The Supreme Court of Texas

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November 4, 2026

Chief Justice Tracy E. Christopher
Chair, Supreme Court Advisory Committee
14th Court of Appeals
301 Fannin, Room 245
Houston, Texas 77002

Re: Referral of Rules Issues

Dear Chief Justice Christopher:

The Supreme Court asks the Committee to study and make recommendations on the following matters.

Rule of Judicial Administration 6.1. In recent months, members of the Legislature have shown an increased interest in Rule 6.1, which provides time standards for the disposition of cases. For example, Rule 6.1 was discussed at the September 14, 2026 Senate State Affairs Committee meeting. In light of the increased interest, the Committee should study and draft any recommended rule amendments. The Committee should be prepared to discuss the rule at the December 5 meeting.

Waiving Privileges Through AI. In the attached email, Hon. Kent Sullivan proposes adopting rules to provide greater certainty regarding the potential waiver of privileges through the use of artificial intelligence. The Committee should study and draft any recommended rules or amendments.

Supersedeas Bonds. The Committee should study whether supersedeas bonds should be taxable as costs and draft any recommended amendments to the Texas Rules of Appellate Procedure.

Eviction and Eviction Appeal Forms. In response to SB 478, passed by the 84th Legislature, the Court established the Landlord-Tenant Forms Task Force to draft forms for use by individuals representing themselves in residential landlord-

tenant matters. On August 14, 2026, the Task Force submitted a proposed kit of forms to be used in eviction suits. On October 9, 2026, the Task Force submitted a proposed kit of forms to be used in eviction appeals. The Committee should review and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Jane N. Bland

Jane N. Bland
Justice

Attachments

cc: Hon. Jimmy Blacklock, Chief Justice
Hon. Evan Young, Deputy Liaison, Supreme Court Advisory Committee
Marcy Hogan Greer, Vice-Chair, Supreme Court Advisory Committee
Jackie Daumerie, Rules Attorney

From: Kent Sullivan [redacted]
Date: June 30, 2026 at 11:08:48 AM MDT
To: Tracy Christopher [redacted], Jane Bland [redacted]
Cc: Grant Dorfman [redacted]
Subject: AI issue re: waiver

Some people who received this message don't often get email from [redacted]. Learn why this is important

CAUTION: This email originated from outside of the Texas Judicial Branch email system.
DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Justice Bland and Justice Christopher,

I recently had a conversation and email exchange with Judge Dorfman (see below) relative to AI and its intersection with the work-product and attorney-client privileges. I have copied Judge Dorfman to keep him in the loop and solicit whatever comments he might care to make.

I have followed several of the legal decisions from around the country in this area. To put it mildly, there appears to be substantial uncertainty about the proper application of these privileges to the evolving use of AI in the legal world.

I wanted to suggest the consideration of potential rules to provide greater certainty to lawyers and judges. I'm afraid that the alternative is years of inconsistent decisions and the expenditure of significant time and resources.

Thanks for your consideration.

Kent

From: Grant Dorfman [redacted]
Sent: Friday, June 19, 2026, 1:22 AM
To: Kent C. Sullivan [redacted]
Subject: [EXTERNAL] Re: AI issue re: waiver

And Here's a link to one of the articles reporting on the ruling:

https://www.law360.com/texas/articles/2485520?nl_pk=2455f46a-c688-4688-a777-43345a789483&ab_exp_id=nl_subject&ab_exp_var=b&utm_source=newsletter&utm_medi

um=email&utm_campaign=texas&utm_content=2026-06-05&read_main=1&nlsidx=0&nlaidx=0

From: Grant Dorfman [redacted]
Sent: Thursday, June 18, 2026 4:57 PM
To: Kent C. Sullivan [redacted]
Subject: [EXTERNAL] AI issue re: waiver

Justice Sullivan,

Per our discussion, please see the Minute Entry I wrote about this subject in an ongoing case, and the authorities that I cited and, in some instances, relied upon.

Best,
Grant

Hon. Grant Dorfman
Judge, Texas Business Court Eleventh Division
301 Fannin Street, Houston, Texas 77002
[redacted]

THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION

TATE GROUP AUTOMOTIVE, LLC, *Plaintiff,* v. LEGACY AUTOMOTIVE CAPITAL, LLC, THE REYNOLDS AND REYNOLDS COMPANY, TOMMY BARRAS, and BENJAMIN CATANESE, *Defendants.*	§ § § § § § § § § § § § §	Cause No. 25-BC11B-0020

COURT MINUTE ENTRY REGARDING CHATGPT MATERIALS *IN CAMERA* REVIEW

Pursuant to the Court's Minute Entry dated April 20, 2026, the Court has completed its *in camera* review of the Kris Tate-ChatGPT "conversations" that Plaintiff withheld based upon a claim of attorney work product protection. Defendants argue that attorney work product protection does not extend to a non-lawyer's "chats" with an artificial intelligence ("AI") tool; or, alternatively, that Kris Tate's use of AI waived any potentially applicable privilege. They seek an order compelling the documents' production. Plaintiff disagrees. In three letters subsequent to the April 20 Minute Entry, the parties argued their

positions; including, on Defendants' behalf, a request that the Court order Plaintiff to identify all discovery materials that Mr. Tate (and/or the Tate Group more generally) shared with ChatGPT.

The issue presented is a novel one, as evidenced by the fact that all case law authorities cited by the parties date from 2026. Indeed, one of them refers to its ruling as "a question of first impression nationwide."

The short answer is that the Court agrees with the analysis and reasoning in the cases cited by Plaintiff: *Warner v. Gilbarco, Inc.,* 2026 WL 373043, at *4 (E.D. Mich. Feb. 10, 2026) and *Morgan v. V2X, Inc.,* 2026 WL 864223, at *3-5 (March 30, 2026). In particular, the Court agrees with these cases' recognition that "work product protections are typically waived *by disclosure to an adversary,* or in circumstances that substantially increase the likelihood that an adversary will obtain the materials." *Morgan,* 2026 WL 864223, at *5 (emphasis added). *See also Warner,* 2026 WL 373043, at *4 ("to the extent Defendants argue that Plaintiff waived the work-product protection by using ChatGPT, the work-product waiver has to be a waiver *to an adversary* or in a way likely to get in an adversary's hand.") (emphasis in original).

Further, the Court disagrees with the primary authority cited by Defendants in support of waiver, *United States v. Heppner,* 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026). And these are all federal cases, whereas the Texas rules set forth a different standard for protectable attorney work product, and plainly appear on their face to extend that protection to Mr. Tate's ChatGPT conversations: they are "material prepared or mental impressions

developed in anticipation of litigation or for trial *by or for a party* . . . ." TEX. R. CIV. P. 192.5(a)(1) (emphasis added).

The above constitutes a model of clarity relative to what the Court assumes to be Plaintiff's 2nd and 3rd Supplemental Privilege Logs submitted in support of its response to Defendants' discovery letters. In particular, it appears that Plaintiff has submitted for *in camera* review documents that have been withheld *both* on grounds of privilege and non-responsiveness. The Court has not reviewed for non-responsiveness, however (and without the parties' discovery requests/responses before it, cannot practically do so).[1]

Accordingly (and assuming the Court has accurately reviewed the documents submitted for *in camera* review), the Court is of the opinion that the following pages should be produced because they do not constitute protectable attorney work product within the meaning of TEX. R. CIV. P. 192.5(a)(1): Document #81, pp. 198-218, 260-283, 287-309, 311-331. The remainder may be withheld from production on the basis of attorney work product, for the reasons identified above.

Notwithstanding the foregoing analysis, however, the Court agrees with Magistrate Judge Braswell that work product protection extends only so far. *See Morgan,* 2026 WL 864223, at *5 (ordering plaintiff to disclose identity of AI tool he used). Reasoning analogously, the Court is of the opinion that – to the extent it has not already done so –

[1] On this point, the Court has serious concerns about the intelligibility of Plaintiff's *in camera* submission and privilege log, and the corresponding ability of Defendants to understand what is being withheld from production and on what basis. Accordingly, Plaintiff is hereby ordered to disclose to Defendants all documents that it submitted for this *in camera* review that have been withheld solely on the basis of relevance and/or non-responsiveness.

Plaintiff must disclose to Defendants all discovery materials or products that it has shared with ChatGPT (by Bates number, if applicable), including any materials that were produced pursuant to the Protective Order. The Court will be prepared to address any potential violations of the Protective Order's terms if and when they may be shown to have occurred.

Further, the Court recommends that the parties confer and consider negotiating amendments to the Protective Order that would make unquestionably clear whether, how, and to what extent if so, Confidential Information may be shared with any AI tool or other Large Language Model system. In this regard, the Court refers the parties to the relevant discussion in the *Morgan* case. *See* 2026 WL 864223, at *6-7.

The Court has previously advised the parties that entry of these less formal orders is not intended to be final, but serves to certify their compliance with BCLR 4. If any party requires an ultimate ruling on these matters – particularly if they anticipate exercising their appellate remedies – it has leave to file and set for submission or oral hearing an appropriate motion to quash/for protection or for reconsideration of these determinations forthwith, without first proceeding under BCLR 4.

ENTERED this 3rd day of June, 2026.



JUDGE GRANT DORFMAN
TEXAS BUSINESS COURT
ELEVENTH DIVISION

2026 WL 864223
Only the Westlaw citation is currently available.
United States District Court, D. Colorado.

Archie MORGAN, Plaintiff,
v.
V2X, INC., Defendant.

Civil Action No. 25–cv–01991–SKC–MDB
|
Signed 03/30/2026

Attorneys and Law Firms

Archie Morgan, San Antonio, TX, Pro Se.

Billie Jo May Risheim, Holland & Knight LLP, Denver, CO, Carolyn Bailey Theis, David Charles Gartenberg, Julian G.G. Wolfson, Littler Mendelson P.C., Denver, CO, for Defendant.

ORDER

Maritza Dominguez Braswell, United States Magistrate Judge

***1** Before the Court is Defendant's Motion to Amend the Stipulated Protective Order, seeking to add language that specifically addresses the use of modern artificial intelligence tools ("AI"), and asking the Court to compel disclosure of Plaintiff's AI. (["Motion"], Doc. No. 52). Plaintiff opposes, in part. (Doc. Nos. 58, 59.) Defendant has replied. (Doc. No. 60.) After considering the Motion, applicable law, and facts and circumstances of this case, **the Motion is GRANTED, in part**.

SUMMARY FOR *PRO SE* PLAINTIFF

The Court is granting Defendant's Motion, in part. Federal Rule of Civil Procedure 26(b)(3) can protect your mental impressions and litigation preparation materials, but you must disclose the name of any AI tool you used in connection with Confidential Information. This is because you have not demonstrated that identifying the tool itself will reveal your mental impressions or legal strategy, and Defendant needs that information to assess whether Confidential Information was compromised. The Court is also amending the Protective Order to address AI use. The practical effect is that you may not upload, input, or submit Confidential Information into any mainstream AI tool like standard ChatGPT, Claude, Gemini, or similar platforms.

BACKGROUND

This is an employment discrimination case where Plaintiff, a self-described "qualified Black American manager," claims he was subjected to a hostile work environment and eventually "terminated based on his race and national origin and in retaliation for protected activities, including opposing sexual harassment and engaging in protected whistleblowing activity." (Doc. No. 35 at 2-3.)

Defendant says Plaintiff was discharged for "legitimate and non-discriminatory, non-retaliatory reasons," after "a workplace complaint was lodged against [Plaintiff]," and Defendant "conducted a thorough investigation, including interviewing and/or taking the statements of more than 30 witnesses." (*Id.* at 3-4.)

The Dispute

Defendant brought the instant Motion shortly after Plaintiff moved to compel an insurance policy. (["Plaintiff's MTC"], Doc. No. 48.) Plaintiff's MTC claimed that Defendant was refusing to produce a copy of the insurance policy, as "leverage to force Plaintiff's consent to a modified Protective Order." (Doc. No. 48 at 2.) Specifically, Plaintiff claimed that Defendant sought disclosure of Plaintiff's AI tool, and restrictions on Plaintiff's AI use, before it would provide the insurance policy to Plaintiff. (*Id.*) Plaintiff characterized this as "holding a four-month overdue disclosure 'hostage' to force an amendment to a Protective Order," in a way that "creates an unfair 'technological gap' by barring a *pro se* litigant from using modern analytical aids while Defendant's firm maintains its own proprietary AI and cloud-based systems." (*Id.* at 3.)

The Court struck Plaintiff's MTC for failure to follow the Court's discovery dispute procedures but set a discovery hearing to address Plaintiff's concerns. (Doc. No. 51.) However, the morning of the discovery hearing, Defendant's counsel emailed Chambers saying:

> ***2** *I am writing on behalf of Defendant, V2X, Inc. ("V2X"), with regarding to the discovery conference set in the above-referenced case for 12:00 p.m. MT today, March 3, 2026, in connection with Plaintiff Archie Morgan's motion to compel. See ECF Nos. 48, 51. Mr. Morgan is cc'ed on this correspondence and agrees to the relief requested herein.*
>
> *Per the Court's direction, the parties meaningfully conferred via videoconference on February 26, 2026. Following that conferral, the parties resolved their discovery dispute regarding Mr. Morgan's motion to compel discovery, and V2X has produced to Plaintiff the requested document underlying his motion. Accordingly, the parties jointly request that the Court vacate the discovery conference set for later today.*

Accordingly, the Court vacated the hearing.

Upon careful review of the instant Motion and related materials, the Court finds it is based on some of the same disputes underlying Plaintiff's now stricken MTC. Both parties appear to be using AI in connection with their litigation work, but they disagree on how AI should or should not be used in connection with Confidential Information as defined in the current Protective Order. (Doc. No. 30.)

The Current Protective Order

The current Protective Order allows the parties to designate information "Confidential" when it "is confidential and implicates the privacy or business interests of the parties, including but not limited to: medical and personal financial information, private personnel information, trade secrets, and other proprietary business information." (Doc. No. 30 at 1.) The Protective Order provides that all Confidential Information "shall not, without the consent of the designating party or further Order of the Court, be disclosed," except under limited, specifically enumerated, circumstances. (*Id.* at 2.)

Defendant's Motion & Plaintiff's Response

Although Defendant's Motion is styled as one to amend the current Protective Order, it requests two forms of relief. First, Defendant asks the Court to enter an amended protective order with new language that specifically addresses its AI-related concerns. Second, Defendant asks the Court compel Plaintiff to "disclose the identity of the AI tool [Plaintiff] is utilizing in this case so that [Defendant] can determine whether it does, in fact, have appropriate safeguards in place regarding [Defendant's] confidential information." (Doc. No. 52 at 5.)

For his part, Plaintiff does not oppose amending the current Protective Order, but he offers competing language. Plaintiff does however oppose disclosure of his AI, saying "[t]he specific software, research platforms, and analytical tools chosen by a litigant to review discovery, synthesize information, and prepare for trial fall squarely under the Work-Product Doctrine, codified in Federal Rule of Civil Procedure 26(b)(3)." (Doc. No. 58 at 2.)

ANALYSIS

AI is forcing litigants and courts to confront difficult questions about how and to what extent longstanding protections will apply when parties use AI to assist them in the litigation process. In particular, courts are beginning to wrestle with practical questions surrounding confidentiality, work product, and privilege. This dispute raises two such questions: (1) to what extent will work product protections apply to a *pro se* litigant's use of AI, and (2) to what extent should a protective order expressly restrict the use of AI? The Court addresses each question in turn.

I. Do work product protections apply to *pro se* Plaintiff's use of AI, and in particular, to his tool selection?

***3** Defendant seeks disclosure of Plaintiff's AI so it can "verify it has appropriate confidentiality restrictions." (Doc. No. 60 at 3; *see also* Doc. No. 52 at 5.) Plaintiff resists, citing Federal Rule of Civil Procedure 26(b)(3). (Doc. No. 58 at 2.) The Court begins by considering the applicability of the Rule, then it moves on to consider the scope of its protections under these facts and circumstances.

A. Applicability of Rule 26(b)(3)

Federal Rule of Civil Procedure 26(b)(3)(A) protects "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative." Mental impressions, conclusions, opinions, and legal theories, are contents that may be embedded in such documents and tangible materials. *See* Rule 26(b)(3)(B) (referencing Rule 26(b)(3)(A) and recognizing that "those materials" may include mental impressions, conclusions, opinions, and legal theories). Rule 26(b)(3)(B) adds another layer of protection to mental impressions and opinions when they come from "a party's attorney or other representative…" This heightened protection is consistent with the doctrine's origins in *Hickman v. Taylor*, 329 U.S. 495 (1947).

The Tenth Circuit has not weighed in on the applicability of Rule 26(b)(3) to *pro se* litigants, but the plain language broadly refers to things prepared in anticipation of litigation by any *party*, language that would "seem to include material created by a party before retaining a lawyer as well as a party who never actually hires an attorney." Jennifer A. Gundlach & Zeus Smith, *Expanding the Federal Work Product Doctrine to Unrepresented Litigants*, 30 GEO. J. ON POVERTY L. & POL'Y 53, 62 (2022) (hereinafter "Gundlach & Smith"). This reading is reinforced by the Rule's history. *See generally id.* Prior to the 1970 amendments, some courts had declined to protect work product prepared by anyone other than an attorney, but the Advisory Committee's amendments were specifically designed to extend protection beyond attorneys' work product to materials prepared by or for a *party*. *Id*. at 61–62. Since then, courts routinely interpret the Rule to apply not just to attorney work product, but to a *pro se* litigant's work product as well. *See Carbajal v. St. Anthony Cent. Hosp.,* 2014 WL 2459713, at *2 (D. Colo. June 2, 2014) (assuming without deciding that the work product protection in Rule 26(b)(3) applies to a *pro se* litigant); *Anderson v. Furst,* 2019 WL 2284731, at *4 (E.D. Mich. May 29, 2019) (stating, "a pro se litigant[ ] has a right to assert work product protection" under Rule 26(b)(3)); *Yates v. Cobb Cnty. Sch. Dist.*, 2016 WL 9444452, at *2 (N.D. Ga. Aug. 4, 2016) (finding persuasive authority indicating *pro se* plaintiffs can assert work product protections under Rule 26(b)(3)).

Moreover, courts have broadly interpreted the rule to protect not just litigation preparation materials, but also the mental impressions, opinions, and theories of *parties*. *See, e.g.*, *Moore v. Tri-City Hosp. Auth.*, 118 F.R.D. 646, 649–50 (N.D. Ga. 1988) (finding work product protection applied to plaintiff's diary); *Ortega v. New Mexico Legal Aid, Inc*., 2019 WL 5864784, at *3 (D.N.M. Nov. 8, 2019) (finding *pro se* plaintiff's mental impressions, opinions and legal theories set forth in diaries, agendas, notebooks, and more, to be protected work product); *Carrier-Tal v. McHugh*, 2016 WL 9185306 (E.D. Va. Feb. 3, 2016) (overruling objections to a magistrate judge's order that found work product protections applied to a *pro se* plaintiff's mental thoughts, impressions, and litigation strategy); *Moore v. Kingsbrook Jewish Med. Ctr.*, 2012 WL 1078000, at *8 (E.D.N.Y. Mar. 30, 2012) (overruling objections to magistrate judge order that found a *pro se* litigant's personal notes reflected her mental impressions of the deposition and the litigation and were therefore protected work product). Thus, while only attorneys and "other representatives" receive additional heightened protection under Rule 26(b)(3)(B), a party's own mental impressions are nevertheless protected under Rule 26(b)(3), generally.

***4** The importance of applying these protections to *pro se* litigants is magnified in the context of AI—one of the most powerful knowledge tools ever to become available to the masses. This is because *pro se* litigants are forced to act as both party and advocate, simultaneously. *See* Gundlach & Smith, at 70 (quoting *Boegh v. Harless*, 2021 WL 1923365, at *6 n.5 (W.D. Ky. May 13, 2021)). And for the first time in history, widespread access to powerful technology may make that dual role surmountable. A reading of Rule 26(b)(3) that conditions work product protection over AI materials on the involvement of counsel finds no support in the rule's text and would further disadvantage unrepresented litigants. *Pro se* litigants are held to the same standard as represented litigants. *See Requena v. Roberts*, 893 F.3d 1195, 1205 (10th Cir. 2018). They should be afforded the same protections. *See Nielsen v. Soc'y of New York Hosp*., 1988 WL 100197, at *2 (S.D.N.Y. Sep. 22, 1988) (saying, "[i]f plaintiff were represented by counsel, his attorney's notes in similar circumstances would not be subject to production. A plaintiff appearing *pro se* is entitled to no less protection.").

The Court is mindful of a recent decision that at first blush may appear contrary. *See United States v. Heppner*, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026). In *Heppner*, the court observed that work product protections have historically been rooted in shielding the mental impressions and legal theories of attorneys. *Id.* at *3. It concluded that a represented criminal defendant who used an AI tool on his own initiative, without any direction or involvement from their attorney, could not claim work product protection over the resulting materials. *Id.* at *3-4. The *Heppner* decision is of course not binding on this Court, but even if it were, the case is distinguishable for at least two reasons. First, *Heppner* was a criminal matter; this is a civil case governed by the Federal Rules

of Civil Procedure, and the text of Rule 26(b)(3) broadly protects the work product of a party, not merely counsel. Second, in *Heppner*, there was a gap between the party and the attorney because the defendant acted entirely apart from his lawyer. No such gap exists in the *pro se* context. A *pro se* litigant is simultaneously the party and the advocate.

Here, like in *Warner v. Gilbarco, Inc.,* 2026 WL 373043 (E.D. Mich. Feb. 10, 2026), Plaintiff can assert work product protections in connection with his AI use. It is true that AI systems like ChatGPT, Claude, Gemini, and others widely available to the public, collect user data for training and other purposes. But in this Court's estimation, that does not eliminate all expectations of privacy or automatically waive protections.

Today, nearly all electronic interaction passes through third-party systems. Google, for example, hosts millions of accounts, and by extension, has access to millions of messages, emails, documents, videos, and more. Moreover, we now know that our phones, computers, in-home smart devices, and other electronics, collect information about us to offer more bespoke services. Does that mean that anyone with a Gmail account has forfeited all rights to confidentiality and privacy? In *United States v. Warshak*, the Sixth Circuit held—albeit in the context of a Fourth Amendment seizure analysis—that email subscribers have a reasonable expectation of privacy in the contents of emails stored with commercial internet service providers. 631 F.3d 266, 268 (6th Cir. 2010). The court rejected the idea that intermediary access alone extinguishes privacy expectations. *Id.* at 285-86. And though the Tenth Circuit did not fully weigh in on this issue in *United States v. Ackerman*, 831 F.3d 1292, 1308 (10th Cir. 2016), the Supreme Court has since held that the mere fact that information is held by a third-party intermediary, does not automatically extinguish a reasonable expectation of privacy in that information. *Carpenter v. United States*, 585 U.S. 296, 310-16 (2018).

***5** The Fourth Amendment governs searches and seizures and offers a wholly different legal framework from the work product doctrine, but the principle reflected in those cases is informative: routing information through a third-party system does not forfeit all privacy. Moreover, the case for privacy is arguably stronger in the context of modern AI use (as contrasted with email use or cell site location). Unlike a general-purpose search engine, which passively returns results, many modern AI platforms are specifically designed and trained to engage. They invite candid and significant disclosure of information, including sensitive information. They simulate empathy, foster trust, and interact in a way that feels genuine and intimate.[1] Research confirms that people share personal and sensitive information with AI chatbots, often without appreciating what happens to that information once shared. *See* Jennifer King et al., *User Privacy and Large Language Models: An Analysis of Frontier Developers' Privacy Policies*, 8 PROCEEDINGS OF THE AAAI/ACM CONFERENCE ON AI, ETHICS, AND SOCIETY 1465 (2025) (noting that the conversational nature of AI chatbots encourages greater disclosure of personal information than traditional search interfaces); *see also* Molly G. Smith, Thomas N. Bradbury & Benjamin R. Karney, *Can Generative AI Chatbots Emulate Human Connection? A Relationship Science Perspective*, 20 PERSPECTIVES ON PSYCHOLOGICAL SCIENCE 1081 (2025).

Moreover, and in the context of a *pro se* litigant's use of AI to assist with their litigation preparation, the use of AI closely resembles the kind of confidential, strategy-laden iterative work product that Rule 26(b)(3) was designed to protect. In other words, given how AI tools function, it is entirely reasonable for a person to expect some privacy and confidentiality when interacting with these tools, even though they understand a third party is behind the tool collecting and storing their information.

In any event, work product protections are typically waived by disclosure to an adversary, or in circumstances that substantially increase the likelihood that an adversary will obtain the materials. *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1297-1301 (D.C. Cir. 1980); *see also Warner*, 2026 WL 373043; *In re Qwest Commc'ns Int'l Inc.*, 450 F.3d 1179, 1186 (10th Cir. 2006) (citing *Foster v. Hill,* 188 F.3d 1259, 1272 (10th Cir. 1999) for the proposition that "the work-product doctrine is affected when a disclosure is to an adversary"). In other words, even though AI use technically "discloses" information to a third party, it is highly unlikely the information will fall into the hands of an adversary absent some legal process to compel it. Thus, AI interactions do not automatically compromise work product protections. *See Warner,* 2026 WL 373043, at *4 (finding that even if *pro se* plaintiff's AI-generated information is discoverable, it is subject to work product protection and the protections were not waived because ChatGPT and other generative AI programs are tools, not persons, and the disclosure is therefore not to an adversary or in a way likely to get in an adversary's hands.)

In sum, Rule 26(b)(3) applies and offers Plaintiff some level of work product protection in connection with his use of AI. The question is, how far will that protection extend?

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B. Scope of Rule 26(b)(3) Protections

Plaintiff seeks to shield from disclosure, not only the outputs from the AI system, but the name of the AI tool he is using.

Some courts have applied the work product doctrine broadly to cover, for example, processes not just outputs. *See, e.g.*, *Sporck v. Peil*, 759 F.2d 312, 315 (3d Cir. 1985) (finding that counsel's selection process and grouping certain documents together out of the thousands produced in litigation was work product entitled to protection under Rule 26(b)(3)). But the Court does not need to delve into that issue here. Even if it is possible that in some contexts disclosing an AI tool can reveal mental impressions or strategy, Plaintiff has not carried his burden to demonstrate that here. *See Martin v. Monfort, Inc.*, 150 F.R.D. 172, 172-73 (D. Colo. 1993) (describing the sequential step approach to resolving work product issues, and noting that once the party seeking discovery establishes relevance, the burden shifts to the resisting party to show the materials are protected work product); *Pouncil v. Branch L. Firm*, 277 F.R.D. 642, 653 (D. Kan. 2011) (noting that the proponent of a work product protection had the burden of establishing that certain calendars, appointment books, and event logs contain information that constitutes protected mental impressions). At best, Plaintiff states, in conclusory fashion and without any legal or factual support, that "[t]he selection and use of specific litigation support tools reveal a party's mental impressions, case strategy, and legal resource allocation." (Doc. No. 58 at 2; *see also* Doc. No. 58-1 (offering similar conclusory statements.).) But the Court cannot discern from that, or any other information Plaintiff provides, how disclosing the name of an AI tool would reveal Plaintiff's mental impressions or case strategy. Moreover, Defendant's request for the name of the tool is legitimate and reasonable. If Plaintiff already submitted Confidential Information to some AI system—and it appears he has—Defendant is entitled to know which system.

II. To what extent should a protective order restrict AI use?

***6** The current Protective Order arguably covers the use of AI already,[2] but the parties appear to agree that a clarifying amendment is necessary.

Defendant asks the Court to add the following language to the Protective Order:

> *Restrictions on Use of AI to process Confidential or Highly Confidential Information: Absent notice to and written permission from the producing party, any person or entity authorized to have access to Confidential Information under the terms of this Order:*
>
> *a. shall not use or employ any application, service, or analytical software that will transfer, transmit, send or allow access to Confidential Information, in whole or in part – including metadata, unless such application, service or analytical software:*
>
> *i. does not further transfer the Confidential Information to another provider, unless the receiving party has confirmed through due diligence that the security and privacy controls of and contractual obligations for such provider allow that party to comply with its obligations under this Protective Order; and*
>
> *ii. provides the receiving party the ability to remove or delete from the system all Confidential information.*
>
> *b. shall not permit any Confidential Information to be used to train any artificial intelligence tool. These restrictions apply to the use of advanced or generative AI tools from OpenAI's GPT or ChatGPT, Harvey.AI, Google's Bard, Anthropic's Claude, and similar tools or applications.*

(Doc. No. 52 at 2-3.) Plaintiff says Defendant's proposed language is "overly broad, technologically vague, and improperly attempt[s] to dictate the specific litigation strategies and work-product tools utilized by a pro se litigant." (Doc. No. 58 at 1-2.) Plaintiff also argues that "Defendant's language fails to account for the capabilities of professional-grade, closed-circuit platforms that already ensure strict data isolation and prohibit machine learning training on user data." (*Id.*) Plaintiff proposes the following language instead:

> *Any party utilizing third-party software, cloud-based platforms, or artificial intelligence tools for the storage, processing, review, or analysis of Confidential Information must ensure that such tools operate within a secure, closed-circuit environment. No Confidential Information may be*

> *uploaded to any platform or service whose Terms of Service permit the provider to utilize the uploaded data for the training of Large Language Models (LLMs), machine learning algorithms, or for any internal human-in-the-loop review.*

(Doc. No. 58 at 5.) Defendant says Plaintiff's proposed language does not offer sufficient safeguards. (Doc. No. 60 at 3.) Defendant also advocates for its own proposal because it is "narrowly-tailored." (*Id.*)

Upon careful consideration of the issues and close review of the competing provisions, the Court finds it appropriate to amend the Protective Order with a provision similar to Defendant's proposed provision, but tailored to the practical realities of this litigation and the current dispute.

***7** Defendant is correct that Plaintiff's proposal does not offer sufficient guardrails. It allows Confidential Information to be uploaded into an AI system so long as it operates in "a secure, closed-circuit environment," which seems to address cybersecurity concerns about unauthorized access rather than the distinct risks associated with today's widely available AI platforms. (*See generally* Doc. No. 58-1.) Moreover, to the extent Plaintiff's proposal *does* address the unique risks associated with AI, it does so in a very limited and vague way, prohibiting the uploading of Confidential Information only when the provider's terms of service "permit the provider to utilize the uploaded data for the training of Large Language Models (LLMs), machine learning algorithms, or for any internal human-in-the-loop review." (Doc. No. 58 at 5.)

Defendant's proposed language is better, but not without its shortcomings. It is, as Defendant says, narrowly-tailored, but not in the way Defendant touts. Defendant's proposed language appears crafted to fit the precise bounds of Defendant's contractual engagement with AI providers, resulting in an over-engineered provision that feels vague to Plaintiff. (*See* Doc. No. 58 at 1 (saying the provision is broad, vague, and an attempt to dictate his strategies and tools).)[3]

Thus, instead of adopting the parties' proposals, the Court will amend the Protective Order to include the following AI-specific language:

> *No party or authorized recipient may input, upload, or submit CONFIDENTIAL Information into any modern artificial intelligence platform, including any generative, analytical, or large language model-based tool ("AI"), unless the AI provider is contractually prohibited from: (1) storing or using inputs to train or improve its model; and (2) disclosing inputs to any third party except where such disclosure is essential to facilitating delivery of the service. Where disclosure to a third party is essential to service delivery, any such third party shall be bound by obligations no less protective than those required by this Order. In addition, the AI provider must contractually afford the party or authorized recipient the ability to remove or delete all CONFIDENTIAL information upon request. A party intending to use AI that it contends meets these requirements must retain written documentation of these contractual protections.*

The Court recognizes that practically speaking, and in light of the current state of AI, this provision will (at least for now) bar the parties from using most, if not all, mainstream low-to-no-cost AI to process Confidential Information. This type of restriction disadvantages *pro se* litigants.[4] Enterprise-tier AI accounts that satisfy these requirements may be available only through organizational procurement processes, or at costs that a *pro se* litigant is unlikely to bear.[5] But the Court cannot ignore the real risks associated with mainstream tools that persistently collect and store data and could compromise confidentiality.

To be clear, the Court does not intend to leave *pro se* Plaintiff without the benefits of AI. Modern AI tools may be used in many ways that do not involve uploading Confidential Information, and nothing in this particular Order restricts those uses.[6] What this Order requires is that Confidential Information not be entrusted to platforms that lack the contractual safeguards described above, regardless of the sophistication or apparent trustworthiness of the tool.

CONCLUSION

***8** For these reasons, the Court **GRANTS Defendant's Motion in part, and DENIES it in part** as follows:

(1) The Court will enter an amended protective order reflecting the AI-specific provision set forth in this Order; and

(2) Plaintiff is **ORDERED** to, within ten (10) days of this Order, disclose the name of any AI platform he used to upload, submit, process, review, analyze, organize, or store any information designated by Defendant as "CONFIDENTIAL" under the Protective Order.

(3) Defendant is **ORDERED** to, within ten (10) days of Plaintiff's disclosure, file a Notice with this Court indicating whether it intends to seek relief from this Court (and if so, what relief), or whether it has mitigated any potential harm or reached agreement with Plaintiff, such that no relief will be necessary.

All Citations

Slip Copy, 2026 WL 864223

Footnotes

[1] The Court does not endorse these practices but simply notes them to describe the environment in which AI users operate.

[2] The current Protective Order broadly prohibits disclosure, not just to a person or entity, but generally and in any fashion, except under specifically enumerated circumstances. (Doc. No. 30.) Thus, "disclosure" in the form of transmission to an AI system with a provider that stores the Confidential Information in their own databases, and/or for their own purposes, may violate the current Protective Order.

[3] Defendant's proposed provision also references "Google's Bard," which has since been rebranded as Gemini.

[4] In light of this restriction, the parties are strongly cautioned against the over-designation of Confidential Information.

[5] This highlights a growing problem in the age of AI: as large firms pour thousands of dollars into enterprise-grade AI and make their use of AI more secure, efficient, effective, and powerful, how will a *pro se* litigant or a litigant who cannot afford big-ticket legal services and better AI keep up?

[6] Still, the parties must still comply with all applicable rules, litigation obligations, and the presiding judge's practice standards and orders when using AI.

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THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 705
February 2025

QUESTIONS PRESENTED

What ethical issues are raised under the Texas Disciplinary Rules of Professional Conduct by a lawyer's use of generative artificial intelligence in the practice of law?

STATEMENT OF FACTS

The public release of ChatGPT in late 2022 introduced many people (and many lawyers) to the concept of generative artificial intelligence. ChatGPT, like other generative AI tools, gives users the ability to rapidly generate new, seemingly human-crafted content in response to user prompts. Many generative AI tools are "large language" or "deep-learning models" that compile vast amounts of text and analyze it using machine learning and sophisticated algorithms to "create" responses to user inquiries. Due in part to the rapid commercial success of ChatGPT, other generative AI tools have proliferated.

Some lawyers soon realized that there could be ways to effectively utilize generative AI, including ChatGPT, in the practice of law. And some companies have designed generative AI tools specifically for the practice of law, to assist in tasks like contract review and management, due diligence, document review, research, and even initial drafting of letters, contracts, and briefs. But lawyers have already seen—and displayed, very publicly—the dangers that lurk in the improper use of these tools. The most famous example at this point is a case where lawyers were sanctioned for submitting a brief that cited non-existent judicial opinions made up by ChatGPT. *See Mata v. Avianca*, No. 22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023). Indeed, many generative AI models have a tendency to "hallucinate," or create inaccurate or made-up answers that sound convincing.

The Committee issues this opinion in response to a request from the State Bar of Texas's Taskforce on Responsible AI in the Law to provide a high-level overview of ethical issues that may be implicated by the use of generative AI in the practice of law. The world of generative AI is rapidly developing and changing nearly every day. So this opinion does not purport to address every ethical issue that might arise now or in the future. Some of the issues raised here may soon be resolved or mooted by changes in the technology or industry practices. This opinion is intended only to provide a snapshot of potential ethical concerns at the moment and a restatement of certain ethical principles for lawyers to use as a guide regardless of where the technology goes.

DISCUSSION

Competence

Rule 1.01(a) of the Texas Disciplinary Rules of Professional Conduct provides, with limited exceptions, that a lawyer "shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence." The Rules define "competence" as the "possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client." *See* Preamble, Terminology. In prior Opinions, this Committee has applied Rule 1.01 to questions involving novel technologies and has concluded that this obligation extends to a lawyer's "technological competence," especially when it comes to preserving client confidential information. *See* Professional Ethics Committee Opinion 680 (September 2018) (addressing cloud-computing systems); Opinion 665 (December 2016) (addressing metadata in electronic documents). Comment 8 to Rule 1.01 confirms that lawyers "should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology."

Rule 1.01 almost certainly does not *require* the use of generative AI for any particular purpose in the practice of law, especially at the present moment where the technology is still developing and the cost-benefit analysis remains somewhat unclear. Still, lawyers should not "unnecessarily retreat[] from the use of new technology that may save significant time and money for clients." Opinion 680; *see also* comment 8 to Rule 1.01. What's clear even now is that *if* a lawyer opts to use a generative AI tool in the practice of law, the lawyer must have a reasonable and current understanding of the technology—because only then can the lawyer evaluate the associated risks of hallucinations or inaccurate answers, the limitations that may be imposed by the model's use of incomplete or inaccurate data, and the potential for exposing client confidential information. *Cf.* Opinion 680 (lawyer should acquire a general understanding of how cloud computing works before using in practice of law); Opinion 665 (similar for metadata). Several of those issues are discussed more fully below.

Confidentiality

Some of the greatest risks posed by the unthinking use of generative AI relate to confidentiality of client information. In general, a lawyer must not knowingly reveal client confidential information to any person other than those who are permitted to receive the information under Rule 1.05. This duty extends to both privileged information and all other information relating to a client or furnished by the client and acquired by the lawyer during the course of the representation. *See* Rule 1.05(a). A lawyer violates Rule 1.05 if the

lawyer knowingly reveals or uses either category of information in ways that exceed Rule 1.05's scope. *See also* Opinion 680 (explaining these principles).

The extent to which Rule 1.05 is implicated by the use of generative AI will depend on how a given program works and how a lawyer uses it. As with other research tools, there may be ways to use certain generative AI programs for general research purposes without revealing client confidential information. But by their very nature, many generative AI tools invite a "conversation" in which the lawyer—through his or her prompts to the generative AI tool—will explain relevant facts, legal theories, and arguments. These exchanges could, if nothing else, expose the lawyer's privileged mental impressions to the generative AI tool. One could also imagine a request for certain outputs from a generative AI tool—like a draft demand letter or a settlement agreement—that would require the lawyer to feed the generative AI program certain privileged or otherwise confidential facts related to the dispute. In any case where the lawyer intends to provide client confidential information to the program, Rule 1.05 will likely be implicated.

These concerns are especially relevant given the "self-learning" nature of many generative AI programs. A self-learning program is one that stores and incorporates user inputs into its existing datasets so as to continue refining its responses and improving operation of the service. In some ways, generative AI programs are attractive *because* of this ever-evolving nature. But that may make them inappropriate for legal work. The use of such self-learning programs poses a risk that the confidential information a lawyer inputs to the program may be stored within the program and revealed in responses to future inquiries by third parties. That is obviously unacceptable. So, with any generative AI tool, the lawyer should be reasonably satisfied that the program will not reveal confidential information to others or permit the use of such information to the disadvantage of the client. If the lawyer is not so satisfied, the lawyer should—at a minimum—not input any confidential information to the program without client consultation and consent.

This goes back to the duty of technological competence. Before any lawyer uses a generative AI product for client work, the lawyer must understand to a reasonable degree how the technology works and must take reasonable precautions to ensure that any client confidential information is protected. Drawing from this Committee's Opinion 680, such reasonable precautions may include:

(1) acquiring a general understanding of how the technology works;

(2) reviewing and potentially renegotiating the "terms of service" to which the lawyer submits when using the generative AI tool;

(3) learning about the data-security protections used by the generative AI tool—because even if the tool does not intentionally share inputs with other users, it may be particularly vulnerable to hacking of stored information; and

(4) training lawyers and staff about how to appropriately use generative AI tools while protecting client confidential information.

See Opinion 680. "These precautions do not require lawyers to become experts in technology; however, they do require lawyers to become and remain vigilant about data security issues from the outset of using a particular technology in connection with client confidential information." *Id.*

With all that said, there may be circumstances where it is permissible to use confidential information in conjunction with a generative AI program. Rules 1.05(c) and 1.05(d) allow a lawyer to disclose client confidential information in various circumstances, including where the use of third-party service providers is reasonably necessary to carry out the representation effectively. *See* Opinion 572 (June 2006) (copy service); Opinion 680 (cloud computing service). But the lawyer can only do so if he or she is reasonably confident that the confidential character of the information will be respected and protected by the service provider. *See id*. The same principles would apply to the use of a generative AI tool.

If a lawyer intends to use confidential information in conjunction with generative AI tools, the lawyer should consider informing clients about the associated risks and may need to secure client consent. The State Bar of California Standing Committee on Professional Responsibility and Conduct has recommended that lawyers inform their clients if generative AI tools will be used as part of their representation. *See* State Bar of California, Standing Committee on Professional Responsibility and Conduct, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Nov. 16, 2023). Ethics opinions from the ABA and the Florida Bar go a step further and suggest that lawyers should obtain informed consent before using these tools. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 512 (2024) ("Generative Artificial Intelligence Tools"); Florida Bar Ethics Opinion 24-1 (2024). This Committee, in Opinion 680 concerning the risks of cloud-computing software, stated "[i]n some circumstances it may be appropriate to confer with a client regarding these risks as applicable to a particular matter and obtain a client's input regarding or consent to using" such new technology. At a minimum, Texas lawyers should engage in the same thoughtful analysis with respect to generative AI tools.

Oversight/Supervision

Though this should likely go without saying, a lawyer should always verify the accuracy of any responses received from a generative AI tool. But this principle apparently wasn't obvious to the ever-increasing number of lawyers who have been caught submitting made-up citations in court filings. So, the Committee will say it again: lawyers are responsible for the work product they submit regardless of who (or what) does the original research and drafting. That means lawyers cannot blindly rely upon or use answers given by generative AI tools. Lawyers who rely on generative AI for research, drafting, and communication risk many of the same perils as those who rely on inexperienced or overconfident nonlawyer assistants. *Cf.* Rule 5.03 (Responsibilities Regarding Nonlawyer Assistants).

A lawyer's failure to verify generative AI outputs can implicate a host of Rules, including Rule 1.01 (Competent and Diligent Representation), Rule 3.01 (Meritorious Claims and Contentions), Rule 3.03 (Candor Toward the Tribunal), and Rule 3.04 (Fairness in Adjudicatory Proceedings), among others. The best practice here, as with many other efficiency-enhancing tools in the law: AI-generated outputs can be used as a starting point for a lawyer's work, but must always be carefully analyzed for accuracy and quality. That said, a lawyer's duties require more than merely detecting and eliminating false AI-generated results—the lawyer is ultimately responsible for ensuring that the content is accurate and supports the client's interests.

A lawyer must also be aware of how various courts treat the use of generative AI. Some courts have issued standing orders or local rules prohibiting the use of generative AI to draft legal filings or at least requiring certain forms of disclosure; others have declined to issue any such rules at all. *Compare* N.D. Tex. LR 7.2(f) (disclosure rules for briefs prepared using generative artificial intelligence), *with* "Court Decision on Proposed Rule" (5th Cir. June 10, 2024) (declining to adopt special rule regarding the use of artificial intelligence in drafting briefs).

Fees

It's not hard to imagine how the effective use of generative AI tools might impact the fees that lawyers charge—after all, one of the most promising aspects of these tools is the possibility for lawyers to provide legal services more efficiently. In most typical hourly arrangements (depending on the agreement), a lawyer will likely be able to charge the client for the actual time the lawyer spends using a generative AI program for purposes of the representation, including to refine the program's outputs and check the work. A lawyer may not, however, charge hourly fees for the time that was "saved"

by using the generative AI program. As the District of Columbia Bar Association explained:

> [I]t goes without saying that a lawyer who has undertaken to bill on an hourly basis is never justified in charging a client for hours not actually expended. If a lawyer has agreed to charge the client on this basis (i.e., hourly), and it turns out that the lawyer is particularly efficient in accomplishing a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter. When that basis for billing the client has been agreed to, the economies associated with the result must inure to the benefit of the client.

D.C. Legal Ethics Opinion 388 (2024) (quoting D.C. Legal Ethics Opinion 267 (1996) and ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-379 (1993) ("Billing for Professional Fees, Disbursements and Other Expenses")). *See also* Florida Bar Ethics Opinion 24-1 ("Though generative AI programs may make a lawyer's work more efficient, this increase in efficiency must not result in falsely inflated claims of time.").

If the lawyer pays per use for a particular generative AI program, the lawyer may be able to collect those expenses from the client, as allowed by law and if the client accepts that arrangement. *See* Opinion 594. When a lawyer incurs per-use fees associated with a generative AI program, one could imagine a client agreeing to reimburse those expenses in much the same way some clients agree to pay for the use of traditional online research tools like Westlaw and LexisNexis. The lawyer will generally not be permitted to recover more than the amount of expenses actually incurred and paid to the generative AI provider. *Cf. id.*

CONCLUSION

While there may be many ways that generative AI can assist in the practice of law and benefit lawyers and clients alike, Texas lawyers must always be aware of the ethical issues that may arise in the use of generative AI. Among many other issues, lawyers should acquire basic technological competence before using any generative AI tool, should always ensure that the tool does not imperil confidential client information, should always verify the accuracy of any responses received from a generative AI tool, and should not charge clients for the time "saved" by using a generative AI program.

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United States District Court, S.D. New York.

UNITED STATES of America,
v.
Bradley HEPPNER, Defendant.

25 Cr. 503 (JSR)
|
Signed February 17, 2026

Synopsis
Background: Defendant who pleaded not guilty to grand jury charges of securities fraud, wire fraud, conspiracy, making false statements to auditors, and falsifying corporate records asserted privilege over documents he created using publicly available generative artificial intelligence (AI) platform. Government moved for ruling that AI documents were not protected by attorney-client privilege or work product doctrine.

Holdings: The District Court, Jed S. Rakoff, J., held that:

[1] in matter of first impression, AI user's communications in connection with pending criminal investigation were not protected by attorney-client privilege, and

[2] in matter of first impression, AI user's communications in connection with pending criminal investigation were not protected by work product doctrine.

Motion granted.

Procedural Posture(s): Pre-Trial Hearing Motion.

West Headnotes (13)

[1] Privileged Communications and Confidentiality🔑Elements in general; definition

The "attorney-client privilege" attaches to, and protects from disclosure, communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice.

[2] Privileged Communications and Confidentiality🔑Construction

Courts construe the attorney-client privilege narrowly because it operates as an exception to the rule that all relevant proof is essential for a complete record and for confidence in the fair administration of justice.

[3] Privileged Communications and Confidentiality🔑Documents and records in general

Defendant's communications that he memorialized in documents created using publicly available generative artificial intelligence (AI) platform, in connection with pending criminal investigation of him for securities fraud, wire fraud, conspiracy, making false statements to auditors, and falsifying corporate records, were not protected by attorney-client privilege, although he had inputted into AI platform information he learned from counsel, created AI documents in order to speak with counsel to obtain legal advice, and later shared AI documents with counsel; AI documents were not communications between defendant and counsel, communications in AI documents were not confidential, and defendant did not communicate with AI platform to obtain legal advice or at counsel's suggestion or direction.

More cases on this issue

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[4] **Privileged Communications and Confidentiality**🔑Relation of Attorney and Client

In the absence of an attorney-client relationship, the discussion of legal issues between two non-attorneys is not protected by attorney-client privilege.

[5] **Privileged Communications and Confidentiality**🔑Privileged Communications and Confidentiality
Privileged Communications and Confidentiality🔑Elements in general; definition

All recognized privileges require a trusting human relationship, such as, in the attorney-client context, a relationship with a licensed professional who owes fiduciary duties and is subject to discipline.

[6] **Privileged Communications and Confidentiality**🔑Documents and records in general

In determining whether the attorney-client privilege applies to communications memorialized in documents by a user of an artificial intelligence (AI) platform, users of AI platforms do not have substantial privacy interests in their conversations with another publicly accessible AI platform which users voluntarily disclosed to the platform and which the platform retains in the normal course of its business.

[7] **Privileged Communications and Confidentiality**🔑Waiver of privilege

Even assuming that defendant inputted information protected by attorney-client privilege into publicly available artificial intelligence (AI) platform, in connection with pending criminal investigation of him for securities fraud, wire fraud, conspiracy, making false statements to auditors, and falsifying corporate records, defendant waived attorney-client privilege for that information, where he shared that information with AI platform, just as if he had shared it with any other third party, and in light of AI platform's privacy policy, he had no reasonable expectation that inputs would not be shared with other third parties.

More cases on this issue

[8] **Privileged Communications and Confidentiality**🔑Effect of delivery of nonprivileged materials to attorney; preexisting documents

Non-privileged communications are not somehow alchemically changed into privileged ones, under the attorney-client privilege, upon being shared with counsel.

[9] **Federal Civil Procedure**🔑Work Product Privilege; Trial Preparation Materials

Related to but distinct from the attorney-client privilege, the work product doctrine, at its core, shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case.

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[10] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

The "work product doctrine" provides qualified protection for materials prepared by or at the behest of counsel in anticipation of litigation or for trial.

1 Case that cites this headnote

[11] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

As with the attorney-client privilege, the work product doctrine is not lightly created nor expansively construed.

[12] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

The work product doctrine's availability in reference to materials in the possession of a client depends upon the existence of a real, rather than speculative, concern that the thought processes of the client's counsel in relation to pending or anticipated litigation would be exposed.

[13] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

Defendant's communications that he memorialized in documents created using publicly available generative artificial intelligence (AI) platform, in connection with pending criminal investigation of him for securities fraud, wire fraud, conspiracy, making false statements to auditors, and falsifying corporate records, were not protected by work product doctrine, even assuming that they were prepared in anticipation of litigation, since AI documents were not prepared by or at behest of counsel, but rather, were prepared by defendant on his own volition, so he was not acting as counsel's agent when he communicated with AI platform, and AI documents did not reflect defense counsel's strategy at time that defendant created them although they did affect counsel's strategy going forward.

More cases on this issue

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MEMORANDUM

JED S. RAKOFF, United States District Judge:

***1** At a pretrial conference in this matter held on February 10, 2026, the Court, after hearing the arguments of counsel, granted from the bench the Government's motion for a ruling that certain written exchanges that defendant Benjamin Heppner had with a generative artificial intelligence ("AI") platform were not protected from Government inspection by either the attorney-client privilege or the work product doctrine. See ECF No. 22

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("Gov't Mot."). This Memorandum sets forth the reasons for the Court's ruling.

I. Background and Procedural History

Generative artificial intelligence tools have become increasingly prevalent across various domains of human activity. It has reliably been estimated, for instance, that more than half of United States households have adopted AI in some form. See Bond, Trends - Artificial Intelligence (2025), https://www.bondcap.com/report/pdf/Trends_Artificial_Intelligence.pdf at 59 (accessed February 12, 2026). Only three years after its release, one prominent AI platform is being used by more than 800 million people worldwide every week. Id. at 55. Yet the implications of AI for the law are only beginning to be explored. Thus, the Court's ruling in this case appears to answer a question of first impression nationwide: whether, when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the AI user's communications protected by attorney-client privilege or the work product doctrine?[1] For the reasons that follow, the answer is no.

On October 28, 2025, a grand jury in this District returned an indictment charging Heppner with securities fraud, wire fraud, conspiracy to commit securities fraud and wire fraud, making false statements to auditors, and falsifying corporate records. ECF No. 3. The indictment was unsealed on November 4, 2 025, see ECF No. 4, and Heppner was arrested the following day in the Northern District of Texas. On November 10, 2025, Heppner pleaded not guilty before this Court to all the charges against him and was released on bond. See ECF Nos. 16, 18. Trial is set to commence April 6, 2026. See ECF No. 16.

The charges against Heppner arise from his alleged misconduct as an executive of several corporate entities, including the publicly traded company GWG Holdings, Inc. ("GWG"). See generally ECF No. 3. At a high level, the indictment charges that Heppner defrauded GWG's investors out of more than $150 million by making false representations about, and causing GWG to enter into undisclosed self-serving transactions concerning, two privately held companies that Heppner controlled, Beneficient Company Group, L.P. and Highland Consolidated L.P. See id. ¶¶ 1-3.

In connection with Heppner's arrest on November 4, 2025, agents with the Federal Bureau of Investigation executed a search warrant at Heppner's home and seized numerous documents and electronic devices. See Gov't Mot. at 3; ECF No. 23-1 at 1. Heppner's counsel later represented to the Government that among the seized materials were approximately thirty-one documents that memorialize communications that Heppner had with the generative AI platform "Claude," which is operated by the private company Anthropic. See Gov't Mot. at 3; ECF Nos. 23-1 23-2. According to Heppner's counsel, the documents represent communications between Heppner and Claude that took place "in 2025, after Mr. Heppner had received a grand jury subpoena [and] after it was clear with discussions with the government that Mr. Heppner was the target of this investigation." Transcript, February 10, 2026 ("Tr.") at 4. Without any suggestion from counsel that he do so, Heppner "prepared reports that outlined defense strategy, that outlined what he might argue with respect to the facts and the law that we anticipated that the government might be charging." Id. Thus, counsel asserted, Heppner "was preparing these reports in anticipation of a potential indictment." Id.

***2** In exchanges with the Government, Heppner, through his counsel, asserted privilege over these documents (the "AI Documents"), arguing that (1) Heppner had inputted into Claude, among other things, information that Heppner had learned from counsel; (2) Heppner had created the AI Documents for the purpose of speaking with counsel to obtain legal advice; and (3) Heppner had subsequently shared the contents of the AI Documents with counsel. See Gov't Mot. at 3-4, 11; ECF Nos. 23-2, 23-4, 23-5. Heppner's counsel conceded, however, that counsel "did not direct [Heppner] to run Claude searches." ECF No. 23-5. Pursuant to a "Privilege Protocol Stipulation," the Government and Heppner's counsel agreed that the Government would segregate the AI Documents and not inspect them pending the resolution of Heppner's claims of privilege, and Heppner's counsel listed the AI Documents in Heppner's privilege log. See Gov't Mot. at 3-4 & n.1; ECF Nos. 23-1, 23-2.

On February 6, 2026, the Government moved, in writing, for a ruling that the AI Documents are protected by neither the attorney-client privilege nor the work product doctrine. Gov't Mot. The Court heard oral argument on the Government's motion at the pretrial conference held on February 10, 2026, and, as noted, orally granted the motion.

II. Attorney-Client Privilege

[1] [2]It is well established that the attorney-client privilege attaches to, and protects from disclosure, "communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice." United States v. Mejia, 655 F.3d 126, 132 (2d Cir. 2011).[2] Courts construe the attorney-client privilege narrowly because it operates as an exception to the rule that "all relevant proof is essential" for a complete record and for "confidence in the fair administration of justice." In re Six Grand Jury Witnesses, 979 F.2d 939, 943 (2d Cir. 1992). See also, e.g., Calvin Klein Trademark Tr. v. Wachner, 198 F.R.D. 53, 55 (S.D.N.Y. 2000).

[3] [4]Applying these principles here, the AI Documents lack at least two, if not all three, elements of the attorney-client privilege. First, the AI Documents are not communications between Heppner and his counsel. Heppner does not, and indeed could not, maintain that Claude is an attorney. "In the absence of an attorney-client relationship, the discussion of legal issues between two non-attorneys is not protected by attorney-client privilege." E.g., In re OpenAI, Inc., Copyright Infringement Litig., 802 F. Supp. 3d 688, 699 (S.D.N.Y. 2025). Because Claude is not an attorney, see ECF No. 23-6, that alone disposes of Heppner's claim of privilege.

[5]The Court is aware that some commentators have argued that whether Claude is an attorney is irrelevant because a user's AI inputs, rather than being communications, are more akin to the use of other Internet-based software, such as cloud-based word processing applications. But the use of such applications is not intrinsically privileged in any case, and the argument that Claude is like any other form of software only cuts against the invocation of privilege because all "[r]ecognized privileges" require, among other things, "a trusting human relationship," such as, in the attorney-client context, a relationship "with a licensed professional who owes fiduciary duties and is subject to discipline." See Ira P. Robbins, Against an AI Privilege, JOLT Dig., Harvard L. Sch. (Nov. 7, 2025), https://jolt.law.harvard.edu/digest/against-an-ai-privilege. No such relationship exists, or could exist, between an AI user and a platform such as Claude.

[6]Second, the communications memorialized in the AI Documents were not confidential. This is not merely because Heppner communicated with a third-party AI platform but also because the written privacy policy to which users of Claude consent provides that Anthropic collects data on both users' "inputs" and Claude's "outputs," that it uses such data to "train" Claude, and that Anthropic reserves the right to disclose such data to a host of "third parties," including "governmental regulatory authorities." See Anthropic, Privacy Policy (as of February 19, 2025), https://www.anthropic.com/legal/archive/a2eecf43-807a-4a53-89dd-04c44c351138. The policy clearly puts Claude's users on notice that Anthropic, even in the absence of a subpoena compelling it to do so, may "disclose personal data to third parties in connection with claims, disputes[,] or litigation." Id. More generally, as another court in this District recently observed, AI users do not have substantial privacy interests in their "conversations with [another publicly accessible AI platform] which users voluntarily disclosed" to the platform and which the platform "retains in the normal course of its business." In re OpenAI, Inc., Copyright Infringement Litig., No. 25 MD 3143, ECF No. 1021 at 3 (Jan. 5, 2026). For these reasons, Heppner could have had no "reasonable expectation of confidentiality in his communications" with Claude. See Mejia, 655 F.3d at 132-34. And the AI Documents are not like confidential notes that a client prepares with the intent of sharing them with an attorney because Heppner first shared the equivalent of his notes with a third-party, Claude. Cf. United States v. DeFonte, 441 F.3d 92, 95-96 (2d Cir. 2006) (per curiam).

***3** Third, Heppner did not communicate with Claude for the purpose of obtaining legal advice. This issue perhaps presents a closer call because Heppner's counsel asserts that Heppner communicated with Claude for the "express purpose of talking to counsel." ECF No. 23-5. But, as Heppner's counsel also conceded, Heppner did not do so at the suggestion or direction of counsel. See id. (noting that counsel "did not direct [Heppner] to run Claude searches"). Had counsel directed Heppner to use Claude, Claude might arguably be said to have functioned in a manner akin to a highly trained professional who may act as a lawyer's agent within the protection of the attorney-client privilege. Cf. United States v. Adlman, 68 F.3d 1495, 1498-99 (2d Cir. 1995) (citing United States v. Kovel, 296 F.2d 918 (2d Cir. 1961)). But because Heppner communicated with Claude of his own volition, what matters for the attorney-client privilege is whether Heppner intended to obtain legal advice from Claude, not whether he later shared Claude's outputs with counsel. And Claude disclaims providing legal advice. Indeed, when the Government asked Claude whether it could give legal advice, it responded that "I'm not a lawyer and can't provide formal legal advice or recommendations" and went on to recommend that a user "should consult with a qualified attorney who can properly assess your specific circumstances." ECF No. 23-6 at 1-2.

[7] [8]Thus, the communications between Heppner and Claude were not privileged at the time they took place.[3] Moreover, even assuming that Heppner intended to share these communications with his counsel and eventually did so, it is black-letter law that non-privileged communications are not somehow alchemically changed into privileged ones upon being shared with counsel. Thus, because the AI Documents "would not be privileged if they remained in [Heppner's] hands," they did not "acquire protection merely because they were transferred" to counsel. See Gould, Inc. v. Mitsui Min. & Smelting Co., Ltd., 825 F.2d 676, 679-80 (2d Cir. 1987).

III. Work Product Doctrine

[9] [10] [11] [12]Related to but distinct from the attorney-client privilege, the work product doctrine, "[a]t its core[,] ... shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case." United States v. Nobles, 422 U.S. 225, 238, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975). The doctrine "provides qualified protection for materials prepared by or at the behest of counsel in anticipation of litigation or for trial." In re Grand Jury Subpoenas Dated March 19, 2002, and August 2, 2002, 318 F.3d 379, 383 (2d Cir. 2003). As with the attorney-client privilege, the work product doctrine is not "lightly created nor expansively construed," id. (quoting United States v. Nixon, 418 U.S. 683, 710, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974)), and the Second Circuit has repeatedly held that the doctrine's purpose "is not generally promoted by shielding from discovery materials in an attorney's possession that were prepared neither by the attorney nor his agents," id. (citing Matter of Grand Jury Subpoenas Dated Oct. 22, 1991, and Nov. 1, 1991, 959 F.2d 1158 (2d Cir. 1992)). The doctrine's availability in reference to materials in the possession of a client "depends upon the existence of a real, rather than speculative, concern that the thought processes of [the client's] counsel in relation to pending or anticipated litigation would be exposed." Matter of Grand Jury Subpoenas, 959 F.2d at 1167 (quoting Gould, 825 F.2d at 680).

[13]The AI Documents do not merit protection under the work product doctrine because, even assuming, arguendo, that they were prepared "in anticipation of litigation," In re Grand Jury Subpoenas, 318 F.3d at 383, they were nevertheless not "prepared by or at the behest of counsel," id., nor did they reflect defense counsel's strategy, see Matter of Grand Jury Subpoenas, 959 F.2d at 1167. As to the former, Heppner's counsel confirmed that the AI Documents "were prepared by the defendant on his own volition." Tr. at 5. That means that Heppner was not acting as his counsel's agent when he communicated with Claude. As to the latter, counsel conceded that while the AI Documents did "affect" counsel's strategy going forward, they did not "reflect" counsel's strategy at the time that Heppner created them. See id.

***4** At oral argument, Heppner resisted these conclusions by relying on two authorities. The first, Federal Rule of Criminal Procedure 16(b) (2) (A), is inapplicable on its face. That rule provides that, where the Government provides a defendant with pretrial discovery and the defendant thereby becomes obligated to satisfy the Government's pretrial discovery requests, the defendant's obligation does not extend to "discovery or inspection of reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense." Id. Here, however, the AI Documents were seized from Heppner, at the time of his arrest, pursuant to a search warrant the validity of which Heppner's counsel does not challenge. See Gov't Mot. at 3. The Government did not request them, and Heppner did not produce them, in pretrial discovery.

Heppner's second authority is Shih v. Petal Card, Inc., 565 F. Supp. 3d 557 (S.D.N.Y. 2021). In that case, a Magistrate Judge in this District authorized the plaintiff to withhold certain communications that she had with an individual who was then her lawyer, and later became her husband, that the plaintiff prepared in anticipation of litigation or for trial. The court held that the work product doctrine protected such communications, "regardless of whether [the lawyer/husband] was acting as her counsel at the time, and without showing that another attorney 'directed the work.' " Id. at 574.

Shih, of course, is not binding on this Court, and this Court respectfully disagrees with its holding. As relevant here, the court in Shih principally concluded that the work product doctrine is not limited to materials prepared by or at the direction of an attorney. Id. But that conclusion undermines the policy animating the work product doctrine, which, as one of the cases cited in Shih explains, is "to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation.' " Parneros v. Barnes & Noble, Inc., 332 F.R.D. 482, 492 (S.D.N.Y. 2019) (quoting United States v. Adlman, 134 F.3d 1194, 1196 (2d Cir. 1998) (quoting, in turn, Hickman v. Taylor, 329 U.S. 495, 510-11, 67 S.Ct. 385, 91 L.Ed. 451 (1947))); see Shih, 565 F. Supp. 3d at 574 (citing Parneros). While it is true that the work product doctrine may apply to materials generated by non-lawyers, the Second Circuit has

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repeatedly stressed that the purpose of the doctrine is to protect lawyers' mental processes. See, e.g., In re Grand Jury Subpoenas, 318 F.3d at 383-85 (extensively describing doctrine's rationale and applying it to material "prepared by or for counsel"); Adlman, 134 F.3d at 1197 (similar); Adlman, 68 F.3d at 1500-02 (similar); Matter of Grand Jury Subpoenas, 959 F.2d at 1166 (doctrine "generally does not shield from discovery documents that were not prepared by the attorneys themselves, or their agents"); see also Bice v. Robb, 511 F. App'x 108, 110 (2d Cir. 2013) (summary order) (declining to extend protection to documents "not the work product of an individual acting as [plaintiffs'] attorney").

Here, there is no dispute that Heppner acted on his own when he created the AI Documents. See ECF No. 23-5 (noting that defense counsel "did not direct [Heppner] to run Claude searches"); Tr. at 5 (confirming same). Because the AI Documents were not prepared at the behest of counsel and did not disclose counsel's strategy, they do not merit protection as work product.

IV. Conclusion

Generative artificial intelligence presents a new frontier in the ongoing dialogue between technology and the law. Time will tell whether, as in the case of other technological advances, generative artificial intelligence will fulfill its promise to revolutionize the way we process information. But AI's novelty does not mean that its use is not subject to longstanding legal principles, such as those governing the attorney-client privilege and the work product doctrine. Because Heppner's use of Claude fails to satisfy either of these rules, the AI Documents do not merit the protections Heppner has claimed.

All Citations

--- F.Supp.3d ----, 2026 WL 436479

Footnotes

1 The Court is unaware of, and the parties have not identified, any case to date that has presented this issue. Most published decisions involving generative artificial intelligence have had to do with attorneys' misuse of that technology. That set of concerns is plainly not present here.

2 Except where otherwise indicated, all quotations in this Memorandum omit citations, quotation marks, footnotes, brackets, ellipses, and other alterations in source material.

3 At oral argument, Heppner's counsel suggested in passing that the AI Documents may be privileged because they "incorporated information that we had conveyed to Mr. Heppner over the course of our representation." Tr. at 3. But even if certain information that Heppner input into Claude was privileged, he waived the privilege by sharing that information with Claude and Anthropic, just as if he had shared it with any other third party. Further, in light of Anthropic's privacy policy discussed above, Heppner had no reasonable expectation that the inputs would not be shared with other third parties.

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2026 WL 373043
Only the Westlaw citation is currently available.
United States District Court, E.D. Michigan, Southern Division.

Sohyon WARNER, Plaintiff,
v.
GILBARCO, INC., Gilbarco, Inc. (d/b/a Gilbarco Veeder-Root), and Vontier Corporation, Defendants.

Case No. 2:24-cv-12333
|
Signed February 10, 2026

Synopsis

Background: Pro se former employee moved for sanctions against former employer and parent company in her discrimination claim against them, alleging their non-compliance with prior discovery order and seeking production of certain materials. Former employer and parent company moved to compel the production of certain documents and the execution of medical authorizations, and sought sanctions.

Holdings: The District Court, Anthony P. Patti, United States Magistrate Judge, held that:

[1] human resources investigations were protected by attorney-client privilege and work product doctrine;

[2] alleged factual accounts given during human resources investigations were not subject to disclosure;

[3] extension of discovery period was not warranted;

[4] artificial intelligence (AI) materials used by former employee were subject to work-product protection; and

[5] former employee did not waive work product doctrine by using artificial intelligence large language model.

Motions granted in part, denied in part, and deemed withdrawn in part.

Procedural Posture(s): Motion for Sanctions (Discovery); Motion to Compel Discovery; Motion to Extend Time for Discovery; Motion to Compel.

West Headnotes (20)

[1] **Federal Civil Procedure** Motions in General

The usual path to gaining relief from the District Court is to file a motion.

[2] **Federal Civil Procedure** Supplemental briefs and filings

A party is generally not permitted to file a notice unless previously requested by the District Court; more often than not, they are stricken.

[3] **Attorneys and Legal Services** Filings and Other Submissions

District Court would issue caution to pro se plaintiff regarding the filing of "notices," rather than motions, where plaintiff had, on more than one occasion, filed unauthorized "notices" on the docket.

More cases on this issue

[4] **Federal Civil Procedure** Depositions and Discovery

Defendants complied with Rules of Civil Procedure and prior discovery order when they filed supplemental discovery response, even though defendants provided additional

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information after court-ordered deadlines, in action brought by pro se plaintiff; defendants complied with their duty to supplement. Fed. R. Civ. P. 26(e).

More cases on this issue

[5] **Federal Civil Procedure**🔑Failure to Comply; Sanctions

Order requiring defendants to produce certain materials, to re-run all electronic discovery searches using an expanded custodian and term list, and to re-produce the results in an organized, labeled format as required by Rules of Civil Procedure was not warranted, in action brought by pro se plaintiff; District Court was satisfied that defendants produced all the requested materials within their possession, custody, or control. Fed. R. Civ. P. 34.

More cases on this issue

[6] **Federal Civil Procedure**🔑Sufficiency of compliance

Defendants' production of electronic discovery material complied with District Court's prior discovery order, in action brought by pro se plaintiff; defendants stated in supplemental response that they had run an electronic search with specific search parameters and identified the location of the documents that were produced as a result of the search.

More cases on this issue

[7] **Federal Civil Procedure**🔑Work Product Privilege; Trial Preparation Materials
Privileged Communications and Confidentiality🔑Particular cases

Reports and documents from human resources investigations were done in anticipation of litigation, both subjectively and objectively, as opposed to the ordinary course of business, and thus were protected from disclosure to former employee by attorney-client privilege and the work product doctrine in employment discrimination case; investigation reports were made by compliance counsel and compliance investigator, and declarations filed in support of privilege claims with respect to the two documents were authored by attorneys.

More cases on this issue

[8] **Privileged Communications and Confidentiality**🔑Factual information; independent knowledge; observations and mental impressions

Any factual accounts given during human resources investigations and contained in the reports such investigations generated, which pro se former employee requested but were not discoverable, as they were within attorney notes, were subject to attorney-client privilege, and thus were not subject to disclosure to former employee by former employer and parent company in employment discrimination action; District Court extensively questioned defense counsel at hearing and was satisfied that no witnesses interviewed in the investigations gave written, recorded, sworn, or transcribed verbatim statements.

More cases on this issue

[9] **Federal Civil Procedure**🔑Work Product Privilege; Trial Preparation Materials

Even attorney interview notes of fact witnesses (if any exist), which are inevitably funneled through the attorney-interviewers' ears, minds,

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fingers and/or voices (if dictated), are also protected as work product and, thus, not discoverable.

[10] **Federal Civil Procedure**🔑Work Product Privilege; Trial Preparation Materials
Privileged Communications and Confidentiality🔑Deliberative process privilege; mental process privilege

Forcing an attorney, during discovery, to disclose notes and memoranda of witnesses' oral statements is particularly disfavored under work product doctrine because it tends to reveal the attorney's mental processes; this is in contrast with government documents protected by the deliberative process privilege, where factual summaries may be discoverable because they are not "deliberative."

[11] **Federal Civil Procedure**🔑Discovery and Production of Documents and Other Tangible Things

District court would decline pro se plaintiff's request to direct defendants to certify, under oath, the preservation of electronically stored information and physical materials associated with former records custodians and to describe their data-retention measures in writing; such certification was given on the record in open court.

More cases on this issue

[12] **Federal Civil Procedure**🔑Proceedings to obtain

Extension of discovery period to ensure pro se plaintiff received a "meaningful opportunity" to review all compelled productions, conduct follow-up discovery, and complete depositions was not warranted, where plaintiff failed to take a deposition she claimed to have requested, purportedly due to not having related documents, despite District Court's explanation to plaintiff from the bench that sometimes depositions were useful to identify documents to be sought in discovery, plaintiff never sought to compel that deposition, let alone within the discovery period, and plaintiff did not avail herself of the opportunity to depose any records custodian if she believed the records that were produced were incomplete.

More cases on this issue

[13] **Federal Civil Procedure**🔑Examination in General
Federal Civil Procedure🔑Documents, examination involving

A deposition may sometimes be used to identify documents to be sought in discovery, the revelation of which may occasionally become the basis for continuing a deposition.

[14] **Federal Civil Procedure**🔑Payment of expenses

Pro se plaintiff's unsuccessful "notice" of defendants' purported noncompliance with discovery order and request for sanctions, which District Court treated as a motion, was substantially justified, or there were other circumstances which made an award of expenses unjust, and thus order requiring plaintiff to pay defendants' reasonable expenses incurred in opposing such motion, including attorney's fees, was not warranted; District Court did grant plaintiff's request to review certain requested human resources

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investigations in camera, in order to determine whether such investigations were subject to attorney-client privilege or the work product doctrine, and plaintiff could not be faulted for making such a request under the circumstances. Fed. R. Civ. P. 37(a)(5).

More cases on this issue

[15] **Federal Civil Procedure** Failure to respond; sanctions
Federal Civil Procedure Pretrial Order

Defendants' discovery-related motion to compel and request for sanctions against pro se plaintiff was filed more than two weeks after the close of discovery, and thus was denied as untimely; initial and amended scheduling orders specifically stated that discovery "shall be completed" on or before cutoff date, District Court judge's and magistrate judge's guidelines for practice contained similar provisions, defendants failed to make showing that it was impossible or impractical to file motion before discovery closed, and they did not file a motion to extend discovery or otherwise demonstrate good cause for filing their motion outside of the discovery period.

More cases on this issue

[16] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

Was use of artificial intelligence in anticipation of litigation, precluding discovery?**Yes**
Former employee's use of third-party artificial intelligence (AI) tools in connection with employment discrimination lawsuit against former employer and parent company was in anticipation of litigation, and thus documents and information related to such use were not discoverable by employer and company. Fed. R. Civ. P. 26(b)(3)(A).

More cases on this issue

[17] **Federal Civil Procedure** Particular Subject Matters

Was requested discovery relevant?**No**
Documents and information concerning former employee's use of third-party artificial intelligence (AI) tools were not relevant under rule governing scope of discovery to her employment discrimination claim against former employer and parent company. Fed. R. Civ. P. 26(b)(1).

More cases on this issue

[18] **Federal Civil Procedure** Work Product Privilege; Trial Preparation Materials

Artificial intelligence (AI) materials used by pro se plaintiff in her action against defendants were subject to work-product protection; generative AI program allegedly used by plaintiff was a tool, AI materials involved plaintiff's internal drafting process, analysis, and her thought process, and were prepared in anticipation for litigation. Fed. R. Civ. P. 26(b)(3), 26(b)(5)(A).

1 Case that cites this headnote
More cases on this issue

[19] **Federal Civil Procedure** Waiver

Pro se plaintiff did not waive protection under work product protection by using artificial intelligence (AI) large-language model (LLM) to prepare for her action against defendants; work-product waiver had to be a waiver to an adversary or in a way likely to get in an adversary's hand, LLM was merely a tool, not a person, even though it had administrators

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working in the background, and if the court were to conclude that such activity waived work-product protection, such protection would not apply to nearly every modern drafting environment, a result no court has endorsed. Fed. R. Civ. P. 26.

1 Case that cites this headnote
More cases on this issue

[20] **Privileged Communications and Confidentiality**🔑Health information statutes and regulations
Privileged Communications and Confidentiality🔑Mental health information statutes and regulations

Order compelling pro se plaintiff to execute Health Insurance Portability and Accountability Act (HIPAA) compliant medical authorizations for medical and mental-health providers identified by plaintiff in her deposition was warranted, even though defendants' motion to compel such information was not timely; District Court had broad management authority over case, and even though plaintiff claimed her prior attorney obtained the releases from her and would have provided them to defense counsel, defense counsel represented he did not receive them, and a minimal amount of cooperation from plaintiff would have avoided the motion to compel. Fed. R. Civ. P. 1, 16(a)(2), 16(d).

More cases on this issue

Attorneys and Law Firms

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Lauren Harrington, Richard W. Warren, Ogletree, Deakins, Nash, Smoak & Stewart, PLLC, Birmingham, MI, for Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR SANCTIONS BASED ON NON-COMPLIANCE WITH A COURT ORDER (ECF No. 68), GRANTING IN PART, DENYING IN PART, AND DEEMING WITHDRAWN IN PART DEFENDANTS' MOTION TO COMPEL (ECF No. 80), and STRIKING THE NON-JOINT STATEMENT (ECF No. 89)

Anthony P. Patti, UNITED STATES MAGISTRATE JUDGE

A. Pending Matters

***1** On August 28, 2025, the Court entered an amended scheduling order, which set the fact discovery deadline for December 5, 2025. (ECF No. 41.) To date, the Undersigned has handled several discovery-related motions (*see, e.g.*, ECF No. 45, 47, 48, 49, 50) via orders dated September 26, 2025 (ECF No. 56) and October 30, 2025 (ECF No. 66).

[1] [2] [3]Currently pending before the Court are: (1) Plaintiff's November 10, 2025 notice of Defendants' non-compliance with the Court's October 30, 2025 order and request for sanctions under Fed. R. Civ. P. 37 (ECF No. 68), as to which Defendants filed a response (ECF No. 73), and Plaintiff filed a reply (ECF No. 77); and, (2) Defendants' December 23, 2025 motion to compel and request for sanctions (ECF No. 80), as to which Plaintiff has filed a response (ECF No. 86) and Defendants have filed a reply (ECF No. 87). Additionally, the parties have filed statements of resolved and unresolved issues. (*See* ECF Nos. 89, 90.)[1]

Judge Drain has referred each of these motions to me for hearing and determination (ECF No. 69, 81). The Undersigned conducted a video status conference on January 12, 2026. (ECF Nos. 85, 93.) Pursuant to the Court's January 13, 2026 notice, Plaintiff, on her own behalf, and defense counsel (Attorney Richard W. Warren) appeared on February 5, 2026 in person for a hearing on these motions. (ECF Nos. 82, 88.)

B. Order

1. Plaintiff's motion (ECF No. 68) is DENIED.
Upon consideration of the motion papers and the parties' arguments and representations at the hearing, and for all the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, Plaintiff's motion (ECF No. 68) is **DENIED** as set forth in the prayer for relief (*see* ECF No. 68, PageID.662-663 ¶¶ 1-6.):

[4]• To the extent Plaintiff asked the Court to "[f]ind Defendants in non-compliance with ECF 66 and the Federal Rules of Civil Procedure[,]" the motion is **DENIED**. *Inter alia*, the Court agrees that Defendants complied with the direction regarding Bates ranges 162-462 (*see* ECF No. 66, PageID.630 ¶ 4), when it submitted its November 7, 2025 supplemental response (*see* ECF No. 73, PageID.735; ECF No. 73-1). To the extent that Defendants provided additional information after Court-ordered deadlines, the Court is satisfied that it did so in compliance with its duty to supplement under Fed. R. Civ. P. 26(e).

***2** [5]• To the extent Plaintiff asks Defendants to "[o]rder immediate, complete production of all comparator files, HR investigations, and ESI—requiring Defendants to re-run all searches using the expanded custodian and term list provided on October 27, 2025, and to re-produce the results in an organized, labeled format consistent with Rule 34(b)(2)(E)[,]" the motion is **DENIED**. Defense counsel, as an officer of the Court, provided answers to the Court's extensive questioning on this subject, and the Court is satisfied that Defendants have produced the comparator files (*see* ECF No. 68, PageID.651-653) within their "possession, custody, or control[,]" Fed. R. Civ. P. 34(a)(1); thus, there is nothing for the Court to order. The two investigation reports listed in the privilege log will be addressed below.

[6]Although not spelled out in her prayer for relief, Plaintiff complains that Defendants' production of Bates range 463-4427 on October 27, 2025 and November 7, 2025 did not comply with the Court's October 30, 2025 order (ECF No. 66). (ECF No. 68, PageID.656-658). However, Defendants' November 7, 2025 supplemental response reads: "Not long before Plaintiff's counsel withdrew their representation, Defendants agreed to run an ESI search with specific search parameters—date range: December 1, 2021 to December 31, 2023—custodians: Ivan Ayma, Emily Heuser, Rosanna Hurst and Robert Steffler—and the search terms below[,]" below which appears a list of search terms. (ECF No. 73-1, PageID.754.) Immediately below the chart of search terms, Defendants state: "As a result of this search, see documents at Bates Nos. G000463-1378 and G001379-4427." (ECF No. 73-1, PageID.754 [No. 16].) The Court finds that this suffices and complies with its prior order.

[7] [8] [9] [10]• To the extent Plaintiff asked the Court to "[r]equire Defendants to serve an updated, itemized privilege log identifying each withheld document with sufficient detail to assess the claim of privilege, and to produce all non-privileged portions of the HR investigations[,]" the motion is **DENIED**. Instead, the Court performed Plaintiff's suggested *in camera* review. Having considered the two investigation reports listed on Defendants' November 21, 2025 privilege log (ECF No. 73-3), one by compliance counsel Kathy Martorell dated March 3, 2023 (*see* ECF No. 73-6) and the other by compliance investigator Kate S. Gibson dated December 14, 2022 (*see* ECF No. 73-4), along with the declarations filed in support of privileges with respect to those two documents, one by Kate Gibson, Esq. (ECF No. 73-5) and the other by Kathy Hunt, Esq. (ECF No. 73-7), the Court concludes these investigations and the reports they generated were done in anticipation of litigation, both subjectively and objectively, as opposed to the ordinary course of business. *See, e.g.*, *Upjohn Co. v. United States*, 449 U.S. 383, 386, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981); *Lee v. EUSA Pharma US LLC*, No. 2:22-CV-11145, 2024 WL 250064 (E.D. Mich. Jan. 23, 2024) (Patti, M.J.) (order after in camera review); *United States v. Nobles*, 422 U.S. 225, 238–39, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975) ("the doctrine protect[s] material prepared by agents for the attorney as well as those prepared by the attorney himself."). Because these documents are protected by both the attorney-client privilege and the work product doctrine, the Court will not order their production. Although Plaintiff argued that any factual accounts given in those reports should be produced, the Court extensively questioned defense counsel at the hearing and is satisfied that no witnesses interviewed by in-house counsel gave written, recorded, sworn, or transcribed verbatim statements. As this Court has noted, "even attorney interview notes of fact witnesses (if any exist), which are inevitably funneled through the attorney-interviewers' ears, minds, fingers and/or voices (if dictated), are also protected as work product and, thus, not discoverable." *Lee*, 2024 WL 250064, at *4. *See In re General Motors LLC Ignition Switch Lit.*, 80 F.Supp.3d 521, 532 (S.D.N.Y. 2015) ("[i]nterview notes and memoranda produced in the course of ... internal

investigations have long been considered classic attorney work product.") As the Supreme Court has explained: "Forcing an attorney to disclose notes and memoranda of witnesses' oral statements is particularly disfavored because it tends to reveal the attorney's mental processes ...." *Upjohn*, 449 U.S. at 399, 101 S.Ct. 677 (citation omitted). *See also United States v. One Tract of Real Prop. Together With all Bldgs., Improvements, Appurtenances & Fixtures*, 95 F.3d 422, 427 (6th Cir. 1996); 6 *Moore's Federal Practice* § 26.70[2][a] (Matthew Bender 3d ed.) ("Thus, while the facts themselves are not privileged, a chart or other compilation of facts may be protected as work product.").[2] The Court confirmed that Plaintiff was provided with all of the names of the people interviewed by in-house counsel in the internal investigation, and, though she had the opportunity to depose them to obtain whatever factual information they had, she did not.

***3** • To the extent Plaintiff asked the Court to "[i]mpose sanctions under [Fed. R. Civ. P. 37(b) and Fed. R. Civ. P. 26(g)] ... [,]" such as assessing expenses and fees, deeming facts established, imposing an adverse inference / spoliation, imposing an evidentiary preclusion, deeming a privilege waived, or providing a warning of further sanctions, the motion is **DENIED**;

[11]• To the extent Plaintiff asked the Court to "[d]irect Defendants to certify, under oath, the preservation and completeness of all ESI and hard-copy materials associated with departed custodians (Schoultz, Hurst, Blaser, McClellan, Posada, Heuser, and Martorell) and to describe their data-retention measures in writing[,]" the motion is **DENIED**, as that certification was given on the record in open court; and,

[12] [13]• To the extent Plaintiff sought an extension of the discovery period "to ensure Plaintiff receives a meaningful opportunity to review all compelled productions, conduct follow-up discovery, and complete depositions after compliance is achieved[,]" the motion is **DENIED**. For example, although Plaintiff claims to have requested depositions of Human Resources (HR) in September 2025, she never took a deposition, purportedly because she did not have related documents. She also never sought to compel that deposition at any time, let alone within the discovery period. Nonetheless, defense counsel confirmed that Plaintiff was given a list of those witnesses interviewed in the investigation, and, as the Court explained from the bench, although documents may be beneficial in deposing a witness, they are not absolutely necessary; indeed, a deposition may sometimes be used to *identify* documents to be sought in discovery, the revelation of which may occasionally become the basis for continuing a deposition. If Plaintiff was concerned about the completeness of personnel records produced to her, she was free to explore the contents that she had been given and whether other material exists or should have been included in document productions by deposing the HR director or some other appropriate custodian. She did not avail herself of this opportunity.

[14]Given the Court's denial of Plaintiff's motion, the Court has considered whether to require Plaintiff to pay Defendants their "reasonable expenses incurred in opposing the motion, including attorney's fees[,]" but the Court declines to do so, finding "the motion was substantially justified or other circumstances make an award of expenses unjust[,]" Fed. R. Civ. P. 37(a)(5), particularly the need for the Court to engage in its *in camera* review. Plaintiff can hardly be faulted for making that request under these circumstances.

2. Defendants' motion (ECF No. 80) is GRANTED IN PART, DENIED IN PART, and DEEMED WITHDRAWN IN PART.

[15] [16] [17] [18] [19] [20]Upon consideration of the motion papers and the parties' arguments and representations at the hearing, and for all the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, Defendants' motion (ECF No. 80) is **GRANTED IN PART**, **DENIED IN PART**, and **DEEMED WITHDRAWN IN PART.** Preliminarily, the initial and amended scheduling orders provide: "Discovery shall be completed on or before the date set forth in the scheduling order. The court will not order discovery to take place subsequent to the discovery cutoff date." (ECF No. 14, PageID.81; ECF No. 41, PageID.257 (emphasis in original).) Judge Drain's and the Undersigned's Practice Guidelines contain similar provisions. (See www.mied.uscourts.gov.) Plaintiff served her responses to Defendants' second request to produce on October 23, 2025 (ECF No. 80-4), she was deposed on November 25, 2025, and the discovery deadline in this case was extended to December 5, 2025 (ECF No. 41, PageID.257.) Defendants have made no showing that it was impossible or impractical to have filed the December 23, 2025 motion before the close of discovery, nor did Defendants file a motion to extend discovery or otherwise demonstrate good cause for filing their motion outside of the discovery period. Therefore, the motion is **DENIED AS UNTIMELY**, except as specified below. *See Santifer v. Inergy Auto Sys., LLC*, No. 5:15-cv-11486, 2016 WL 4011268, at *2 (E.D. Mich. Jul. 27, 2016) (E.D. Mich. July 27, 2016) (requiring good

cause for bringing a motion to compel after the close of discovery). Alternatively, as set forth in the prayer for relief:

***4** • To the extent Defendants seek production of "all documents and information concerning her use of third-party AI tools in connection with this lawsuit, as requested in Defendants' discovery requests," this request is **DENIED**, as the information sought is not discoverable. *See* Fed. R. Civ. P. 26(b)(3)(A) ("Ordinarily, a party may not *discover* documents and tangible things that are prepared in anticipation of litigation or for trial by another *party* or its representative ...."') (emphases added). Moreover, it is not relevant, or, even if marginally relevant, is not proportional. *See* Fed. R. Civ. P. 26(b)(1).[3]

• To the extent Defendants ask the Court to "[o]verrule[ ] Plaintiff's attorney–client privilege and work-product objections to the AI materials," or alternatively, "if the Court sustains any privilege or protection as to any item, require Plaintiff, within seven days, to serve a Rule 26(b)(5)(A)-compliant privilege log[,]" the request is **DENIED**. Even if this information were discoverable, it is subject to protection under the work-product doctrine, which Plaintiff is permitted to assert. *See, e.g., Systemes v. Childress*, No. 09-10534, 2013 WL 12181774 (E.D. Mich. Nov. 22, 2013) (Hluchaniuk, M.J.) (order granting in part and denying in part motion to quash subpoenas); *Anderson v. Furst*, No. 2:17-12676, 2019 WL 2284731, *4 (E.D. Mich. May 29, 2019) (Patti, M.J.) ("Plaintiff, as a *pro se* litigant, has a right to assert work product protection over such material."); *see also* Fed. R. Civ. P. 26(b)(3). Moreover, to the extent Defendants argue that Plaintiff waived the work-product protection by using ChatGPT, the work-product waiver has to be a waiver *to an adversary* or in a way likely to get in an adversary's hand. *In re Columbia/HCA Healthcare Corp. Billing Pracs. Litig.*, 293 F.3d 289, 306 n.28 (6th Cir. 2002) (explaining differences in waiver of attorney-client privilege and work product protection); *Schanfield v. Sojitz Corp. of Am.*, 258 F.R.D. 211, 214 (S.D.N.Y. 2009) ("It is well-established that voluntary disclosure of confidential material to a third party waives any applicable attorney-client privilege."). *See also United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1299 (D.C. Cir. 1980) ("while the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself for waiver of the work product privilege."). And ChatGPT (and other generative AI programs) are *tools, not persons*, even if they may have administrators somewhere in the background. As Plaintiff noted in her response, Defendants' motion "asks the Court to compel Plaintiff's internal analysis and mental impressions—*i.e.*, her thought process— rather than any existing document or evidence, which is not discoverable as a matter of law. The motion seeks intrusive post-discovery production based on speculation about what might exist in Plaintiff's internal drafting process, untethered from Rule 26 relevance, disregarding the heightened protection afforded to opinion work product, and improperly attempting to manufacture a waiver where none exists. At its core, Defendants' request is a fishing expedition. ..." (ECF No. 86, PageiD.917.) Additionally, the Court agrees with Plaintiff that the pursuit of this information is "a distraction from the merits of this case[,]" and that Defendants' theory, which is supported by no case law but only a Law360 article posing rhetorical questions,[4] "would nullify work-product protection in nearly every modern drafting environment, a result no court has endorsed." (*Id.*, PageID.920, 930.)

***5** • To the extent Defendants ask the Court to compel Plaintiff "to execute HIPAA-compliant medical authorizations for the medical and mental-health providers Plaintiff identified in her deposition[,]" this request is **GRANTED**. Notwithstanding the untimeliness of this motion, pursuant to the Court's broad authority under Fed. R. Civ. P. 1 and Fed. R. Civ. P. 16(a)(2) & (d), Plaintiff is required to produce signed HIPPA releases for Therapists Maria Yoo and Lemica Cox, and Dr. Shazia Qumar (*see* ECF No. 80, PageID.818; ECF No. 80-2, PageID.840 [pp. 23-24]) no later than **Thursday, February 12, 2026**. While Plaintiff claims that her prior attorney obtained these releases from her and would have given them to defense counsel, defense counsel represented that he did not receive them. Even a minimal amount of cooperation on Plaintiff's part could have avoided this portion of Defendants' motion to compel.

• To the extent Defendants seek an order requiring Plaintiff "to bear Defendants' reasonable expenses, including attorneys' fees, incurred in bringing this Motion, pursuant to Rule 37(a)(5)," the request was **WITHDRAWN** at the hearing.

(ECF No. 49, PageID.810-811.)

******

In the end, both sides of this dispute seek to obtain each other's thought processes, while shielding their opponent from discovery of their own. The Court will uphold the protections afforded the thought processes and litigation

strategies of both sides and will order production of neither.

IT IS SO ORDERED.[5]

All Citations

--- F.Supp.3d ----, 2026 WL 373043

Footnotes

1 Plaintiff's "notice" (ECF No. 68) has been treated as a motion. The usual path to gaining relief from the Court is to file a motion, and notices are generally not permitted unless previously requested by the Court (*e.g.*, ECF No. 51); more often than not, they are stricken. Plaintiff is cautioned about filing notices going forward, as she has, on more than one occasion, filed unauthorized "notices" on the docket. (*See, e.g.*, ECF No. 58, 68.) Also, Plaintiff's emergency supplement (ECF No. 72) was stricken pursuant to the Court's November 26, 2025 text-only order. Finally, at the February 5, 2026 motion hearing, the Court struck the non-joint statement (ECF No. 89) from the record.

2 This is in contrast with *government* documents protected by the *deliberative process privilege*, where factual summaries may be discoverable because they are not "deliberative." *See EEOC v. Peoplemark, Inc.*, No. 1:08-cv-907, 2010 WL 748250, at *2 (W.D. Mich. Feb. 26, 2010).

3 Notably, the Court previously confirmed that Defendants have no evidence of Plaintiff having violated the protective order by uploading documents marked confidential onto an AI platform. (ECF No. 93, PageID.1002.) The Court also reviewed pertinent and highlighted portions of Plaintiff's deposition transcript (ECF No. 80-2), which reveals an inordinate amount of questioning about Plaintiff's use of AI, but again, no suggestion that she uploaded prohibited items. Defendants' preoccupation with Plaintiff's use of AI needs to abate.

4 *See* ECF No.80, PageID.825-826. But as Plaintiff points out, "no cited case orders the production of what Defendants seek here: a litigant's internal mental impressions reformatted through software." (ECF No. 86, PageID.933.)

5 The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days after being served with a copy of this order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

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From: Trish McAllister [redacted]
Sent: Friday, August 14, 2026 9:24 AM
To: Brett Busby [redacted]
Cc: Judge Carlos Villa [redacted]; Jaclyn Daumerie [redacted]; Nina Hess Hsu [redacted]
Subject: Eviction Kit

CAUTION: This email originated from outside of the Texas Judicial Branch email system.
DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Dear Justice Busby,

On behalf of the Landlord-Tenant Forms Task Force, I am delighted to submit the new Eviction Forms Kit that incorporates recent legislative and rule changes affecting the Eviction Kit submitted to the Court in January 2025. The Eviction Kit includes forms, FAQs and instructions regarding a notice to pay or vacate, a notice to vacate, a notice of lease termination after foreclosure, an eviction petition, and an eviction answer. The Eviction Kit also provides an eviction judgment.

We are currently working on our final review of the Eviction Appeal Kit, our last forms kit. Once it is submitted, the work of the Task Force will be complete.

Best,
Trish

Trish McAllister
Attorney and Program Administrator
Law Practice Management
State Bar of Texas
[redacted]

LANDLORD'S NOTICE TO VACATE, OR NOTICE TO PAY OR VACATE, PRIOR TO FILING EVICTION

FAQS AND INSTRUCTIONS

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use This Form If:

- ❑ You want to evict your tenant. Before you file an eviction case in justice court, you must give the tenant either a Notice to Vacate, or Notice to Pay or Vacate, depending on the circumstances, which allow the tenant to leave, or pay or leave, before you file the eviction. *See* Texas Property Code 24.005.

  CAUTION: Landlords of subsidized and public housing have additional obligations under the lease and the law.

Do Not Use This Form If:

- ❑ If you want to evict a residential tenant from a foreclosed property who has not violated the terms of the lease, there are different requirements. *See* the Notice of Lease Termination After Foreclosure form and instructions.

These FAQs and instructions are meant to be used with the Notice to Vacate Before Filing Eviction form or the Notice to Pay or Vacate Before Filing Eviction form. Read these instructions carefully. Texas Law has strict rules about the content and delivery of the Notice to Vacate or the Notice to Pay or Vacate. If you do not fill out and deliver the notice properly, it could be invalid. Check with the justice court where you plan to file the eviction. References to Rules are to the Texas Rules of Civil Procedure (TRCP) available at http://www.txcourts.gov/rules-forms/rules-standards.

I. Frequently Asked Questions

1. Is a notice to vacate, or notice to pay or vacate, considered an eviction? *See* Texas Property Code Sections 24.002, 24.004, and 24.005, and TRCP 510.6 and 510.8.

   No, a notice to vacate or notice to pay or vacate is not an eviction, but it is required before you can file an eviction lawsuit. A landlord must go through the court eviction process to lawfully evict a tenant.

   The notice to vacate is how the landlord tells the tenant that they will be filing an eviction lawsuit if the tenant does not move out by a certain date. The notice to pay or vacate is how the landlord tells the tenant that they will be filing an eviction suit if the tenant does not pay the rent owed by a certain date.

A landlord must give the tenant a properly worded and delivered notice to vacate or a notice to pay or vacate before the landlord can file an eviction lawsuit, otherwise the court cannot evict the tenant. Providing a tenant with a notice to vacate or notice to pay or vacate does not give a landlord the right to personally remove the tenant from the property.

An eviction lawsuit is the lawsuit filed by the landlord with the justice court in the precinct where the property is located. Once an eviction is filed, the sheriff, constable, or process server will deliver an eviction citation to the tenant. An eviction citation is the court's notice letting the tenant know that an eviction lawsuit has been filed against them and provides the date and time of the eviction trial. An eviction lawsuit is sometimes called a "forceable detainer" lawsuit.

2. What is the difference between a notice to vacate and a notice to pay or vacate, and when am I required to give either one? *See* Texas Property Code Section 24.005.

   The notice to vacate simply tells the tenant when the landlord wants them to vacate the property to avoid an eviction. A notice to pay or vacate adds an opportunity for the tenant to pay any amounts owed to avoid an eviction.

   If the tenant owes rent but, during this lease term, has not been late or missed a rent payment before the month in which you give the notice, you must give a tenant a "notice to pay or vacate."

   If the tenant receives a notice to pay or vacate and pays what they owe before the deadline in the notice, you cannot evict them. If you are required to give the tenant a notice to pay or vacate and do not do so, the tenant could use this as a defense for why you cannot evict them.

   If you are not required to give a notice to pay or vacate, you can just give you a notice to vacate.

3. Am I required to give the tenant other notice, such as a notice of lease violation, before I give the notice to vacate? *See* Texas Property Code Sections 24.005 and 91.001.

   It usually depends on your lease. If the tenant has violated a specific clause in the lease, such as nonpayment of rent, smoking, or an unauthorized occupant or pet, the landlord is normally only required to provide a notice to vacate, or notice to pay or vacate, unless the lease requires additional notice to be given.

   Additional notice may be required in some situations, including:

   a. **Notice of nonrenewal of lease**: If you do not intend to renew the lease, you must give the tenant notice of nonrenewal as required by your lease. If the tenant does

not move out after receiving the notice of nonrenewal, you must give the tenant notice to vacate before filing an eviction. In many leases, when the initial term ends, the lease becomes month-to-month, which would also require a notice of nonrenewal of the lease.

b. **Subsidized housing**: Some subsidized housing leases or laws may require additional notice and an opportunity to fix the issue/problem before terminating the lease.

4. In Texas, how many days' notice is a landlord required to give a tenant in a notice to vacate, or notice to pay or vacate, before filing an eviction? *See* Texas Property Code Sections 24.005 and 24.0042.

   In Texas, unless the written lease requires more or less time, a landlord must give a tenant at least three days' written notice to vacate or notice to pay or vacate before the landlord can file an eviction lawsuit. Apartment leases often allow for a one-day notice.

   Calculate the vacate time period so that it:
   1. does not include the day that begins the period;
   2. includes Saturdays, Sundays, and state or federal holidays; but
   3. **if the date to vacate falls on a Saturday, Sunday, or state or federal holiday, the deadline is extended so that the date to vacate is the next day that is not a Saturday, Sunday, or state or federal holiday.**

   So, make sure that the deadline you are giving the tenant to vacate, or pay or vacate, does not land on a Saturday, Sunday, or state or federal holiday.

   For example, if you want to give a three-day notice to vacate on a Thursday, the notice would be for the tenant to vacate on Monday. That is, since the third day lands on Sunday, the actual deadline to vacate must be Monday, assuming that it is not a state or federal holiday.

5. How is a landlord supposed to deliver the notice to vacate to the tenant? *See* Texas Property Code Section 24.005.

   The notice to vacate must be delivered to the tenant in at least one of these four ways:

   - mail, including first class mail, registered mail, certified mail, or a delivery service;
   - delivery to the inside of the premises, in a conspicuous place;
   - hand delivery to any tenant of the premises who is 16 years of age or older; or
   - if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

   However, these methods are not required if the tenant actually receives the notice and is given the required amount of time to vacate, or pay or vacate.

6. Is there specific language required in the notice to vacate?

   No, but the notice to vacate must make an explicit demand that the tenant(s) and any other occupants move out in a certain number of days or by a specific date.

7. Is there specific language required in the notice to pay or vacate?

   No, but the notice to pay or vacate must give the tenant the opportunity to pay or move out in a certain number of days or by a specific date. The best practice is to state the amount owed by the tenant in the notice.

II. Instructions for Filling out the Landlord's Notice to Vacate

The word "you" on the form refers to the tenant.

1. **To:** List all tenants who signed the written lease, or if an oral lease, all tenants who made the agreement.

2. **From**: Write the landlord's name (not the landlord's authorized agent).

3. **Property Address**: Write the street address, unit number (if any), city, state, and ZIP of the property.

4. **You must vacate the property on or before:** Write the date the tenant must vacate the property. This date must be a minimum of 3 days after the date of delivery, unless the parties agreed on a short or longer notice period in a written lease or agreement. If delivery will be by mail, make sure to include time for the mail to arrive at the property. Remember, the deadline for the tenant to vacate cannot be a Saturday, Sunday, or state or federal holiday. See FAQ 4.

5. **Reason for the notice to vacate**: Check all that apply. List any reasons for the eviction other than nonpayment of rent on the lines next to "other."

6. **Date of delivery:** Write in the date the notice was delivered to the tenant, if known.

7. **Landlord's Signature Block**: The landlord or landlord's authorized agent must sign and date the notice. That person's contact information must be listed on the notice.

The Notice to Vacate must be delivered in at least one of the following ways. For your records, check all that apply. See FAQ 5.

- ☐ mail, including first class mail, registered mail, certified mail, or a delivery service;
- ☐ delivery to the inside of the premises, in a conspicuous place;

- ☐ hand delivery to any tenant of the premises who is 16 years of age or older; or
- ☐ if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

III. Instructions for Filling out the Landlord's Notice to Pay or Vacate

The word "you" on the form refers to the tenant.

1. **To:** List all tenants who signed the written lease, or if an oral lease, all tenants who made the agreement.

2. **From**: Write the landlord's name (not the landlord's authorized agent).

3. **Property Address**: Write the street address, unit number (if any), city, state, and ZIP of the property.

4. **Amounts owed:** List the rent amounts the tenant must pay to avoid an eviction case.

5. **Pay or vacate the property on or before:** Write the date the tenant must pay or vacate the property. This date must be a minimum of 3 days after the date of delivery, unless the parties agreed on a short or longer notice period in a written lease or agreement. If delivery will be by mail, make sure to include time for the mail to arrive at the property. Remember, the deadline the tenant has to pay or vacate cannot be a Saturday, Sunday, or state or federal holiday. See FAQ 4.

6. **Date of delivery:** Write in the date the notice was delivered to the tenant, if known.

7. **Landlord's Signature Block**: The landlord or landlord's authorized agent must sign and date the notice. That person's contact information must be listed on the notice.

The Notice to Pay or Vacate must be delivered in at least one of the following ways. For your records, check all that apply. See FAQ 5.

- ☐ mail, including first class mail, registered mail, certified mail, or a delivery service;
- ☐ delivery to the inside of the premises, in a conspicuous place;
- ☐ hand delivery to any tenant of the premises who is 16 years of age or older; or
- ☐ if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

LANDLORD'S NOTICE TO VACATE
BEFORE FILING EVICTION

PER TEXAS PROPERTY CODE SECTION 24.005

1. **To**: *Tenant/s*

_____

2. **From**: *Landlord*

_____

3. **Property Address**:

_____

4. **You must vacate the property on or before:** _____.

Minimum of 3 days from date of delivery, unless parties agreed on a shorter or longer notice period in a written lease or agreement. Texas Property Code Section 24.005.

5. **Reasons for this Notice to Vacate**: (CHECK ALL THAT APPLY)

- ☐ Nonpayment of Rent
- ☐ Lease Violations/Other:

_____

_____

_____

_____

If you do not timely vacate the property, the Landlord may file an eviction suit for possession of the property.

6. **Date of delivery**, if known: _____.

_____

Landlord or Authorized Agent Signature

_____

Landlord or Authorized Agent Name

_____

Address

_____

City, State, Zip Code

_____

Phone Number

_____

Email Address, if you check it frequently

_____

Date

WARNING: Texas Law has strict rules about the content and delivery of this notice. If the landlord does not fill out and deliver this notice properly, it could be invalid. Read the attached instructions carefully.

LANDLORD'S NOTICE TO PAY OR VACATE
BEFORE FILING EVICTION

PER TEXAS PROPERTY CODE SECTION 24.005

1. To: *Tenant/s*

_____

2. From: *Landlord*

_____

3. Property Address:

_____

This is an opportunity for you to pay the amount you owe to avoid the filing of an eviction case.

4. Amounts owed: You must pay the following amount to avoid an eviction: $_____.

5. Pay or vacate the property on or before: _____.

Minimum of 3 days from date of delivery, unless parties agreed on a shorter or longer notice period in a written lease or agreement. Texas Property Code Section 24.005.

If you do not pay the amount listed above or vacate the property by the deadline listed above, the Landlord may file an eviction suit for possession of the property.

6. Date of delivery, if known: _____.

_____

Landlord or Authorized Agent Signature

_____

Landlord or Authorized Agent Name

_____

Address

_____

City, State, Zip Code

_____

Phone Number

_____

Email Address, if you check it frequently

_____

Date

WARNING: Texas Law has strict rules about the content and delivery of this notice. If the landlord does not fill out and deliver this notice properly, it could be invalid. Read the attached instructions carefully.

NEW OWNER'S NOTICE OF LEASE TERMINATION AFTER FORECLOSURE

FAQS AND INSTRUCTIONS

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use This Form If:

- ❑ You want to terminate a written or oral lease of a residential tenant in a foreclosed property who has not violated the terms of the lease. *Visit* Texas State Library Tenant Rights in Foreclosure for information on the Protecting Tenants at Foreclosure Act (PTFA).

Do Not Use This Form If:

- ❑ You want to terminate a written or oral lease of a residential tenant who has violated the terms of the lease and the property has not been foreclosed. Use the Landlord's Notice to Vacate Before Filing Eviction or Notice to Pay or Vacate Before Filing Eviction forms instead.

These FAQs and instructions are meant to be used with the New Owner's Notice of Lease Termination after Foreclosure form. Read these instructions carefully.

Frequently Asked Questions:

1. What is the Protecting Tenants at Foreclosure Act (PTFA)?

   The federal Protecting Tenants at Foreclosure Act (PTFA) gives residential tenants certain rights in foreclosed properties. The PTFA states what notice a buyer of a foreclosed residential property must give tenants and when a tenant may stay until the end of their lease.

2. Does the PTFA protect residential tenants who have violated their lease?

   No. After foreclosure, the new property owner may evict a tenant who is not paying rent or has otherwise violated the terms of the lease. If the tenant violates the terms of the lease, you must give the tenant a written notice to vacate or a notice to pay or vacate, depending on the circumstances. All other terms in the lease remain in effect.

   If you are the new owner of a foreclosed property, it is a good idea to send the tenant written notice of where to pay rent and proof that you are the new owner.

3. Do all residential tenants living in a foreclosed property have these rights under the PTFA?

   No. The PTFA only applies to a "bonafide tenant" with a "bonafide lease."

   A tenant is not a bonafide tenant with a bonafide lease if the tenant:

- was the prior owner of the property whose mortgage was foreclosed or that prior owner's child, spouse, or parent, or
- is paying substantially less than a fair market rent, or
- signed the lease after the foreclosure.

If you are trying to evict someone listed above, use the Landlord's Notice to Vacate Before Filing Eviction or Notice to Pay or Vacate Before Filing Eviction form.

4. If a tenant is not a bonafide tenant and the PTFA does not apply, how much time am I required to give them? *See* Texas Property Code Section 24.005(b).

   If the PTFA does not apply because the tenant is a nonbonafide residential tenant who is not in default of their lease, you may need to give them a 30-day notice to vacate after foreclosure.

5. How do I terminate the lease under the PTFA of a tenant living in a foreclosed property if I want to evict them?

   You must give the tenant two notices before you can file for eviction:

   - A written notice of lease termination after foreclosure, and
   - A written notice to vacate.

   You must give the written notice of lease termination after foreclosure before you give them a written notice to vacate. The written notice of lease termination after foreclosure tells the tenant when the lease will end after the property has been foreclosed.

6. Under the PTFA, how much time am I required to give in the notice of lease termination after foreclosure before I can give the notice to vacate?

   If you do not intend to use the foreclosed property as your primary residence and the tenant has more than 90 days left on their lease, you must allow them to stay until their lease ends. If you do intend to use the foreclosed property as your primary residence and the tenant has less than 90 days left on their lease, you must give the tenant at least a 90-day notice of lease termination after foreclosure.

7. What if the tenant doesn't leave after I give them the lease termination notice under the PTFA?

   If the notice of lease termination after foreclosure has been properly done and the tenant has not left by the time the notice of lease termination after foreclosure ends, you must then give the tenant a written notice to vacate. *See* Landlord's Notice to Vacate Before Eviction Instructions.

Instructions for Filling out New Owner's Notice of Lease Termination after Foreclosure

In the form, the word "you" refers to the tenant.

1. **To**: List all tenants who signed the written lease, or if an oral lease, all tenants who made the agreement.

2. **From**: List the current owner's name (not the current owner's authorized agent).

3. **Property Address**: List the street address, unit number (if any), city, state, and ZIP code of the property.

4. **The new owner does not intend to renew or extend the lease**: Check the first box if the new owner will be living in the property once the tenant leaves. Check the second box if the new owner will NOT be living in the property.

5. **Date of delivery:** Write in the date the notice was delivered to the tenant, if known.

6. **Landlord's Signature Block**: The new owner *or* the new owner's authorized agent must sign and date the notice. That person's contact information must be listed on the notice.

NEW OWNER'S NOTICE OF LEASE TERMINATION AFTER FORECLOSURE

1. **To**: *Tenant(s)*

_____

2. **From**: *New Owner*

_____

3. **Property Address:** _____

4. **The new owner does not intend to renew or extend your lease**. **(Check ONE box)**

   ❑ The new owner intends to live in the property. You have 90 days from the date of delivery of this notice to vacate the property. Please vacate by this date: _____.

   ❑ The new owner does not intend to live in the property. You have 90 days from the date of delivery of this notice, or if more than 90 days remains on your lease, you have until the end of your lease to vacate the property. Please vacate by this date: _____.

You must vacate the property by the date listed above, return all keys to the new owner or the new owner's authorized agent, and provide written notice of your forwarding address if you are requesting the return of a security deposit, if any.

5. Date of delivery, if known: _____.

_____
New Owner or Authorized Agent Signature

_____
New Owner or Authorized Agent Name

_____
Address

_____
City, State, Zip Code

_____
Phone Number

_____

Email Address, if you check it frequently

_____

Date

INSTRUCTIONS
EVICTION PETITION

Texas Rule of Civil Procedure 510.2(u)

These instructions do not provide legal advice and are not a substitute for the advice of an attorney.

These instructions are meant to be used with the Eviction Petition. A petition is the written document that begins the eviction process in court. It tells the court that you want to evict a tenant and why you want to evict them. Texas Law has strict rules about when you can file an eviction. Read these instructions carefully.

Use this form if you want to evict a tenant **and** have already served the tenant with a Notice to Vacate or a Notice to Pay or Vacate.

Instructions:

Header*:*

- *Case Number* – Leave this blank. The Clerk's office will fill in the Case Number when you file this form.
- *Name of Plaintiff/Landlord* – Write the Landlord's name (not the landlord's authorized agent).
- *Name of Defendant(s)/Tenant(s)* – Write the names of the tenants you want to evict who are named in the oral or written lease.
- *Precinct/Place Number* – Write in the precinct number of the justice precinct in which the Property is located. If you do not know, ask the court clerk or check the court's website.
- *County, Texas* – Write in the name of the county in which the Property is located.
- *Court Time* AND *Court Date* – Leave these blank. The Clerk's office will fill in this information when you file the form.

1. **Complaint**: Write the street address, unit number (if any), city, and state of the Property.
2. **Service of Citation**: Write each Defendant's name, their usual place of residence, or other address where they may regularly be found.
3. **Lease**: Check the box next to the type of lease the Defendant/Tenant has (written or oral) and write in the dates the lease began and ends.
    - Check whether the Defendant/Tenant pays rent monthly or weekly.
    - Write in the date that the lease began and the date that the lease ends.
    - Check the appropriate box for when rent is paid.

- If the Defendant/Tenant gets a rent subsidy or voucher, write in the amount of the subsidy.
- Write in the Defendant/Tenant's portion of the rent. If the tenant gets a rent subsidy, this is only the amount that the tenant pays.
- Write in the total amount of rent due each week or month.

4. *Grounds for Eviction*: Check all that may apply.
    - If the Defendant/Tenant did not pay rent as obligated under the written or oral lease, check the box next to "Failure to Pay Rent as Grounds for Eviction." List each month in which Defendant/Tenant did not pay rent and the amount unpaid for that month. List the TOTAL unpaid rent for all months (without late fees or other non-rent sums).
    - If the Defendant/Tenant did not move out of the Property at the end of the lease, check the box next to "Holdover as Grounds for Eviction." Write the date the lease ended.
    - If the Defendant/Tenant violated any terms of the lease other than unpaid rent or a holdover, check the box next to "Other Grounds for Eviction/Lease Violations or Other Information the Court Should Know," then list the lease violation(s) and provide any facts or reasons that the Defendant/Tenant should be evicted.
5. *Request for Unpaid Rent* – Check the first box if you are asking the court to award you the unpaid rent you listed in #3 and possibly any unpaid rent through the final date of judgment, which may not be known to you when you complete this form. Check the second box if you are not asking for unpaid rent.
6. *Notice to Vacate* – You must have properly worded and delivered a Notice to Vacate or Notice to Pay or Vacate to the Defendant/Tenant before you can file the Eviction Petition. State how you delivered the Notice to Vacate or Notice to Pay or Vacate to the Defendant/Tenant. *See* the Notice to Vacate or Notice to Pay or Vacate in the Eviction Kit for more information, as well as the Notice to Vacate form and the Notice to Pay or Vacate form.

    If the grounds for eviction are solely based on nonpayment of rent and nothing else, you must check one of the listed boxes stating whether the tenant was late or delinquent in rent before the month in which the notice to vacate or notice to pay or vacate was given. If the tenant was late or delinquent before the month in which the notice was given, list those months in the space provided.
7. *Attorney's Fees* – Check this box if you will be asking the court to award you attorney's fees. You can only make this request if an attorney worked on your case and must provide proof of the attorney's fees.
8. *Immediate Possession Bond* – Check this box if you are separately filing an immediate possession bond with the court as described in Texas Rule of Civil Procedure 510.9.

9. *Email Address* – Complete this section only if you agree to receive by email documents filed with the court, or about the case. If so, list an email address that you check frequently.
10. *Plaintiff/Authorized Agent Information* – List your name, address, phone, and fax numbers.
11. *Sworn Statement* – By checking **ONE** of the following boxes, you are declaring under penalty of perjury that everything in the petition is true and correct.

    CHECK AND COMPLETE ONLY ONE BOX.

    - *Declaration* – Check this box if you do not want to use a notary or there is not a notary available. If you choose this option, you must provide your name, birthdate, and address, which will become publicly available as a part of the court's record. Sign, and write the date and the county in which you signed.

    - *Notary* – Check this box if you want to sign the Eviction Petition in front of a notary or you do not want to have the information required under the declaration, such as your address, in the public court record. DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name and only sign it when you are in front of a notary or the clerk of the court. Some notaries charge a fee.

Case Number_____
(The Clerk's office will fill in the Case Number when you file this form)

_____
Name of Plaintiff/Landlord

VS.

_____
And All Occupants
Name of Defendant(s)/Tenant(s)

In the _____,
(Court Type)
Precinct, Place _____,
(Precinct and Place Number)
_____ County, Texas
(County Name)
Court Time: _____

Court Date: _____
(If Blank, See Citation or Contact Court)

Eviction Petition

1. **Complaint:** I request that the Defendant(s) named above be evicted from the Property at:

_____
Street Address *Unit No. (If any)* *City* *State* *Zip*

2. **Service Of Citation:**

I request service on Defendant(s) by personal service at the usual place of residence of Defendant(s) or by alternative service as permitted by law (Texas Rules of Civil Procedure 510.8).

List the usual place of residence for each Defendant:

Defendant Name	**Usual Place of Residence**	**Other Address**

I know of no other addresses for Defendant(s) in _____ County.
County where property is located

3. **Lease:**

- ❑ Written
- ❑ Oral

Date Lease Began: _____ Date Lease Ends: _____

Rent Information:
- ❑ Paid Monthly
- ❑ Paid Weekly

Rental Subsidy (if any) $_____

Tenant's Portion $_____
TOTAL RENT $_____

4. **Grounds For Eviction:**

- ❑ Failure to Pay Rent as Grounds for Eviction:

  Defendant(s) failed to pay rent as obligated under the written or oral lease for the following time period(s). List the month(s) the rent was due and the amount of unpaid rent for each month:
  _____
  _____

  Total Unpaid Rent Due as of Filing Date: (DO NOT INCLUDE late fees or other non-rent sums.) $_____.

- ❑ Holdover as Grounds for Eviction:

  Defendant(s) did not move out when the lease ended on _____(date).

- ❑ Other Grounds for Eviction/Lease Violations or Other Information the Court Should Know:

  List the lease violations or any facts or reasons for evicting defendants or other information the court should know (List violations other than unpaid rent or holdover and briefly state any other facts the court should know):
  _____
  _____
  _____
  _____
  _____
  _____

5. **Request for Unpaid Rent:**

- ❑ I am asking for the above total unpaid rent. I reserve the right to request any additional unpaid rent through the date of final judgment at trial.

- ❑ I am NOT asking for the above total unpaid rent.

6. **Notice to Vacate or Notice to Pay or Vacate:** Check the appropriate box:

- ❑ I delivered a written notice to vacate the Property on _____ (date) by this method: _____(as required by Texas Property Code 24.005), **OR**
- ❑ I delivered a written notice to pay or vacate the Property on _____ (date) by this method: _____(as required by Texas Property Code 24.005).

If the grounds for eviction are solely based on nonpayment of rent, check the appropriate box:

- ❑ The tenant was late or delinquent before the month in which notice was given. List the month or months the tenant was late: _____
- ❑ The tenant was not late or delinquent before the month in which notice was given.

7. **Attorney's Fees:**

❑ I will be asking for attorney fees.

8. **Immediate Possession Bond:**

   ❑ I am filing an immediate possession bond with this complaint (as described in Texas Rule of Civil Procedure 510.9).

9. **Request For Judgment:** I request that Defendant(s) be served with citation and that I get a judgment against Defendant(s) for possession of the Property, court costs, and anything requested above, plus interest as allowed by law or the lease.

10. **Email Address:** *[Complete only if you agree]* I agree to receive any documents or pleadings about this case at the following email address:
    _____.

11. **Plaintiff/Authorized Agent Information**

    _____ _____
    Print Name of Plaintiff/Landlord or Authorized Agent Phone & Fax Number

    _____
    Street Address City State ZIP

12. **Declaration or Notary:** Complete <u>one</u> of the two following sections.

    ❑ <u>Declaration</u>:

    I declare under penalty of perjury that everything in this request is true and correct.

    My name is _____.
    First *Middle* *Last*

    My birthdate is: _____/_____ /_____.
    Month *Day* *Year*

    My address is: _____.
    Street *City* *State* *ZIP* *Country*

    _____signed on ___/____ /____ in _____ County, Texas.
    Your Signature *Month/Day/Year* *County Name*

OR

❑ <u>Notary</u>:

_____
Your Printed Name

_____
Your Signature *(Sign only when a notary can see you doing so)*

Sworn to and subscribed before me this _____ day of _____, 20_____.

_____

CLERK OF THE JUSTICE COURT OR NOTARY

DEFENDANT/TENANT'S ANSWER IN AN EVICTION CASE
FAQs AND INSTRUCTIONS

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use This Form If:

- Your landlord has filed a petition in court to evict you, you have received papers from the court listing a date and time that you must appear in court for the trial, and you want to give the judge reasons in writing why you shouldn't be evicted. A written response is not required but is highly recommended.

Do Not Use This Form If:

- Your landlord has not filed a petition in court to evict you.

Read these FAQs and instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at http://www.txcourts.gov/rules-forms/rules-standards/.

Frequently Asked Questions

1. What is an answer? See TRCP 510.2(a), 510.11.

   An answer is a written response that you can file with the court after you are sued. It is a way for you to tell the court your side of the story. An answer can simply deny all the landlord's claims without giving a specific reason why ("I generally deny the claims of the landlord in this eviction"), or you can give specific reasons why the landlord should not be allowed to evict you.

   An answer must have your name, address, telephone number, and fax number (if any). The Court or your landlord may ask you for an email address to send information, notices, and documents about the court case. If you check your email frequently and agree to get these things by email, list your email address in the answer. **If you provide your email address, it is very important to check your email at least once every day. There may be short deadlines.**

2. Do I need to file an answer with the justice court before trial? See TRCP 510.11.

   You are not required to file an answer with the justice court before your eviction trial, but it is recommended. If you file an answer, it is recommended that you submit to the court with your answer any written evidence that supports your version of the facts.

3. Why should I file an answer with the justice court? See TRCP 510.16.

- It allows you to explain to the judge the specific reasons, if any, you think the landlord doesn't have the right to evict you. *See* the Instructions section below for a list of reasons.
- If you do not file an answer and do not show up at the trial, a "default judgment" may be issued against you. The judge will not have any way to know your side of the facts and the landlord may get everything that they ask for.
- If you have filed an answer and do not show up at the trial, the landlord must still prove why you should be evicted, but the judge will not have your side of the story.
- It is strongly recommended that you appear at the trial to tell the judge your side of the story and bring written or other evidence to support your position, such as receipts of payment, screenshots of bank payments, etc.

4. Do I have a right to a jury trial?

   Yes, if you pay the required fee and notify the court that you want a jury trial at least 3 days before the trial date or 3 days after service of citation and petition, whichever is later. If you cannot pay the fee, you can file a Statement of Inability to Afford Payment of Costs.

   If you decide you want a jury trial, it is strongly recommended that you seek legal advice on all aspects of the jury trial process, such as the process you use for selecting a jury, etc.

5. Should I file an answer if my case is appealed to the County Court?

   Yes, for the same reasons listed in FAQ 2 and 3. If you've already filed an answer in justice court, you don't have to file another one in County Court.

I. **Instructions for Filling out Defendant/Tenant's Written Answer**:

Header: This information should be at the top of the documents you have received from the court about your eviction case.

- *Case Number* –If you cannot find the Case Number, you can ask the clerk's office to give you that number.
- *Name of Plaintiff/Landlord* – Write the landlord's name (not the landlord's authorized agent).
- *Name of Defendant(s)/Tenant(s)* – Write your name.
- *Type of Court and Precinct/Place Number* –Check the appropriate box and fill in the precinct or court number. This is where the case was filed. If you do not know, ask the court clerk or check the court's website.
- *County, Texas* – Write in the name of the court's county.

1. **Name**: Write your name.

   This section states "I generally deny the claims that Plaintiff/Landlord has made." You can file an answer that denies the landlord's claims without listing any reasons listed under number 2. See TRCP 510.11(c). If you don't list any reasons, you can still tell the judge at your trial why you should not be evicted.

2. **Specific reasons I should not be evicted**: (*Check any that apply. Not required.*)

   Here, you can give the judge specific reasons why you should not be evicted. If you check specific reasons, you will need to testify under oath and bring any documents, witnesses, or other evidence with you to your trial.

   Specific reasons why you should not be evicted could include:

   a. The landlord did not do something correctly:

      i. *Notice to Vacate or Notice to Pay or Vacate*:

         1. *Notice to Vacate*: The landlord did not give you any Notice to Vacate or did not give you a proper Notice to Vacate before filing the eviction. For information on what a notice must contain and how it must be delivered, see the FAQs and Instructions for Notice to Vacate or Notice to Pay or Vacate Before Filing Eviction Suit.

            Examples include: the landlord did not give you any notice at all, or the notice gave you less time than it should have. For more information on what a notice must contain and how it must be delivered, read your lease, the FAQs and Instructions for Notice to Vacate or Notice to Pay or Vacate Before Filing Eviction Suit, and the Texas Property Code Section 24.005.

         2. *Notice to Pay or Vacate*: The landlord did not give you any Notice to Pay or Vacate or did not give you a proper Notice to Pay or Vacate before filing the eviction. For information on what a notice must contain and how it must be delivered, *see* the FAQs and Instructions for Notice to Vacate or Notice to Pay or Vacate Before Filing Eviction Suit.

            Examples include: you never missed a rent payment before the month your landlord gave you a notice and your landlord did not give you an opportunity to pay by giving you a Notice to Pay or Vacate to avoid an eviction; or the Notice to Pay or Vacate did not state a date or the number of days you had to pay or vacate the property.

      ii. *Statute of limitations*: If the landlord is trying to evict you for something that happened more than 2 years ago, the landlord did not file this case in time. *Texas Civil Practice and Remedies Code Section 16.003(a).*

      iii. *No 10-day written notice to pay rent in a manufactured or mobile home park:* If you rent a mobile home lot but not the mobile home, the landlord must give you 10 days' notice to pay rent before filing the eviction. Texas Property Code Section 94.206.

   b. You did something timely that should prevent you from being evicted:

      i. *Rent paid*: You are being evicted for not paying rent, but you timely paid the rent that the landlord says you owe.

ii. *Attempted to timely pay rent:* You tried to pay rent on time, but the landlord did not accept it.

iii. *New Lease*: You signed a new lease with the landlord after the date the landlord says you violated your old lease.

c. The plaintiff who filed this eviction lawsuit does not have the right to evict you:

i. *Not the Landlord or Authorized Agent*: The plaintiff who filed this eviction is not the landlord or landlord's authorized agent of the property. *Texas Rules of Civil Procedure 510.3 and Texas Property Code Section 24.011*

ii. *Property Owner*: You are an owner or part owner of the property and should not be evicted. A court cannot resolve a question of ownership or title in an eviction. *Texas Rules of Civil Procedure 510.6(f).*

d. The Plaintiff/Landlord cannot evict you because you have certain rights:

i. *Retaliation*: The landlord is retaliating against you because you asked for repairs, complained to code enforcement, participated in a tenant organization, or used other rights you have under the lease or law. A landlord cannot evict you for exercising these rights. *See* Texas Property Code *Section* 92.335.

However, the landlord can still evict you if the landlord can prove that you are being evicted for other reasons, like failure to pay rent on time, committing serious misconduct or criminal acts, or you or someone with you intentionally damaged the property or threatened someone. *See* Texas Property Code *Section* 92.332.

ii. *Disability*: The landlord denied your request for a reasonable accommodation of your disability, and this eviction is related to that denial.

If you have a disability, the landlord may not refuse to make reasonable accommodations if they are necessary for you. For example, if you request it and it is related to your disability, a landlord must allow a service animal in a "no pets" apartment complex, or allow a tenant who receives a disability benefits check on the third day of each month to pay the rent on that day without incurring late fees. *See* Texas Property Code Section 301.025(c)(2).

However, a landlord does not have to accommodate a tenant if: 1) the tenant is a direct threat to the health and safety of others, 2) the accommodation would result in substantial physical damage to the property of others, 3) the request was not made by, or on behalf of, a person with a disability, 4) there is no disability-related need for the accommodation, or 5) providing the accommodation is not reasonable. For a complete list of when a landlord can refuse to accommodate a disability, please *see* Reasonable Accommodations under the Fair Housing Act.

e. Write down any other legal reason you should not be evicted (not required).

3. *I want to receive all documents or notices at the email address below.* Check this box if you agree to get notices through email. List an email address that you regularly use in the space provided in the signature block in #4 below. If you check this box, **check your email at least once every day** because the documents or notices you receive about the eviction may contain time-sensitive deadlines or hearing dates you may need to act upon quickly. You may not get paper copies through the mail if you agree to get email notices.
4. *I ask the Court to:*
    a. *Signature* – Sign the answer.
    b. *Mailing address* – Write the address where you want to receive notices and documents from the court or the Plaintiff/Landlord. These notices may contain dates of court hearings or things that you may need to act upon quickly, so make sure that the address you list is legible, accurate, and a place you frequently check.
    c. *Phone number* – List a phone number where you can be reached by the court.

Certificate of Service

- *Check one* – You must send a copy of the answer that you file with the court to the Plaintiff/Landlord. These checkboxes list the three different ways the answer can be delivered (mail or courier-receipted delivery; email if email address is provided by the receiving party; hand delivery). Check the one you used. Hand delivery means physically handing the answer to the Plaintiff/Landlord or their agent.
- *Signature* – Sign and date the Certificate of Service. When you do, you are certifying that you sent the answer to the Plaintiff/Landlord.

Case Number_____
(Look at the Petition or contact the court for this information)

_____
Name of Plaintiff/Landlord

vs.

_____
Name of Defendant(s)/Tenant(s)

In the *(Check one))*
☐ Justice Court, Precinct _____
☐ County Court, Number_____

_____ County, Texas
(County Name)

Defendant/Tenant's Answer

1. My name is: _____.
Print your full name. (Each Defendant should file an answer.)

I am a Defendant/Tenant in this case.

I generally deny the claims that the Plaintiff/Landlord has made. (Texas Rule of Civil Procedure 510.11(c).)

2. Specific Reason(s) I should not be evicted are as follows: (*Check any that apply. Not required.*)

- ❑ **Notice to Vacate or Notice to Pay or Vacate**:
  - ❑ The Landlord did not give me any Notice to Vacate or a proper Notice to Vacate before filing this eviction case.
  - ❑ The Landlord is evicting me for nonpayment of rent. I have not missed a rent payment in any month before the Landlord gave me a Notice to Vacate and the Landlord never gave me a Notice to Pay or Vacate or a proper Notice to Pay or Vacate.
- ❑ **Statute of Limitations:** The reason the Landlord filed this eviction case is for something that happened more than two years ago.
- ❑ **Manufactured or Mobile Home Notice:** I live in a mobile home or trailer and the Landlord of the lot I rent did not give me ten (10) days written notice to pay the rent before filing this eviction case.
- ❑ **Rent Timely Paid:** I timely paid the rent the Landlord says I owe.
- ❑ **Attempted to Pay**: I tried to timely pay the rent the Landlord says I owe but the Landlord refused to accept it.
- ❑ **New Lease**: I signed a new lease with the Landlord after the date the Landlord says I violated my lease.
- ❑ **Not the Landlord or Authorized Agent**: The person or entity that filed this eviction case is not the owner or representative of the owner of the Property in this case.
- ❑ **Property Owner**: I am a part or full owner of the Property in this case.
- ❑ **Retaliation**: The Landlord is retaliating against me because I asked for repairs or used other rights I have under the lease or law. (Retaliation is not a defense against eviction if your Landlord can prove you are being evicted for reasons other than retaliation, like non-payment of rent. See instructions, part 2.d.i. Describe what is going on:

_____

_____

❑ **Disability**: I have a disability as defined by the Fair Housing Act (Texas Property Code Section 301.003(6)). I requested a reasonable accommodation for my disability, the Landlord refused to provide a reasonable accommodation, and that is why I am being evicted. (Refusing to accommodate a disability is not a defense if your Landlord can prove you are being evicted for reasons other than your disability, like nonpayment of rent. See Instructions, part 2.d.ii.).

Please state in detail any other reasons why you should not be evicted. *(Not required.)*

_____

_____

_____

3. I want to receive all documents or notices about this case at the address under my signature below.

❑ **By checking this box**, I agree to receive any documents filed with the court or about this case at the email address below that I check *regularly*. (Some courts and parties do not use email.)

4. I ask the Court to:

Grant judgment in my favor;
Assess all costs against Plaintiff/Landlord; and
Grant me any other relief to which I am entitled.

_____
Defendant/Tenant Signature

_____
Defendant/Tenant Name

_____
Address

_____
City, State, Zip Code

_____
Phone Number

_____
Email Address, if you check it frequently

Certificate of Service

I certify that a copy of this document was delivered to the Plaintiff/Landlord on this date by:

(Check one.)

- ☐ mail or courier-receipted delivery
- ☐ E-mail (*if email address is expressly provided by the receiving party*) to: _____
- ☐ Hand delivery to Plaintiff/Landlord or their authorized agent

▶ _____ _____

Your Signature ***Date***

Case Number_____

_____
Name of Plaintiff/Landlord

In the Justice Court, Precinct _____

vs.

_____ County, Texas
(County Name)

_____
Name of Defendant(s)/Tenant(s)

FINAL EVICTION JUDGMENT

The court heard this eviction on _____.

Plaintiff/Landlord Full Name: _____
and ☐ **Appeared** in person/Representative ☐ Was duly notified and **Did Not Appear**

Defendant/Tenant Full Name: _____
and ☐**Appeared** in person/Representative ☐ Was duly served and notified and **Did Not Appear**

This case was tried to: ☐ Judge ☐ Jury

After considering the pleadings, evidence and arguments of the parties, and if applicable, the jury's verdict, the Court enters the following:

1. ☐ **Judgment in favor of Plaintiff**/Landlord. It is ORDERED that Plaintiff/Landlord shall recover from Defendant/Tenant:
   - ☐ Possession of the property located at:_____.
   - ☐ Court costs in the amount of $_____.
   - ☐ Total unpaid rent in the amount of $_____,
   - ☐ Attorney's fees $_____.

OR

☐ **Judgment in favor of Defendant**/Tenant. It is ORDERED that Plaintiff/Landlord take nothing from Defendant/Tenant, that Defendant/Tenant can stay in possession of the property at _____,
and that Defendant/Tenant shall recover from Plaintiff/Landlord:
- ☐ Court costs in the amount of $_____.
- ☐ Attorney's fees $_____.☐

2. Post Judgment Interest:

Interest on the above sums shall accrue from this date at _____% per annum until paid.

3. **Appeal:**

You may appeal this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 5 days after this judgment was signed. See Texas Rule of Civil Procedure 510.19(a-c).

The bond or cash deposit is _____ for an appealing party unless a Statement of Inability to Afford Payment of Court Costs is filed.

4. **Rent:**

The Court finds according to the lease and applicable laws and regulations that

☐ weekly ☐ monthly rent is $_____, of which $_____ is paid by the Defendant/Tenant and $_____ is paid by a government entity, if applicable.

All writs and processes necessary to enforce this judgment shall issue. All relief not expressly granted herein is denied. This judgment is final and disposes of all parties and all claims in this case.

Important Notice
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.

El Aviso Importante
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.

IT IS SO ORDERED.

Entered this _____ day of _____, 20___.

_____
PRESIDING JUDGE

TENANT APPEAL OF A JUSTICE COURT EVICTION JUDGMENT
FAQS AND INSTRUCTIONS
***Eviction Appeal by Bond or Cash Deposit* Form,**
***Statement of Inability to Afford Payment of Court Costs or an Appeal Bond* Form,**
and *Defendant Affirmation to Appeal* Form

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use These Forms If:

- You are a tenant who lost an eviction case in justice court, and you want to appeal the judge's decision. **You must file an appeal within five days after the eviction judgment is signed by the judge. See FAQ 1.**

Do Not Use These Forms If:

- Your case is in county court
- Your case is not an eviction

Read these FAQs and instructions carefully. References to Rules are to the Texas Rules of Civil Procedure (TRCP), available at http://www.txcourts.gov/rules-forms/rules-standards/.

I. Frequently Asked Questions (FAQs) about Evictions Appeals:

1. If I lose my eviction case in justice court, how long do I have to appeal the judgment? See Texas Property Code 24.005107(a), TRCP 510.19(a).

   Five days. You have only five **calendar** days (in other words, count Saturdays, Sundays, and state or federal holidays) from the date that the eviction judgment is signed by the judge to appeal the decision of the justice court. This means that the justice court must have your appeal documents in their hands on or before that date.

   - If your deadline to appeal lands on a weekend or state or federal holiday, you can file your appeal on the next day the court is open.
   - If you are unable to file your appeal because the justice court is closed on a weekday for all or part of the day, your deadline is extended to the court's next business day. See TRCP 510.4(a).

   Some courts close early, so it is best to go in the morning or call to check their hours for that specific day. It's best not to rely on the justice court's website for their hours because they may not be regularly updated, especially during the holidays.

   Appeals filed by mail must be received by the due date, so it is best not to rely on the mail to file an appeal.

2. What happens if I do not file an appeal in my eviction case within the five days? See Texas Property Code Section 24.0061.

   If you do not appeal the eviction judgment within five calendar days and you do not move out, the eviction judgment becomes final and your landlord can ask the judge for a "Writ of Possession." A Writ of Possession is a court order directing a constable or sheriff to give you a written warning posted on your front door that you have 24 hours to move out before they return to supervise the removal of your family and your belongings from the residence.

3. Can I ask the justice court for another trial in justice court instead of appealing? See TRCP 510.18(g).

   No. You cannot ask the justice court to have a new trial in an eviction case.

   However, if you missed the trial and the landlord got a default judgment against you, you can ask the court to set aside the default judgment. A default judgment is a court order ruling against you because you or your representative did not show up to the eviction hearing. In the request, you must explain the good reasons why you missed the trial and why you should be given another chance.

   - A request to set aside a default judgment **does not delay** your five-day deadline to appeal. It must be filed within the five-day appeal deadline because the justice court loses the power to set aside the default judgment the day after the appeal is due. TRCP 510.24(a).
   - It is generally safer to file an appeal because a judge could deny your motion to set aside a default judgment, or take no action on it, which is the same as if a judge has denied it.

4. What would help me prepare before I file an appeal of my case from justice court?

   It is a good idea to get a copy of the justice court's judgment so that you know what it says. It will have the information you will need to fill out the appeal forms. The judgment should include the judge's decision, the date the judge signed it, any amounts that the judge decided you owe, the amount of a bond to appeal the judgment, and your monthly rental amount.

5. Where does my case go if I properly appeal the justice court judgment?

   County court. If you correctly and timely file your appeal of the justice court judgment, you will have a new trial before a new judge in the county court.

6. How do I appeal an eviction judgment in justice court? See TRCP 510.19.

   First, you must affirm, under penalty of perjury, that you have a good faith belief that you have a meritorious defense and that the appeal is not for the purpose of delay. This means that you believe you have a reason why you disagree with what your landlord has claimed in the eviction case. For example, you disagree with how much rent the landlord says you owe or whether you have violated your lease. You can satisfy this requirement by filing the *Defendant's Affirmation to Appeal* form. See Instructions IV below.

   Second, you must appeal an eviction case in justice court in one of three ways:

   a. A Statement of Inability to Afford Payment of Court Costs or Appeal Bond: If you cannot afford the amount of the appeal bond or the cash deposit set by the judge, file a *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*. See **FAQs 8 & 9**, and the instructions and form for the *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*. See Instructions II below.

   b. An Appeal Bond: You can appeal by filing an appeal bond if you and someone else of your choice (a surety) will promise to pay the judgment amount if you lose on appeal. Go to **FAQs 10 & 11**, and the instructions and form for the *Eviction Appeal by Bond or Cash Deposit*. See Instructions III below.

   c. A Cash Deposit: You can appeal by making a cash deposit in the bond amount with the justice court. Go to **FAQ 12 & 13** and the instructions and form for the *Eviction Appeal by Bond or Cash Deposit*, Instructions III below.

   Third, you must pay rent into the court registry if you want to stay in possession of the residence during your appeal. See FAQ 7.

   IMPORTANT: While not required, you may also want to file a written answer with the county court. An answer may be a simple hand-written letter asking for a trial. If you have good reasons why you should not be evicted, you should describe them. For example, if you paid the rent or if the landlord failed to give you notice before filing the eviction case, you should state this in your answer. For more information and an answer form, see *FAQs and Instructions for Defendant/Tenant's Answer in an Eviction Case*.

7. Do I have to pay rent into the court registry? See Texas Property Code Section 24.0053, TRCP 510.19(d).

   Yes, if you want to stay in your residence during the appeal. If so, you must pay one month's rent to the justice court within five calendar days of filing your appeal (in other words, count Saturdays, Sundays, and state or federal holidays if they fall within that five-day period). If your deadline to pay lands on a weekend or state or federal holiday, you can pay the rent on the next day the court is open, and if the court is officially closed for all or part of the day, your deadline is extended to the court's next business day. See TRCP 510.4.

After you make your initial rent payment to the justice court, you must pay subsequent rent payments into the court registry on or before the date that rent is due under the lease (typically the first of the month). These additional rent payments into the court registry will most likely need to be paid to the county clerk, unless the justice court still has your case when the rent becomes due. If you fail to pay rent into the court registry on time, the landlord can ask the court to issue a "writ of possession," which allows the constable or sheriff to give you a 24-hour warning posted on your front door and then to supervise the removal of your family and your belongings from the premises.

When you file your appeal by Statement of Inability to Afford Payment of Court Costs, Bond, or Cash Deposit, the justice court will give you a notice that will tell you the amount of the rent you must pay to the court and how and when to pay it. See TRCP 510.19(d).

If you do not want to stay in possession of the residence during the appeal or have moved out, you do not have to pay rent to the court. If you appeal the justice court judgment, your case will be transferred to the county court whether or not you pay rent to the court.

8. How do I appeal an eviction judgment with a ***Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*** form?

   If you cannot afford the appeal bond set by the judge, you can appeal within five calendar days of the judgment by filing a *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond.* A *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond* form is included in this packet, or you can ask the justice court for one. You must list your income, assets, monthly expenses, dependents, and debts on the form and sign it under penalty of perjury. See Texas Property Code Section 24.0052 and Instructions III below.

9. Can my landlord challenge my ***Statement of Inability to Afford Payment of Court Costs or an Appeal Bond***? See TRCP 510.19(c)(2), (3), (4).

   Yes. The landlord has five calendar days from the date they received the notice that the *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond* was filed to contest it. The contest must contain sworn evidence—not merely allegations—either that the *Statement of Inability* was materially false when made or that, because of changed circumstances, is no longer true.

   If you are represented by an attorney who has filed a Certificate of Legal Aid Provider, the landlord cannot contest the *Statement of Inability.* See TRCP 502.3(c).

   If the landlord contests the *Statement of Inability*, the justice court will set a hearing. You will need to testify and give evidence to prove that you cannot afford to pay the bond or the court costs. Bring proof of your expenses, income, and any public benefits or assistance that you may be receiving, such as SNAP (formerly food stamps), Social Security, or Medicaid. This is

not a re-hearing of the eviction case, only a hearing about your financial situation. If you lose this "financial hearing," you have five calendar days to either post the appeal bond with the justice court, or appeal that decision to the county court. See TRCP 502.3(d).

If you appeal the justice court decision denying your *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*, ask the county court to set a hearing to consider your financial evidence, because the county court is supposed to set a hearing within five days. If the county court does not approve your *Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*, you must file an appeal bond or cash deposit within one day of the county court judge's decision if you want to continue your appeal. See TRCP 502.3(d).

10. How do I appeal with an **appeal bond**? See TRCP 510.19(a), (b).

You can appeal by filing an appeal bond if you and someone else of your choice will promise to pay the judgment amount if you lose on appeal. You must file an appeal bond with the court within five calendar days of the judgment. An appeal bond must be signed by you and at least one other person who guarantees payment, called a "surety." A tenant is always obligated to pay judgment if they lose. A surety simply tells the judge that they will pay it if you can't.

The judge must approve any sureties, so a surety must have enough non-exempt property in Texas to satisfy any judgment and costs ordered by the judge. The judge may require two sureties, but that is up to the judge.

The judge should set the amount of the appeal bond in the eviction judgment. If the judge did not do that, or you do not have a copy of the judgment, call the court to find out the amount of the appeal bond and what the judge requires as sureties.

To appeal with an appeal bond, you can use *Defendant's Eviction Appeal by Bond or Cash Deposit* Form. See Instructions II below.

11. Are there any other requirements with an **appeal bond**? See TRCP 510.19(h).

Yes. In addition to paying rent into the court registry (see **FAQ 7** above), you must pay the filing fee for the appeal in county court once the case gets there. If you don't pay the filing fee within 7 days from the date you are notified to do so by the county clerk, the case is returned to justice court, and the judgment against you becomes final. For information about what happens at county court after you appeal, go to **FAQ 14**.

12. How do I appeal an eviction judgment with a **cash deposit**? See TRCP 510.19(a), (b).

You can appeal by making a cash deposit with the justice court in the amount of the appeal bond within five calendar days of the judgment. The judge should have set the appeal bond amount in the eviction judgment. If the judge did not do that, or you do not have a copy of

the judgment, call the court to find out the amount of the appeal bond.

If you appeal with a cash deposit, you do not need to file any form. Make sure to check with the justice court about how they will accept payment (money order, check, etc.).

While it is not required, it may be helpful to use the Form *Defendant's Eviction Appeal by Bond or Cash Deposit* to notify the justice court that you are appealing with a cash deposit. See Instructions III below.

13. Are there any other requirements with a **cash deposit**?

    Yes. Once the case goes to the county court, you will be required to pay the filing fee for the appeal in county court. If you don't pay the filing fee within 7 days from the date you are notified to do so by the County Clerk, the case is returned to justice court and the judgment against you becomes final. For information about what happens at the county court after you appeal, go to **FAQ 14**.

14. What happens after my case goes to the county court? See Texas Property Code Section 24.005107(c), TRCP 510.

    Once your case goes to county court, you will have a completely new trial, meaning that any papers, witnesses, or photographs you presented in justice court will have to be presented again. The county court must hold the trial no later than the 21st day after receiving the case from the justice court.

    County court hearings are more formal than the justice court. They require following the Texas Rules of Civil Procedure and the Texas Rules of Evidence. You should also check with the county court to see if any local rules apply that you must follow.

    Like the justice court judge, the county court judge will listen first to the landlord's side and then to your side of the story. After listening to both sides, the judge will decide if you will be evicted. Be sure to bring any witnesses or papers to the hearing that will help you defend yourself and prove your side of the story. Do not be afraid to speak up — the judge cannot read your mind, so do not remain silent. If you have questions for the landlord, you are entitled to ask them in front of the judge.

    If the county court judge rules to evict you, you can appeal to the court of appeals. The process is very complicated, and you should immediately see a lawyer to discuss your next steps. If you have a very low income, you should also call the legal aid organization in your area.

    If you decide you want to appeal the county court's judgment to evict you and you want to remain living in the property while you appeal, you must file a supersedeas bond within 10 days from the date of the judgment. A supersedeas bond is an amount set by the county court judge in the judgment for a tenant who plans to appeal the county court judge's ruling to the

Court of Appeals and remain living in the property during the appeal. Contact a lawyer for help.

II. **Instructions on the *Eviction Case Statement of Inability to Afford Payment of Court Costs***:

Heading:

- *Cause Number* – Fill in the Cause Number assigned to your case.
- *Fill in blanks in next section* – In the top blank, write the name of the Plaintiff/Landlord who filed the eviction case. Under the "v.," write in the name of the Defendant/Tenant(s)
- *Court Number* – Write in the precinct/place (if any)/court number listed on the eviction petition or other court document in this eviction case.
- *County, Texas* – Write in the name of the county in which the case is located.
- *Check the correct box* – Check the box where the case is currently located. (For example, if the case is in justice court and you are appealing to county court, you would check justice court.)

1. Your Information: Fill in the requested information. Include an email address only if you regularly check it. If you list an email, please remember to check it regularly for communications about your case that could include notices of court hearings. Let the court know in writing if your address changes.
2. About My Dependents: Dependents include any person who is financially dependent on you, like your child whether or not they live with you, or who you are financially responsible for, like a relative with disabilities. Use initials only for children under 18 years of age.
3. Are you represented by Legal Aid? Check the appropriate box.
4. Public Benefits: If you or your dependents do not receive public benefits, check No in the first box and skip to section 5. If you or your dependents receive public benefits, check Yes and indicate which public benefits are received by checking all boxes that apply. It is best to attach proof that you're currently receiving public benefits if you have it or can easily get it. You can usually get a statement or letter from the agency online.
5. What are your monthly income sources? Complete the blanks. If you receive money weekly, bi-weekly, or twice a month, figure out what the amount would be if you were paid monthly and make sure to list that amount in the spaces.
6. What is the value of your assets or property? The value is how much you think it would sell for less the amount you owe on it, if anything.
    - Cash: List the amount of cash you have on hand.
    - Bank accounts, other financial assets: State the type of account you have, such as "checking account" or "savings account," and the amount of money in the account, but **do not** list any account numbers.
    - Cars and boats (make and year): List the type and year of vehicle you have, like "2019 Toyota Corolla," and its value, which is the amount you could sell it for minus the amount you owe on it.

- Other property like jewelry, stocks, land, or a second house: **Do not include the value of your homestead (the home where you live)**.

7. What are your monthly expenses that are not deducted from your paycheck*?* List the amount that you pay each month for each item listed. Make sure to list any car or vehicle payments in the space provided for debt payments by listing the company you owe the money to (e.g. "Toyota Car Loan") but do not list any account numbers.
8. Are there debts or other facts explaining your financial situation*?* If you have any unusual medical expenses, family emergencies, or anything else that is financially impacting you that you want the judge to know about, list it in the space provided or attach a sheet of paper with the information on it.
9. Ability to Pay Court Costs. Check the appropriate box.
10. Declaration/Affidavit: Fill out the box for EITHER Option 1 or Option 2.
    - Option 1: This is the Declaration box. If you fill out this box, you will need to list your address and your date of birth but will not need to sign the form in front of a notary public. If you do not want to list your address or your date of birth for privacy or safety concerns, take the form and photo identification, and fill out the Notary box in front of a notary public.
    - Option 2: This is the Notary box. If you plan to use a notary public, do not sign it until a notary can watch you sign the form. If you do sign it beforehand, you'll need to complete a new form. Remember to bring your photo identification too.

III. **Instructions on How to Fill Out the *Defendant's Eviction Appeal by Bond or Cash Deposit* Form**:

Heading:

- *Cause Number* – Fill in the Cause Number assigned to your case.
- *Name of Plaintiff/Landlord* – Write the name of the Plaintiff/Landlord who filed the eviction case.
- *Name of Defendant/Tenant* – Write your name.
- *Precinct/Place Number* – Write in the precinct/place number of the justice court precinct/place.
- *County, Texas* – Write in the name of the county in which the case is located.

1. Judgment: You do not need to complete anything in this section. This paragraph tells the court that you want to appeal.
2. Bond Amount for Appeal: Enter the amount of the bond. The bond amount should be listed in the judgment, which is the court order in the eviction case. If you do not have a copy of the judgment or the bond amount is not listed in the judgment, call the court and ask them for the bond amount in your case.
3. Appeal by Bond or Cash Deposit: Check **ONE ONLY** box. See FAQs 10 and 11 to find out which option is best for you and to learn what a surety is.

- Option One: Bond with Surety: Check the box and print the name of the surety, the surety's address and phone number, and have the surety sign the form. If you are using more than one surety, list both sureties on the form. If you don't know how many sureties the court requires, contact the court.
- Cash Deposit: Check the box. No other information is needed.

4. Signature: Sign your name and fill in the rest of the information. If your address changes, make sure to let the court that will be hearing your case or appeal know in writing what your new address is.

IV. **Instructions on How to Fill Out the *Defendant's Affirmation to Appeal* Form**:

Heading:

- *Cause Number* – Fill in the Cause Number assigned to your case.
- *Name of Plaintiff/Landlord* – Write the name of the Plaintiff/Landlord who filed the eviction case.
- *Name of Defendant/Tenant* – Write your name.
- *Precinct/Place Number* – Write in the precinct number of the justice court precinct.
- *County, Texas* – Write in the name of the county in which the case is located.

1. Affirmation: You are stating that you affirm, under penalty of perjury, that you have a good faith belief that you have a meritorious defense and that the appeal is not for the purpose of delay.
2. Signature: Sign your name and fill in the rest of the information. If your address changes, make sure to let the court that will be hearing your case or appeal know in writing what your new address is.

Cause Number: _____

_____ In the
Name of Plaintiff/Landlord Justice Court _____
(*Precinct Number*)

v.

_____ _____ County
Name of Defendant/Tenant (*County*)

Eviction Appeal By Bond or Cash Deposit

1. Judgment

The court issued a judgment in this eviction case. I want to appeal the judgment with bond or cash deposit as listed below. *Texas Rule of Civil Procedure 510.19(a) states: "A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs … with the justice court within 5 days after the judgment is signed."*

2. Bond Amount for Appeal

The court has set the bond amount for appeal at $_____.

3. Appeal by Bond or Cash Deposit (*check only one*)

❑ Option One: Bond **with Surety**

If I lose on appeal, I and the following surety (*or sureties, if more than one is required by the court*) acknowledge and agree that we must pay the judgment and all costs, which may be more or less than the bond amount set by the court. *See Texas Rules of Civil Procedure 510.19(b)*.

_____ _____
Print Surety's Name **Surety's Signature**

_____ _____
Address City, State, Zip

_____ _____
Surety's Email Phone Number

_____ _____
Print Surety's Name **Surety's Signature**

_____ _____
Address City, State, Zip

_____ _____
Surety's Email Phone Number

❑ Option Two: Cash **Deposit**

Instead of using a bond with surety, I choose to appeal by depositing cash in the amount of the bond set by the court. If I lose on appeal, I acknowledge and agree that I must pay the judgment and all costs, which may be more or less than the cash amount I deposited with the court.

Date: _____

_____
Your Signature

_____
Your Printed Name

_____
Address

_____
City, State, Zip Code

_____
Phone Number

4. **COURT APPROVAL OF SURETY OR SURETIES FOR BOND**:

SIGNED and APPROVED on _____, 20_____.

_____
Signature

HON. _____
PRESIDING JUDGE

Cause Number: _____

_____
Name of Plaintiff/Landlord

In the
Justice Court _____
(*Precinct Number*)

v.

_____ _____ County
Name of Defendant/Tenant (*County*)

Defendant's Affirmation
To Appeal Eviction

I am appealing the judgment against me in this eviction case. Under penalty of perjury, I affirm that I have a good faith belief that I have a meritorious defense and that the appeal is not for the purpose of delay.

Date:_____

_____
Your Signature

_____
Your Printed Name

_____
Address

_____
City, State, Zip Code

_____
Phone Number

HOW TO CONTEST THE AMOUNT OF RENT YOU PAY TO COURT DURING APPEAL WHEN ALL OR PART OF YOUR RENT IS PAID BY A GOVERNMENT AGENCY

FAQS AND INSTRUCTIONS

***Defendant's/Tenant's Contest of Rent Determination* Form**

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use This Form if:

- All or part of your rent is paid by a government agency, public housing authority, or other housing entity, including Section 8 vouchers, and
- The justice court judgment against you in an eviction case lists the wrong monthly rental amount you pay to your landlord.

Do Not Use This Form If:

- None of your rent is paid by a government agency, or
- You agree with the amount of rent that the justice court decided you must pay into the court registry to stay in the rental property while your non-payment of rent eviction case is on appeal.

Read these FAQs and the instructions carefully. References to Rules are to the Texas Rules of Civil Procedure (TRCP), available at http://www.txcourts.gov/rules-forms/rules-standards/.

I. Frequently Asked Questions about Rent Determination and Appeals:

1. What is my deadline to appeal an eviction case? *See* TRCP Rule 510.4 and 510.19.

   You have only five **calendar** days (in other words, count Saturdays, Sundays, and state or federal holidays) from the date that the eviction judgment is signed by the judge to appeal the decision of the justice court. The justice court must have your appeal documents in their hands on or before that date.

   - If your deadline to appeal lands on a weekend or state or federal holiday, you can file your appeal on the next day the court is open.
   - If you are unable to file your appeal because the justice court is closed on a weekday for all or part of the day, your deadline is extended to the court's next business day. See TRCP 510.4(a).

   Some courts close early, so it is best to go in the morning or call to check their hours for that specific day. It's best not to rely on the justice court's website for their hours because they may not be regularly updated, especially during the holidays.

Appeals filed by mail must be received by the due date, so it is best not to rely on the mail to file an appeal.

You can appeal a justice court eviction judgment in one of three ways: 1) appeal bond; 2) cash deposit in the amount of the appeal bond; and 3) statement of inability to afford payment of court costs (available at the justice court). These FAQs and Instructions are only about rent issues during an appeal. For more information about appeals, the process, and forms, please read *Tenant Appeal of a Justice Court Eviction Judgment, FAQs, forms and Instructions*.

2. Do I have to pay rent into the Justice Court registry if I appeal an eviction case? *See* TRCP 510.19 and Texas Property Code Section 24.0053.

   If you want to stay in possession of your residence during your appeal, you must pay rent into the court registry. See **FAQs 4 and 5** for when you must pay rent to the court registry.

   If you do not want to stay in the residence during the appeal, you do not have to pay rent to the court. If you appeal the justice court judgment, your case will be transferred to the county court even if you do not pay rent to the court.

3. What happens if I don't pay rent to either the justice court or county court, or I don't pay it on time?

   If you don't pay rent on time to either the justice court or the county court registry and you are still in the residence, the landlord can ask the court to issue a "writ of possession," which allows the constable or sheriff to give you a 24-hour warning to remove your family and your belongings from the premises and then come back with the landlord to remove you, your family, and your belongings from the premises.

   Even if the justice court issues a writ of possession, the justice court will still forward your appeal to the county court for a new trial to resolve any remaining issues in the case. *See* Texas Property Code Section 24.0054.

4. When is the first time that I have to pay rent into the justice court registry if I appeal an eviction case? *See* TRCP 510.19 and Texas Property Code Sections 24.0042 and 24.0053.

   If you want to stay in your residence during the appeal, you must pay one month's rent to the justice court **within five calendar days of filing your appeal** (in other words, count Saturdays, Sundays, and state or federal holidays if they fall within that five-day period). If your deadline to pay lands on a weekend or state or federal holiday, you can pay the

rent on the next day the court is open. If the court is officially closed for all or part of the day, your deadline is extended to the court's next business day. *See* TRCP 510.4.

5. Do I have to make any other rent payments to the court after my first rent payment to the court? *See* TRCP 510.19 and Texas Property Code Sections 24.0042 and 24.0053.

   Yes. After you make your initial rent payment to the justice court, you must pay subsequent rent payments into the court registry on or before the date that rent is due under the lease (typically the first of the month). These additional rent payments into the court registry will most likely need to be paid to the county clerk, unless the justice court still has your case when the rent becomes due.

   If you do not want to stay in possession of the residence during the appeal or have moved out, you do not have to pay rent to the court. If you appeal the justice court judgment, your case will be transferred to the county court even if you do not pay rent to the court.

6. What if I am current on my rent when I appeal? Do I still have to make a rent payment into the court registry to stay in the residence during my appeal? *See* TRCP 510.19 and Texas Property Code Sections 24.0042 and 24.0053.

   Yes. State law currently requires you to make these payments to stay in the residence during an appeal to the county court. Depending on when you appeal, you may need to pay rent into the court registry for a month you've already paid rent, even if your case has nothing to do with not paying rent. This means you could need to make an extra rent payment. If this happens, point this out to the county court judge at your appeal trial to see if you can get that payment back.

7. How do I know how much rent to pay into the court registry? *See* TRCP 510.19 and Texas Property Code Section 24.0053.

   The amount of rent you need to pay should be in the judgment signed by the justice court in your case. Contact the justice court immediately to get a copy of the judgment or the amount of rent you need to pay into the court registry.

   Also, when you file your appeal (by Statement of Inability to Afford Payment of Court Costs, Bond, or Cash Deposit), the justice court will give you a notice that will tell you the amount of the rent you must pay to the court and how and when to pay it. *See* TRCP 510.19(d).

8. What if the amount of my rent is wrong in the judgment or the Court's notice? *See*

Rule 510.19 and Texas Property Code Section 24.0053.

If your rent is paid by a government agency and the amount of your rent is wrong in the judgment and the court's notice, you must file a Contest of Rent Determination, which alerts the Court that it has wrongly determined the amount of your rent. You can do this using the *Defendant's/Tenant's Contest of Rent Determination Form* in this toolkit.

The Contest of Rent Determination is due within five days of the judgment, the same date your appeal is due. **This means that if the court gives you a notice of an incorrect rent amount when you file your appeal, you must file the Contest of Rent Determination that same day.**

9. What happens after I file the Contest of Rent Determination? *See* Rule 510.19 and Texas Property Code Section 24.0053.

   After you file your Contest of Rent Determination, the Justice Court must set a hearing within five days. At that hearing, you must explain to the judge why the rental amount was incorrect. Bring any documentation showing your rent amount. For example, if you are in public housing, you could bring a copy of your lease. If you have a Section 8 voucher, you could bring a notice from the housing authority stating the amount of your portion of the rent. You could also bring a ledger (if you have one) showing the amount of rent normally paid by you.

   If the judge agrees with you about the rent amount, you should **immediately** pay that amount into the justice court registry. If the judge does not agree with you, you should **immediately** pay the amount the judge determines into the justice court registry.

   There is no appeal process if the justice court judge incorrectly determines your rent amount at the rent contest hearing, so make sure to bring any available proof of your rent amount.

10. What if I do not pay rent into the justice court registry after the Contest of Rent Determination hearing?

    If you fail to pay rent into the justice court registry, the landlord can ask the court to issue a "writ of possession," which allows the constable or sheriff to give you a 24-hour warning to remove your family and your belongings from the premises and then come back with the landlord to remove you, your family, and your belongings from the premises.

Even if the justice court issues a writ of possession, the justice court will still forward your appeal to the county court for a new trial to resolve any remaining issues in the case. *See* Texas Property Code Section 24.0054.

11. What happens to my case after the Contest of Rent Determination hearing? Do I need to do anything else? *See* TRCP 510.19 and Texas Property Code Section 24.0053.

    After the rent determination hearing, your case will be transferred to the county court for a new trial. While your case is on appeal, either you or your landlord can request that the county court reconsider the amount of rent you must pay into the court registry. You can use the Defendant's/Tenant's Contest of Rent Determination Form to do that.

    Once your case goes to county court, you will have a completely new trial. This means that any papers, witnesses, or photographs you presented in justice court will have to be presented again. Like the justice court judge, the county court judge will listen first to the landlord's side and then to your side of the story. After listening to both sides, the judge will decide if you will be evicted. Be sure to bring any witnesses or papers to the hearing that will help you defend yourself and prove your side of the story. Do not be afraid to speak up—the judge cannot read your mind, so do not remain silent. If you have questions for the landlord, you are entitled to ask them in front of the judge.

II. **How to Fill Out This Form**:

Heading:

- *Case Number* – Copy the case number from any document you've received from the court or from the eviction petition that was served on you.
- *Name of Plaintiff/Landlord* – Copy the name of the landlord from the eviction petition that was served on you.
- *Name of Defendant(s)/Tenant(s)* – Copy the names of the Defendant(s)/Tenant(s) from the eviction petition that was served on you.
- *Precinct or County Court Number* – Write in the precinct or county court number of the court where you are filing the form. If you do not know, ask the court clerk or check the court's website.
- *County, Texas* – Write in the name of the county in which the property is located.

1. Rent Amount: Write in the monthly rent amount listed in the court's judgment.
2. Your Portion of the Rent: If you receive rent assistance from a government agency, public housing authority, or other housing entity, including Section 8 vouchers, write in the amount of rent that you are responsible for paying. This is the amount you are asking the court to have you pay into the court registry.

NOTE: Do not use this form if you do not receive this type of rent assistance. The form is only intended for use by people who receive government rental assistance.

3. Signature: Sign your name and fill in the rest of the information. If your address changes, make sure to let the court that will be hearing your case or appeal know in writing what your new address is. List an email address only if you check it frequently.
4. Certificate of Service: Fill in the date that you will deliver this form to the landlord.
    - *Check one box* – You must send a copy of the Contest of Rent Determination form that you file with the court to the Plaintiff/Landlord. These checkboxes list the different ways you can do that. If you send it by email, the Plaintiff/Landlord must have previously given their email address to you or emailed you from that email address. Check the one you used.
    - *Signature* – Sign the Certificate of Service. When you sign, you are certifying that you will send the Contest of Rent Determination to the Plaintiff/Landlord.

Case Number_____
(Look at the Petition or contact the court for this information)

_____
Name of Plaintiff/Landlord

vs.

_____
Name of Defendant(s)/Tenant(s)

In the *(Check one))*
☐ Justice Court, Precinct _____
☐ County Court, Number_____

_____ County, Texas
(County Name)

DEFENDANT/TENANT'S CONTEST OF RENT DETERMINATION

1. I am the Defendant/Tenant in this case. The Court entered a judgment in favor of the Plaintiff/Landlord in this case that states that my monthly rent is $_____. I disagree with the rent determination of the Court.

2. A government agency, public housing authority, or other housing entity, including Section 8 voucher, is responsible for paying a portion of the monthly rent for the property in this case, and **my** portion of the rent is $_____. This is the amount of rent that I request the Court decide that I pay into the court registry. (*Texas Rule of Civil Procedure 510.19(d)(2)(C) and Texas Property Code Section 24.0053(c) and (d).*)

Respectfully submitted:

_____
Your Signature

_____
Your Printed Name

_____
Address

_____
City, State, Zip Code

_____
Phone Number

_____
E-mail address (if you check it frequently)

Certificate of Service

I certify that a copy of this document was delivered to the Plaintiff/Landlord on this date by:

(Check one.)

- ☐ Mail or courier-receipted delivery
- ☐ E-mail to:

  _____

- ☐ Hand delivery to Plaintiff/Landlord or their authorized agent

▶ _____ _____

Your Signature ***Date***

Case Number_____

In the Justice Court,
Precinct_____, Place _____,
(Precinct and Place Number)

_____
Name of Plaintiff(s)/Landlord(s) (Print)

VS.

_____
Name of Defendant(s)/Tenant(s) (Print)

_____ County, Texas
(County Name)

Plaintiff's/Landlord's Request for Writ of Possession

(*Texas Property Code, Section 24.0061*)

1. **Property Address:** _____

2. **Judgment**:

   Date of Judgment: _____

   The judgment is against the following defendant(s): _____

   _____

3. **Requested by Landlord, Landlord's Authorized Agent, or Landlord's Attorney:**

   Name: _____ Bar # (if applicable): _____

   Signature:_____ Date:_____

   To Assist the Officer Executing the Writ, Provide Contact Information:

   Plaintiff's/Landlord's Authorized Agent (if different from above): _____

   Address: _____

   Phone number: _____

   Email: _____

LANDLORD'S WRIT OF POSSESSION
IN A JUSTICE COURT EVICTION CASE
Frequently Asked Questions (FAQs) AND INSTRUCTIONS
Texas Property Code, Section 24.0061

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Use This Form If:

- You are a landlord, and you have a final judgment in your favor in an eviction case; **OR**
- You have the right to get a writ of possession, as explained further in FAQs below.

Do Not Use This Form If:

- A judge ruled in favor of the tenant in an eviction case.

General Instructions:
Read these Frequently Asked Questions and these Instructions carefully. References are to the Texas Rules of Civil Procedure (https://www.txcourts.gov/rules-forms/rules-standards/) and the Texas Property Code (https://statutes.capitol.texas.gov/?link=PR).

I. Frequently Asked Questions (FAQs) about Writs of Possession

1. What is a writ of possession?

   A Writ of Possession is an order from a court that has previously made a ruling in favor of a landlord in an eviction case. It orders a constable or sheriff to take certain steps to get possession of the property. It is the only legal way for a landlord to regain possession of the property in an eviction case when the tenant is still occupying it. A landlord cannot try to take possession of the property on their own.

2. Can I use a writ of possession to get anyone removed from the property?

   No. You can only use a writ of possession to remove people who are named by a judge in an eviction judgment or who do not have a legal right to continue occupying the property.

   Note that a writ of possession cannot be issued against a tenant with a lease (defined by the property code 92.001 as a written lease or oral agreement) who was not named in the eviction petition and served with citation. If you want to remove someone with a legal right to occupy the property who was not listed as a defendant in the eviction suit, you will need to file a separate eviction suit against them. *See* Texas Rule of Civil Procedure 510.6(d).

3. Where do I get a writ of possession?

   The landlord may request a writ of possession at the court where the original case was filed. If the case was appealed, the landlord would request a writ from the court where the eviction was appealed.

4. How do I get a writ of possession? Texas Property Code, Section 24.0061(b-1) and TRCP 510.18(g)

   The landlord requests a writ of possession as stated in FAQ 2 and pays a fee. You can use the Request for Writ of Possession form to make the request. The judge, or the clerk under the authority of the judge, will sign the writ, and then it will be sent to the constable or sheriff.

   The writ of possession will order the officer executing the writ to post a written warning of at least 8 ½ x 11 inches outside the front door notifying the tenant that a writ has been issued and they must vacate the property within 24 hours or they will be physically removed.

   If the constable or sheriff does not serve the writ on or before the fifth business day after the date the writ is issued, the landlord may have the writ served by any other law enforcement officer, including an off-duty officer with appropriate identification, who has received appropriate training from the Texas Commission on Law Enforcement.

5. When can I get a writ of possession?

   Once a final judgment has been entered in an eviction case, you may request a writ of possession on:

   - The sixth day after the final judgment has been signed, or
   - The day after the tenant's deadline to appeal, whichever is later.

   When you have previously filed an Immediate Possession Bond, you may be able to request a writ.

6. What if the case was appealed? Texas Rules of Civil Procedure 510.18 and 510.19

   A judge will not issue a Writ of Possession if a tenant has appealed and rent has been paid to the court (if required, see FAQ 7). A tenant "appeals" when a tenant has properly filed a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs with the court. Once the appeal is at the county court, any request for a writ of possession will need to be made to that court or the clerk for that court.

7. How does the tenant know how much rent to pay into the court registry? Texas Rules of Civil Procedure 510.19(d) and Texas Property Code Section 24.0053

   If the tenant wants to continue to live in the rental unit during the appeal, the tenant must pay rent into a court registry. A court registry is simply an account the court has established where you pay your rent. Payments are made to the court.

   The judge will decide how much rent needs to be paid to the court registry, when it needs to be paid, where it needs to be paid, and how it needs to be paid. This information will be stated in the court judgment and in a notice the tenant will receive when they properly appeal.

8. When does the tenant pay rent into the court registry? Texas Rules of Civil Procedure 510.19(d) and 510.4, and Texas Property Code Section 24.0053 and 24.0042

   The initial payment must be made to the justice court registry within 5 days from the date that the tenant files an appeal (See below). The tenant must continue to pay rent to the justice court registry on or before rent is due until the case is transferred to the county court for the appeal. Once the case has been transferred, the payments will be paid to the county court registry on or before the rent is due.

   Calculating the 5 Days When Rent is Due to the Court on Appeal:

   The judge will determine when the tenant's rent is due to the court and will tell the tenant that day in the notice the tenant is given when they appeal. The court will determine that date by:

   a. excluding the day that the tenant properly files the appeal; and
   b. counting 5 days beginning the following day, including Saturdays and Sundays, except that the last day will be extended to the court's next business day if the last day falls on:
      i. a weekend, or
      ii. a state or federal holiday (even if the court is actually open on the state or federal holiday), or
      iii. a day during which the court is closed for all or part of the day.

   If the tenant fails to pay rent into the court registry on time, the landlord can ask the court to issue a writ of possession.

9. How long is the writ enforceable before it is no longer valid? Texas Rules of Civil Procedure 510.18(g)

The writ must be requested and issued within 60 days after the judgment. If you did not request a writ within 60 days, you can ask the court for a 30-day extension. A judge may extend the deadline up to 30 days if you request an extension and prove a good reason to do so.

A writ can only be executed 90 days from the date of the judgment. If the writ is not executed within the 90-day period, the writ will expire, and the landlord will need to start the entire eviction process over again.

10. What happens when the writ is executed? Texas Property Code, Chapter 24.0061

The constable or sheriff will post a written warning on the front door of the property notifying the tenant of the writ and the date and time that the tenant must move out of the property, which must be a minimum of 24 hours from when the warning is posted.

An officer must be present to execute the writ. The landlord is entitled to receive possession of the property only when the officer arrives at the property to execute the writ, not beforehand. This means that the landlord cannot attempt to remove any people or personal belongings after the written warning has been posted on the front door unless the constable is present. Even if the tenant has not vacated the property by the time stated in the written warning, the landlord still cannot start removing personal property or attempt to remove anyone from the property on their own.

When executing a writ, the officer will:

- Give possession of the Property to the landlord;
- Tell the tenant, and anyone claiming a right to the property under the tenant, to leave the Property immediately. If they fail to comply, the officer can physically remove them;
- Tell the tenant to remove their personal property from the Property, or allow the landlord, their designee, or someone under the officer's supervision to do so; and
- Tell them to place the removed personal property outside the rental unit at a nearby location but not blocking a public sidewalk, passageway, or street. Personal property cannot be removed and placed outside while it is raining, sleeting, or snowing. Personal property may be removed during inclement weather if it is moved into a portable, closed container provided by a municipality. *See* Texas Property Code, Chapter 24.0061(d) and (d-1) for more information.

When executing a writ, the officer may, at the officer's discretion, hire a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

A sheriff or constable, including a deputy sheriff or deputy constable, must serve the writ of possession not later than the fifth business day after the date the writ is issued. If the writ of possession is not served on or before the fifth business day after the date the writ is issued,

the landlord may, but is not obligated to, have the writ served by any other law enforcement officer, including an off-duty officer with appropriate identification, who has received training as determined by the Texas Commission on Law Enforcement.

Instructions for Filling Request for Writ of Possession Form:

1. Heading:
    - *Case Number*:
    - *Plaintiff/Landlord Name* – Print your name.
    - *Name of Defendant(s) /Tenants:* Print the name of the defendant(s) that you sued.
    - *Precinct/Place Number* – Print in the precinct number of the justice court where the case was heard.
    - *County, Texas* – Print in the name of the county in which the case was heard.

2. Property Address: Fill in the address of the property in the eviction case judgment.

3. Judgment:
    - *Date of Judgment*: Write in the Month/Day/ Year that the judge signed the eviction judgment.
    - *Defendant(s):* Look at the eviction judgment to see which defendant(s) the judge evicted. Write in only the name of the evicted defendants, which may not be all the defendants that you sued. *See* FAQ 2.

4. Requested by Landlord, Landlord's Authorized Agent, or Landlord's Attorney:
    - *Name*: Write the name of the landlord, the landlord's agent, or the landlord's attorney.
    - *Bar number, if applicable:* If the landlord's attorney is completing the form, the attorney will write in their State Bar of Texas number.
    - *Signature*: Whoever is completing the form needs to sign it.
    - *Date*: Write in the date the form is signed.
    - *To Assist the Officer Executing the Writ, Provide Contact Information*: Write in the name, address, phone number,is and email address of the person who will coordinate with the officer to execute the writ.