 S.W.3d 489, 494 (Tex. 2002).

A. Due process protects the pending cause of action and a meaningful opportunity to be heard. A cause of action is a species of property protected by the Fourteenth Amendment, and civil litigants may not be denied established adjudicatory procedures without constitutionally adequate notice and opportunity. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428–30 (1982). At minimum, adjudicatory deprivation must be preceded by notice and an opportunity "appropriate to the nature of the case." *Id.* at 428 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). That identifies the protected interest missing from a bare invocation of *Peralta*.

Texas applies the principle to dispositive settings. "Once a defendant has made an appearance in a cause, he is entitled to notice of the trial setting as a matter of due process." *LBL Oil Co. v. International Power Services, Inc.*, 777 S.W.2d 390, 390–

91 (Tex. 1989) (per curiam). In a post-answer-default case, the Texas Supreme Court later used the broader formulation "trial setting or dispositive hearing." *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012). The March 26 order disposing of the case on the papers was the dispositive event here, but *Mabon* itself was still a default case. In a paper-disposition setting, the Austin Court extended the no-notice principle to a default no-evidence summary judgment where an affidavit established that the nonmovant received neither the motion nor hearing notice. *Limestone Construction, Inc. v. Summit Commercial Industrial Properties, Inc.*, 143 S.W.3d 538, 543–45 (Tex. App.—Austin 2004, no pet.). *Etheredge v. Hidden Valley Airpark Ass'n* likewise held that proper notice of a summary-judgment hearing is a prerequisite to judgment and reversed when actual and constructive notice were absent. 169 S.W.3d 378, 381–84 (Tex. App.—Fort Worth 2005, pet. denied).

B. The analogy is close but not exact. *Peralta*, *LBL Oil*, *Mabon*, *Limestone*, and *Etheredge* concern defaults or parties who did not receive the dispositive motion. Appellant did receive the original plea and filed a seventy-eight-page response. That distinction means the cases do not mechanically command automatic reversal here, and Appellant does not present the extension as settled. The analogy remains substantial because the live target changed after the original plea. Appellant filed the Fourth Amended Petition and response on March 3 (CR

103–97). The original February 9 plea did not address the statute and policy on which the live pleading relied (CR 43–102). Bass's response anticipated defenses, but Appellees then set the matter for dispositive submission, filed their first focused application of those defenses and futility to the live statutory theory, and submitted a proposed judgment (CR 198–216). Appellant received none of those items (RR 7–8). In a paper proceeding, notice of when the record closes and service of the material closing paper are the practical means of being heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

The court's four written grounds do not eliminate that distinction:

1. The March 3 response meant Appellant was heard on the then-existing papers and anticipated several defenses, but it did not answer Appellees' later application of those defenses and futility to the live pleading (CR 121–44, 205–10, 214, 435).

2. Appellant does not challenge the court's discretion to use submission rather than oral argument; he challenges lack of notice of the submission proceeding (CR 435–36).

3. The statement that no surreply was necessary and would not have been considered confirms that the court assessed the lost paper retrospectively rather than offering leave to answer (CR 436).

4. The statement that inability to object to the proposed order warranted no relief does not address Rule 305's service command or the combined harm (CR 436).

C. Appellant does not rely exclusively on categorical structural error. In true no-notice defaults, *Peralta* rejects a requirement to prove a meritorious defense: it is no answer that due process might have produced the same result. 485 U.S. 80, 86–87 (1988). *Mathis* applies that rule when a defaulted party lacked notice of trial. 166 S.W.3d at 744. If this Court holds that exclusion from the dispositive submission here is constitutionally equivalent, that rule supports reversal without a separate merits showing.

But the Court need not take that step. The comparison of Bass's anticipatory response at CR 121–44, Appellees' application of those issues and futility at CR 205–10, and Bass's postjudgment answer and attempted amendment at CR 299–304 permits a probable-harm finding under Rule 44.1(a)(1). The reply was material, the order says it was considered, and Bass lost a timely chance to seek leave to answer its formulation or propose a narrower cure. This ordinary-error route respects the factual distinction from the default cases and avoids making constitutional harmlessness the sole path to relief.

IV. If the Court reaches jurisdiction, the proper relief is one opportunity to plead a materially narrower official-duty claim.

Standard of review. Subject-matter jurisdiction is reviewed de novo. When a plea challenges the pleadings, the court construes them liberally in the pleader's favor and looks to the pleader's intent. *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004). If the pleadings affirmatively negate jurisdiction, dismissal without amendment is proper; if the defect is curable, the plaintiff should be afforded an opportunity to amend. *Id.* at 227.

A. The statute supplies an external legal limit. Section 559.004 provides:

"Each state governmental body shall establish a reasonable procedure under which an individual is entitled to have the state governmental body correct information about the individual that is possessed by the state governmental body and that is incorrect. The procedure may not unduly burden an individual using the procedure."

Tex. Gov't Code § 559.004. The provision plainly leaves judgment in what is "reasonable" and what constitutes an undue burden. The existence of some judgment, however, does not automatically foreclose an ultra vires claim. An officer with limited discretion may act without legal authority by exceeding the bounds of the governing law or acting in conflict with it. *Houston Belt & Terminal Railway Co. v. City of Houston*, 487 S.W.3d 154, 158, 163–64 (Tex. 2016). Ultra vires jurisdiction is absent when the law grants absolute discretion or when the claim merely challenges a lawful discretionary choice. *Id.* at 163–64; *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

Hall v. McRaven supplies the limiting comparison. There, a Regents' Rule gave the UT Chancellor an otherwise unconstrained duty to determine whether FERPA restricted a regent's access, so his legal interpretation remained within his authority even if erroneous. 508 S.W.3d 232, 241–43 (Tex. 2017). Section 559.004 is different as pleaded: it is not collateral law that an official has unlimited authority to interpret; it directly requires a reasonable procedure that "may not unduly burden" its user. But that statutory boundary runs to the governmental body, making identification of the responsible official a real issue rather than a detail the Court may assume.

The strongest version of Appellant's claim therefore rests on § 559.004 itself, not on treating OP 77.13 as independent "enabling law." The policy is evidence of the procedure TTUHSC chose to establish and the roles it assigned; an internal policy alone cannot enlarge statutory jurisdiction. The external constraint is the statute's command that the established correction procedure be reasonable and not unduly burdensome.

B. Both tendered prayers were overbroad, and the proper-official problem is real. The Fourth Amended Petition alleges that McSween had a role in transcript-related inspection logistics and that D'Agostino had the policy's assistance role when a student is uncertain which office maintains records (CR 103–04). It alleges four escorted review days for roughly 1,600 items and a fourteen-hour video,

restrictions that prevented meaningful documentation, identified records not produced, and no written disposition of the Step-2 request (CR 107–13). It disclaims an order deciding whether the transcript notation is accurate (CR 105, 112–13).

But the statute imposes its express duty on the governmental body, so the pleading must connect the requested act to a proper official. The January 26 Step-2 request went to Dr. Erin Justyna, not either Appellee, although both were copied (CR 109). The Fourth Amended Petition sought court-set deadlines, scheduling, organization, pagination, an inventory, tolling, preservation, and a compliance notice (CR 115–16). The proposed Fifth Amended Petition tendered after judgment still sought sessions and deadlines, organized and paginated presentation, an inventory, tolling, preservation and logging, and a compliance notice (CR 304, 366–89, 386–88). Those terms invite the conclusion that the suit asks a court to administer discretionary operations. Appellant does not defend them here.

C. The proposed cure is one proper official, one written-disposition step, and no court-managed operations. HSC OP 77.13—the procedure TTUHSC chose—assigns a concrete role after a student submits a written amendment request. The Executive Vice President for Academic Affairs or designee must request a written statement from the records custodian and then "will provide written notification to

the Student whether or not TTUHSC will implement the change"; if TTUHSC will not do so, the student is notified of the right to a hearing (CR 154–55).

A materially narrower amendment would identify the EVPAA or designee who received or is responsible for the January 26 request—substituting or adding the correct official if neither present Appellee holds that role—and seek only prospective provision of that written disposition and any associated notice of a hearing right. It would leave record accuracy, the result of the request, format, timing, scheduling, access logistics, and record management to TTUHSC. OP 77.13 would identify the procedure and responsible role TTUHSC selected; it would not be pleaded as independent enabling law. The external constraint would remain § 559.004.

This is a proposed cure, not proof that the current pleading already establishes jurisdiction. *Miranda* permits dismissal without amendment if the pleadings affirmatively negate jurisdiction; otherwise a curable pleading defect ordinarily warrants an opportunity to amend. 133 S.W.3d at 227. The question is whether the one-step official-duty theory is legally impossible, not whether the broader prayers should survive.

D. The amendment history is the strongest jurisdictional obstacle. This Court remanded where missing jurisdictional allegations did not foreclose the possibility that the plaintiff could plead them. *Texas A&M University Department of*

Transportation, Parking Services Department v. Reeves, No. 15-24-00069-CV, slip op. at 11–12 (Tex. App.—15th Dist. Jan. 30, 2025, no pet.) (mem. op.). It affirmed dismissal with prejudice where a plaintiff had notice of the defect for several months and amended immediately before the hearing without curing it. *Sharma v. Texas Tech University Health Sciences Center El Paso*, No. 15-25-00007-CV, slip op. at 4 (Tex. App.—15th Dist. Apr. 24, 2025) (mem. op.). *Fraley* likewise denied another amendment after four petitions, an amendment responding to the plea, twenty-two months, and extensive discovery. *Fraley v. Texas A&M University System*, 664 S.W.3d 91, 101–02 (Tex. 2023).

Matzen v. McLane is more direct still. Although Matzen did not request remand, the Court said it would have denied that relief because he had already repleaded three times to no avail and his briefing advanced no viable theory. 659 S.W.3d 381, 396 & n.18 (Tex. 2021). Bass amended four times and then tendered a proposed fifth amendment whose prayer remained broad. That history may persuade this Court that another chance would serve no purpose.

The narrower answer is procedural and specific. Bass filed the Fourth Amended Petition the same day as his response to a plea directed at an earlier pleading. Appellees' application of futility to the live theory arrived in an unreceived reply one day before submission (CR 103–10, 198–210). The exact one-step formulation was not in the postjudgment proposed Fifth, which strengthens Appellees' *Matzen*

argument. But the amendment now described does not depend on new historical facts; it strips the pleaded remedy down to one proper official, one written-disposition step, and prospective compliance only. If the Court concludes even that claim is legally impossible—or that the prior amendments already supplied a reasonable opportunity—*Matzen* supports affirmance. If it is potentially viable and no reasonable opportunity to plead it followed Appellees' live-pleading futility argument, *Miranda* supports one remand, not serial amendment.

PRAYER

For these reasons, Appellant Kevin N. Bass respectfully prays that this Court:

1. Reverse the trial court's May 27, 2026 order denying Appellant's motion for new trial and the March 26, 2026 dismissal order;

2. Remand for a noticed adjudication of the plea in which Appellant has a reasonable opportunity to seek leave to answer the material reply grounds;

3. Alternatively, remand once under *Miranda* to permit a materially narrower amendment identifying the proper official and seeking only prospective performance of the written-disposition step, with operational details and the substantive result left to TTUHSC; and

4. Grant Appellant all other relief to which he may be justly entitled.

Respectfully submitted,

/s/ Kevin N. Bass

KEVIN N. BASS

Appellant pro se

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████████████████████████████████████

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the typeface and length requirements of Tex. R. App. P. 9.4. Relying on the word count of the computer program used to prepare it, this document contains 7,370 words, excluding the portions excepted by Rule 9.4(i)(1). It is printed in a conventional 14-point typeface, with footnotes in no smaller than 12-point typeface.

/s/ Kevin N. Bass

KEVIN N. BASS

CERTIFICATE OF SERVICE

I certify that on August 24, 2026, a true and correct copy of this Appellant's Brief was served on counsel for Appellees through the electronic filing manager and by electronic mail:

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/s/ Kevin N. Bass

KEVIN N. BASS

APPENDIX

Tab A — Order on Defendants' Plea to the Jurisdiction, signed March 26, 2026 (CR 214–15), reproduced from the record so the strike-through of the alternative plea-in-abatement paragraph is visible

Tab B — Order Denying Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial, signed May 27, 2026 (CR 435–36)

Tab C — Tex. Gov't Code § 559.004

Tab D — Tex. R. Civ. P. 21, 21a, 21d, 305, 306a, and 329b; Tex. R. App. P. 33.1 and 44.1

Tab E — U.S. Const. amend. XIV, § 1

Tab F — Excerpts from the Reporter's Record of the May 21, 2026 hearing (RR 4–5, 7–9, 12–13)

Tab G — TTUHSC HSC OP 77.13 (Student Education Records) (CR 149–57)

Tab H — Appellees' reply addressing the live statutory theory (CR 204–10)

Tab I — Appellant's postjudgment answers to the reply grounds (CR 299–304)

Tab J — Service certificates for the submission notices, reply, proposed order, and new-trial order (CR 200, 203, 213, 216, 437)

Tab K — Clerk's Rule 306a(3) Notice of Judgment, April 2, 2026 (CR 217)

APPENDIX TAB A

Order on Defendants' Plea to the Jurisdiction

Signed March 26, 2026 — CR 214—15. Reproduced from the clerk's record so the visible strike-through on CR 214 is preserved.

SIGNED on March 26, 2026



HONORABLE LES HATCH

APPENDIX TAB B

Order Denying Sworn Rule 306a(5) Motion and Motion for New Trial

Signed May 27, 2026 — CR 435–36. These pages are scans in the clerk's
record.

CAUSE NO. DC-2025-CV-1817

TB

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	OF LUBBOCK COUNTY, TEXAS
	§	
DARRIN D'AGOSTINO, D.O.,	§	
M.P.H., M.B.A., in his official capacity	§	
as Provost and Executive Vice	§	
President of Academics of Texas Tech	§	
University Health Sciences Center; and	§	
AMANDA McSWEEN, in her official	§	
capacity as Managing Director of	§	
Enrollment Services and University	§	
Registrar of Texas Tech University	§	
Health Sciences Center,	§	
	§	
<i>Defendants.</i>	§	237th JUDICIAL DISTRICT

**ORDER DENYING PLAINTIFF'S SWORN MOTION UNDER RULE 306a(5) AND
MOTION FOR NEW TRIAL**

On May 21, 2026, the Court considered Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b (the "Motion"), Defendants' Response, Plaintiff's Reply, the pleadings on file, oral argument, and the applicable law.

As to Plaintiff's 306a(5) Motion, the Court finds it inapplicable as the Plaintiff had notice of the Order on Defendants' Plea to the Jurisdiction within 20 days of the Court signing same.

As to Plaintiff's Motion for New Trial, the Court finds that Plaintiff failed to establish entitlement to the relief requested in the Motion and further failed to demonstrate grounds warranting a new trial under Rule 329b. First, Plaintiff was "heard" on Defendants' Plea to the Jurisdiction by way of his Response to same filed March 3, 2026, which the Court considered. Second, it was within the Court's discretion to consider Defendants' Plea to the Jurisdiction by

submission as the Plea was based solely on uncontroverted pleadings and facts--Plaintiff's claim that he was deprived of oral argument on same does not entitle him to a new trial. Third, no sur-reply to Defendants' Reply to Plaintiff's Response to Plea in Abatement was necessary and would not have been considered by the Court. Fourth, Plaintiff is not entitled to a new trial based on his inability to object to Defendants' proposed order granting the Plea to the Jurisdiction.

IT IS THEREFORE ORDERED that Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b is DENIED in its entirety.

IT IS FURTHER ORDERED that all relief requested in the Motion and not expressly granted herein is DENIED.

IT IS SO ORDERED.

SIGNED this 27th day of May, 2026.

A handwritten signature in blue ink, appearing to read "Wes Hatch", is written above a horizontal line.

JUDGE PRESIDING

APPENDIX TAB C

Texas Government Code § 559.004

TEXAS GOVERNMENT CODE § 559.004

Sec. 559.004. RIGHT TO CORRECTION OF INCORRECT INFORMATION.

Each state governmental body shall establish a reasonable procedure under which an individual is entitled to have the state governmental body correct information about the individual that is possessed by the state governmental body and that is incorrect. The procedure may not unduly burden an individual using the procedure.

Added by Acts 2001, 77th Leg., ch. 1059, Sec. 1, eff. Sept. 1, 2001.

APPENDIX TAB D

Rules Relied On

Texas Rules of Civil Procedure 21, 21a, 21d, 305, 306a, and 329b; Texas Rules of Appellate Procedure 33.1 and 44.1.

RULE 20. MINUTES READ AND SIGNED

On the last day of the session, the minutes shall be read, corrected and signed in open court by the judge. Each special judge shall sign the minutes of such proceedings as were had by him.

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

- (a) **Filing and Service Required.** Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, must be filed with the clerk of the court in writing, must state the grounds therefor, must set forth the relief or order sought, and at the same time a true copy must be served on all other parties, and must be noted on the docket.
- (b) **Service of Notice of Court Proceeding.** An application to the court for an order and notice of any court proceeding, as defined in Rule 21d(a), not presented during a court proceeding, must be served upon all other parties not less than three days before the time specified for the court proceeding, unless otherwise provided by these rules or shortened by the court. Notice of any court proceeding must contain the information needed for participants, as defined in Rule 21d(a), to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence. A court must publish the information needed for participants to participate in its proceedings.
- (c) **Multiple Parties.** If there is more than one other party represented by different attorneys, one copy of each pleading must be served on each attorney in charge.
- (d) **Certificate of Service.** The party or attorney of record, must certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion, or application.
- (e) **Additional Copies.** After one copy is served on a party, that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.
- (f) **Electronic Filing.**
 - (1) **Requirement.** Except in juvenile cases under Title 3 of the Family Code and truancy cases under Title 3A of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required.
 - (2) **Email Address.** The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

- (3) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.
- (4) Exceptions.
 - (A) Wills are not required to be filed electronically.
 - (B) The following documents must not be filed electronically:
 - (i) documents filed under seal or presented to the court in camera; and
 - (ii) documents to which access is otherwise restricted by law or court order.
 - (C) For good cause, a court may permit a party to file other documents in paper form in a particular case.
- (5) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:
 - (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
 - (B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.
- (6) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.
- (7) Electronic Signatures. A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:
 - (A) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (B) an electronic image or scanned image of the signature.

- (8) Format. An electronically filed document must:
 - (A) be in text-searchable portable document format (PDF);
 - (B) be directly converted to PDF rather than scanned, if possible;
 - (C) not be locked; and
 - (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.
- (9) Paper Copies. Unless required by local rule, a party need not file a paper copy of an electronically filed document.
- (10) Electronic Orders, Notices, and Other Documents From the Court.
 - (A) Except as provided in (B), the clerk must send orders, notices, and other documents to the parties electronically through an electronic filing system approved by the Supreme Court. A court seal may be electronic.
 - (B) The clerk need not send orders, notices, or other documents electronically:
 - (i) when sealed or when access is otherwise restricted by law or court order; or
 - (ii) when an unrepresented party has not provided an e-mail address.
- (11) Non-Conforming Documents. The clerk may not refuse to file a document that fails to conform with this rule. 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.
- (12) Original Wills. When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.
- (13) Official Record. The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

Notes and Comments

Comment to 2013 Change: Rule 21 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order - Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 - mandating electronic filing in civil cases beginning on January 1, 2014. The mandate will be implemented according to the schedule in the order and will be completed by July 1, 2016. The revisions reflect the fact that the mandate will only apply to a subset of Texas courts until that date.

Comment to 1990 change: To require filing and service of all pleadings and motions on all parties and to consolidate notice and service Rules 21, 72 and 73.

Comment to 2023 changes: Rule 21(b) is amended to clarify requirements for notices. Rule 21(f)(10) is amended to implement section 80.002(b) of the Government Code. Clerks are encouraged to coordinate and work with other court staff to effectuate this rule. Nothing in Rule 21(f)(10) prohibits the court from sending orders, notices, and documents to parties by additional methods and the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 21(f)(10) is impossible, then the clerk should use an alternative method to send orders, notices, and documents to that party.

RULE 21a. METHODS OF SERVICE

- (a) **Methods of Service.** Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record in the manner specified below:
 - (1) **Documents Filed Electronically.** A document filed electronically under Rule 21 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (2).
 - (2) **Documents Not Filed Electronically.** A document not filed electronically may be served in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

- (b) When Complete.
- (1) Service by mail or commercial delivery service shall be complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service.
 - (2) Service by fax is complete on receipt. Service completed after 5:00 p.m. local time of the recipient shall be deemed served on the following day.
 - (3) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.
- (c) Time for Action After Service. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.
- (d) Who May Serve. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.
- (e) Proof of Service. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document was not received, or, if service was by mail, that the document was not received within three days from the date that it was deposited in the mail, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.
- (f) Procedures Cumulative. These provisions are cumulative of all other methods of service prescribed by these rules.

Notes and Comments

Comment to 2013 Change: Rule 21a is revised to incorporate rules for electronic service in accordance with the Supreme Court's order - Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 - mandating electronic filing in civil cases beginning on January 1, 2014.

Comment to 1990 change: To allow for service by current delivery means and technologies.

2024 Comment: The Estates Code provides for other methods of service and citation, and proof thereof, in estate and guardianship proceedings and governs those proceedings.

- (1) designating the document as containing sensitive data when the document is electronically filed; or
 - (2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.”
- (e) Non-Conforming Documents. The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.
- (f) Restriction on Remote Access. Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

Notes and Comments

Comment to 2013 Change: Rule 21c is added to provide privacy protection for documents filed in civil cases.

RULE 21d. APPEARANCES AT COURT PROCEEDINGS

- (a) Definitions.
- (1) “Court proceeding” means an appearance before the court, such as a hearing or trial.
 - (2) “Participant” means any party, attorney, witness, court reporter, or juror who participates in a court proceeding.
- (b) Participant Method of Appearance.
- (1) Unless the notice of court proceeding states otherwise, a person who participates in a court proceeding does so by physical presence in the courtroom. Upon appropriate notice by a party or the court, a court may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means, except as otherwise provided in (2).
 - (2) A court must not require:
 - (A) a party or lawyer to appear electronically for a court proceeding in which oral testimony is heard, absent good cause or the agreement of the parties; or

- (B) a lawyer, party, or juror to appear electronically for a jury trial, absent the agreement of the parties.
- (c) Judge Method of Appearance; Location. A judge may appear at a court proceeding by videoconference, teleconference, or other available electronic means. However, even if appearing electronically, a judge must conduct the court proceeding from a location required by law.
- (d) Objection. A party may object to any method of appearance, stating good cause for the objection. The objection must be made within a reasonable time after the party receives notice of the appearance. The court may, but is not required to, conduct a hearing on the objection. Before proceeding by the objected-to method of appearance, the court must rule on the objection and timely communicate the ruling to the parties in a written order or on the record.
- (e) Factors. In determining good cause under this rule, the court should consider factors such as:
 - (1) case type;
 - (2) court proceeding type;
 - (3) the number of parties and witnesses;
 - (4) the complexity of the legal and factual issues;
 - (5) the type of evidence to be submitted, if any;
 - (6) technological restrictions such as lack of access to or proficiency in necessary technology;
 - (7) travel restrictions such as lack of transportation, distance, or inability to take off work;
 - (8) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability; and
 - (9) any previous abuse of a method of appearance.
- (f) Open Courts. If a court conducts a court proceeding in which all participants appear electronically, the court must:
 - (1) provide reasonable notice to the public of how to observe the court proceeding; and

- (2) provide the public the opportunity to observe the court proceeding, unless the court has determined that it must close the court proceeding to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings on the record adequate to support closure.

Notes and Comments

Comment to 2023 change: New Rule 21d clarifies procedures for appearances at court proceedings. Paragraph (a) defines “court proceeding” and “participant.” Paragraph (b) governs a participant’s method of appearance. Certain statutes expressly prohibit or further permit electronic appearances, in which case the governing statute applies. Paragraph (c) provides that the judge may appear by electronic means, but it requires the judge to appear electronically from a location required by law. *See, e.g.*, TEX. CONST. art. V, § 7(d); TEX. GOV’T CODE §§ 24.030(a), 26.002(c). Nothing in paragraph (c) permits the judge to conduct a proceeding away from a location required by law. Paragraph (d) addresses objections to any method of appearance, and paragraph (e) addresses good-cause factors. Paragraph (f) recognizes the public’s right to reasonable notice of and access to a fully electronic proceeding unless there is an overriding interest. A court should rarely close a court proceeding from public observation, and in such an exceptional case, the court must use the least restrictive measure to protect the overriding interest.

SECTION 2. INSTITUTION OF SUIT

RULE 22. COMMENCED BY PETITION

A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk.

RULE 23. SUITS TO BE NUMBERED CONSECUTIVELY

It shall be the duty of the clerk to designate the suits by regular consecutive numbers, called file numbers, and he shall mark on each paper in every case the file number of the cause.

RULE 24. DUTY OF CLERK

When a petition is filed with the clerk he shall indorse thereon the file number, the day on which it was filed and the time of filing, and sign his name officially thereto.

RULE 25. CLERK'S FILE DOCKET

Each clerk shall keep a file docket which shall show in convenient form the number of the suit, the names of the attorneys, the names of the parties to the suit, and the nature thereof, and, in brief

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

RULE 302. ON COUNTERCLAIM

If the defendant establishes a demand against the plaintiff upon a counterclaim exceeding that established against him by the plaintiff, the court shall render judgment for defendant for such excess.

RULE 303. ON COUNTERCLAIM FOR COSTS

When a counterclaim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counterclaim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a claim existing at the commencement of the suit, he shall recover his costs.

RULE 304. JUDGMENT UPON RECORD

Judgments rendered upon questions raised upon citations, pleadings, and all other proceedings, constituting the record proper as known at common law, must be entered at the date of each term when pronounced.

RULE 305. PROPOSED JUDGMENT

Any party may prepare and submit a proposed judgment to the court for signature.

Each party who submits a proposed judgment for signature shall serve the proposed judgment on all other parties to the suit who have appeared and remain in the case, in accordance with Rule 21a.

Failure to comply with this rule shall not affect the time for perfecting an appeal.

Notes and Comments

Comment to 1990 change: To clarify the practice for proposed judgments and notice to other parties.

RULE 306. RECITATION OF JUDGMENT

The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

RULE 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT

1. **Beginning of Periods.** The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.
2. **Date to Be Shown.** Judges, attorneys and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order.
3. **Notice of Judgment.** When the final judgment or other appealable order is signed, the clerk of the court must immediately send the judgment or order to the parties as provided in Rule 21(f)(10). If the judgment awards monetary damages, the judgment must state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).
4. **No Notice of Judgment.** If within twenty days after the judgment or other appealable order is signed, a party adversely affected by it or his attorney has neither received the notice required by paragraph (3) of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in paragraph (1) shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.

5. **Motion, Notice and Hearing.** In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.
6. **Nunc Pro Tunc Order.** When a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316, the periods mentioned in paragraph (1) of this rule shall run from the date of signing the corrected judgment with respect of any complaint that would not be applicable to the original document.
7. **When Process Served by Publication.** With respect to a motion for new trial filed more than thirty days after the judgment was signed pursuant to Rule 329 when process has been served by publication, the periods provided by paragraph (1) shall be computed as if the judgment were signed on the date of filing the motion.

Notes and Comments

Comment to 1988 change: Amend to reflect repeal of Rule 317.

RULE 306b. ADVICE OF RIGHT TO APPEAL IN ORDERS CERTIFYING A CHILD TO STAND TRIAL AS AN ADULT

When a juvenile court issues an order under Family Code section 54.02 certifying a child to stand trial as an adult, the court must inform the child and the child's attorney, orally on the record and in writing in the certification order, that:

- (a) the child may immediately appeal the certification order under Family Code section 56.01; and
- (b) the appeal is accelerated under Texas Rule of Appellate Procedure 28.1.

Notes and Comments

Comment to 2023 change: This rule is adopted to implement Texas Family Code section 56.01(h-1).

RULE 306c. PREMATURELY FILED DOCUMENTS

No motion for new trial or request for findings of fact and conclusions of law shall be held ineffective because prematurely filed; but every such motion shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment the motion assails, and every such request for findings of fact and conclusions of law shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment.

- (a) The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was signed. The parties adversely interested in such judgment shall be cited as in other cases.
- (b) Execution of such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in an amount fixed in accordance with Appellate Rule 47 relating to supersedeas bonds, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.
- (c) If property has been sold under the judgment and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale.
- (d) If the motion is filed more than thirty days after the judgment was signed, the time period shall be computed pursuant to Rule 306a(7).

RULE 329a. COUNTY COURT CASES

If a case or other matter is on trial or in the process of hearing when the term of the county court expires, such trial, hearing or other matter may be proceeded with at the next or any subsequent term of court and no motion or plea shall be considered as waived or overruled, because not acted upon at the term of court at which it was filed, but may be acted upon at any time the judge may fix or at which it may have been postponed or continued by agreement of the parties with leave of the court. This subdivision is not applicable to original or amended motions for new trial which are governed by Rule 329b.

RULE 329b. TIME FOR FILING MOTIONS

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts:

- (a) A motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed.
- (b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within thirty days after the judgment or other order complained of is signed.
- (c) In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period.

- (d) The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.
- (e) If a motion for new trial is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.
- (f) On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; provided that the court may at any time correct a clerical error in the record of a judgment and render judgment nunc pro tunc under Rule 316, and may also sign an order declaring a previous judgment or order to be void because signed after the court's plenary power had expired.
- (g) A motion to modify, correct, or reform a judgment (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court's plenary power and the time for perfecting an appeal in the same manner as a motion for new trial. Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected, or reformed. The overruling of such a motion shall not preclude the filing of a motion for new trial, nor shall the overruling of a motion for new trial preclude the filing of a motion to modify, correct, or reform.
- (h) If a judgment is modified, corrected or reformed in any respect, the time for appeal shall run from the time the modified, corrected, or reformed judgment is signed, but if a correction is made pursuant to Rule 316 after expiration of the period of plenary power provided by this rule, no complaint shall be heard on appeal that could have been presented in an appeal from the original judgment.

Notes and Comments

Comment to 1988 change: Amended to conform with repeal of Rule 317.

- (m) the name, mailing address, telephone number, fax number (if any), email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;
- (n) (1) the dates of filing of any motion and affidavit of indigence;
- (2) the date of any hearing;
- (3) the date of any order; and
- (4) whether the motion was granted or denied; and
- (o) any other information the appellate court requires.

32.3. Supplemental Statements

Any party may file a statement supplementing or correcting the docketing statement.

32.4. Purpose of Statement

The docketing statement is for administrative purposes and does not affect the appellate court's jurisdiction.

Notes and Comments

Comment to 1997 change: The rule is new.

Comment to 2023 change: Rule 32.1 is amended to implement Texas Family Code section 56.01(h-1).

Comment to 2024 change: Rule 32.1 is amended to remove the list of requirements of what information must be included in the docketing statement in favor of a form approved by the Office of Court Administration.

Rule 33. Preservation of Appellate Complaints

33.1. Preservation; How Shown

- (a) *In General.* As a prerequisite to presenting a complaint for appellate review, the record must show that:
 - (1) the complaint was made to the trial court by a timely request, objection, or motion that:

- (A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

- (B) complied with the requirements of the Texas Rules of Evidence or the Texas Rules of Civil or Appellate Procedure; and

- (2) the trial court:

- (A) ruled on the request, objection, or motion, either expressly or implicitly; or

- (B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

- (b) *Ruling by Operation of Law.* In a civil case, the overruling by operation of law of a motion for new trial or a motion to modify the judgment preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court.

- (c) *Formal Exception and Separate Order Not Required.* Neither a formal exception to a trial court ruling or order nor a signed, separate order is required to preserve a complaint for appeal.

- (d) *Sufficiency of Evidence Complaints in Civil Nonjury Cases.* In a civil nonjury case, a complaint regarding the legal or factual insufficiency of the evidence - including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact - may be made for the first time on appeal in the complaining party's brief.

33.2. Formal Bills of Exception

To complain on appeal about a matter that would not otherwise appear in the record, a party must file a formal bill of exception.

appeals and costs for preparation of the record. The court of appeals may tax costs otherwise as required by law or for good cause. But the judgment must not require the payment of costs by a party who was entitled to proceed without payment of costs under Rule 20.1, and a provision in the judgment purporting to do so is void.

43.5. Judgment Against Sureties in Civil Cases

When a court of appeals affirms the trial court judgment, or modifies that judgment and renders judgment against the appellant, the court of appeals must render judgment against the sureties on the appellant's supersedeas bond, if any, for the performance of the judgment and for any costs taxed against the appellant.

43.6. Other Orders

The court of appeals may make any other appropriate order that the law and the nature of the case require.

Notes and Comments

Comment to 1997 changes: Former Rules 80(a) - (c) and 82 are merged. Paragraph 43.2(e) allows the court of appeals to vacate the trial court's judgment and dismiss the case; paragraph 43.2(f) allows the court of appeals to dismiss the appeal. Both provisions are new but codify current practice. Paragraph 43.3(a) is moved here from former Rule 81(c). Paragraph 43.3(b), allowing a remand in the interest of justice, is new. Subdivisions 43.4 and 43.5 are from former Rule 82.

Rule 44. Reversible Error

44.1. Reversible Error in Civil Cases

- (a) *Standard for Reversible Error.* No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of:
 - (1) probably caused the rendition of an improper judgment; or
 - (2) probably prevented the appellant from properly presenting the case to the court of appeals.
- (b) *Error Affecting Only Part of Case.* If the error affects part of, but not all, the matter in

controversy and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error. The court may not order a separate trial solely on unliquidated damages if liability is contested.

44.2. Reversible Error in Criminal Cases

- (a) *Constitutional Error.* If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.
- (b) *Other Errors.* Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
- (c) *Presumptions.* Unless the following matters were disputed in the trial court, or unless the record affirmatively shows the contrary, the court of appeals must presume:
 - (1) that venue was proved in the trial court;
 - (2) that the jury was properly impaneled and sworn;
 - (3) that the defendant was arraigned;
 - (4) that the defendant pleaded to the indictment or other charging instrument; and
 - (5) that the court's charge was certified by the trial court and filed by the clerk before it was read to the jury.

44.3. Defects in Procedure

A court of appeals must not affirm or reverse a judgment or dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.

44.4. Remediable Error of the Trial Court

- (a) *Generally.* A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:

APPENDIX TAB E

United States Constitution, Amendment XIV, § 1

U.S. CONST. AMEND. XIV, § 1

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX TAB F

Reporter's Record Excerpts — May 21, 2026

RR 4–5, 7–9, and 12–13.

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P R O C E E D I N G S

THE COURT: The Court calls Cause No. DC-2025-CV-1817. This is Dr. Bass vs. Rice-Spearman, et al. And we are here on Plaintiff's 306a motion to extend the applicable periods of time from the signing of the judgment. We're also here on Plaintiff's Motion for New Trial pursuant to Rule 329b.

The Court -- before we have an evidentiary hearing on the 306a motion as to when the Plaintiff got notice of the -- the order granting the plea to the jurisdiction, the Court finds that 306a does not apply because the Plaintiff, pursuant to his pleadings, acknowledges notice of the order granting the plea to the jurisdiction within either seven or eight days, for sure by eight days, and that 306a(4) only applies if you did not receive notice within 20 days.

As a result of that finding by the Court, the Court finds that whether or not the Plaintiff received notice and why he didn't receive it of the order granting the plea to the jurisdiction is irrelevant because the Motion for New Trial was filed, I think, on day eight of the signing of the order granting the plea to the jurisdiction.

And the -- again, the Plaintiff acknowledges knowledge, actual knowledge of the order

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1 granting the plea to the jurisdiction within eight days,
2 which is within 20 days; and, therefore the -- the 306a
3 motion to extend the appellate deadline is not
4 applicable in this case.

5 So, the court denies the Plaintiff --
6 without hearing evidence, the Court denies the
7 Plaintiff's 306a motion to extend the periods of time.
8 And by -- as a result of such denial, the Plaintiff is
9 required to comply with the deadlines as if he had
10 knowledge of the order when it was signed.

11 And I know, Dr. Bass, that you're ready
12 to put on all kinds of evidence about when you received
13 the notice, and -- and I know that the Defense is ready
14 to argue why you should have corrected the reason why
15 you didn't receive the notice earlier.

16 But for purposes of the 306a motion, the
17 Court finds none of that to be relevant, and that the
18 Plaintiff has timely perfected the ability to complain
19 about the order granting the plea to the jurisdiction.

20 And, so, the Court now moves to
21 Plaintiff's Rule 329 Motion for New Trial, would call on
22 Dr. Bass to argue that.

23 *MR. BASS:* Could I have a short break to
24 orient myself?

25 *THE COURT:* Sure.

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1 date that closed the paper record. I had notice of none
2 of them.

3 Second, Rule 21a, service to me was
4 defective. The certificates of error in this case
5 record serviced me as error or as sent to an address
6 that does not exist in one particular case.

7 Your Honor, these are contested factual
8 questions. I ask the Court to take evidence on them
9 today, to admit my exhibits and hear my testimony,
10 because Peralta requires findings of facts, and findings
11 cannot be made on papers alone. Today is where the
12 record, I hope, gets built.

13 *THE COURT:* Okay. So, I do have a
14 question. You received the plea to the jurisdiction
15 that was filed by the Defendants, because you filed a
16 response to that plea.

17 What you didn't get, because of the email
18 address issue, you didn't get the notice of the hearing
19 on the plea, which was by submission, not oral argument.
20 You didn't get the proposed order granting the plea.
21 You didn't get the Defendants' reply to your response to
22 the plea.

23 And what was the fourth thing that you
24 didn't get?

25 *MR. BASS:* The -- the March 19th

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1 submission date that closed the paper record.

2 *THE COURT:* That's -- so, there was --
3 there were two orders setting hearing that you didn't
4 get. One of them I looked up last night, and it was
5 actually set for hearing before the order setting
6 hearing was signed. So, that couldn't have happened.

7 And, so, somebody realized that --
8 somebody on behalf of the Defendants realized that and
9 promptly submitted me an amended order setting hearing,
10 setting it for hearing again, by submission, at a date
11 after the order setting hearing.

12 And, so, those were two documents you
13 didn't get, and then the proposed order granting the
14 plea to the jurisdiction and then the reply by the
15 Defendants to your response.

16 What -- what would you have done
17 differently had you had notice of those four documents?

18 *MR. BASS:* One moment, Your Honor. So,
19 for the -- so, Your Honor, for the 3-13th, the notice of
20 submission, plus submitted notice of submission, I would
21 have objected, requested an oral argument. For 3-13,
22 the pre-drafted proposed order, I would have objected to
23 form and substance. 3-18, for the reply through the
24 arguments, ripeness futility, and academic deference, I
25 would have moved for a leave to file surreply.

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1 And, then, for the -- for the 3-19 one, I
2 would have filed a surreply answering the -- the 3-18
3 before the submission closed.

4 And to add onto that, however, I would
5 also say, or at least it is my understanding that
6 Peralta forecloses the same result argument entirely,
7 independent of what I might have done.

8 As Peralta says, for 85 U.S. 80 at 86 to
9 87, it is no answer saying that in his particular case
10 due process of law would have led to the same result
11 because he had no adequate defense on the merits.

12 And, so, independent of what I might have
13 done, the lack of notice and opportunity was itself the
14 Peralta violation. No showing of a different outcome is
15 required.

16 *THE COURT:* All right. Thank you.

17 Mr. Smith?

18 **DEFENDANT'S ORAL ARGUMENT**

19 *MR. SMITH:* Yes, Your Honor.

20 So, the first point I want to make is
21 that Mr. Bass was not deprived of any due process
22 rights. He had his notice and opportunity to be heard,
23 which is evidenced by his comprehensive 78-page response
24 addressing Defendants' plea to the jurisdiction.

25 Mr. Bass's assertion that he didn't

May 21, 2026

1 is the futility argument under Miranda that Defendants'
2 original plea was fundamentally jurisdictional, and so a
3 dismissal for lack of subject matter jurisdiction. And,
4 so, the -- by simply arguing that any amendment is
5 futile. That -- that all the Defendants were arguing is
6 that Plaintiff had already amended, repeatedly, the
7 defect was legal rather than factual. So, further
8 amendment could not convert discretionary conduct into
9 administerial duties.

10 That's it. It's not a new jurisdictional
11 ground. There's no new arguments that are raised.
12 Simply, what Plaintiff is seeking is a second
13 opportunity to litigate issues that have already been
14 fully briefed. So, Defendants would respectfully submit
15 that his Motion for New Trial be denied. Thank you.

16 **COURT'S CLOSING COMMENTS**

17 *THE COURT:* Okay. All right. So, I
18 think the Court has discretion as to whether or not to
19 entertain evidence at a Motion for New Trial hearing.
20 The Court finds that the Plaintiff has sufficiently
21 briefed everything that's necessary to support his
22 argument here today on the Motion for New Trial, that
23 there's no factual evidence that would bolster or be
24 germane to the Motion for New Trial. It's a procedural
25 issue.

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1 And the Court finds that evidence is --
2 is not necessary and will not entertain evidence.

3 So, the Court will consider the Motion
4 for New Trial based on the pleadings and the arguments
5 by the Plaintiff here today and the response by the
6 Defense. And the Court will let the parties know of its
7 ruling on the Motion for New Trial probably, oh, say,
8 Wednesday or so of next week.

9 All right. Thank you very much.

10 *MR. BASS:* Thank you, Your Honor.

11 *THE COURT:* All right. Bye-bye.

12 *(Proceedings adjourned)*

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APPENDIX TAB G

TTUHSC HSC OP 77.13 — Student Education Records

CR 149–57.



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Operating Policy and Procedure

HSC OP: 77.13, Student Education Records

PURPOSE: This Health Sciences Center Operating Policy and Procedure (HSC OP) is intended to implement the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and other federal and state laws governing access to and confidentiality of records and information pertaining to Students. To the extent that there is any dispute regarding the terms and conditions of this policy, the provisions of FERPA will prevail in each instance, notwithstanding anything in this policy which may provide otherwise.

REVIEW: This HSC OP will be reviewed on March 1 of every odd-numbered year (ONY) by the TTUHSC Registrar and the Senior Associate General Counsel, with recommendations for revisions forwarded to the Executive Vice President for Academic Affairs by May 1.

POLICY/PROCEDURE:

1. Definitions

- a. Directory Information. "Directory Information" is information in a Student's Education Record that would not generally be considered harmful or an invasion of privacy if disclosed.
 - (1) The following information is designated by TTUHSC as Directory Information:
 - (a) Student's name, address, previous institution(s) attended, major field of study, dates of attendance, enrollment status (e.g., undergraduate or graduate, part-time or full-time), classification, degree(s) conferred, date(s) of degree(s) (including degrees from previous institutions), honors and awards (including scholarships), participation in officially recognized activities, and postgraduate training/clinical sites for R.N., M.D. or Ph.D. graduates and degree candidates.
 - (2) "Dates of Attendance" means the period of time during which a Student attends or attended TTUHSC, such as an academic year, a spring semester, or a first quarter. The term does not include specific daily records of a Student's attendance at TTUHSC.
- b. Education Records. "Education Records" are records that are directly related to a Student and that are maintained by TTUHSC or by a party acting for TTUHSC. The term does not include:
 - (1) Records of instructional, administrative and educational personnel that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
 - (2) Records of the Texas Tech Police Department, subject to the provisions of 34 C.F.R. 99.8;
 - (3) Records relating solely to an employee of TTUHSC in his/her capacity as an employee that are not available for any other purpose, unless the Student is employed as a result of his/her status as a Student;
 - (4) Student medical and counseling records created, maintained, and/or used only in connection with providing medical treatment or counseling to the Student, that are not disclosed to anyone other than the individuals providing the treatment; and,
 - (5) Alumni records or other records that contain information about an individual after he/she is no longer a Student at that agency or institution (e.g., information gathered on the accomplishments of alumni).

- c. Eligible Student. An “Eligible Student” is a Student who has reached the age of 18 or is attending an institution of postsecondary education.
- d. Legitimate Educational Interest. A “University Official” has a “Legitimate Educational Interest” if the official is:
 - (1) Performing a task that is specified in his/her position description or responsibilities designated by contract or state law;
 - (2) Performing a task related to a Student’s education;
 - (3) Performing a task related to the discipline of a Student; or,
 - (4) Providing a service or benefit relating to the Student or Student’s family, such as health care, counseling, job placement, or financial aid.

Questions regarding “Legitimate Educational Interest” should be referred to the Registrar or the Dean of the school in which the Student is enrolled. Instances of dispute regarding “Legitimate Educational Interest” will be resolved by the Executive Vice President for Academic Affairs.

- e. Records Custodian. TTUHSC office or individual responsible for maintaining a specific Education Record.
- f. Student. A “Student” is any individual who is or has been in attendance at TTUHSC, either full-time or part-time, pursuing undergraduate, graduate or professional studies, and regarding those individuals for whom TTUHSC maintains Education Records, but specifically excluding School of Medicine House staff.
 - (1) “Attendance” means enrollment in a course that is taken in person, by correspondence, electronic distance education or other means.
 - (2) An individual who is or has been enrolled in one component unit of TTUHSC and applies for admission to a second unit, has no right to inspect the records accumulated by the second unit until enrolled therein.
- g. University. “University” means Texas Tech University Health Sciences Center (TTUHSC), inclusive of all regional sites and their components.
- h. “University Official.” A “University Official” includes:
 - (1) A person employed by TTUHSC in an administrative, supervisory, academic, research, or support staff position, including, but not limited to, law enforcement unit personnel and health staff;
 - (2) A person or organization with whom TTUHSC has contracted, such as an attorney, auditor, or collection agent;
 - (3) A Student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his/her tasks;
 - (4) A person serving on the Texas Tech Board of Regents; or,
 - (5) A person or organization acting as an agent of TTUHSC and performing a business function or service on behalf of the University.

2. **Release of Directory Information (34 C.F.R. 99.3; 34 C.F.R. 99.37)**

- a. Subject to Sections 2(b)-(c) and (3) below, a Student may request that his/her Directory Information be withheld at any time by:
 - (1) Submitting a written request to the TTUHSC Registrar’s Office to withhold the information; or,
 - (2) Changing the Directory Information release indicator via <http://webraider.ttuhs.edu>.

- b. A request to withhold Directory Information may take up to one (1) business day to process and may not be effective until such time.
- c. A Student's notification to restrict the release of Directory Information will remain in effect until the Student either:
 - (1) Submits written notice to the TTUHSC's Registrar's Office to release the information; or,
 - (2) Changes the Directory Information release indicator via <http://webraider.ttuhs.edu>.
- d. If an "Unlisted in Web Directory" is indicated in Banner for a Student, that Student's name will not appear in the commencement bulletin and other University publications, and employers, credit card companies, loan agencies, friends, parents, relatives, news media and the like will be denied any Directory Information.
- e. TTUHSC may disclose Directory Information about a former Student, unless the Student, at his or her last opportunity as a Student, requested that Directory Information not be disclosed and the Student has not informed TTUHSC, either electronically or in writing, to the contrary.

3. **Disclosure of Education Records (34 C.F.R. 99.31)**

- a. TTUHSC will disclose information from a Student's Education Records only with the written consent of the Student (Student Consent to Release Education Records form, Attachment A), except for disclosures in the following situations.
 - (1) University Officials. University Officials determined by TTUHSC to have a Legitimate Educational Interest in the records.
 - (2) Agents of TTUHSC. Agents acting on behalf of TTUHSC (e.g., Clearinghouses, degree/enrollment verifiers, etc.)
 - (3) Officials of Another School. Officials of another school in which a Student seeks or intends to enroll.
 - (4) U.S. Government Officials. Certain officials of the U.S. Department of Education, the Comptroller General, and state and local educational authorities in connection with an audit, authorized representatives of the U.S. Attorney General, or certain state or federally supported education programs.
 - (5) Financial Aid. Individuals needing this information to determine the eligibility of a Student for financial aid, the amount or conditions of a Student's financial aid, or to enforce the terms and conditions of a Student's financial aid.
 - (6) State and Local Officials. State and local officials and authorities to whom disclosure is specifically allowed pursuant to state statute adopted:
 - (a) before November 19, 1974, if the allowed disclosure concerns the juvenile justice system and that system's ability to effectively serve the Student whose records are released; or,
 - (b) after November 19, 1974, if the allowed disclosure concerns the juvenile justice system and that system's ability to serve effectively, prior to adjudication, the Student whose records are released, and if the officials to whom the information is disclosed certify in writing to TTUHSC that the information will not be disclosed to any other party without the Student's written consent, except as provided under state law.
 - (7) Organizations Conducting Studies. Organizations conducting certain studies for or on behalf of the University for those functions set forth in 34 CFR 99.31.
 - (8) Accrediting Organizations. Accrediting organizations to carry out their functions.
 - (9) Parents of Dependent. Parents, as defined in 34 CFR 99.3, of an Eligible Student who claims the Student as a dependent for income tax purposes, provided that the parent provides adequate written documentation of the dependent status.
 - (10) Subpoena or Judicial Order. Individuals requiring such information by means of a judicial order or a lawfully issued subpoena, provided that TTUHSC makes a reasonable attempt to inform the Student in advance of compliance with the order or subpoena. TTUHSC's

notice to the Student will be in writing and inform the Student that it has received an order or a subpoena, that it intends to comply (if it does) 14 calendar days from the date of the notice, and that a motion to quash by the Student must be filed before the date TTUHSC intends to comply with the order or subpoena. However, TTUHSC will not inform the Student when:

- (a) A federal grand jury subpoena and the court have ordered that the existence or the contents of the subpoena, or the information furnished in response to the subpoena, not be disclosed; or,
- (b) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena, or the information furnished in response to the subpoena, not be disclosed.

If a Records Custodian or other University Official receives a court order, a subpoena, or similar document, such individual should immediately contact the Office of General Counsel and the respective Dean's Office.

- (11) Health and Safety. Appropriate parties in a health or safety emergency, subject to 34 CFR 99.36.
- (12) Directory Information. Individuals requesting a Student's "Directory Information," unless the Student has requested such Directory Information be withheld. Refer to Section 7 above, Release of Directory Information.
- (13) Parent (when Student is under 18). Parent of a Student who is not an Eligible Student.
- (14) Victims – Violence or Non-forcible Sex Offenses. Alleged victims of any crime of violence or a non-forcible sex offense, subject to the requirements in 34 CFR 99.39. The disclosure may only include the final results of any disciplinary proceeding related to the alleged crime or offense, regardless of whether TTUHSC concluded a violation was committed. As used herein, the term "crime of violence" means arson, assault offenses, burglary, criminal homicide, destruction/damage/vandalism of property, kidnapping/abduction, robbery and forcible sex offenses, as those terms are defined by 29 CFR 99.39, and the term "non-forcible sex offense" means statutory rape or incest. The term "final results" means a decision or determination made by any entity or individual authorized to resolve disciplinary matters. Disclosure of final results may include the name of the student who is the alleged perpetrator, any violation committed and any sanction imposed (including description of disciplinary action, date imposed and the sanction's duration).
- (15) Third Parties – Violence or Non-forcible Sex Offenses. Third parties regarding the final results of any disciplinary proceeding against a Student who is an alleged perpetrator of any crime of violence or non-forcible sex offense, if on or after October 7, 1998, the Student is found responsible for violating the University's rules or policies with respect to such crime or offense. Such disclosure shall include only the name of the Student, the violation committed, and any sanction imposed by TTUHSC on that Student. Such disclosure may include the name of any other Student, such as a victim or witness, only with the written consent of that other Student.
- (16) Parent or Legal Guardian – Alcohol or Drugs Violations. Parent or legal guardian of a Student regarding information with respect to a violation of federal, state or local law, or of any rule or policy of the University, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the Student's Education Records, if the Student is under the age of 21 at the time of disclosure to the parent, and TTUHSC determines that the Student is responsible for a disciplinary violation with respect to such use or possession.
- (17) Legal Action by TTUHSC against Parent or Student. TTUHSC may disclose to the court, without a court order or subpoena, if TTUHSC initiates legal action against a parent or Eligible Student. TTUHSC may disclose the Education Records of a Student that are relevant for TTUHSC to precede with legal action. In addition, if a parent or Eligible Student initiates legal action against TTUHSC, TTUHSC may disclose to the court, without a court order or subpoena, the Student's Education Records that are relevant for TTUHSC to defend itself. The Office of General Counsel should be consulted before TTUHSC discloses Education Records to a court pursuant to this section.

- (18) Student Exchange Visitor Information System. The Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) for the purpose of complying with Request Form ICE relative to TTUHSC's participation in Student Exchange Visitor Information System (SEVIS).
 - (19) Military Recruiters. Military recruiters who request "Student Recruiting Information" for recruiting purposes only (Solomon Amendment, 10 U.S.C. § 983; 32 C.F.R. Part 216), unless the Student has elected to withhold this information under Section 2 above. Student Recruiting Information is name, address, telephone listing, age (or year of birth), class level, major, degrees received and most recent educational institution of enrollment.
 - (20) Internal Revenue Service. The Internal Revenue Service (IRS) for purposes of complying with the Taxpayer Relief Act of 1997.
 - (21) Veterans Affairs. Authorized representatives of the Department of Veterans Affairs for Students receiving educational assistance from the agency.
- b. When personally identifiable information is disclosed from a Student's Education Records pursuant to his/her written consent, the Student may, upon request, obtain a copy of the information disclosed.
 - c. Each Records Custodian shall maintain with the Student's Education Records documentation for each disclosure request that he/she receives and each disclosure, except the following disclosures:
 - (1) To the Student himself or herself;
 - (2) Pursuant to the written consent of the Student;
 - (3) To University Officials with Legitimate Educational Interest(s);
 - (4) Pursuant to a law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena shall not be disclosed or the order concerns an authorized investigation or prosecution of domestic or international terrorism; or,
 - (5) Directory Information. (34 C.F.R. 99.32).

4. **Review and Inspection of Education Records by Student (34 C.F.R. 99.10- 99.12)**

- a. Education Records Subject to Inspection. With certain exceptions, a Student has the right to inspect and review his/her Education Records.
- b. Education Records **Not** Subject to Inspection (34 C.F.R. 99.12). Some records related to a Student may be "Education Records", but are not subject to inspection by the Student. TTUHSC reserves the right to refuse the inspection and review of certain records, including, but not limited to:
 - (1) Financial information submitted by the Student's parents, if applicable;
 - (2) Confidential letters and statements of recommendations associated with admissions, employment or job placement, or honors, to which the Student has waived rights of inspection and review;
 - (3) Confidential letters and statements of recommendation placed in the Education Records of the Student prior to January 1, 1975, as long as the statements are used solely for the purposes for which they were specifically intended; and,
 - (4) Education Records containing information regarding more than one Student, in which case TTUHSC will permit access only to the part of the record that pertains to the inquiring Student.
- c. Student Requests for Access of Education Records.
 - (1) A Student's request for access to his/her Education Records should be made by completing a Student Request for Access to His/Her Education Records form

- (Attachment B) and returning the form to the Records Custodian. The Student must identify as precisely as possible the record(s) the Student wishes to inspect.
- (2) Although principal locations for Student Education Records are referenced below, a Student is in the best position to determine which offices or officials are likely to possess his/her Education Records. If a Student is uncertain as to what office maintains the records at issue, the Student shall submit a written request for assistance to the Executive Vice President for Academic Affairs.
 - (3) Proper photographic identification must be presented to the Records Custodian before the documents may be reviewed.
 - (4) Records authorized to be disclosed under FERPA will be made available to the Student within forty-five (45) days from the Records Custodian's receipt of the written request. If the records are not excepted from access, and are covered by FERPA, the Records Custodian will make arrangements for access and notify the Student of the time and place the records may be inspected.
 - (5) Copies of all written requests are to be maintained in the Student file in which the requested educational record is maintained.
- d. Principal Locations for Student Education Records. Any TTUHSC office or official may possess an Education Record regarding a Student. A Student is in the best position to determine which offices or officials are likely to have his/her Education Records. Records Custodians include, but are not limited to, the following offices and/or officials:
- (1) Academic Records
 - (a) Registrar's Office – admission records, basic scholastic records, and disciplinary records when a Student is placed on suspension or is dismissed;
 - (b) Dean's Office for each School – academic progress and disciplinary records; or,
 - (c) Admissions Office for each School – admission records.
 - (2) Student Services Records
 - (a) Registered Student organizations records;
 - (b) Disabled Student Records (ADA); or
 - (c) Disciplinary records.
 - (3) Financial Records.
 - (a) Student Business Services – Student tuition and fees; or,
 - (b) Student Financial Aid – Student loans.
- e. Copies of Education Records (34 CFR 99.10(d)).
- (1) Generally, if the Education Record is covered under FERPA, the Student may inspect or review the Education Record at the office of the Records Custodian, but does not have the right to receive copies of the Education Record unless a Student is effectively prevented from onsite inspection or review of his/her Education Record. The Student may then have a right to receive copies of the Education Record at the Student's expense after evaluation of the circumstances by the Records Custodian.
 - (2) Official copies of academic records or transcripts will not be released for Students who have a delinquent or unpaid financial obligation to the University, have a "hold" at the University, or have an unresolved disciplinary action pending at the University, provided that applicable law does not otherwise require disclosure of the records.
 - (3) While TTUHSC is not required to give student access to treatment records under FERPA (see section 1(b)(4) above), a Student may request in writing that those records be reviewed by a physician or other appropriate professional of the student's choice.

5. **Student's Request to Amend Records (34 C.F.R. 99.20-99.22)**

- a. Informal Discussion. A Student who believes that his/her Education Records are inaccurate or misleading, or that the records violate his/her privacy rights, must first request an informal discussion regarding the questionable item with the Records Custodian, who may or may not honor the request.

- b. Written Request to Amend Records. If the result of the informal discussion with the Records Custodian is not satisfactory to the Student, and the Student still wishes to have the record corrected, the Student should submit a Student Request to Amend Education Records form (Attachment C) to the Executive Vice President for Academic Affairs or designee. The request shall clearly identify the part of the record the Student believes should be changed, and specify why it should be changed, i.e., why the Student believes the record is inaccurate, misleading or in violation of his/her privacy rights. **[Note: The substantive judgment of a faculty member regarding a Student's work, expressed in grades or evaluations, is not within the purview of the right to seek amendment of Education Records under this section. This section does not include procedures for Students challenging individual grades. Grade appeal and grievance procedures are set forth in the individual Student handbooks for each School and the TTUHSC Student Handbook/ Code of Professional and Academic Conduct.]**
- c. Review by the Executive Vice President for Academic Affairs. After receiving the written request from the Student for a change in his/her Education Records, the Executive Vice President for Academic Affairs ("EVPAA") or designee shall request, and the Records Custodian shall provide, a written statement that explains why the request for the change in the Education Record was denied at the informal stage. After reviewing the request by the Student and the response of the Records Custodian, the EVPAA or designee will provide written notification to the Student whether or not TTUHSC will implement the change. If not, the EVPAA or designee will notify the Student of the right to a hearing to challenge the information believed by the Student to be inaccurate, misleading, or in violation of the Student's rights.
- d. Hearing Procedures (34 C.F.R. 99.22). Upon receiving a written request from the Student for a hearing, the EVPAA or designee shall arrange for a hearing and provide written notice to the Student reasonably in advance of the date, time and place of the hearing. The hearing will be conducted according to the following procedures:
 - (1) The hearing shall be conducted by a hearing official or committee appointed by the President or designee. Such individual(s) must have no direct interest in the outcome of the case and shall decline to serve if a conflict of interest, or an appearance of a conflict of interest, exists with either the Student or the Records Custodian.
 - (2) At least five (5) days prior to the date scheduled for the hearing, the Student and the Records Custodian, shall submit to each other, as well as to the hearing official or committee, any and all pertinent documents and a list of witnesses and advisors who are to be involved in the hearing process. The Student may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney. If the Student has an advisor, the Office of General Counsel shall represent the University. The Student and the Records Custodian are each responsible for presenting relevant information. Therefore, the advisors and/or attorneys for the Parties are not permitted to speak or participate directly in the hearing.
 - (3) At the hearing, the Student shall have the opportunity to present evidence to support his/her position that the content of the relevant educational record is inaccurate, misleading and/or otherwise in violation of the privacy rights of the Student.
 - (4) Any additional information regarding the hearing procedures will be provided to the Student when notified of the right to a hearing.
 - (5) Within seven (7) business days after the conclusion of the hearing, the hearing officer or chair of the hearing committee, if applicable, will transmit the decision in writing to the Student, the Records Custodian, and the EVPAA or designee. The decision must include a summary of the evidence and the reasons for the decision. If, as a result of the hearing, the hearing official or committee determines that the information in the Education Record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the Student, the Student will be notified of the right to place a statement in the record contesting the information in the record or stating why the Student disagrees with the

decision of the agency or institution, or both. Any statement provided by the Student shall be maintained with the contested portion of the record for as long as the record is maintained. In the event the contested portion of the record is later requested, the statement shall be disclosed with the record to the extent it pertains to the contested portion.

6. Annual Notice

Students will be notified of their FERPA rights annually through the *TTUHSC Student Handbook / Code of Professional and Academic Conduct*, the TTUHSC orientation process, and the Office of the Registrar website located at <http://www.ttuhs.edu/registrar>. The *TTUHSC Student Handbook* and this operating policy and procedure are available in hard copy to all Students who request it. In addition to this notice, individual TTUHSC schools may annually notify Students of their rights under FERPA.

7. Address and Phone Numbers of Record

Students shall maintain an accurate, local physical address, with the TTUHSC Registrar's Office. These addresses are used for official notifications including, but not limited to, grade reports, billing, and notification of university requirements and other correspondence. In addition, Students may provide current telephone numbers to the Registrar's Office.

8. Complaints (34 C.F.R. 99.63)

A Student has the right to file a complaint within 180 days of the alleged violation with the U.S. Department of Education concerning alleged failures by TTUHSC to comply with the requirements of FERPA. The name and address of the office that administers FERPA is:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-4605.

9. Student Information System for TTUHSC Employees

- a. Banner is an integrated online and web-based student information system that includes admissions, student records and financial aid information.
- b. Each individual requesting access must complete the FERPA training referenced below and the Confidentiality Agreement (Attachment D) and request access at <http://team.texastech.edu>. The individual must select the "Request Access to Banner" link and complete the required steps provided. Each School will have their Student Security Administrator evaluate the request, determine whether access should be granted, and forward their approval to the TTUHSC Registrar to grant the appropriate access level, if any.
- c. Each individual given access to Banner will be assigned a user name and password. In all transactions, employees shall use their own user name and passwords. Each employee shall keep his/her password confidential.
- d. When additional access is needed, the employee shall make a request for additional access to the School Student Security Administrator.
- e. If a personnel change occurs, the Department Head/Supervisor shall notify the School Student Security Administrator, and they will inform the TTUHSC Registrar to modify access when an employee terminates employment or transfers to another department or campus.

10. **FERPA Training**

- a. As part of the general orientation of all new employees, the TTUHSC Office of Human Resources will provide a brief introduction to FERPA and reference this policy.
- b. In addition to the brief introduction for all employees, all new and existing faculty, staff and volunteers who have access to Education Records shall receive detailed training regarding FERPA and this policy. This training will be administered through the TTUHSC Registrar's Office.
- c. All training shall be documented in the Registrar's Office. New employees (faculty and staff) must complete the online FERPA training before obtaining BANNER Student access, including access to the faculty and/or advisor portal in Webraider or grade course section access. FERPA training will be required every two years for all faculty and staff. FERPA compliance will be reviewed by the Office of the Registrar quarterly. All faculty and staff who are not compliant will be notified by the Registrar and have 7-10 working days to become compliant. After 10 working days, all access to the student information system will be removed until training is completed and the Office of the Registrar is notified through the TEAM site requesting access.

11. **Disciplinary Action**

- a. An individual who uses or discloses information from an Education Record, or allows access to an Education Record by another individual, in violation of this policy and/or state or federal laws and regulations may be subject to disciplinary action, including, but not limited to, dismissal/termination from TTUHSC.
- b. Inappropriate use or misuse of Student Education Records is also a violation of federal and state laws and regulations and could result in criminal and/or civil prosecution.

12. TTUHSC reserves the right to interpret, change, modify, amend or rescind any policy in whole or in part at any time without the consent of employees, faculty or Students.

Attachments: Attachment A, [Student Consent to Release Education Records](#)
Attachment B, [Student Request to Access His/Her Education Records](#)
Attachment C, [Student Request to Amend Education Records](#)
Attachment D, [Confidentiality Agreement](#)

APPENDIX TAB H

Appellees' Reply Addressing the Live Statutory Theory

CR 204–10.

require this Court to supervise how a public university administers its education-record processes in connection with an academic dismissal. Sovereign immunity does not permit such intrusion.

Plaintiff's theory rests on the premise that Texas Government Code § 559.004 and TTUHSC's internal policy, HSC OP 77.13, convert record-inspection logistics into purely ministerial duties enforceable by injunction. They do not. Section 559.004 requires a governmental body to establish a reasonable procedure, and TTUHSC has done so. Plaintiff's dissatisfaction with how that procedure was applied to his situation does not transform discretionary administrative judgment into ultra vires conduct.

Because Plaintiff challenges discretionary acts rather than conduct taken without legal authority, sovereign immunity bars this suit. Even if jurisdiction existed, abatement remains warranted due to the parallel federal action involving the same disciplinary nucleus and the same officials. Accordingly, the Plea should be granted.

II. REPLY

A. Plaintiff Has Not Alleged Ultra Vires Conduct

The ultra vires exception to sovereign immunity is narrow. Under *City of El Paso v. Heinrich*, sovereign immunity does not bar suits seeking prospective relief against officials who act without legal authority or who fail to perform a purely ministerial duty.¹ 284 S.W.3d 366, 372-73 (Tex. 2009). The exception does not permit courts to control discretionary governmental conduct, nor does it authorize judicial supervision of administrative implementation mechanics simply because a plaintiff labels them “procedural.”

¹ Plaintiff's reliance on *Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184 (Tex. 2024), is misplaced. *Hensley* addressed statutory limits that expressly constrained the Commission's authority to take specific disciplinary action—not discretionary implementation of broadly worded procedural language. *Id.* at 195-97. Here, by contrast, § 559.004 does not prescribe specific implementation mechanics for record inspection or amendment; it requires only that a governmental body establish a reasonable procedure. Determining what is reasonable necessarily involves administrative judgment. *Hensley* does not transform discretionary implementation of a broadly worded statute into a purely ministerial duty.

Plaintiff does not allege that Defendants lacked authority over education records. To the contrary, his Petition confirms that TTUHSC maintains his records and administers a published inspection and amendment procedure. His complaint concerns how inspection sessions were structured, how scheduling was handled, and how his amendment request was processed. Those allegations, even if taken as true, concern the exercise of administrative judgment within the scope of Defendants' authority. To the extent Plaintiff references transcript review or correction, those allegations likewise implicate discretionary academic and administrative judgment, not the failure to perform a ministerial duty.

Ultra vires jurisdiction turns on the absence of legal authority—not disagreement with how that authority is exercised. Plaintiff's live pleading does not allege conduct outside Defendants' statutory or institutional authority. It therefore fails to satisfy *Heinrich's* threshold requirement. Plaintiff challenges discretionary implementation rather than unauthorized action. The ultra vires exception therefore does not apply.

B. Section 559.004 Does Not Create a Purely Ministerial Duty

Plaintiff's central argument is that Texas Government Code § 559.004 imposes a mandatory, ministerial obligation that Defendants have failed to perform. The statute provides that a state governmental body "shall establish a reasonable procedure" under which an individual may seek correction of information and that the procedure "may not unduly burden" the individual. That language does not eliminate discretion.

The Legislature did not prescribe a specific format for inspection, copying, recording, or third-party attendance. It did not define what constitutes a "reasonable" procedure or what qualifies as an "undue burden." By employing flexible terms such as "reasonable" and "unduly burden," the Legislature necessarily entrusted implementation to the governmental body. Determining what

is reasonable in this context requires administrative judgment. A duty is ministerial only when “the law clearly spells out the duty to be performed...with such certainty that nothing is left to the exercise of discretion.” *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). Section 559.004 does not meet that standard.

TTUHSC has established a procedure—OP 77.13. Plaintiff’s disagreement with how inspection was conducted does not demonstrate that Defendants failed to establish a procedure. At most, it reflects disagreement with how that procedure was administered. That is not a ministerial omission. Section 559.004 leaves room for institutional judgment; it does not support ultra vires jurisdiction.

C. OP 77.13 Does Not Transform Administrative Discretion into Enforceable Ministerial Duties

Plaintiff further argues that TTUHSC’s internal policy, OP 77.13, functions as “enabling law” and therefore constrains discretion in a manner enforceable under *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016). That analogy fails.

Houston Belt involved a municipal ordinance defining the parameters of a drainage fee and statutory limits on its imposition. It did not involve internal academic policy governing record administration. An internal university policy outlining procedural steps does not eliminate administrative discretion in implementation, nor does it waive sovereign immunity. Even when policies employ mandatory language, the existence of procedural steps does not render every aspect of their administration ministerial. See *Southwestern Bell Telephone, L.P. v. Emmett*, 459 S.W.3d 578 (Tex. 2015) (recognizing that statutory “shall” language does not eliminate discretion where implementation requires judgment).

Plaintiff’s allegations concern inspection format, copying restrictions, recording, and scheduling. Those are administrative judgments committed to institutional discretion. Nothing in

OP 77.13 strips Defendants of that discretion or converts those decisions into mechanical duties enforceable by injunction. OP 77.13 governs process but does not eliminate discretion in its administration. Ultra vires relief is therefore unavailable.

D. Academic Record Administration Is Entitled to Judicial Deference

The transcript notation at issue arises from academic disciplinary proceedings. Courts consistently recognize that academic determinations and related record administration fall within the discretionary authority of educational institutions. *See Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985); *University of Texas Medical School at Houston v. Than*, 901 S.W.2d 926, 931 (Tex. 1995); *Alcorn v. Vaksman*, 877 S.W.2d 390, 403 (Tex. App.—Houston [1st Dist.] 1994, writ denied).

Although Plaintiff insists that he does not challenge the merits of the disciplinary decision, the relief he seeks would require this Court to supervise the manner in which TTUHSC administers education records associated with that decision. Judicial intrusion into those administrative mechanics would undermine the deference courts afford academic institutions in disciplinary matters. Academic record administration falls within institutional discretion. It is not subject to ultra vires control by this Court.

E. Plaintiff's Ripeness Theory Does Not Create Jurisdiction

Plaintiff contends that his claims are ripe because OP 77.13's 45-day window expired. Even assuming *arguendo* that his allegations are true for jurisdictional purposes, a dispute over timing does not create ultra vires jurisdiction. Failure to meet an internal administrative deadline, even if it occurred, does not constitute action without legal authority.

Ripeness does not expand ultra vires jurisdiction beyond purely ministerial duties, and it requires a final and definitive position that inflicts a concrete injury. *See Texas Dep't of Protective*

& Regulatory Servs. v. Mega Child Care, Inc., 145 S.W.3d 170, 198 (Tex. 2004). OP 77.13’s provisions governing access to education records are patterned after the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations, which require only that a student be given an “opportunity to inspect and review” education records. 34 C.F.R. § 99.10. Neither OP 77.13 nor FERPA defines what constitutes an “opportunity,” nor do they mandate a minimum amount of time or prescribe the manner in which inspection must occur. Plaintiff’s own pleading reflects ongoing administrative exchanges and multiple opportunities to review the records at issue, including more than forty hours of access across seven days over a three-month period. A disagreement over inspection logistics or the pace and structure of administrative access does not create a justiciable ultra vires controversy. And even if Plaintiff attempts to characterize TTUHSC’s position as a “final” determination, the complained-of conduct still concerns discretionary implementation of a reasonable procedure—not the failure to perform a purely ministerial duty.

Accordingly, the ultra vires exception does not apply, and Plaintiff’s ripeness theory fails. Plaintiff’s theory improperly reframes discretionary administration as jurisdictional error.

F. Abatement Remains Warranted

Even if this Court were to conclude that jurisdiction exists, abatement remains appropriate. Defendants’ request is grounded not merely in Rule 93 but in this Court’s inherent authority to prevent duplicative litigation and inconsistent rulings. *See Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974); *Van Dyke v. Boswell, O’Toole, Davis & Pickering*, 697 S.W.2d 381, 383 (Tex. 1985).

The parallel federal action arises from the same disciplinary proceedings, challenges the same transcript consequences, and names the same officials. Immunity defenses are pending in

that forum. Permitting parallel litigation in two sovereign courts risks inconsistent rulings and undermines the protection from litigation burdens that immunity is designed to provide. At a minimum, orderly adjudication favors abatement pending resolution of the federal case.

G. Amendment is Futile

Under *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), dismissal is proper where pleadings affirmatively negate jurisdiction. Plaintiff has amended repeatedly. His Fourth Amended Petition narrows its phrasing but continues to challenge discretionary administrative conduct. No additional amendment can convert that conduct into a purely ministerial duty. The jurisdictional defect is legal rather than factual. Further amendment would therefore be futile, and dismissal is proper.

III. CONCLUSION AND PRAYER FOR RELIEF

Plaintiff's increasingly refined procedural framing does not alter the governing analysis. Section 559.004 requires a reasonable procedure, and TTUHSC has established one. Plaintiff's disagreement with how that procedure has been implemented does not constitute ultra vires conduct. Sovereign immunity deprives this Court of subject-matter jurisdiction. Alternatively, principles of comity and judicial economy warrant abatement pending resolution of the parallel federal action.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant the Plea to the Jurisdiction and dismiss Plaintiff's claims without prejudice or, alternatively, grant the Plea in Abatement and stay these proceedings pending final disposition of the federal action, and grant all other and further relief to which Defendants may be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General

APPENDIX TAB I

Appellant's Postjudgment Answers to the Reply Grounds

CR 299–304.

- March 13, 2026, 4:40 p.m. — Amended Notice of Submission (Envelope ID 112418015): ERROR. Defendants corrected a defect in the original Notice of Submission within fifty-eight minutes by amendment; they did not correct the service-to-Plaintiff defect that the eFileTexas system was simultaneously flagging on the face of the paper.
- March 18, 2026, 3:29 p.m. — Reply in Support of the Plea (Envelope ID 112584730): SENT to the nonexistent truncated address. Exhibit D.
- April 14, 2026, 3:28 p.m. — Response in Opposition: ERROR. Response at 9.

Three features of this record compound the defect. First, the Proposed Order ERROR certificate — on the document this Court signed — remained ERROR for the thirteen days between filing and signing; the certificate was re-refreshed by re:SearchTX at 4:09 p.m. on March 26 and still reported ERROR. Exhibit C, page 3. Defendants had thirteen days to correct or redirect service of the very document that became the judgment. They did neither. Second, on the face of the March 13, 2026 Notice of Submission itself, Defendants’ counsel hand-typed a Certificate of Service listing Plaintiff’s correct email “kbassphiladelphia@gmail.com,” while on the same page, immediately below, the eFileTexas Automated Certificate of eService reported service to Plaintiff’s truncated “kbassphiladelphi@gmail.com” as ERROR. Exhibit B. Counsel thus typed the correct address by hand on the same document, on the same page, where the automated system simultaneously reported failed delivery to the incorrect address. Third, on March 13, 2026 at 3:17 p.m. — nineteen minutes before Defendants filed the Notice of Submission through the eFileTexas system that recorded ERROR — Defendants’ counsel emailed Plaintiff at his correct address, kbassphiladelphia@gmail.com, about the FERPA-records subject matter of this state-court case. Exhibit F-2. Counsel held the correct address, was actively using it, and typed it by hand on the face of the very filing whose electronic service the system was flagging as failed.

Defendants’ counsel’s asymmetric conduct is controlling. Counsel had Plaintiff’s correct email address throughout and used it for direct correspondence with Plaintiff on a continuing basis — beginning well before the March 3 service defect arose and continuing through March 30, 2026. On January 26, 2026, AAG Scott D. Smith emailed Plaintiff directly at kbassphiladelphia@gmail.com in this state case (DC-2025-CV-1817) regarding Plaintiff’s courtesy copy of the Amended Petition and Notice of Nonsuit, expressly writing: “Service via this email is fine.” Exhibit K (Gmail Message ID 19bfc077acc15dc1; subject “Re: DC-2025-CV-1817 — Courtesy copy of today’s eFiled Amended Petition and Notice of Nonsuit”). Counsel continued to use the correct address on March 12 and March 13, 2026 concerning the FERPA-records subject matter of this state-court action and on March 22 and March 30, 2026 concerning the parallel federal case (Bass v. TTUHSC, No. 5:25-cv-00244-H-BV). Exhibits F-1 through F-4. Plaintiff’s Motion ¶ 40 and Exhibit F summary-list at Motion page 12 referred to counsel’s January 26, 2026 email as the most

recent use of Plaintiff’s correct address; that reference was correct as to the January 26 email’s existence and content but erroneous as to recency, because counsel continued to use the correct address in the months following. The four March emails from counsel are re-tendered with this Reply as Exhibits F-1 through F-4. The January 26, 2026 email is tendered with this Reply as Exhibit K, authenticated by its Gmail Message ID, with the original .eml preserved and available for the Court’s or Defendants’ forensic inspection upon request.

On April 15, 2026 at 12:06 p.m. Central Time — the day after filing the Response in Opposition, and twenty days after this Court signed the Order on Defendants’ Plea — Karla Gutierrez of the Office of the Attorney General transmitted the Response to Plaintiff by direct email at kbassphiladelphia@gmail.com, with Assistant Attorney General Scott D. Smith copied, under the subject line “Courtesy Copy of Filed Response to Motion.” Exhibit I (Gmail Message ID 19d921bfa9f0f0ab). The same direct-email channel, with the same two counsel, was available on March 13 (Notice of Submission, Amended Notice of Submission, Proposed Order), March 18 (Reply in Support), and April 2 (Clerk’s Notice of Judgment). Defendants declined to use it for any filing that would have permitted Plaintiff to be heard before the Order was signed. They used it the day after the Order secured them their relief.

A party that knows its chosen method of service is failing, holds the opposing party’s correct address, and continues to rely on the failing method until after dispositive relief is obtained has not served by a method reasonably calculated to apprise the opposing party of the pendency of the proceedings. See *Ewton v. Gayken*, 130 S.W.3d 382, 384–85 (Tex. App.—Beaumont 2004, pet. denied) (court clerk erred by relying on address of record when a correct forwarding address was known); see also *Mathis*, 166 S.W.3d at 746 (citing *Ewton* as contrary authority to duty-to-keep-current-address rule). Defendants’ Argument C — that Rule 21a imposed no duty on them to verify or troubleshoot Plaintiff’s profile — is beside the point. The question is not whether Rule 21a required Defendants to maintain Plaintiff’s profile; it is whether Rule 21a permitted Defendants to rely on service they knew was failing. It did not. *Cruz*, 528 S.W.3d at 110 (“Failure to provide proper notice results in a due process violation and mandates reversal.”).

VI.

PERALTA, LOPEZ, AND MATHIS REQUIRE NEW TRIAL

Defendants argue (Response § III.D) that “due process is satisfied where a party is afforded a meaningful opportunity to present his case” and that because Plaintiff filed a 78-page response to the Plea, the opportunity was afforded. Response at 5 (citing *Peralta*, 485 U.S. at 84–86). That reading inverts *Peralta*.

The Texas Supreme Court’s recent framing of dispositive rulings entered without the non-moving party’s participation forecloses Defendants’ approach before it begins. Four months ago

in *Tabakman v. Tabakman*, No. 24-0919 (Tex. Dec. 5, 2025) (per curiam), the Court restated the governing principles from *In re Lakeside Resort JV, LLC*, 689 S.W.3d 916 (Tex. 2024): “Default judgments are ‘greatly disfavor[ed]’ under Texas law, consistent with the strong policy preference for adjudicating cases on the merits.” *Tabakman* (slip op. at 3) (citing *Lakeside Resort*, 689 S.W.3d at 921, 925). The “adversarial clash” “increases the likelihood that accurate and truthful results will emerge” through the “collision of evidence and ideas.” *Lakeside Resort*, 689 S.W.3d at 920. “Accordingly, any doubts about a default judgment — **not just doubts about service** — ‘must be resolved against the party who secured the default.’” *Tabakman* (slip op. at 4) (quoting *Lakeside Resort*, 689 S.W.3d at 922). Mabon’s “dispositive hearing” formulation (discussed below) brings the March 26 Order within the *Lakeside Resort* category: dispositive relief obtained without the non-moving party’s participation. Any doubt about whether Plaintiff received the Rule 21a service or the Peralta notice due process requires must be resolved against Defendants, not against Plaintiff.

The Texas Supreme Court has held — with binding effect on this Court — that “[o]nce a defendant has made an appearance in a cause, he is entitled to notice of the trial setting as a matter of due process under the Fourteenth Amendment to the federal constitution.” *LBL Oil Co. v. International Power Services, Inc.*, 777 S.W.2d 390, 390–91 (Tex. 1989) (per curiam) (citing *Peralta*, 485 U.S. 80, and *Lopez*, 757 S.W.2d at 723). *LBL Oil* applied that rule on facts materially indistinguishable from these: a post-appearance defendant had been denied notice of the motion for default judgment, “which effectively was his trial setting since it was dispositive of the case.” *Id.* at 391. The Court reversed. *Id.* Here, Plaintiff was denied notice of every filing leading to the March 26 Order — the March 13 Notice of Submission, the March 13 Amended Notice of Submission, the March 13 Proposed Order itself, and the March 18 Reply in Support of the Plea — and of the Clerk’s April 2 Notice of Judgment. The Plea to the Jurisdiction was, like the default motion in *LBL Oil*, dispositive of the case. *LBL Oil* controls.

Peralta reversed the Texas courts for denying relief from a judgment entered without notice. “Failure to give notice violates ‘the most rudimentary demands of due process of law.’” 485 U.S. at 84 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)). The “meaningful opportunity” language in *Peralta* summarizes the standard; it does not supply an exception that would have required the Peralta Court to affirm. The rule Defendants derive — that a party who once filed may thereafter be denied notice of subsequent dispositive filings without a due-process violation — is the rule *Peralta* rejected.

Peralta’s rule is stated at the level of general due-process principle: “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” 485 U.S. at 84 (quoting *Mullane*, 339 U.S. at 314). The Texas Supreme Court has applied that requirement beyond the

default-judgment context to any dispositive ruling entered without adequate notice and opportunity to be heard. See *Union Carbide Corp. v. Moye*, 798 S.W.2d 792, 794 (Tex. 1990) (“the court effectively deprived Union Carbide of its fundamental due process right to notice and a hearing”; reversing venue ruling entered after movant was misled about the form of proof at the hearing). The Court reaffirmed and refined that principle in *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809, 813 (Tex. 2012) (per curiam): “Entry of a post-answer default judgment against a defendant who did not receive notice of the trial setting **or dispositive hearing** constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution.” Mabon’s “dispositive hearing” formulation is controlling on the facts of this case. The March 13 Notice of Submission set Defendants’ Plea to the Jurisdiction for submission on the papers; the March 26 Order disposing of the Plea is the “dispositive hearing” within Mabon. Plaintiff received no notice of the submission, of the March 18 Reply, of the Proposed Order, or of the Proposed Order’s signing. The due-process rule applies and Mabon controls.

The Texas Supreme Court adopted Peralta for Texas in *Lopez*: “[B]ecause the record here establishes that Guadalupe had no actual or constructive notice of the trial setting, the lower courts erred in requiring him to show that he had a meritorious defense as a condition to granting his motion for new trial,” and imposing that requirement “in the absence of notice, violates due process rights under the Fourteenth Amendment to the federal constitution.” 757 S.W.2d at 723. Mathis extended *Lopez*: “When the first element [of Craddock] is established by proof that the defaulted party was not given notice of a trial setting, we have dispensed with the second element for constitutional reasons.” 166 S.W.3d at 744.

Mathis also addressed, and rejected, the argument Defendants make here. The court of appeals below had reasoned that a litigant has a duty “to keep the court and parties apprised of their correct and current address.” 166 S.W.3d at 746. The Texas Supreme Court replied: “[E]ven assuming there is such a duty, unless noncompliance was intentional rather than a mistake, due process requires some lesser sanction than trial without notice or an opportunity to be heard.” *Id.* The eFileTexas truncation is a data-entry mistake. Defendants do not argue otherwise. Under Mathis, even if Plaintiff had a duty to audit his eFileTexas profile, the sanction Defendants seek — a final judgment on the merits of the Plea without opportunity to respond to the Reply or contest the form of the Order — is not constitutionally available.

This Court sits within the jurisdiction of the Seventh Court of Appeals, which has applied the Peralta/Lopez rule in Texas, including in recent decisions on closely analogous facts. See *McDaniel v. Hale*, 893 S.W.2d 652 (Tex. App.—Amarillo 1994, writ denied). The Seventh Court most recently applied the Lopez first-prong rule in *Strong v. Brooks*: “When a party receives no notice of a trial setting, she satisfies the first prong of Craddock and does not have to meet the remaining prongs of the test to be entitled to a new trial.” No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562,

at *4 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op.) (citing Lopez, 757 S.W.2d at 723). Strong reversed and remanded for no-notice where the Rule 21a-authorized method — certified mail — had failed to effect receipt. The same rule forecloses Defendants’ position here, where the Rule 21a-authorized method — eFileTexas transmission to the service-contact list — affirmatively reported its own failure to effect receipt on every envelope.

Defendants’ Response (at 5) recasts Plaintiff’s position as a complaint that he was “denied” the right to file a sur-reply. That is not Plaintiff’s position. Plaintiff did not see the March 13 Notice of Submission, the March 13 Amended Notice of Submission, the March 13 Proposed Order, or the March 18 Reply. The absence of notice is not the absence of sur-reply rights — it is the absence of the notice on which every downstream procedural choice depends: whether to request oral argument, whether to object to submission on the papers, whether to seek leave to file a sur-reply, and whether to object to the form of the Proposed Order Defendants had pre-drafted for the Court’s signature.

Defendants’ Response does not cite Mabon, Lopez, Mathis, Strong, or McDaniel.

VII.

THE CRADDOCK/STRACKBEIN HARM SHOWING IS NOT REQUIRED AND IS SATISFIED

Defendants cite Strackbein v. Prewitt, 671 S.W.2d 37 (Tex. 1984), for a harm standard Lopez and Mathis dispense with in no-notice cases. 757 S.W.2d at 723; 166 S.W.3d at 744. Strackbein itself, moreover, is the wrong side of Defendants’ own case: the Texas Supreme Court there affirmed the court of appeals’ reversal of the trial court and ordered new trial, holding that the uncontroverted affidavits established the Craddock elements and required the grant of new trial. 671 S.W.2d at 39. Defendants cite, as authority against new trial, a Texas Supreme Court case that granted new trial.

The harm showing, if it applied, is satisfied. Defendants’ March 18 Reply introduced three arguments Plaintiff’s March 3 Response did not address — because he did not see the March 18 Reply until April 3.

First, academic deference, elevated. The Plea cited Ewing, Than, and Alcorn in one paragraph on sovereign immunity (Plea at 4–5). The March 18 Reply promoted the line into a titled section — “Academic Record Administration Is Entitled to Judicial Deference” (§ II.D) — and extended it for the first time to records administration. Plaintiff’s Fourth Amended Petition expressly disclaims any challenge to academic or disciplinary determinations; he seeks ultra vires relief for non-performance of Tex. Gov’t Code § 559.004 and OP 77.13 records procedures. A responsive brief could have distinguished records administration from academic judgment and shown that the Ewing line has never been extended by the Texas Supreme Court to immunize the failure to discharge § 559.004 procedures.

Second, the FERPA-analogy ripeness argument. The Reply introduced for the first time the argument that OP 77.13’s access language should be narrowly construed by analogy to FERPA, 20 U.S.C. § 1232g, and 34 C.F.R. § 99.10. Reply § II.E at 5–6. The Plea cited neither provision. A responsive brief could have shown that TTUHSC’s refusal to amend, after the 45-day OP 77.13 window expired on February 13, 2026, is by its own terms a final and definitive position, and that *Texas Dep’t of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004), is distinguishable on its face.

Third, the Miranda futility argument. The Reply invoked for the first time the argument that further amendment would be “futile” under *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). Reply § II.G at 7. The Plea cited *Miranda* only for a general sovereign-immunity proposition (Plea at 4). A responsive brief would have identified specific factual allegations, including records produced since the Fourth Amended Petition, that support a Fifth Amended Petition directly addressing *Miranda*’s negation standard. To demonstrate concrete non-futility of amendment, Plaintiff tenders with this Reply, as Exhibit L, a proposed form of Fifth Amended Verified Original Petition for the Court’s inspection subject to granting of new trial and leave under Tex. R. Civ. P. 63. Exhibit L is not filed as the operative pleading of this cause; it is tendered as an exhibit so that the Court may inspect, under *Miranda*, the particularized allegations Plaintiff would assert upon leave. The proposed form supplies, on its face, the particularized jurisdictional allegations responsive to *Miranda*, the ministerial-versus-discretionary distinction, the scope of academic deference, the inapplicability of FERPA analogy, and the expiration of OP 77.13’s forty-five-day window — defeating any assertion that amendment is futile.

Beyond the substantive rebuttal opportunity, Plaintiff was prevented from (i) objecting to submission without oral hearing and requesting oral argument on the Plea; (ii) filing a sur-reply responsive to the three new arguments Defendants introduced in the March 18 Reply; (iii) seeking leave under Tex. R. Civ. P. 63 to file a Fifth Amended Petition with particularized allegations addressing *Miranda*’s negation standard, including records produced since the Fourth Amended Petition (a proposed form of which Plaintiff tenders with this Reply as Exhibit L, for the Court’s inspection only — not as the operative pleading of this cause); (iv) moving to strike the portions of the March 18 Reply that exceeded rebuttal by raising new matter; (v) filing supplemental evidence and affidavits in opposition, including documents produced by Defendants and agency counsel since the Plea was filed; (vi) moving for continuance of the submission date to permit preparation of the foregoing; and (vii) objecting to the form of the Proposed Order Defendants had pre-drafted on March 13 and tendered for the Court’s signature. Each of these steps was procedurally available to a timely-notified opposing party; several would have been pursued as of right. The Court signed that Proposed Order on March 26. Had Plaintiff been present — by direct email, as Defendants’ counsel has since demonstrated was possible — the record before the Court at signing would have

APPENDIX TAB J

Electronic-Service Certificates

CR 200, 203, 213, 216, and 437.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith
Bar No. 24011874
karla.gutierrez@oag.texas.gov
Envelope ID: 112412497
Filing Code Description: NOTC - Notice
Filing Description: Notice of Submission
Status as of 3/13/2026 3:55 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 3:42:10 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 3:42:10 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 3:42:10 PM	ERROR

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith
Bar No. 24011874
karla.gutierrez@oag.texas.gov
Envelope ID: 112418015
Filing Code Description: Amended Filing
Filing Description: Amended Notice of Submission
Status as of 3/13/2026 4:45 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 4:40:34 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 4:40:34 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 4:40:34 PM	ERROR

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith

Bar No. 24011874

karla.gutierrez@oag.texas.gov

Envelope ID: 112584730

Filing Code Description: Answer/Response

Filing Description: 20260318_Reply in Support of Defendants PTJ and Plea in Abatement

Status as of 3/18/2026 3:48 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/18/2026 3:29:07 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/18/2026 3:29:07 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphia@gmail.com	3/18/2026 3:29:07 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith
Bar No. 24011874
karla.gutierrez@oag.texas.gov
Envelope ID: 112411933
Filing Code Description: ORDR - Order
Filing Description: 20260313_Proposed Order
Status as of 3/26/2026 4:09 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 3:36:55 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 3:36:55 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 3:36:55 PM	ERROR

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 115396083

Filing Code Description: ORDM - Order To Deny Motion

Filing Description: DC-2025-CV-1817 - Order Denying Plaintiff's Sworn Motion and Motion for New Trial

Status as of 5/27/2026 2:25 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tristan A Garza		tristan.garza@oag.texas.gov	5/27/2026 2:23:09 PM	SENT
Karla Gutierrez		karla.gutierrez@oag.texas.gov	5/27/2026 2:23:09 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	5/27/2026 2:23:09 PM	SENT
Kevin N. Bass		kbassphiladelphi@gmail.com	5/27/2026 2:23:09 PM	ERROR

APPENDIX TAB K

Clerk's Rule 306a(3) Notice of Judgment

CR 217.



OFFICE OF THE DISTRICT CLERK

ROOM 105, COURTHOUSE
P O Box 10536
LUBBOCK, TEXAS 79408-3536
(806) 775-1317
FAX (806) 775-7992

SARA L. SMITH
DISTRICT CLERK
ALEXANDRA GONGORA
CHIEF DEPUTY

April 02, 2026

Lauren Cobbs
3601 4th Street Room 2B440
Lubbock, TX 79415

Darrin D'Agostino
3601 4th Street
Lubbock, TX 79415

John C. Detoledo, M.D.
3601 4th Street
Lubbock, TX 79430

Tamara Mancini
3601 4th Street
Lubbock, TX 79415

Amanda McSween
3601 4th Street
Lubbock, TX 79415

Mia Myers
3601 4th Street
Lubbock, TX 79430

Lori Rice-Spearman
3601 4th Street
Lubbock, TX 79415

Simon Williams
3601 4th Street
Lubbock, TX 79415

Re: Cause No. DC-2025-CV-1817
In the 237th District Court of Lubbock County, Texas
Kevin Bass vs. Lori Rice-Spearman, Darrin D'Agostino, Amanda McSween, Lauren Cobbs, Tamara Mancini, Simon Williams, Mia Myers, John DeToledo

JUDGMENT NOTICE

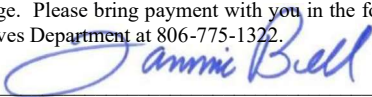
___x___ In compliance with Rule 306a(3) of the Texas Rules of Civil Procedure, you are hereby notified that an Order On Defendant's Plea To The Jurisdiction or, in the alternative, plea in abatement was signed in the above styled and numbered cause on March 26, 2026. If you are an individual (not a company), you may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. Find out more by visiting [TexasLawHelp.org](https://www.texaslawhelp.org).

_____ In compliance with Rule 239(a) of the Texas Rules of Civil Procedure, you are hereby notified that a default judgment was signed in the above styled and numbered cause on . Judgment was entered in favor of Kevin Bass and against Lori Rice-spearman.

_____ **NOTICE OF SIGNING OF FINAL DIVORCE DECREE.** In compliance with Rule 306(a)(3) of the Texas Rules of Civil Procedure or Section 6.710 of the Texas Family Code, you are hereby notified that Divorce Decree was signed in the above styled and numbered cause on .

The original decree or order is on file in the office of the District Clerk of Lubbock County, Texas, and a copy can be obtained in the District Clerk's Archival Department located in the basement of the Lubbock County Courthouse, at the above address. You may also request a copy by emailing dcarchives@lubbockcounty.gov. Copy costs are \$1.00 per page. Please bring payment with you in the form of cash, credit/debit card, or money order. The total cost may be obtained by contacting the Archives Department at 806-775-1322.

Dated: April 02, 2026


Tammie Bell, Deputy District Clerk

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 119036786

Filing Code Description: Brief Requesting Oral Argument

Filing Description:

Status as of 8/25/2026 7:20 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Smith	24011874	scott.smith@oag.texas.gov	8/24/2026 11:58:40 PM	SENT
Kevin Bass		kbassphiladelphia@gmail.com	8/24/2026 11:58:40 PM	SENT