Supreme Court of Texas
Protective Order Task Force
PO Box 12487
Austin, TX 78711-2487
(512) 427-1855
(512) 427-4160 (fax)

February 17, 2012

The Supreme Court of Texas
Attn: Mr. Blake Hawthorne
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

Re: **Supplemental Report to the Supreme Court of Texas, Misc. Docket No. 03-9146**

Dear Justices of the Supreme Court of Texas:

This Supplemental Report contains edits made to the revised Protective Order Kit filed with the Court on January 31, 2012. The Protective Order Kit was originally promulgated by the Court in 2005. Misc. Docket No. 05-9059, and was updated by the Supreme Court Protective Order Task Force to comport with new law created by legislative changes made during the 82nd Texas Legislative Session.

Please find the Supplemental Report for revisions to the 2005 Protective Order Kit forms and instructions for your review.

Very truly yours,

Stewart W. Gagnon
Chair

Attachments

PROTECTIVE ORDERS

DRAFT

What is a Protective Order?

It is a court order that protects you from someone who has been violent or threatened to be violent. Violence can include sexual assault.

How can a Protective Order help me?

It can order the other person to:

- Not hurt you or threaten to hurt you
- Not contact you or go near you, your children, other family relatives, your pets, your home, where you work, or your children's schools.
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a Protective Order?

You can get a Protective Order if:

- Someone has hurt you, or threatened to hurt you, **and**
- You are afraid that person may hurt you again, **and**
- Either you, or your spouse or dating partner has a close relationship with the person who hurt you (a close relationship includes: marriage, close relatives, dating or living together, or having a child together).

You can also get a Protective Order if you have had a Protective Order against the other person before and the other person violated the parts of the Protective Order designed to protect you.

You can also get a Protective Order if you have been sexually assaulted or stalked, even if you do not have a close relationship with the person who sexually assaulted or stalked you. To get more information about this kind of Protective Order, contact the Texas Advocacy Project, Inc. at 800/374-HOPE or the Texas Association Against Sexual Assault at 512/474-7190.

How much does it cost?

It is free for you.

How do I ask for a Protective Order?

Fill out the forms in this kit:

- Application for Protective Order and Declaration
- Temporary Ex Parte Protective Order-Protective Order
- Respondent Information

Where do I file the forms?

After you fill out the forms, take the forms with 2 copies to the courthouse. File them in the county where you or the other person lives. But if you have a divorce or custody case pending against the other person, file the forms in that same county or the county where you live.

What if the other person and I live together or have children together?

The judge can make orders about who gets to use the house, apartment or car.

The judge can also make other orders, like child custody, child support, visitation, and spousal support. The judge can also make an order to protect pets.

Can I get protection right away?

The judge may give you a temporary order that protects you until your court hearing. This order is called a "Temporary Ex Parte Protective Order". Please note: If you do not receive a court document entitled "Temporary Ex Parte Protective Order" that is signed by the judge after you apply, you do NOT have a protective order yet. You must go to a hearing and ask the judge for a Protective Order.

In some cases, the judge orders the other person to leave the home right away. If you want this, you should ask the judge. Be ready to testify at a hearing when you file your Application.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks. The judge will decide if you should have protection and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court* in this kit. Or get it from the court clerk or from: **www.texaslawhelp.org/protectiveorderkit**

How will the other person know about the Protective Order?

You must have the other person "served" ***before*** the court hearing. This means someone—not you—will serve (*give*) the other person a copy of your application for a protective order. Please note: when the other person receives your application for a Protective Order, they will also receive a copy of your signed Declaration. Also, if the other person is in the military, a copy of the application for protective order and Declaration will be sent to the officials on base.

The clerk can arrange for law enforcement to serve the other person the court papers for FREE (for you).

How long will the Protective Order be in place?

In most cases, a Protective Order will last up to two years. There are some situations where a court can issue a Protective Order that lasts longer than two years.

Need help?

There is an instruction sheet for each form. But, if you need more help, contact: Family Violence Legal Line: **800-374-HOPE (4673)** Or, go to: **www.texaslawhelp.org/protectiveorderkit**

Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help for free. The State Bar of Texas may also be able to refer you to a lawyer if you call 800-252-9690.

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Get Ready for Court

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end and you will have to start from the beginning.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you.
- Bring any evidence you have, like photographs, medical records, torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative or police. The judge may ask them to testify.
- If you had a Protective Order in the past bring a copy of it.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court. Proof of Service is a document that shows when and where the other person was given a copy of the Application for Protective Order and Declaration.

Get there 30 minutes early.

- Find the courtroom.
- When the courtroom opens, go in and tell the clerk or officer that you are present.
- Watch the other cases so you will know what to do.
- When your name is called, go to the front of the courtroom.

What if I don't speak English?

When you file your papers, tell the clerk you will need an interpreter. Ask the court clerk if you qualify for any free interpretation services.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you file your papers, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE (4673)**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE (7233)**

Practice what you want to say.

Make a list of the orders you want and practice saying them. Do not take more than 3 minutes to say what you want.

If you get nervous at the hearing, just read from your list. Use that list to see if the judge has made every order you asked for.

The judge may ask questions.

The other person or his or her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers. If you don't understand, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What happens after the hearing?

If the judge agrees you need protection, the judge will sign your Protective Order.

Take your signed order to the court clerk. Ask for copies of your order (or make extra copies) and keep one with you at all times.

Make sure copies of your order are sent to your children's daycare, babysitter, school, and to the other person's military superior, if they have one. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call Family Violence Legal Line: **800-374-HOPE (4673)**

Or go to:
www.texaslawhelp.org/protectiveorderkit

Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help for free. The State Bar of Texas may also be able to refer you to a lawyer if you call 800-252-9690.

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Make A Safety Plan

A safety plan can help keep you and your children safe. Ask a domestic violence counselor to help you with your plan.

During an Attack

When an attack starts, try to escape. Leave your home and take your children, *no matter what time it is!*

- Go to a friend's house or to a domestic violence shelter. Call 1-800-799-SAFE (7233) to find a shelter near you.
- Defend and protect yourself. Later, take photos of your injuries.
- Call for help. Scream as loud and as long as you can.
- Stay close to a door or window so you can get out if you need to.
- Stay away from the bathroom, kitchen, and weapons.

Be Ready to Leave

Leaving is the most dangerous time. Thinking about your safety plan before you leave will help you when the time comes.

- Practice your escape. Know which doors, windows, elevator, or stairs are best. Practice with your children if they are old enough.
- Have a safe place to go in an emergency. Memorize their phone number.
- Keep a cell phone or calling card with you always so you can call in an emergency.
- Ask a neighbor and a co-worker to call the police if they see or hear abuse.
- Get rid of guns and weapons in your house.
- Teach your children how to dial 911 to get help in an emergency.
- Have a safety plan for your children when you can't be with them. Teach them the plan.
- Have a "code word" to use with your children, family, friends, and neighbors. Ask them to call the police when you say that word.
- Keep a bag ready with clothes and extra keys for your house and car. Hide it in a place you can get to quickly. Or leave it at a friend's house.
- Get your own post office box so you can safely get checks and mail.
- Open your own checking or savings account and try to get a credit card in your name
- Put important things in a safe place where you can get them easily, such as your:
  - Medicines
  - Driver's license, ID, social security card
  - Cash, check book, credit cards
  - Legal papers, important phone numbers.
- Make plans for your pets if you have them.
- Review your safety plan a lot and make changes to it if you need to.

Be Safe With Technology

- Get a new email address.
- Change your passwords and PIN numbers often.
- Search your name on the Internet to see if your phone numbers or address are listed.
- If you have an online page, "de-friend" your partner or make a new page.
- Use a computer that your partner doesn't know about like at a library or friend's house.
- Get a cell phone that your partner doesn't know about. Call the domestic violence shelter and ask them if they can give you a donated cell phone. Call 1-800-799-SAFE (7233).
- Save emergency phone numbers with a made up name in your cell phone. For example, you can name the domestic violence shelter in your cell as "Angie."

Be Safe When You Live on Your Own

- Change the locks on your doors as soon as you can.
- Put locks on all your doors and windows.
- Ask your phone company for an unlisted number. Sometimes this is free. Don't call your partner from your phone. Screen all your calls.
- If you move, don't tell your partner where you live.
- Give your children's school or daycare a list of who is allowed to pick up your children.
- Tell your neighbors and landlord that your partner no longer lives with you.
- Ask them to call the police if they see your partner near your home.
- Take care of yourself by asking for what you need and going to a support group.
- If you have to see your partner, meet in a public place and bring someone with you.

LSC

Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

- If you are thinking about going back to your partner, talk to someone you trust first.
- Be safe at work by asking your co-workers to call the police if they see your partner at your job. Bring a picture of your partner to work.
- Take a different way home and to work. Go to different stores and places. Change your routine.
- If you drive, park where there is a lot of light.
- Have someone walk with you to your car or to the bus stop.

Be Safe With a Protective Order

- Always keep your Protective Order with you and call the police if your partner violates it.
- Give copies of your protective order to your family, friends, neighbors, school, and daycare.

Important Phone Numbers

Police and Emergencies 911

National Domestic Violence (DV) Hotline
1-800-799-SAFE (7233)
1-800-787-3224 (TTY) for the Deaf

Texas Council on Family Violence
1-800-525-1978

First Call for Help
1-800-HELP-5555 (1-800-4357-5555)

Child and Elderly Abuse/Neglect
1-800-252-5400

Rape Abuse & Incest National Network
1-800-656-HOPE (4673)

Texas Advocacy Project—Legal Line
1-800-374-HOPE (4673)

Lawyer Referral Service
1-877-9TEXASBAR or 1-800-252-9690

Child Support Office
1-800-252-8014

Crime Victim's Compensation
1-800-983-9933

Important Things to Take With You

Identification—

- ☐ Driver's License
- ☐ Birth Certificate
- ☐ Social Security Card
- ☐ Children's Birth Certificate and Social Security Cards

Financial—

- ☐ Money and credit cards in your name
- ☐ Checking and savings account numbers

Legal Papers—

- ☐ Protective Order
- ☐ Lease or house papers
- ☐ Car registration and insurance
- ☐ Health and life insurance papers
- ☐ Medical records for you and your children
- ☐ School records
- ☐ Work permits/Green Cards/Visa
- ☐ Passport
- ☐ Divorce and custody papers
- ☐ Marriage license
- ☐ Mortgage and loan payment books and account numbers

Other—

- ☐ Medications
- ☐ House and car keys
- ☐ Valuable jewelry
- ☐ Address book
- ☐ Pictures
- ☐ Clothes for you and your children
- ☐ Diapers and formula
- ☐ Pets

Keep these papers in a safe place where your partner can't find them!

LSC SJI Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

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Cause No.: _____

Applicant: Your name here. You are the Applicant. § In the _____ Court

v. §

The clerk fills out this part

§

Respondent: Name of person you want protection from. This is the Respondent. § _____ County, Texas

Application for Protective Order

1 Parties

Name:
Applicant: Your name here.
Respondent: Name of person you want protection from
Respondent's address for service: Best address to give the other person a copy of this form

County of Residence:
County where each person lives

Check all that apply:

- ☐ The Applicant and Respondent are or were members of the same family or household.
- ☐ The Applicant and Respondent are parents of the same child or children.
- ☐ The Applicant and Respondent used to be married.
- ☐ The Applicant and Respondent are or were dating.
- ☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
- ☐ The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	Names of children needing protection	☐ Yes	☐ No	County where each person lives
b.		☐ Yes	☐ No	
c.		☐ Yes	☐ No	
d.		☐ Yes	☐ No	

Check all that apply:

- ☐ Other children are listed on a sheet attached to this Application.
- ☐ The Children are or were members of the Applicant's family or household.
- ☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	Names of other adults needing protection	County where each person lives
b.		

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): ☐ A copy of the final order is attached.
☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? *Check o*

Read and check one or both

☐ The Respondent committed family violence and is likely to commit f ture.

☐ The Respondent violated a prior Protective Order that expired, or will exp days or less. A copy of the Order is (*check one*): ☐ Attached, or
☐ Not available now but will be filed before the hearing on this Applicat on

Sample Only — Do Not File

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The Applicant requests a PROTECTIVE ORDER and asks the Court to make the Orders marked with a check ☒

Check all the orders you want the judge to make

6 ☒ Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ☒ Not commit family violence against any person named on page 1 of this form.
b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.
c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.
d. ☐ Not communicate or attempt to communicate in any manner with (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
   The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.
e. ☐ Not go within 200 yards of the (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
f. ☐ Not go within 200 yards of the residence, workplace or school of the (*Check all that apply*):
   ☐ Applicant ☐ Other Adults named on page 1 of this form.
g. ☐ Not go within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a possession schedule entered by the Court.
h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.
j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.
k. ☐ Prohibit the Respondent from harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal or assistance animal: _____ (describe the animal).
l. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.

_____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

The Residence located at: _____

Your home address here, unless you want it to be confidential.

(*Check one*): ☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders (*Check all that apply*):

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.
☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.
☐ The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:

_____

List the property you want to use or control, like a car or furniture, even if the other person owns it with you.

☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

Sample Only — Do Not File

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8 ☐ Spousal Support Order

Check here if you want spousal support.

...ndent or otherwise legally entitled to support from the Respondent and asks ... pay support in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Re... of the Applicant's children:_____

Check here and fill out this section if you want the judge to make orders about who the children can stay with, restrictions on travel, and child support.

And, the App... in the best interest of the people named on page 1 of this form.

Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☒ Temporary Ex Parte Protective Order

Based on the information in the attached Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

Th... the Respondent at: _____ Your home address here _____ or has resided at this ... filing this Application. The Respondent committed family violence against a ... 30 days prior to the filing of this Application, as described in the attached Declaration. ... and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

Check here if you want the judge to order the other person to move out.

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

Check here if you want to keep your contact information private.

... keep addresses and telephone numbers for residences, workplaces, schools, and

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

Sign Here

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

Phone # where Applicant may be contacted: _____

(*List another address/phone if you want yours kept confidential*)

List your address/phone or another address/phone if you want yours kept confidential.

Sample Only — Do Not File

Declaration

My name is (Your name here) _____. My date of birth is _____. My address is (Your address here) _____ (leave out if you are requesting that your address be kept confidential). I declare under penalty of perjury that the following is true and correct.

Executed in (Write the name of your county here) County, State of _____ on _____ (date).

1 Describe the most recent time the Respondent hurt you or threatened to hurt you: _____

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

2 What date did this happen? ____/____/____

3 Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____

4 Were any children there? ☐ Yes ☐ No If yes, who? _____

5 Did you call the police? ☐ Yes ☐ No If yes, what happened? _____

6 Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

7 Has the Respondent ever threatened or hurt you ***before***? Describe below, including date(s).

8 Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____

9 Were any children there? ☐ Yes ☐ No If yes, who? _____

10 Have the police ever been called? ☐ Yes ☐ No

11 Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

12 Has the Defendant ever been convicted of family violence? ☐ Yes ☐ No If yes, list when and in which county and state the convictions occurred: _____

(Sign Here)

_____

Applicant *Pro se*

Cause No.: _____

Applicant: _____ § In the _____ Court

v. § of

§

Respondent: _____ § _____ County, Texas

Application for Protective Order

1 Parties

Name: County of Residence:

Applicant: _____ _____

Respondent: _____ _____

Respondent's address for service: _____

Check all that apply:

- ☐ The Applicant and Respondent are or were members of the same family or household.
- ☐ The Applicant and Respondent are parents of the same child or children.
- ☐ The Applicant and Respondent used to be married.
- ☐ The Applicant and Respondent are or were dating.
- ☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
- ☐ The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	☐ Yes	☐ No	_____
b.	_____	☐ Yes	☐ No	_____
c.	_____	☐ Yes	☐ No	_____
d.	_____	☐ Yes	☐ No	_____

Check all that apply:

- ☐ Other children are listed on a sheet attached to this Application.
- ☐ The Children are or were members of the Applicant's family or household.
- ☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____	_____
b.	_____	_____

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): ☐ A copy of the final order is attached.

☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

- ☐ The Respondent committed family violence and is likely to commit family violence in the future.
- ☐ The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): ☐ Attached, or

☐ Not available now but will be filed before the hearing on this Application

DRAFT

The Applicant requests a PROTECTIVE ORDER and asks the Court to make all Orders marked with a check ☒

6 ☒ Orders to Prevent Family Violence

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b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.
c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.
d. ☒ Not communicate or attempt to communicate in any manner with (*Check all that apply*):
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h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.
j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.
k. ☐ Prohibit the Respondent from harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal or assistance animal: _____ (describe the animal).
l. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
   _____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

The Residence located at: _____

(*Check one*): ☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders (*Check all that apply*):

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.
☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.
☐ The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:
_____
_____

☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

DRAFT

8 ☐ Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks the Court to order the Respondent to pay support in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Respondent is a parent of the following of the Applicant's children: _____

_____

_____

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.
Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☑ Temporary Ex Parte PROTECTIVE ORDER

Based on the information in the attached Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: _____ or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Declaration. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

The Applicant asks the Court to keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____
Applicant, *Pro se*

Address where Applicant may be contacted: _____

Phone # where Applicant may be contacted: _____ Fax #: _____
(*List another address/phone if you want yours kept confidential*)

Declaration

My name is _____. My date of birth is _____. My address is _____ (leave out if you are requesting that your address be kept confidential). I declare under penalty of perjury that the following is true and correct.

Executed in _____ County, State of _____ on _____ (date).

1 Describe the most recent time the Respondent hurt you or threatened to hurt you: _____

2 What date did this happen? ____ / ____ / ____

3 Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____

4 Were any children there? ☐ Yes ☐ No If yes, who? _____

5 Did you call the police? ☐ Yes ☐ No If yes, what happened? _____

6 Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

7 Has the Respondent ever threatened or hurt you ***before***? Describe below, including date(s).

8 Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____

9 Were any children there? ☐ Yes ☐ No If yes,who? _____

10 Have the police ever been called? ☐ Yes ☐ No

11 Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

12 Has the Defendant ever been convicted of family violence? ☐ Yes ☐ No If yes, list when and in which county and state the convictions occurred: _____

▶ _____

Applicant *Pro se*

DRAFT

Cause No.: _____

Applicant: _____ § In the _____ Court

v. Look at the top of your Application for Protective Order and copy the same information here. of

§

Respondent: _____ § _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: _____ ☐ a.m. The court fills out this part.

Court Address: _____

Findings: The Court finds from the sworn Declaration attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 **Respondent:** The person named below must follow all Orders marked with a check.

Name: _____ (Who do you want protection from?) County of Residence: _____ (What county does s/he live in?)

2 **Protected People:** The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	(Your name here)	(County where each person lives)
☐ **Children:**	(Names of children you want to be protected by this order)	
☐ **Other Adults:**	(Names of other adults needing protection)	

3 **Temporary Orders** — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check.

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended injury, assault, or sexual assault or that is a threat that reasonably place physical harm, bodily injury, assault, or sexual assault.

(The Court fills out the rest of this form. The judge may ask you questions before making the orders)

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

Sample Only — Do Not File

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☒ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above
that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. ☐ Not interfere with the Applicant's use of the Residence located at: _____
_____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

n. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

4 ☐ Order: Vacate Residence Immediately

The Court finds that the Residence located at:
(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: _____ ☐ a.m. ☐ p.m. on: _____(*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

This Ex Parte Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Temporary Ex Parte PROTECTIVE ORDER

Go to the court hearing on: Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Court Address: _____

Findings: The Court finds from the sworn Declaration attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 **Respondent:** The person named below must follow all Orders marked with a check.

Name: _____ County of Residence: _____

2 **Protected People:** The following people are protected by the terms of this PROTECTIVE ORDER:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____
	_____	_____

3 **Temporary Orders** — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☒ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above
that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. ☐ Not interfere with the Applicant's use of the Residence located at: _____
_____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

n. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

4 ☐ Order: Vacate Residence Immediately

The Court finds that the Residence located at:
(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before:_____ ☐ a.m. ☐ p.m. on: _____(*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

This Ex Parte Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

DRAFT

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

Your name here

_____
First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

Names of children needing protection

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

Names of other adults needing protection

VS.

Respondent

Name of person you want protection from

First Middle Last

Relationship to Petitioner: _____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR			(last 3 #)
DRIVERS LICENSE NO.			STATE	EXP DATE

Fill out information describing the person you want protection from

Distinguishing F

For example: tattoos, piercings, scars, facial hair

A Court hearing was held on: Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Write the actual date and time of the hearing

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been p and opportunity to be heard.

[4] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[4] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or as otherwise provided for in Section 14 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32); *or* the applicant is dating or married to a person who was married to or dating the Respondent.
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	Your name here	County where each person lives
☐ **Children:**	Names of children needing protection	
☐ **Other Adults:**	Names of other adults needing protection	

3 A Record of Testimony (*Check one*): ☐ was made by: _____ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☒

The Respondent must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in 2 above.

(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)

☐ Applicant ☐ Other Adults named in 2 above.

The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Applicant's Residence: _____

Applicant's Workplace/School: _____

Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Children's Residence: _____

Children's Child-care/School: _____

Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☐ Not harm, threaten, or interfere with the care, custody or control of the following pet, companion animal or assistance animal: _____ (*describe the animal*).

j. ☒ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____ / _____. (*Check one*):

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____
(*Check one*):

- ☐ is jointly owned or leased by the Applicant and Respondent;
- ☐ is solely owned or leased by the Applicant; or
- ☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on: _____ (*date*).

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____ / _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both*:

The Respondent must:

- ☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.
- ☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one*:

- ☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.
- ☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on _____ / _____ / _____, in cause number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one:*

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____ / _____, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The Child Support Order previously entered on _____ / _____ / _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $ _____ + *all other Court fees and costs*: $ _____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $ _____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $ _____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order (*Check all that apply*):

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to (*Check all that apply*):

- ☐ Sheriff and Constable of _____ County, Texas.
- ☐ Police Chief of the City of _____.
- ☐ Children's child-care facility/schools listed above.
- ☐ The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned.
- ☐ Was served on the Respondent in open court.
- ☐ Shall be personally served on the Respondent.
- ☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
- ☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until:

- ☐ _____ (*this date must be no more than two years from the date this Order is signed.*)
- ☐ _____ (*duration*) This date is more than two years from the date this Protective Order is signed.
  - ☐ The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of Applicant's family or household; or
  - ☐ The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

If Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

WARNING: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

IN THE _____ COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

_____

VS.

Respondent

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY NO. (Last 3 #)		
		____ ____ ____		
DRIVERS LICENSE NO.			STATE	EXP DATE

Distinguishing Features: _____

_____

A Court hearing was held on: Date: _____ Time: _____ ☐ a.m. ☐ p.m.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard.

[4] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[4] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or as otherwise provided for in Section 14 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32); *or* the applicant is dating or married to a person who was married to or dating the Respondent.
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other**	_____	_____
Adults:	_____	_____

3 A Record of Testimony (*Check one*): ☐ was made by: _____ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑

The Respondent must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☐ Not harm, threaten, or interfere with the care, custody or control of the following pet, companion animal or assistance animal: _____ (*describe the animal*).

j. ☒ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____ / _____. (*Check one*):

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____
(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on: _____ (*date*).

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____ / _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both*:

The Respondent must:

☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one*:

☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on _____/_____/_____, in cause number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one*:

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____/_____/_____, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The Child Support Order previously entered on _____/_____/_____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $ _____ + *all other Court fees and costs*: $ _____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $ _____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $ _____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order (*Check all that apply*):

- ☐ Was served on the Respondent in open court.
- ☐ Shall be personally served on the Respondent.
- ☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
- ☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to (*Check all that apply*):

- ☐ Sheriff and Constable of _____ County, Texas.
- ☐ Police Chief of the City of _____.
- ☐ Children's child-care facility/schools listed above.
- ☐ The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until:

- ☐ _____ (*this date must be no more than two years from the date this Order is signed.*)
- ☐ _____ (*duration*) This date is more than two years from the date this Protective Order is signed.
  - ☐ The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of Applicant's family or household; or
  - ☐ The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

If Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

WARNING: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶_____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order
By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

_____ _____
Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____
Respondent

Respondent Information for Protective Orders

If the Court grants you a Protective Order, then fill out this form and file it with the clerk. Unless otherwise noted, fill in information below for the Respondent. If you do not know the information requested, leave that section blank. Please try to provide, at a minimum, the Respondent's name, date of birth, sex, height, weight, eye color, hair color, and race. Law enforcement needs this information to serve (give) the Respondent with the Protective Order and enter the Respondent's information into the statewide law enforcement database. If the Court does not grant you a Protective Order, then do not fill out this form.

If the Court does not grant you a Protective Order, then do not fill out this form.

Respondent's Name: _____

Alias (Nickname): _____

Respondent's Relationship to Applicant: _____

Respondent's Address: _____ City: _____ State: _____ Zip: ____

County: _____ Email Address: _____ Date of Birth: _____ Place of Birth: _____

SSN (*last 3#*) # ___ ___ ___ Identification Number/State: _____/_____ Expiration Date: _____

Driver's License Number/State: _____/_____ Expiration Date: _____

Other Identification Number: _____

Respondent ☐ is ☐ is not on active duty with the military

Sex: ☐ M ☐ F Height: ____ ft ____ in Weight: _____ lbs

Race
- ☐ American Indian or Alaskan Native (I)
- ☐ Asian Pacific Islander (A)
- ☐ Black (B)
- ☐ White (W)
- ☐ Unknown (All other non-whites) (U)
- *Other:* _____

Ethnicity
- ☐ Hispanic (H)
- ☐ Non-Hispanic (N)
- ☐ Unknown (U)

Eye color
- ☐ Black (BLK)
- ☐ Blue (BLU)
- ☐ Brown (BRO)
- ☐ Gray (GRY)
- ☐ Green (GRN)
- ☐ Hazel (HAZ)
- ☐ Maroon (MAR)
- ☐ Pink (PNK)
- ☐ Multicolored (MUL)
- ☐ Unknown (XXX)
- *Other* _____

Hair color
- ☐ Black (BLK)
- ☐ Blond or Strawberry (BLN)
- ☐ Brown (BRO)
- ☐ Gray or partially gray (GRY)
- ☐ Red or Auburn (RED)
- ☐ White (WHI)
- ☐ Sandy (SDY)
- ☐ Completely Bald or Unknown (xxx)
- Other (*style/length*): _____

Skin
- ☐ Albino (ALB)
- ☐ Black (BLK)
- ☐ Dark (DRK)
- ☐ Dark Brown (DBR)
- ☐ Fair (FAR)
- ☐ Light (LGT)
- ☐ Light Brown (LBR)
- ☐ Medium (MED)
- ☐ Medium Brown (MBR)
- ☐ Olive (OLV)
- ☐ Ruddy (RUD)
- ☐ Sallow (SAL)
- ☐ Yellow (YEL)
- ☐ Unknown (XXX)
- *Other* _____

Other Identifying Information (*Check all that apply to the Respondent and describe)*

Respondent's Vehicle Information: Vehicle ID # (VIN): _____ Year: ____ Make: _____ Model: _____

Color: _____ License Plate #: _____ State: _____ License Plate Year of Expiration: _____

Respondent's Employment Information (name of employer): _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Hours/Dept: _____ Supervisor: _____

Respondent's Attorney (*Name*): _____ Phone: _____ Address: _____

_____ City: _____ State: _____ Zip: _____

Other people who may have information to help find Respondent:

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

*****Protected Person Information*****

(Use additional pages if necessary)

Name of Protected Person: _____

Sex: ☐ M F Date of Birth: _____ SSN (*last 3#*) ____ ____ ____ County: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: ☐ Indian ☐ Asian ☐ Black ☐ White ☐ Unknown **Ethnicity:** ☐ Hispanic ☐ Non-Hispanic ☐ Unknown

Employment Information (*name of employer*):

_____

Address: _____ City: _____ State: ____ Zip: _____

Employment Information (*name of employer*):

_____

Address: _____ City: _____ State: ____ Zip: _____

*****Protected Child Information*****

(Use additional pages if necessary)

Name of Protected Child: _____

Sex: ☐ M ☐ F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: ☐ Indian ☐ Asian ☐ Black ☐ White ☐ Unknown **Ethnicity:** ☐ Hispanic ☐ Non-Hispanic ☐ Unknown

Name of Protected Child: _____

Sex: ☐ M ☐ F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip: _____

Race: ☐ Indian ☐ Asian ☐ Black ☐ White ☐ Unknown **Ethnicity:** ☐ Hispanic ☐ Non-Hispanic ☐ Unknown

MEMORANDUM

TO: Richard Orsinger

FROM: Frank Gilstrap

DATE: April 10, 2012

RE: Protective Order Kit

The Protective Order Kit was first presented to SCAC on March 5, 2005 without subcommittee consideration. After discussion by the full SCAC, the kit was approved by the Supreme Court. Now, amendments to the Kit have been referred to our subcommittee.

On April 4, I sent out a memo asking several questions, and I received prompt and helpful responses from Judge Judy Warne, a Harris County family law judge, and Professor Jeana Lungwitz, who heads the Domestic Violence clinic at the UT law school. These answered some of the questions in the April 4 memo, leaving only the questions set out below.

The page references are to the attached handout, which includes the temporary and final orders and parts of Chapters 82, 83 and 85 of the Family Code. Because this handout is taken from a larger document, there are gaps in the page numbering sequence.

1. Notice. Under the statute, the Notice of Application for Protective Order must contain the following statement:

> An application for a protective order has been filed . . . alleging that you have committed family violence. You may employ an attorney to defend you against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, default judgment will be taken and a protective order may be issued against you.

TEX.FAM.CODE § 82.041(b) (handout, p.19).

The Notice of Application for Protective order is not part of the Protective Order Kit, and it is supposed to be prepared by the clerk. From what I can tell, the clerks are quite aware of this requirement. The clerks in Tarrant County (pop. 2 million), Johnson County (pop. 200,000) and Wise County (pop. 60,0000) include this language in the Notice. It may be possible, however, that in some of the more remote counties, the clerk may not know to include this information.

Even so, the respondent needs to understand that, at the hearing, the judge can restrict his communications, restrict his physical liberty, order him to pay support, order him to leave home, restrict access to children, prohibit him from possessing a gun, and suspend his concealed handgun license. *See* TEX.FAM.CODE §§ 85.021 & 85.022 (b) (handout, pp.29-31). While he may be able to learn this by reading the application and the temporary order, these consequences should be stated in laymen's language, which could be placed in the citation or in the warnings in the temporary order.[1]

2. Firearms. Under the statute, the court may prohibit the respondent from possessing a firearm and must suspend the respondent's concealed handgun license. *Id.* §§ 83.001(b) (handout, p.21) & 85.022(b)(6)&(d) (handout, pp.30-31). But under the proposed orders, the court must prohibit the respondent from possessing a firearm and suspend his concealed handgun license.[2]

It is a crime to possess a firearm after a final order has been entered (but not a temporary ex parte order),[3] and the statute requires the respondent to be advised of this. *See* TEX.FAM.CODE § 85.026(a) (handout, pp.32-33).[4] But the judge is not required to restrain conduct merely because it is criminal. For example, it is obviously a crime for the respondent to assault the applicant, but that box is not checked.[5] The legislature has given the judge the discretion to prohibit the respondent from possessing a firearm, but the proposed orders take that discretion away.

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[1] *See* Temporary Ex Parte Protective Order, p.3 ¶ 7 (handout, p.7).

[2] *Id.*, p.2 ¶ 3(g) (handout, p.6); Protective Order, p.3 ¶ 4(j) (handout, p.10).

[3] *See* 18 U.S.C. § 922(g)(8) & TEX.PENAL CODE § 46.04(c).

[4] *See also* Temporary Ex Parte Protective Order, p.3 ¶ 7 (handout, p.7) & Protective Order, p.7 (handout, p.14).

[5] *See also* Temporary Ex Parte Protective Order, p.1 ¶ 3(a) (handout, p.5), Protective Order, p.2 ¶ 4(a) (handout, p.9).

3. Due Process. The respondent has a Second Amendment right to possess a gun in his home for purposes of self-defense.[6] While the law in this area is only now developing, the respondent will be entitled to some measure of procedural due process before being ordered to surrender firearms. Ordering the respondent to surrender firearms after the hearing should not be a problem, since the respondent has received notice and opportunity to be heard. The problem is the temporary order and particularly the following features: (i) the temporary order is entered ex parte (ii) the order requires the court to prohibit respondent from possessing firearms (iii) the respondent may not receive a hearing for up to 20 days, or even more and (iv) the order contains no specific finding that there is a danger that firearms will be misused.

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[6] *See District of Columbia v. Heller,* 554 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 130 S.Ct. 320, 326 (2010).

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Temporary Ex Parte PROTECTIVE ORDER

Go to the court hearing on: Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Court Address: _____

Findings: The Court finds from the sworn Declaration attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 Respondent: The person named below must follow all Orders marked with a check.

Name: _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this PROTECTIVE ORDER:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____
	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

5

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above
that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. ☐ Not interfere with the Applicant's use of the Residence located at: _____
_____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

n. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

6

4 ☐ **Order: Vacate Residence Immediately**

The Court finds that the Residence located at:

(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before:_____ ☐ a.m. ☐ p.m. on: _____(*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 **Go to the Court Hearing**

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 **Duration of Order:** This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 **Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.**

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

This Ex Parte Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

7

IN THE_____COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

_____

VS.

Respondent

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY NO. (Last 3 #)		
		___ ___ ___		
DRIVERS LICENSE NO.			STATE	EXP DATE

Distinguishing Features: _____

_____

A Court hearing was held on: Date: _____ Time:_____ ☐ a.m. ☐ p.m.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or as otherwise provided for in Section 14 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

8

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32); *or* the applicant is dating or married to a person who was married to or dating the Respondent.
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____

3 A Record of Testimony (*Check one*): ☐ was made by: _____ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑

The Respondent must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above.

(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)

☐ Applicant ☐ Other Adults named in **2** above.

The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Applicant's Residence: _____

Applicant's Workplace/School: _____

Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Children's Residence: _____

Children's Child-care/School: _____

Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☐ Not harm, threaten, or interfere with the care, custody or control of the following pet, companion animal or assistance animal: _____ (*describe the animal*).

j. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____ / _____. (*Check one*):

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

10

6 Property Orders

☐ The Court finds that the Residence located at: _____

(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on: _____ (*date*).

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____ / _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both*:

The Respondent must:

☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one*:

☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on _____ / _____ / _____, in case number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one*:

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____ / _____, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The Child Support Order previously entered on _____ / _____ / _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $ _____ + *all other Court fees and costs*: $ _____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $ _____

Attorney's name: _____

Attorney's address: _____

12

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $ _____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order (*Check all that apply*):

- ☐ Was served on the Respondent in open court.
- ☐ Shall be personally served on the Respondent.
- ☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
- ☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to (*Check all that apply*):

- ☐ Sheriff and Constable of _____ County, Texas.
- ☐ Police Chief of the City of _____.
- ☐ Children's child-care facility/schools listed above.
- ☐ The staff judge advocate at Joint Force Headquarters or the provost marshall of the military installation to which Respondent is assigned.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until:

- ☐ _____ (*this date must be no more than two years from the date this Order is signed.*)
- ☐ _____ (*duration*) This date is more than two years from the date this Protective Order is signed.
  - ☐ The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of Applicant's family or household; or
  - ☐ The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

If Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

WARNING: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

13

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Comment

In some cases, respondents claim that the applicant has committed family violence against them. This section of the code requires that the respondent file a written application for a protective order instead of arriving at the hearing and orally requesting a protective order. This requirement gives the applicant proper notice that a protective order is being sought against her or him.

Leading Case

State for Protection of Cockerham v. Cockerham, 218 S.W.3d 298 (Tex. App.—Texarkana 2007, no pet.) (court cannot issue a protective order for a person who has not filed an application, expired protective order is subject to review due to the collateral consequences exception to mootness doctrine)

SUBCHAPTER C. NOTICE OF APPLICATION FOR PROTECTIVE ORDER

§ 82.041. Contents of Notice of Application

(a) A notice of an application for a protective order must:

(1) be styled "The State of Texas";

(2) be signed by the clerk of the court under the court's seal;

(3) contain the name and location of the court;

(4) show the date the application was filed;

(5) show the date notice of the application for a protective order was issued;

(6) show the date, time, and place of the hearing;

(7) show the file number;

(8) show the name of each applicant and each person alleged to have committed family violence;

(9) be directed to each person alleged to have committed family violence;

(10) show the name and address of the attorney for the applicant or the mailing address of the applicant, if the applicant is not represented by an attorney; and

(11) contain the address of the clerk of the court.

(b) The notice of an application for a protective order must state: "An application for a protective order has been filed in the court stated in this notice alleging that you have committed family violence. You may employ an attorney to defend you against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, a default judgment may be taken and a protective order may be issued against you."

§ 82.042. Issuance of Notice of Application

(a) On the filing of an application, the clerk of the court shall issue a notice of an application for a protective order and deliver the notice as directed by the applicant.

(b) On request by the applicant, the clerk of the court shall issue a separate or additional notice of an application for a protective order.

§ 82.043. Service of Notice of Application

(a) Each respondent to an application for a protective order is entitled to service of notice of an application for a protective order.

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(b) An applicant for a protective order shall furnish the clerk with a sufficient number of copies of the application for service on each respondent.

(c) Notice of an application for a protective order must be served in the same manner as citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized.

(d) Service of notice of an application for a protective order is not required before the issuance of a temporary ex parte order under Chapter 83.

(e) The requirements of service of notice under this subchapter do not apply if the application is filed as a motion in a suit for dissolution of a marriage. Notice for the motion is given in the same manner as any other motion in a suit for dissolution of a marriage.

Comment

Because the protective order has the unusual quality of being criminally enforceable, service by publication, typically allowable in a civil case, is not an acceptable form of service in a protective order case.

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CHAPTER 83. TEMPORARY EX PARTE ORDERS

§ 83.001. Requirements for Temporary ex Parte Order

(a) If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.

(b) In a temporary ex parte order, the court may direct a respondent to do or refrain from doing specified acts.

§ 83.002. Duration of Order; Extension

(a) A temporary ex parte order is valid for the period specified in the order, not to exceed 20 days.

(b) On the request of an applicant or on the court's own motion, a temporary ex parte order may be extended for additional 20-day periods.

Comment

Temporary ex parte protective orders historically have been enforced through contempt proceedings as opposed to arrest, due to the lack of due process on the respondent who typically is not present when the order is rendered. However, effective November 6, 2007, the Texas Constitution was amended to specifically provide that, along with magistrate's emergency protective orders and regular protective orders, a respondent who has violated a temporary ex parte order after having been served with the order may be arrested. Further, the respondent "may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate in this state determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense." TEX. CONST. ART. 1, § 11c.

Leading Case

Amir-Sharif v. Hawkins, 246 S.W.3d 267 (Tex. App.—Dallas 2007, rev. dismissed w.o.j.) (repeated extensions of ex parte order was allowed where respondent being evaluated for competency to stand trial)

§ 83.003. Bond Not Required

The court, at the court's discretion, may dispense with the necessity of a bond for a temporary ex parte order.

§ 83.004. Motion to Vacate

Any individual affected by a temporary ex parte order may file a motion at any time to vacate the order. On the filing of the motion to vacate, the court shall set a date for hearing the motion as soon as possible.

§ 83.005. Conflicting Orders

During the time the order is valid, a temporary ex parte order prevails over any other court order made under Title 5 to the extent of any conflict between the orders.

Comment

In 2003, the legislature addressed the confusion caused by the entry of a temporary ex parte order under Title 4 after the entry of a magistrate's order of emergency protection under TEX. CRIM. PROC. CODE. art. 17.292. That statute provides that the terms and conditions imposed by the magistrate's order prevail unless the court issuing the subsequent temporary ex parte order is informed of the existence of the magistrate's order, and makes a finding that the court is superseding the magistrate's order. The terms of a final protective order rendered after a magistrate's order of emergency protection always prevail over the magistrate's order.

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§ 83.006. Exclusion of Party From Residence

(a) Subject to the limitations of Section 85.021(2), a person may only be excluded from the occupancy of the person's residence by a temporary ex parte order under this chapter if the applicant:

(1) files a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence; and

(2) appears in person to testify at a temporary ex parte hearing to justify the issuance of the order without notice.

(b) Before the court may render a temporary ex parte order excluding a person from the person's residence, the court must find from the required affidavit and testimony that:

(1) the applicant requesting the excluding order either resides on the premises or has resided there within 30 days before the date the application was filed;

(2) the person to be excluded has within the 30 days before the date the application was filed committed family violence against a member of the household; and

(3) there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household.

(c) The court may recess the hearing on a temporary ex parte order to contact the respondent by telephone and provide the respondent the opportunity to be present when the court resumes the hearing. Without regard to whether the respondent is able to be present at the hearing, the court shall resume the hearing before the end of the working day.

Amended by Acts 2011, 82nd Leg., ch. 632 (S.B. 819), § 4, eff. Sept. 1, 2011.

§ 83.007. ~~Recess of Hearing to Contact Respondent~~

~~The court may recess the hearing on a temporary ex parte order to contact the respondent by telephone and provide the respondent the opportunity to be present when the court resumes the hearing. Without regard to whether the respondent is able to be present at the hearing, the court shall resume the hearing before the end of the working day.~~

Repealed by Acts 2011, 82nd Leg., ch. 632 (S.B. 819), § 6(1), eff. Sept. 1, 2011.

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(2) the place of employment or business of a person protected by the order; or

(3) the child-care facility or school a child protected by the order attends or in which the child resides.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

(1) strike the information described by Subsection (a) from the public records of the court; and

(2) maintain a confidential record of the information for use only by the court.

§ 85.008. Repealed.

§ 85.009. Order Valid Until Superseded

A protective order rendered under this chapter is valid and enforceable pending further action by the court that rendered the order until the order is properly superseded by another court with jurisdiction over the order.

SUBCHAPTER B. CONTENTS OF PROTECTIVE ORDER

§ 85.021. Requirements of Order Applying to Any Party

In a protective order, the court may:

(1) prohibit a party from:

(A) removing a child who is a member of the family or household from:

(i) the possession of a person named in the order; or

(ii) the jurisdiction of the court; ~~or~~

(B) transferring, encumbering, or otherwise disposing of property, other than in the ordinary course of business, that is mutually owned or leased by the parties; **or**

(C) removing a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, from the possession of a person named in the order;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence:

(A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession;

(B) is owned or leased by the party retaining possession; or

(C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

(3) provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child; or

(5) award to a party the use and possession of specified property that is community property or jointly owned or leased property.

Amended by Acts 2011, 82nd Leg., ch. 136 (S.B. 279), § 1, eff. Sept. 1, 2011.

Comment

Similar to the connection between intimate partner violence and child abuse, there is also a link between family violence and abuse of animals. Recognizing this association, in 2011 the Texas legislature amended this section to add a prohibition against removing animals from the possession of a person named in the order.

In addition to safety, two big issues that cause people to stay in abusive relationships are finances and their children. This section of civilly enforceable provisions available in a protective order can be essential to helping applicants escape the abuse.

§ 85.022. Requirements of Order Applying to Person Who Committed Family Violence

(a) In a protective order, the court may order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence and may order that person to:

(1) complete a battering intervention and prevention program accredited under Article 42.141, Code of Criminal Procedure;

(2) beginning on September 1, 2008, if the referral option under Subdivision (1) is not available, complete a program or counsel with a provider that has begun the accreditation process described by Subsection (a-1); or

(3) if the referral option under Subdivision (1) or, beginning on September 1, 2008, the referral option under Subdivision (2) is not available, counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor who has completed family violence intervention training that the community justice assistance division of the Texas Department of Criminal Justice has approved, after consultation with the licensing authorities described by Chapters 152, 501, 502, 503, and 505, Occupations Code, and experts in the field of family violence.

(a-1) Beginning on September 1, 2009, a program or provider serving as a referral option for the courts under Subsection (a)(1) or (2) must be accredited under Section 4A, Article 42.141, Code of Criminal Procedure, as conforming to program guidelines under that article.

(b) In a protective order, the court may prohibit the person found to have committed family violence from:

(1) committing family violence;

(2) communicating:

(A) directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;

(B) a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and

(C) if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;

(3) going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;

(4) going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;

(5) engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; ~~and~~

(6) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision; **and**

(7) harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, that is possessed by a person protected by an order or by a member of the family or household of a person protected by an order.

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(c) In an order under Subsection (b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the location, if any, that the party must maintain. This subsection does not apply to an order in which Section 85.007 applies.

(d) In a protective order, the court shall suspend a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code, that is held by a person found to have committed family violence.

(e) In this section, "firearm" has the meaning assigned by Section 46.01, Penal Code.

Amended by Acts 2011, 82nd Leg., ch. 136 (S.B. 279), § 2, eff. Sept. 1, 2011.

Comment

Subsection (b)(6) authorizes the court to prohibit a person from possessing a firearm for the duration of a protective order. This subsection conforms to the Penal Code regarding an offense for possession of a firearm by an individual while subject to an active protective order, or for possession of a firearm for five years following conviction for a family violence assault. TEX. PENAL CODE ANN. § 46.04. This legislation was enacted to give local law enforcement agencies authority to take action against weapons declared illegal by federal law (albeit rarely enforced in that context), *see* 18 U.S.C.A. §922(g)(8), (9). The "official use exemption" for on-duty peace officers mirrors language in the corresponding federal statute. 18 U.S.C.A. §922(a).

The 81st Texas Legislature amended this chapter to require, rather than permit, the court to suspend a license to carry a concealed handgun for someone who is the subject of a Protective Order. This amendment aligns state law to the existing federal law prohibiting those who are subject to protective orders from possessing a firearm. 18 U.S.C.A. §922(g).

In 2011, protection available was extended to prohibit a respondent from using pets or service animals to further abuse, harm, or threaten the applicant. One thing is certain; respondents are creative in their efforts engage in bad conduct, and the legislature has been responsive to requests to counter that creativity.

§ 85.023. Effect on Property Rights

A protective order or an agreement approved by the court under this subtitle does not affect the title to real property.

§ 85.024. Enforcement of Counseling Requirement

(a) A person found to have engaged in family violence who is ordered to attend a program or counseling under Section 85.022(a)(1), (2), or (3) shall file with the court an affidavit before the 60th day after the date the order was rendered stating either that the person has begun the program or counseling or that a program or counseling is not available within a reasonable distance from the person's residence. A person who files an affidavit that the person has begun the program or counseling shall file with the court before the date the protective order expires a statement that the person completed the program or counseling not later than the 30th day before the expiration date of the protective order or the 30th day before the first anniversary of the date the protective order was issued, whichever date is earlier. An affidavit under this subsection must be accompanied by a letter, notice, or certificate from the program or counselor that verifies the person's completion of the program or counseling. A person who fails to comply with this subsection may be punished for contempt of court under Section 21.002, Government Code.

(b) A protective order under Section 85.022 must specifically advise the person subject to the order of the requirement of this section and the possible punishment if the person fails to comply with the requirement.

§ 85.025. Duration of Protective Order

(a) Except as otherwise provided by this section ~~Subsection (b) or (c)~~, an order under this subtitle is effective:

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(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(a-1) The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order:

(1) caused serious bodily injury to the applicant or a member of the applicant's family or household; or

(2) was the subject of two or more previous protective orders rendered:

(A) to protect the person on whose behalf the current protective order is sought; and

(B) after a finding by the court that the subject of the protective order:

(i) has committed family violence; and

(ii) is likely to commit family violence in the future.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. **A person who is the subject of a protective order under Subsection (a-1) that is effective for a period that exceeds two years may file a subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order not earlier than the first anniversary of the date on which the court rendered an order on a previous motion by the person under this subsection.** After a hearing on the motion, if the court **does not make a finding that**~~finds~~ there is **no** acontinuing need for the protective order, the protective order remains in effect until the date the order expires under this section. **Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order.** If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a) **or (a-1)**, the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

Amended by Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 2, eff. Sept. 1, 2011.

Comment

One of the most far reaching amendments to this title in 2011 allows the court to enter a Protective Order of any duration in limited circumstances.

Leading Cases

In re I.E.W., 2010 WL 197270 (Tex. App.—Corpus Christi, 2010) (burden is on person requesting modification of protective order to establish that there was no "continuing need" for the order)

B.C. v. Rhodes, 116 S.W.3d 878 (Tex. App.—Austin 2003, no pet.) (protective orders generally in effect for the period stated, not to exceed two years or until modified by issuing court)

§ 85.026. Warning on Protective Order

(a) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

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"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

~~(b) Each protective order issued under this subtitle, except for a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:~~

~~"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."~~

(c) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Amended by Acts 2011, 82nd Leg., ch. 632 (S.B. 819), §§ 5, 6(2), eff. Sept. 1, 2011.

SUBCHAPTER C. DELIVERY OF PROTECTIVE ORDER

§ 85.041. Delivery to Respondent

(a) A protective order rendered under this subtitle shall be:

(1) delivered to the respondent as provided by Rule 21a, Texas Rules of Civil Procedure;

(2) served in the same manner as a writ of injunction; or

(3) served in open court at the close of the hearing as provided by this section.

(b) The court shall serve an order in open court to a respondent who is present at the hearing by giving to the respondent a copy of the order, reduced to writing and signed by the judge or master. A certified copy of the signed order shall be given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the clerk of the court shall mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(c) If the order has not been reduced to writing, the court shall give notice orally to a respondent who is present at the hearing of the part of the order that contains prohibitions under Section 85.022 or any other part of the order that contains provisions necessary to prevent further family violence. The clerk of the court shall mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(d) If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the clerk of the court shall immediately provide a certified copy of

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Divorce Kit – No Minor Children, No Real Property

These forms are intended for use in an *uncontested divorce* by parties who do NOT have minor children and who do NOT own or are not buying a house, land, or other real property.

You can use these forms when:

1) Your case is **uncontested**, meaning:
   - It is 'agreed' – you and your spouse agree about EVERY ISSUE in your divorce.

   -or-

   - It is a 'default' – your spouse does not *file* (turn in) an answer with the court after being *served* (given) your divorce paperwork.

   -or-

   - Your spouse signs the waiver in this *Divorce Kit*.

   AND

   - On the day that you *file* the divorce, you or your spouse must have **lived in Texas for at least 6 months *and*** in the **county where you are filing for divorce for at least 90 days** (*see below for different requirements if you or your spouse is in the military).*

For Military Families

If you are serving in the armed forces outside of Texas, or you have accompanied your spouse who is serving in the armed forces outside of Texas, ***you can use these forms when***:

- Texas has been the home state of either spouse for at least six months.

AND

- The county where you file the divorce has been the home county of either spouse for at least 90 days.

Do not use these forms if:

→ You and your spouse **do not agree about every issue in your divorce**.

→ The wife is **pregnant** (even if the husband is not the father).

→ A **child** was born during this marriage who is under 18 years old, regardless of who the father is.

→ A **child** was born during this marriage who is 18 years old or older and who is still in high school, regardless of who the father is.

→ You have a **disabled child** of any age.

→ You have an ongoing **bankruptcy** case. If this applies to you, talk to a bankruptcy lawyer before filing your divorce.

→ You and your spouse are **not residents of Texas**.

→ You or your spouse has a pension, retirement plan or 401(k) you want to divide.

→ You or your spouse owns or is buying a house, piece of land or other real property.

Can I file for divorce if I am an immigrant without legal status in the United States?

Yes, you can still file for divorce.

Where do I turn in the forms?

You must *file* (turn in) your divorce forms at the **district or county clerk's office** at the courthouse in the county where you or your spouse has lived for at least 90 days. If serving in the military, you must *file* (turn in) your forms at the courthouse in the county that has been your home county for at least 90 days.

Will there be a fee?

Yes. The fee may be different from county to county and can range from $150 to $300. You may also have to pay to have an official to *serve* (give) your spouse the divorce papers. If you are poor, receiving public benefits, or believe you can't afford the court filing fee, you can file an Affidavit of Indigency, so that you may not have to pay the court fees (*see form in this Kit*).

Need help?

It is always best to hire an attorney to represent your interests in a divorce. Even if you feel you can't afford an attorney, the State Bar of Texas Lawyer Referral Information Service may be able to refer you to Legal Aid or a reduced fee or limited scope lawyer to assist you if you call 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Basic Information

Getting started

Always use blue ink to fill out the forms.

Fill in all of the blanks. If a question does not apply to you, write "n/a."

A. Starting the Case
The spouse who files for divorce, called the "*Petitioner*," begins the process by filling out, signing, and giving to the court clerk:

1. **Original Petition for Divorce**
2. **Filing Fee or Affidavit of Indigency** (Fill out this form only if you are poor, on government benefits, or believe you cannot afford to pay court fees.)

B. *Giving Legal Notice*
After the other spouse, called the "*Respondent*," receives a file-stamped copy of the divorce papers, he or she responds by completing ***one of these two forms***:

1. **Waiver of Service**
   -or-
2. **Answer**

If the Respondent doesn't file a Waiver of Service or an Answer, the Petitioner will have to **give legal notice** by getting a process server to give the papers to the Respondent.

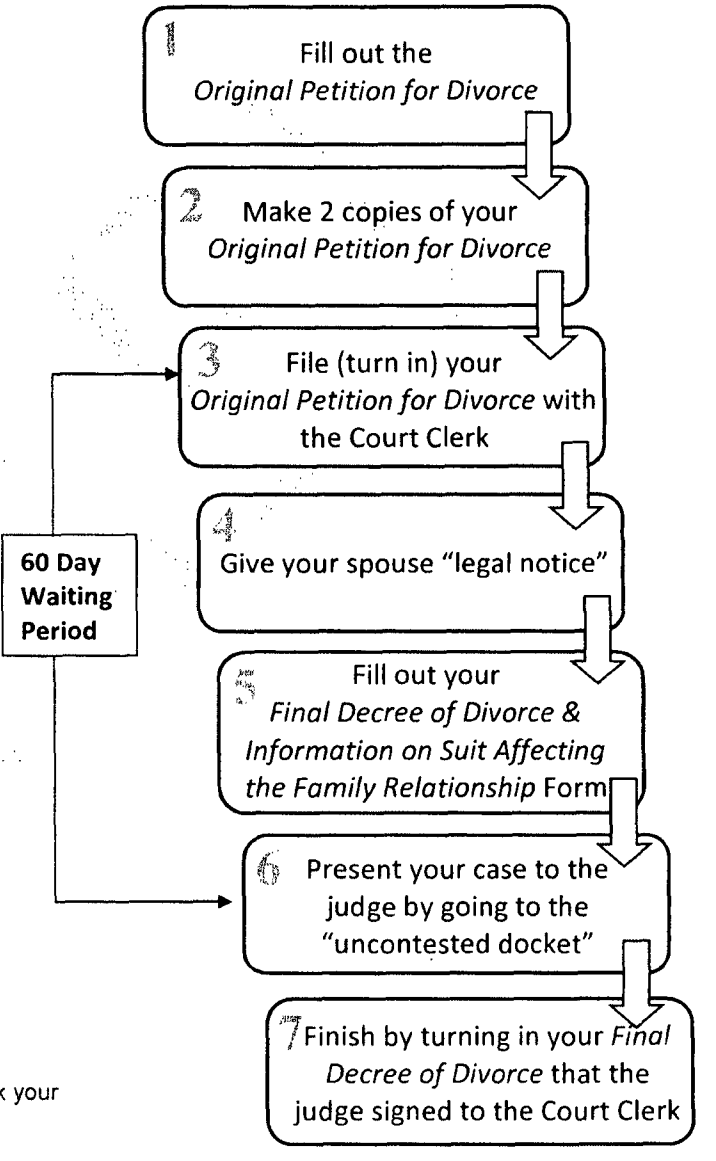
After receiving **legal notice,** the Respondent then has a period of time to file a Waiver of Service or an Answer.

C. Completing the Case
Depending on the situation, one or both parties file, or turn in:

1. **Final Decree of Divorce**; and
2. **Information on Suit Affecting the Family Relationship Form (B.V.S. Form)** This form changes state records about your family. The form is available at the courthouse; ask your district or county clerk for it.

What steps will I have to take to get my *uncontested* divorce?

Read all the instructions in this packet.



What if I can't find my spouse?
Go to **www.TexasLawHelp.org** and look at the Legal Notice, Service by Posting, and Service by Publication kits. If you use any of these methods to give Legal Notice to your spouse, you will also need to use the *Certificate of Last Known Mailing Address* and the *Military Status Affidavit* forms available in this *Divorce Kit*. You may also want to seek legal advice. Call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690 for referral to an attorney. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Divorce in Texas – Take these steps

Step 1. Fill out the Original Petition for Divorce.

Check with your county or district clerk to see if there are any local rules that you need to follow to complete a divorce in your county.

The *Original Petition for Divorce* form tells the judge and your spouse that you want a divorce. Fill out the form in blue ink. *Do not use pencil or pens with red, purple, or other unusual ink color.* Make sure to fill in all of the blanks and if something does not apply to your case, write "n/a." **The judge will not fill out the form for you.**

Step 2. Make two copies of your completed Original Petition for Divorce.

Make 2 copies, one for yourself and one for your spouse. You will give the original to the court.

Step 3. *File* (turn in) your Original Petition for Divorce with the Court Clerk.

Take the original and 2 copies of your completed *Original Petition for Divorce* to the Courthouse. *File* (turn in) the *Original Petition* with the District or County Clerk's Office.

The clerk will ask you to pay a fee. This fee may be different in every county, and it will cost between $150 and $300 to *file* (turn in) your *Original Petition for Divorce*. If you are poor, receiving public benefits, or believe you can't afford the fee, you can file an *Affidavit of Indigency*. You use this form to tell the judge how much money you have and to ask the judge to allow you to continue with your divorce without paying the fees. Your request may not be approved.

The clerk will then stamp your papers with the date you turned them in. The clerk will keep the original and give you back your "file-stamped" copies. Keep a copy for yourself in a safe place. You will need the other copy to give ***legal notice*** to your spouse.

Step 4. Give Your Spouse "Legal Notice."

You must **tell your spouse in writing** that you are filing for a divorce and you must **prove** to the court that you did so. This is called giving ***"legal notice."*** There are 4 ways to give legal notice:

1) Answer. If your spouse agrees to the divorce and wants to know what you will ask the judge for, then s/he should sign and file (*turn in*) an *Answer*.

How do I use the *Answer*? Give your spouse a copy of the *Petition* that has been *stamped by the court clerk* and a blank *Answer* form. Your spouse will need to file (*turn in*) the *Answer* with the Court. Your spouse will also need to sign the *Final Decree of Divorce* at the end of the case.

2) Waiver of Service. If your spouse does not want to know what the judge orders, s/he can fill out a *Waiver of Service*.

How do I use the Waiver of Service? File (*turn in*) your *Original Petition for Divorce* **first!** Next, give your spouse a file stamped copy of the *Petition* and a *Waiver*. Your spouse must ***sign the Waiver in front of a notary*** at least **one day after** the *Original Petition for Divorce* was filed. If not, your spouse will have to sign the Waiver again. After your spouse signs the *Waiver*, you or your spouse must then *file* it (turn it in) to the court clerk where you filed the *Original Petition for Divorce*.

Read this section on Legal Notice to select the method of notice you plan to use.

3) Official Service in Person or by Mail. You can have an official process server give notice to your spouse in person, or have the clerk send it registered mail, return receipt requested.

How do I use Official Service? Ask the Court Clerk for a referral to **process servers** in your county who can give your spouse legal notice. There will be a fee for this service. After your spouse is served, the official process server fills out a *Return of Service* form stating when and where your spouse was served. This is proof to the court that you gave Legal Notice to your spouse. The *Return of Service* form must be filed with (*turned in to*) the clerk's office.

If ***your spouse is in jail,*** you need to have an official process server personally ***serve your spouse.*** For more information, go to www.TexasLawHelp.org. Be sure to include your spouse's inmate number. **Do not serve by mail.**

4) What if I don't know where my spouse is? You can use *Publication* or *Posting* when you don't know how to find your spouse. You will have to prove to the judge that you tried hard to find your spouse. You may have to pay your spouse's attorney's fees. See page 2, "What if I can't find my spouse," for more information.

Divorce in Texas – Take these steps (*continued*)

Step 5. Fill out your Final Decree of Divorce and Information on Suit Affecting the Family Relationship (B.V.S.) Form.

Fill out your *Final Decree of Divorce*. The judge won't do it for you. This is the paper that the judge will sign to allow your divorce. The *Final Decree* also says who keeps what property and who pays what debts.

Fill out your Information on Suit Affecting the Family Relationship (B.V.S.) Form. This form changes state records about your family to reflect what the judge decided in your divorce case. The form is available at the courthouse; ask your district or county clerk for it.

Step 6. Present your case to the judge by attending the "uncontested docket."

Ask the court clerk when the uncontested divorce cases will be heard. The judge will not sign the *Final Decree of Divorce* until 61 days after you filed your divorce. If you are a victim of domestic violence, you may be able to finalize your divorce in less than 61 days, contact an attorney at 1-800-374-4673. Bring all of your paperwork to the courthouse on the day the court in your county hears uncontested divorce cases. To prepare for your court date, read "Are you ready for court?" on page 5. You may have to give testimony at the hearing. You can find sample testimony on page 5 that you can bring with you to court and read.

If your spouse has filed an *Answer* or a *Waiver* bring:

1) a copy of your *Original Petition for Divorce* with the clerk's stamp of the date it was filed;
2) the *Waiver of Service* or *Answer* signed by your spouse;
3) Information on Suit Affecting the Family Relationship (B.V.S.) Form; and
4) Your *Final Decree of Divorce*, (if your spouse filed an Answer, make sure s/he signed the *Final Decree of Divorce)*.

If your spouse has not filed an *Answer* or a *Waiver* bring:

1) a copy of your *Original Petition for Divorce* with the clerk's stamp of the date it was filed.
2) the *Return of Service*, with the clerk's stamp of the date it was filed. It must be on file at least 12 days before your court date;
3) Military Status Affidavit;
4) Certificate of Last Known Address;
5) Bureau of Vital Statistics Form (B.V.S. Form); and
6) Your *Final Decree of Divorce*.

Step 7. Finish your divorce by filing your Final Decree of Divorce in the Clerk's Office.

File (*turn* in) your *Final Decree of Divorce* with the judge's signature on it and the Information on Suit Affecting the Family Relationship (B.V.S.) Form at the clerk's office. Check with the clerk to see what steps you need to take to file the *Final Decree of Divorce.* Each county is different.

Do NOT forget!

Your divorce is NOT final until all of the paperwork has been turned in to the court clerk. This includes the Final Decree of Divorce, with the judge's signature.

You cannot get married to another person until 30 days after the judge signs your Final Decree of Divorce.

Are you ready for court?

Be prepared:

- ✓ Get to the courthouse early to find parking and your courtroom. You may have to go through a metal detector.
- ✓ When the courtroom opens, go in and tell the court staff you are present. The court staff usually sits next to the judge's bench.
- ✓ Courtrooms do not allow children.
- ✓ Dress neatly. Do not wear shorts, tank tops, or hats. Do not chew gum, or bring food or drink into the courtroom.

When you are in court:

- ✓ Turn off your cell phone.
- ✓ Stand up when the judge enters the courtroom.
- ✓ Be calm and polite to everyone. Avoid gestures and facial expressions.
- ✓ Do not talk to the judge or your spouse (if s/he comes), unless it is your turn to speak. Stand up when you are speaking to the judge.
- ✓ The judge may not call your case right away. Be patient. If you have to leave the courtroom, tell the court staff where you are going.
- ✓ If friends or relatives come to court with you, ask them to follow these rules too.

When the judge calls your case:

- ✓ You will raise your right hand and swear to tell the truth.

About testimony

In some counties, the judge will ask you questions. In other counties, you will need to have testimony prepared. You can read from the sample testimony to the right. → → →

- ✓ If the judge asks you questions, wait until the judge finishes speaking before you start to speak. Stand when speaking to the judge.
- ✓ If you do not understand a question, say, "I don't understand." If you do not know an answer, say, "I don't know."
- ✓ Tell the truth and don't exaggerate. Give complete answers.
- ✓ Speak slowly and loud enough so everyone in court can hear you.
- ✓ Call the judge "Your Honor."
- ✓ Say "Yes" or "No" out loud. It's not enough to nod or shake your head.

SAMPLE TESTIMONY FOR DIVORCE WITHOUT CHILDREN AND WITHOUT REAL PROPERTY

My name is _____. I filed this suit
Your name
for divorce from my spouse _____.
Your spouse's name

We were married on or about _____.
Date of marriage

We separated on or about _____.
Date of separation

At the time I filed this divorce, I (or my spouse) had lived in Texas for at least the last six (6) months and in _____ County for at least
County you live in
ninety (90) days.

My marriage to _____
Your spouse's name
has become unworkable because of differences and misunderstandings between us. There is no reasonable chance that we will get back together.

There are no children born to or adopted of this marriage, who are under 18 years old, or older than 18 years but still in high school, and the wife is not currently expecting any other children. We have no adult disabled children.

The wife did not have a child by another person while we were married.

I am requesting that the marital estate be divided as set forth in the Final Decree of Divorce. I believe this division is just and right.

(OPTIONAL) I am (or my spouse is) requesting a name change to a name that was used before we were married: _____.
State a name used before marriage
I am (or My spouse is) not asking for a name change to avoid a creditor or criminal prosecution.

I would respectfully request the Court to grant my divorce.

- ✓ The judge will listen to what you say and review your papers. If everything is in order, the judge will sign your *Final Decree of Divorce.*

Common Questions

What is a divorce?

A divorce legally ends your marriage.
A *Final Decree of Divorce* is the judge's written order that says who keeps what property and who pays what debts.

Where do I get divorced?

- ✓ You can get divorced in Texas if you ***or*** your spouse has lived in Texas for the last 6 months.
- ✓ File (*turn in*) your *Original Petition for Divorce* in the county courthouse where you ***or*** your spouse has lived for the last 90 days.

Why do I need to wait until after the baby is born?

Most Texas courts will not complete a divorce when the wife is pregnant, even if it is not the husband's baby. The judge will wait until after the baby is born so that orders about the baby can be included in the divorce decree.

Do I need a lawyer?

It is always best to hire a lawyer, especially if:

- ✓ You and your spouse do not agree on **every issue** (the divorce is contested).
- ✓ Your spouse has a lawyer.
- ✓ You are afraid for you or your children's safety.
- ✓ You have minor children, disabled children, or a child 18 years old or older who is still in high school.
- ✓ You want to divide property such as retirement and real estate correctly.
- ✓ You want spousal support (sometimes referred to as "alimony").

Getting a divorce can be complicated. If you make a mistake, it could affect your children, your property, your retirement, and your income.

Try to speak to a lawyer about your legal rights before you turn in your *Original Petition for Divorce*. Some lawyers will help you with part of your case so you are only charged for the services you ask for. Other lawyers will only represent you if you hire them to handle every step of the case. A lawyer who you hire for your whole case may charge you a retainer, or a fee, at the very beginning of the case. If you can't afford to hire a lawyer, contact the State Bar Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Is it difficult to handle a contested case without a lawyer?

Yes. Court rules are very hard to understand if you are not a lawyer. If you make a mistake, the judge may not be able to understand your side of the case. A mistake can affect your children, retirement, property, and income. If at all possible you should hire a lawyer.

Terms to Know

Petitioner is the spouse who files the divorce. Even if both spouses want the divorce, only one spouse can be the petitioner.

Respondent is the other spouse.

Contested: A divorce is contested when the spouses don't agree about getting the divorce, custody of the children, or dividing property and debts.

Uncontested: A divorce is uncontested when either the divorce is *agreed* (both parties agree on ***all*** the issues) or a *default* (the Respondent does not file an Answer).

Uncontested Docket is when the court hears divorce cases that are either *uncontested* (agreed) or a *default* (the other party doesn't answer).

Original Petition for Divorce: This is the form one spouse files to ask the court for a divorce.

Final Decree of Divorce: A Decree of Divorce is the form that the judge signs to grant the divorce. A decree says who keeps what property and who pays what debts. A Decree of Divorce can include other orders, such as spousal support.

File: To file is to turn in the legal papers to the court clerk. There is usually a fee to file an Original Petition for Divorce, have a citation issued, or to have copies made.

Official Process Server is a constable, sheriff, or private process server who delivers court papers and gives the court notice that the delivery was made. There is a fee for Official Process Service. If your spouse lives in another county or is in jail, learn who provides Official Process Service in your spouse's county by calling that county's court clerk. Contact information for Texas clerk's offices can be found at www.txlaw.org/clerks.html

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Protective Order is a court order that protects you from someone who has been violent or threatened to be violent. Violence includes sexual assault.

Common Questions (*continued*)

Where can I read the laws about divorce?

You can read the Texas Family Code at www.statutes.legis.state.tx.us/.

You can read the Texas Rules of Civil (court) Procedure at www.supreme.courts.state.tx.us/rules/trcphome.asp.

How long will it take to get divorced?

Unless you satisfy other provisions of the law, it will take ***at least 61 days*** after the day you file (*turn in*) your *Original Petition for Divorce.* If you are a victim of domestic violence, you may be able to finalize your divorce in less than 61 days, contact an attorney at 1-800-374-4673.

When can I get married again?

You must wait ***at least 30 days*** after the judge signs your *Final Decree of Divorce.*

Exception: There is no waiting period if you want to remarry the spouse you just divorced. If you want to marry someone else, you can ask the judge who signed your *Final Decree of Divorce* for permission to marry sooner than 30 days. This is called a *Waiver of the 30 Day Prohibition against Remarriage.*

Can I get divorced if I don't know where my spouse is?

Yes. But first, you must prove to the court that you have tried hard to find your spouse. Read about service by posting and publication at *www.TexasLawHelp.org*.

What if I started my divorce in a different county?

You can finish your divorce in the county where you originally filed if you or your spouse had lived in that county for at least 90 days and in Texas for at least 6 months at the time you filed your *Original Petition for Divorce*. If you want to have the case heard in the county where you are now living, talk to a lawyer.

If my spouse and I do not own any property together, do we still have to fill out the property and debt sections on the Final Decree of Divorce form?

Yes. Anything you or your spouse purchased during your marriage, even if it was purchased after you separated, is probably community property. Any debts you or your spouse incurred during your marriage, even if they were incurred after you separated, are community debts. Answer each section carefully so you will be able to keep *any* property that belongs to you.

If my spouse filed an Answer, but later agrees to sign the Final Decree of Divorce, can I still go to an Uncontested Docket?

Yes, if your spouse has signed the *Final Decree of Divorce.*

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

(Print your answers in blue ink)

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of: _____ County, Texas
(Court Number) *(County)*

Affidavit of Indigency
(Request to Not Pay Court Fees)

Request to Waive Court Fees

You can only use this form if: 1) you get government benefits because you are poor, or 2) you can't pay court fees. Use this form to ask the court to allow you to not pay court fees. This form is also called an "Affidavit of Inability to Pay Court Costs" or "Pauper's Oath."

You must sign this form in front of a Notary Public. By signing this form, you are swearing that the information you provide is true. You could be prosecuted if you lie on this form.

The court may or may not approve this request to waive court fees. The court may order you to answer questions about your finances at a hearing. At that hearing you will have to present evidence to the judge of your income and expenses to prove that you are indigent or have no ability to pay court fees.

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

"My name is _____ My phone number is: (____) _____

"My mailing address is: _____

"I am above the age of eighteen (18) years, and I am fully competent to make this affidavit. I am unable to pay court costs. The nature and amount of my income, resources, debts, and expenses are described in this form.

Check ALL boxes that apply and fill in the blanks describing the amounts and sources of your income

"I receive these public benefits/government entitlements that are based on indigency: ☐ SSI ☐ WIC
☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ Needs-based VA Pension
☐ County Assistance, County Health Care, or General Assistance (GA) ☐ Community Care via DADS
☐ AABD ☐ Public Housing ☐ Low-Income Energy Assistance ☐ LIS in Medicare ("Extra Help")
☐ Emergency Assistance ☐ Child Care Assistance under Child Care and Development Block Grant
☐ (other): _____
Describe

If you receive any of the above public benefits, attach proof and label it "Exhibit: Proof of Public Benefits."

"My income sources are stated below *(check all that apply)*.

☐ Unemployed since: _____
Date

-or-

☐ Wages: I work as a _____ for _____
Your job title *Your employer*

☐ Child/spousal support ☐ My spouse's income or income from another member of my household *(if available)*
☐ Tips, bonuses ☐ Military Housing ☐ Worker's Comp ☐ Disability ☐ Unemployment ☐ Social Security
☐ Retirement/Pension ☐ Dividends, interest, royalties ☐ 2nd job or other income: _____
Describe

"My income amounts are stated below.

(A) My **monthly gross income *before*** deductions are taken out:	*Total income before deductions →*	$
(B) The amount I receive each month in **public benefits** is:	*Total amount received →*	$
(C) The amount of income from **other people in my household**: *(list this income only if other members contribute to your household income.)*	*Total amount received →*	$
(D) The amount I receive each month from **other sources** is:	*Total amount received →*	$
(E) My TOTAL monthly income	*Add all sources of income above →*	= $

About my *dependents*:

"The people who depend on me financially are listed below:

	Name	*Age*	*Relationship to Me*
1			
2			
3			
4			
5			
6			

"My property includes:	**Value***
Cash	$
Bank accounts, other financial assets *(List)*	
	$
	$
	$
Vehicles (cars, boats) *(List make and year)*	
	$
	$
	$
Real estate (house and land) *(Address or land description)*	
	$
	$
Other property (like jewelry, stocks, etc.) *(Describe)*	
	$
	$
Total value of property →	**=$**

"My monthly expenses are:	**Amount**
Rent/house payments/maintenance	$
Food and household supplies	$
Utilities and telephone	$
Clothing and laundry	$
Medical and dental expenses	$
Insurance (life, health, auto, etc.)	$
School and child care	$
Transportation, auto repair, gas	$
Child / spousal support	$
Wages withheld by court order	$
Debt payments paid to: *(List)*	$
	$
	$
	$
Total Monthly Expenses →	**=$**

*The value is the amount the item would sell for less the amount you still owe on it (if anything).

"My debts include: *(List debt and amount owed)*

"I am unable to pay court costs. I verify that the statements made in this affidavit are true and correct."

To list any other facts you want the court to know such as unusual medical expenses, family emergencies, etc., attach another page to this form and label it "Exhibit Additional Supporting Facts." Check here if you attach another page. ☐

Do not sign until you are in front of a notary.

▶ _____ _____

Signature of Person Signing Affidavit — Date

Notary fills out below.

State of Texas, County of _____
(Print the name of county where this Affidavit is notarized)

Sworn to and subscribed before me, the undersigned notary, on this date: ____/____/20____ at _____ a.m./p.m.
month day year time circle one

by _____
(Print name of person who is signing this Affidavit NOT the notary's name.)

▶ _____
Notary's Signature

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

(Print your answers in blue ink)

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Original Petition for Divorce (No Minor Children, No Real Property)

WARNING: **Do not use this form if you have children under the age of 18, or children who are still in high school, the wife is pregnant, or you have disabled children of any age.**

Do not use this form if you or your spouse owns or is buying a house, a piece of land, or other real property.

Do not use this form if you or your spouse has a pension, retirement plan, or 401(k) that the other spouse wants a part of. If each of you wants to keep your own retirement, you can still use this form.

Do not use this form if you want to ask the judge for spousal support, sometimes referred to as "alimony."

You may be able to ask the judge to order a sale of your home and divide the proceeds of the sale. You may be entitled to part of your spouse's retirement. You may be entitled to spousal support. Using this divorce kit will not allow you to do any of these things. You will need to consult an attorney.

Parties

Petitioner

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

The last three numbers of my driver's license number are: ___ ___ ___. My driver's license was issued in _____.
State

Or ☐ I do not have a driver's license number.

The last three numbers of my social security number are: ___ ___ ___.

Or ☐ I do not have a social security number.

Respondent

My spouse's name is: _____.
First *Middle* *Last*

1. Discovery

The discovery level in this case is:
(Check one box)

☐ Level 1. (Check here if you and your spouse do not have *children under the age of 18, children who are 18 or over and still in high school, or a disabled children of any age, the wife is not pregnant,* and you have less than $50,000 in property.)

☐ Level 2. *(All other couples.)*

2. Notice or Citation

Your spouse has the legal right to be notified when you file a divorce. The Citation is not included in this Divorce Kit. It will be prepared by the District or County Clerk.

(Check one box)

☐ I will have a sheriff, constable, or process server give a copy of this Original Petition for Divorce and Citation of Service to my spouse at this address:

_____.
Street Address *City* *State* *Zip*

If this is a work address, name of business: _____.

I ask the clerk to issue the Citation of Service. I understand that I will need to **pay the fee** (or file an Affidavit of Indigency form to show the Court that I am unable to pay the fee) and **arrange for service**.

☐ Do not send a sheriff, constable, or process server to give a copy of this Original Petition for Divorce and Citation of Service to my spouse. I think my spouse will sign a Waiver of Service, or file an Answer.

If not, I will ask a sheriff, constable, or process server to give my spouse a copy of this Original Petition for Divorce and Citation of Service at this address (*the Citation of Service will be prepared by the clerk and is not included in this Kit)*:

_____.
Street Address *City* *State* *Zip*

If this is a work address, name of business: _____.
Name of business

I will ask the clerk to issue the Citation of Service. I understand that I will need to **pay the fee** (or file an Affidavit of Indigency form to show the Court that I am unable to pay the fee) and **arrange for service.**

3. Jurisdiction

County of Residence

(Check all boxes that apply)

☐ I have lived in this county for the last 90 days.

☐ My spouse has lived in this county for the last 90 days.

☐ I am serving in the armed forces outside of Texas, but this county has been the home county of either my spouse or me for at least 90 days.

☐ I have accompanied my spouse who is serving in the armed forces outside of Texas, but this county has been the home county of either my spouse or me for at least 90 days.

State of Residence

(Check all boxes that apply)

☐ I have lived in Texas for the last six months.

☐ My spouse has lived in Texas for the last six months.

☐ My spouse does not reside in Texas but Texas is the last state where we lived together as a married couple. This petition is filed less than two years after we separated.

☐ I am serving in the armed forces outside of Texas, but Texas is the home state of either my spouse or me and has been for at least six months.

☐ I have accompanied my spouse who is serving in the armed forces outside of Texas, but Texas is the home state of either my spouse or me and has been for at least six months.

4. Protective Order Statement

[Select Option A, B, or C and check the appropriate box(es)]

A. No Protective Order --

☐ I **do not** have a Protective Order against my spouse and I have not asked for one.

AND

☐ My spouse **does not** have a Protective Order against me and has not asked for one.

B. Pending Protective Order --

☐ I **have** filed paperwork asking for a Protective Order against my spouse, but a judge has not decided if I should get it. I asked for a Protective Order on _____ (Date Filed) in _____ (County), _____ (State). The cause number is _____ (Cause Number).

If I get the Protective Order, I will file a copy of it before any hearings in this divorce.

☐ **My spouse has** filed paperwork asking to get a Protective Order against me, but a judge has not decided if my spouse will get it. My spouse asked for a Protective Order on _____ (Date Filed) in _____ (County), _____ (State). The cause number is _____ (Cause Number).

If my spouse gets the Protective Order, I will file a copy of it before any hearings in this divorce.

C. Protective Order in Place --

☐ I **do have** a Protective Order against my spouse. I got the Protective Order in _____ (County), _____ (State) on _____ (Date Ordered). The cause number for the Protective Order is _____ (Cause Number). Either I have attached a copy of the Protective Order to this Original Petition or I will file a copy of it with the court before any hearings in this divorce.

☐ My spouse **does have** a Protective Order against me. The Order was made in _____ (County), _____ (State) on _____ (Date Ordered). The cause number for the Protective Order is _____ (Cause Number). Either I have attached a copy of the Protective Order to this Original Petition or I will file a copy of it with the court before any hearings in this divorce.

5. Marriage, Separation, and Grounds for Divorce

My spouse and I got married on or about: _____ (Month Day Year).

We stopped living together as spouses on or about: _____ (Month Day Year).

The marriage has become insupportable due to discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.
(This means that you and your spouse do not get along and do not plan to get back together.)

6. Children

(Check all boxes that apply)

- ☐ My spouse and I do not have any biological or adopted children together who are under the age of 18.
- ☐ My spouse and I do not have any biological or adopted children together who are 18 years old or older and are still in high school.
- ☐ My spouse and I do not have any disabled children of any age.
- ☐ The wife has not had a child by another man since the date of marriage.
- ☐ The wife is not pregnant.

(If you did not check all five boxes do NOT use this form)

7. Property and Debts

Community Property

My spouse and I will try to make an agreement about how to divide the personal property and debts we acquired during our marriage. If we cannot agree, I ask the Court to divide our personal property and debts according to Texas law.

Separate Personal Property

I own the following separate personal property. I owned this personal property *before* I was married or I received this personal property as a gift or inheritance *during* my marriage.

1. **Cars, trucks, motorcycles or other vehicles**

I owned these vehicles *before* marriage:

Year	Make	Model	Vehicle Identification No. [VIN]

I received these vehicles as a gift or inheritance:

Year	Make	Model	Vehicle Identification No. [VIN]

2. **Other Money or Personal Property**

I owned the following money or personal property *before* my marriage:

I inherited or received as a gift the following money or personal property *during* my marriage:

_____

_____

_____

_____

I received the following money damages from a lawsuit *during* my marriage. These damages are not compensation for lost wages: *(List damages you received from a lawsuit but do not include damages for lost wages)*

_____

_____

I ask the Court to confirm this personal property as my separate personal property in my Final Decree of Divorce.

8. Name Change

Note: You cannot use this form to change your name to anything other than a name that you used before you got married.

I ask the Court to change my name back to a name I had before my marriage.

I am not asking the court to change my name to avoid criminal prosecution or creditors.

_____

First *Middle* *Last*

9. Prayer

I ask the Court to grant me a divorce.

I also ask the Court to make the other orders I have asked for in this Original Petition for Divorce and any other orders to which I am entitled.

_____ _____

Petitioner's Name (Print) *Date*

_____ ( )_____

Petitioner's Signature *Phone number*

_____

Petitioner's Mailing Address *City* *State* *Zip*

I understand that I *must* let the Court and my spouse (or my spouse's attorney) know in writing if my mailing address or phone number changes during this case. If I don't, any notices about this case will be sent to me at the address on this form.

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Respondent's Answer to Divorce (No Minor Children, No Real Property)

1. Respondent's Personal Information

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

The last three numbers of my driver's license number are___ ___ ___. My driver's license was issued in _____.
State

Or ☐ I do not have a driver's license number.

The last three numbers of my social security number are ___ ___ ___.

Or ☐ I do not have a social security number.

I am the Respondent in this case. I enter a general denial. I request notice of all hearings in this case.

If my spouse and I can reach an agreement, I will sign the *Final Decree of Divorce*.

If I sign the *Final Decree of Divorce*, then I agree that the Court can finalize the case without me, without my receiving notice of the hearing, and without me being present.

2. Contact Information

My mailing address is _____.
Mailing Address *City* *State* *Zip*

My phone number is: (_____)_____- _____.

My fax number (if available) is (_____)_____ - _____.

I understand that I *must* give a true copy of this *Answer*, and any other papers I file with the Court, to my spouse (and my spouse's attorney, if applicable) in person, by fax, or by certified mail, return receipt requested.

3. Name Change

Note: You cannot use this form to change your name to anything other than a name you used before you got married.

(Check only one)

☐ I am NOT asking the court to change my name.

☐ I ask the Court to change my name back to a name I had before my marriage. I am not asking the court to change my name to avoid criminal prosecution or creditors.

_____

First *Middle* *Last*

4. Prayer

I ask the Court to grant me a divorce. I also ask the Court to make the other orders I have asked for in this *Answer* and any other orders to which I am entitled.

▶ _____ _____

Respondent's Signature *Date*

_____ ( )_____

Respondent's Name (print) *Phone number*

_____ _____

Respondent's Mailing Address *City* *State* *Zip*

I understand that I *must* let the Court and my spouse (or my spouse's attorney) know in writing if my mailing address or phone number changes during this case. If I don't, any notices about this case will be sent to me at the address on this form.

5. Certificate of Service

I gave a true copy of this *Answer* to my spouse (and my spouse's attorney, if applicable) in person, by fax, or by certified mail, return receipt requested.

▶ _____ _____

Respondent's Signature *Date*

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

***WARNING TO RESPONDENT*: By signing this form you give up all of your legal rights in this case.**
DO NOT sign this form if you want to know what will be ordered in your case. You may want to file an *Answer* instead. Filing an *Answer* does not waive your legal rights. You can find an *Answer* form in this Divorce Kit (located online at www.TexasLawHelp.org). If you file an *Answer*, your spouse or the court must let you know what the judge orders.

Waiver of Service – Divorce (No Minor Children, No Real Property)

Instructions to *Petitioner:*

Give your spouse this *Waiver of Service* and a file stamped copy of your *Original Petition for Divorce*.

Do not ask your spouse to sign the *Waiver of Service* until **at least one day after** you have filed your *Original Petition for Divorce* in the clerk's office. If the *Waiver of Service* is signed before the Petition is filed, it is *void* (not legally enforceable) and must be redone.

The *Waiver of Service* must be signed in front of a notary.

After your spouse signs the *Waiver of Service*, you or your spouse must file (*turn in*) the *Waiver* to the clerk's office. Keep a copy for your records.

If you change anything in the *Original Petition for Divorce* after you have your spouse sign this *Waiver of Service*, you must have your spouse complete a new *Waiver of Service* or *Answer*, or have a sheriff, constable, or process server give a copy of the *Amended* (*changed*) *Petition for Divorce* to your spouse.

Instructions to *Respondent:*

Read the WARNING at the top of this form. Talk to a lawyer if you don't understand it, or read the instructions included in this *Divorce Kit*, which can be found at www.TexasLawHelp.org.

If you decide you want to use this form:

- Make sure your spouse has already filed an *Original Petition for Divorce*. Do not sign this Waiver until **at least one day after** the *Original Petition for Divorce* has been filed with the clerk's office. If you sign it before then, it must be redone. The official court stamp on your copy of the *Original Petition for Divorce* will tell you when it was filed.
- Fill out the *Waiver of Service* completely. You must include your address.
- **Sign the *Waiver of Service* in front of a notary. If you sign it beforehand, you will need to redo it.**
- Give the original signed *Waiver of Service* back to your spouse. Keep a copy for your records.

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

"I am the Respondent in this case.

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

"My mailing address is: _____.
Mailing Address *City* *State* *Zip*

"My phone number is: (_____) _____-_____.

"The last three numbers of my driver's license number are: ____ ____ ____. My driver's license was issued in _____.
State

Or "☐ I do not have a driver's license number.

"The last three numbers of my social security number are: ____ ____ ____.

Or "☐ I do not have a social security number.

"☐ I have been given a copy of the *Original Petition for Divorce* filed in this case. I have read the *Original Petition for Divorce* and understand what it says. I do not give up my right to review a different *Petition for Divorce* if it gets changed (*amended*).

"☐ I understand that I have the right to be given a copy of the *Original Petition for Divorce* and official notice by a constable, sheriff or other official process server. This process is called *issuance and service of citation.* I do not want to be given official notice. I give up my right to *issuance and service of citation* in this case.

"☐ I request that the Court do not enter any orders or judgment if they are not signed by me or if I have not received prior written notice of the date, time, and place of any hearings.

"☒ If I reach an agreement and sign a *Decree of Divorce*, the court can enter the *Decree* without giving me notice.

"☐ **I understand that I must let the Court and my spouse (or my spouse's attorney) know in writing if my mailing address or phone number changes during this case.** If I don't, then I understand that any notices about this case will be sent to me at the address on this form.

"☐ I understand that by signing this form I am entering an appearance and am not required to go to Court to tell the judge my side of the case. I agree that a Judge or Associate Judge in the county and state where this case is filed may make decisions about my divorce, even if the divorce should have been filed in another county. I do not want a court reporter to make a record of the testimony.

Military Status
(Check only one)
"☐ I am not in the military.
"☐ I am in the military and I waive all rights, privileges, and exemptions I may have under the Servicemembers Civil Relief Act, including having a lawyer appointed to represent me in this case.

Name Change
(Check only one)
"☐ I am NOT asking the court to change my name."
"☐ I ask the Court to change my name back to a name I had before my marriage. I am not asking the court to change my name to avoid criminal prosecution or creditors."

_____.
First *Middle* *Last*

***WARNING*: Do not sign this form if you have children under the age of 18, or children who are still in high school, the wife is pregnant, or you have disabled children of any age.**

Do not sign this form if you or your spouse owns or is buying a house, a piece of land, or other real property.

Do not sign this form if you or your spouse has a pension, retirement plan, or 401(k) that the other spouse wants a part of. If each of you wants to keep your own retirement, you can still sign this form.

Do not sign this form if you want to ask the judge for spousal support, sometimes referred to as "alimony."

▶ _____ _____
Signature of Person Signing Affidavit Date

Notary fills out below.

State of _____ County of _____
(Print name of state where this Affidavit is notarized) *(Print the name of the county where this Affidavit is notarized)*

Sworn to and subscribed before me, the undersigned notary, on this date: ____ / ____ /20____ at ____ a.m./p.m.
month *day* *year* *time* *circle one*

by _____
(Print name of person who is signing this Affidavit. NOT the notary's name.

▶ _____
Notary's Signature

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Final Decree of Divorce (No Minor Children, No Real Property)

***WARNING*: Do not use this form if you have children under the age of 18, or children who are still in high school, the wife is pregnant, or you have disabled children of any age.**

Do not use this form if you or your spouse owns or is buying a house, a piece of land, or other real property.

Do not use this form if you or your spouse has a pension, retirement plan, or 401(k) that the other spouse wants a part of. If each of you wants to keep your own retirement, you can still use this form.

Do not use this form if you want to ask the judge for spousal support, sometimes referred to as "alimony."

A hearing took place on _____, and the following people were present. There was no
Date
jury. Neither the husband nor wife asked for a jury.

1. Appearances

Petitioner

The Petitioner's name is: _____.
First *Middle* *Last*

(Check one box)

☐ The Petitioner **was present**, representing him/herself, and has agreed to the terms of this Final Decree of Divorce (herein "Decree").

☐ The Petitioner **was not present** but has signed below, agreeing to the terms of this Decree.

Respondent

The Respondent's name is: _____.
First *Middle* *Last*

(Check one box)

☐ The Respondent **was present** and agrees to the terms in this Decree.

☐ The Respondent was **not present** but has signed below, agreeing to the terms in this Decree.

☐ The Respondent was **not present** but agreed in the Waiver of Service that the judge can finalize the divorce, without giving the Respondent notice of this hearing.

☐ The Respondent was **not present** and has defaulted. The Petitioner has filed a Certificate of Last Known Address and a Military Status Affidavit. The Petitioner has also arranged for a court reporter to record the hearing.

2. Record

The Court fills out this box.

☐ A court reporter did not record today's hearing because the husband, wife, and judge agreed not to make a record.

☐ A court reporter recorded today's hearing.

3. Jurisdiction

The Court heard evidence and finds that it has jurisdiction over this case and the parties, that the residency and notice requirements have been met, and the *Original Petition for Divorce* meets all legal requirements.

The Court finds that the *Original Petition for Divorce* was filed more than 60 days ago.

4. Children

Husband and Wife do not have **any** biological or adopted children, together, under the age of 18.
Husband and Wife do not have **any** biological or adopted children together who are 18 years old or older and are still in high school.
Husband and Wife do not have any **disabled children** of any age.
The wife has not had a child by another man since the date of marriage.
The wife is not pregnant.

5. Divorce

IT IS ORDERED that the Petitioner and the Respondent are divorced.

6. Property and Debts

You may be entitled to part of your spouse's retirement or 401(k). You may be able to ask the judge to order a sale of your home and divide the proceeds of the sale. You may be entitled to spousal support (sometimes called "alimony"). Using this Divorce Kit will not allow you to do any of these things. You need to consult an attorney.

About community property: Texas is a community property state. This means that any new property or debt that either party obtains from the minute they are married until the minute the judge grants the divorce is probably community property, even if the property or debt is only in one spouse's name. There are only a few exceptions to the law of community property. The exceptions are gifts, inheritance, or damages from a lawsuit that are not compensation for lost wages. All community property and debt should be included in the Final Decree of Divorce.

About separate property: If either party receives a gift, an inheritance, or money from a lawsuit that is not for lost wages, it is separate property. It is a good idea to list separate property obtained during the marriage as that spouse's separate property in the Final Decree of Divorce.

More information about community and separate property can be found by consulting a lawyer, as well as in the Texas Family Code, Chapters 3, 4, and 5. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you are a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

The Court makes the following orders regarding the parties' community and separate property:

Husband's Property

Husband's Separate Property

Fill in all lines. If you have no property to declare in any particular category, write, "none."

The Court confirms that Husband owns the following property as his separate personal property:

1. **Cars, trucks, motorcycles or other vehicles**

☐ He owned these vehicles *before* marriage:

Year	Make	Model	Vehicle Identification No. [VIN]

☐ He received these vehicles as a gift or inheritance *during* the marriage:

Year	Make	Model	Vehicle Identification No. [VIN]

2. **Other Money or Personal Property** *(not real property, such as a house or piece of land)*

Husband owned the following money or personal property *before* marriage:

Husband inherited or received as a gift the following money or personal property *during* the marriage:

Husband received the following money from a lawsuit *during* the marriage. This money was not compensation for lost wages: *(List money you received from a lawsuit but do not include money for lost wages.)*

Community Property

The Court ORDERS that Husband gets the following property as his sole and separate property, and Wife conveys (*gives*) to Husband her interest in such property, and Wife is divested of (*loses*) all right, title, interest and claim in and to that property.

Wife IS ORDERED to sign any documents needed to transfer any personal property listed below to Husband. Husband is responsible for preparing the documents.

3. All PERSONAL property in Husband's care, custody or control, or in Husband's name, that this Order does not give to Wife.
4. All of Husband's employment benefits, including retirement, pension, profit-sharing, and stock option plans that are in his name alone, along with all individual retirement accounts, such as IRA's, that are in his name alone. *(Note: if you want to divide retirement or employment benefits do NOT use this form. You will need additional forms. Talk to an attorney.)*
5. All of Husband's cash and money in any bank or other financial institution listed in Husband's name alone.
6. Any insurance policy that covers Husband's life.
7. Husband's cars, trucks, motorcycles or other vehicles listed below:

Year	Make	Model	Vehicle Identification No. [VIN]

8. Husband will keep the following personal property still held jointly: *(For example, a bank account, but not real property such as a house or land.)*

_____
_____
_____
_____

Husband's Debts

(If you do not want Husband to pay these debts, do NOT use this form.)

Husband shall pay the debts listed below:

9. All taxes, bills, liens, and other charges, present and future, for all personal property that are in Husband's name alone or that this Order gives to Husband alone, unless this Order requires otherwise.
10. Any debt Husband incurred after separation. Date of separation: _____.
Month Day Year
11. The balance due on any loan for any vehicles that this Order gives to Husband alone.
12. The other debts listed below which are not in Husband's name alone (such as credit cards, student loans, medical bills, income taxes):

_____
_____
_____
_____

Wife's Property

Wife's Separate Property

Fill in all lines. If you have no property to declare in any particular category, write, "none."

The Court confirms that Wife owns the following property as her separate personal property:

1. **Cars, trucks, motorcycles or other vehicles**

☐ She owned these vehicles *before* marriage:

Year	Make	Model	Vehicle Identification No. [VIN]

☐ She received these vehicles as a gift or inheritance *during* the marriage:

Year	Make	Model	Vehicle Identification No. [VIN]

2. **Other Money or Personal Property** *(not real property such as a house or piece of land.)*
Wife owned the following money or personal property *before* marriage:

Wife inherited or received as a gift the following money or personal property *during* the marriage:

Wife received the following money from a lawsuit *during* the marriage. This money was not compensation for lost wages: *(List money you received from a lawsuit but do not include money for lost wages.)*

Community Property

The Court ORDERS that Wife gets the following property as her sole and separate property, and Husband conveys (*gives*) to Wife his interest in such property, and Husband is divested of (*loses*) all right, title, interest, and claim in and to that property.

Husband IS ORDERED to sign any documents needed to transfer any personal property listed below to Wife. Wife is responsible for preparing the documents.

3. All PERSONAL property in Wife's care, custody, or control, or in Wife's name, that this Order does not give to Husband.
4. All of Wife's employment benefits, including retirement, pension, profit-sharing, and stock option plans that are in her name alone, along with all individual retirement accounts, such as IRA's, that are in her name alone. *(Note: If you want to divide retirement or employment benefits do NOT use this form. You will need additional forms. Talk to an attorney.)*
5. All Wife's cash and money in any bank or other financial institution listed in Wife's name alone.
6. Any insurance policy that covers Wife's life.
7. Wife's cars, trucks, motorcycles or other vehicles listed below:

Year	Make	Model	Vehicle Identification No. [VIN]
_____	_____	_____	_____
_____	_____	_____	_____

8. Wife will keep the following personal property still held jointly: *(For example, a bank account, but not real property such as a house or land.)*

_____
_____
_____
_____
_____

Wife's Debts

(If you do not want Wife to pay these debts, do NOT use this form.)

Wife shall pay the debts listed below:

9. All taxes, bills, liens, and other charges, present and future, for all personal and real property that are in Wife's name alone or that this Order gives to Wife alone, unless this Order requires otherwise.
10. Any debt Wife incurred after separation. Date of separation _____ .
Month Day Year
11. The balance due on any loan for any vehicles that this Order gives to Wife alone.
12. The other debts listed below, which are not in Wife's name alone (such as credit cards, student loans, medical bills, income taxes):

_____
_____
_____
_____

7. Muniment of Title

This decree shall serve as a muniment of title to transfer ownership of all property awarded to any party in this Final Decree of Divorce. (A "muniment of title" creates an official record of ownership transfer.)

8. Name Change

The Court changes the name of the:

(Check all boxes that apply)

☐ Husband back to a name used before marriage, as it appears below.

First Middle Last

☐ Wife back to a name used before marriage, as it appears below.

First Middle Last

9. Court Costs

The costs of court are to be borne by the party who incurred them to the extent the party is required to pay such costs.

10. Other Orders

The court has the right to make other orders, if needed, to clarify or enforce the orders above. Any orders requested that do not appear above are denied.

Judge's Name

Judge's signature

Date of Judgment

By signing below, the Petitioner agrees to the form and substance of this *Decree*.

Petitioner's Name (print) Phone number

Petitioner's Signature Date

Mailing Address

By signing below, the Respondent agrees to the form and substance of this *Decree*.

Respondent's Name (print) Phone number

Respondent's Signature Date

Mailing Address

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Certificate of Last Known Mailing Address (No Minor Children, No Real Property)

I, _____ certify that the last known mailing
Your full name

address that I have for Respondent, _____, is:
Spouse's full name

_____
Spouse's Mailing Address

_____
City *State* *Zip*

_____
Telephone

_____
Fax

▶ _____
Party's Signature *(Sign your name)*

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Notice of Change of Address
Divorce (No Minor Children, No Real Property)

I, _____, certify that I am party to the above-styled
Print your full name
cause. My address has changed. I request that the Court's records be updated accordingly.

My new address is as follows:

_____
Mailing Address

_____
City *State* *Zip*

_____
Telephone

_____
Facsimile

▶ _____
Party's Signature *(Sign your name)*

Certificate of Service

I gave or have given a true copy of this *Notice of Change of Address* to my spouse (and my spouse's attorney, if applicable) in person, by fax, or by certified mail, return receipt requested.

▶ _____ _____
Party's Signature *(Sign your name)* Date

Mr. Sheldon Foreman

By: Sheldon L. Foreman
Mr. Sheldon Foreman

Attorney for Defendant, PETROMINERALS CORPORATION

WARNING: Without the advice and help of an attorney, you may be putting yourself, your children, personal property, and money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you or your child is a victim of domestic violence, you can get legal help by calling 1-800-374-4673.

Print court information exactly as it appears on your Original Petition for Divorce.

(Print your answers in blue ink)

Cause Number: _____

IN THE MATTER OF THE MARRIAGE OF

Petitioner: _____
(Print first, middle, and last name of the spouse filing for divorce)

And

Respondent: _____
(Print first, middle, and last name of other spouse)

In the *(check one)*:

_____ ☐ District Court ☐ County Court of:
(Court Number)

_____ County, Texas
(County)

Military Status Affidavit
Divorce (No Minor Children, No Real Property)

State of Texas,
County of _____
(Print the name of county where this Affidavit is notarized)

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

1. "My name is: _____.
First *Middle* *Last*

2. "The Respondent's name is: _____.
First *Middle* *Last*

3. "I am the Petitioner in this case. I am an adult and of sound mind.
"I have personal knowledge of the facts stated in this affidavit.
"The facts stated in this affidavit are true and correct.

(Check all boxes that apply)

☐ "I know that the Respondent is **not** in the military because I asked the U.S. Department of Defense to check their Defense Manpower Data Center (DMDC) database. DMDC notified me that the Respondent is not on active duty in any of the armed forces.

"I attached a true copy of the DMDC verification.
*(If you check this box, you **must** attach a copy of the DMDC verification. You can print a copy of the DMDC verification from this web address: https://www.dmdc.osd.mil/appj/scra/scraHome.do.)*

☐ "I know that the Respondent is **not** now in the military because:
(List facts that you know would make your spouse ineligible for military service, such as being in prison, having a serious disability, etc.)

_____
_____
_____
_____

☐ "I do not know if the Respondent is in the military now. Because of this:

(check one)

☐ "I am willing to post a bond in case the Respondent is in the military now and is harmed by this judgment. I am able to post a bond in the amount of $_____."
(Print the amount of the bond you are able to post)

☐ "There is no need to post a bond, because the Respondent will not be harmed by this judgment."

Do not sign until you are in front of a notary.

▶ _____ _____
Signature of Person Signing Affidavit Date

Notary fills out below.

State of Texas, County of _____
(Print the name of county where this Affidavit is notarized)

Sworn to and subscribed before me, the undersigned notary, on this date: ____/____/20____ at _____ a.m./p.m.
month day year time circle one

by _____
(Print name of person who is signing this Affidavit NOT the notary's name)

▶ _____
Notary's Signature

REPORT
of the Rules 15-165a Subcommittee
of the Texas Supreme Court Advisory Committee
on Proposed Divorce-Related Forms

April 11, 2012

(Click the endnote number to go to the endnote; all URLs in endnotes are Web enabled; click the URL to go to the underlying document)

OVERALL CONTEXT

1. The set of ten divorce-related forms "(Divorce Forms") presently under consideration were developed by the Texas Supreme Court's Uniform Forms Task Force ("the Task Force"), since its creation by order of the Texas Supreme Court on March 15, 2011.[1] These Divorce Forms were forwarded by the Task Force to the Texas Supreme Court on January 11, 2012. These Divorce Forms were referred by the Supreme Court to the Supreme Court Advisory Committee (SCAC) on January 25, 2012. The Divorce Forms were assigned for review to the SCAC's Rules 15-165a Subcommittee ("the Subcommittee") during the SCAC's meeting on January 27, 2012.

2. The Divorce Forms resulted from impetus provided by the Texas Office of Court Administration and the Texas Access to Justice Commission, and the efforts of the Task Force. The Task Force held its first meeting on March 18, 2011. The Divorce Forms were developed over a period of approximately ten months, culminating in January 2012. The Divorce Forms came to the forefront of the attention of the State Bar of Texas leadership shortly before they were referred by the Task Force to the Supreme Court.

3. On January 5, 2012, the President of the State Bar of Texas, Bob Black, sent a letter[2] to Wallace B. Jefferson, Chief Justice of the Texas Supreme Court, indicating that the Executive Committee of the State Bar of Texas had voted to request that the Supreme Court of Texas "suspend the work of its Uniform Forms Task Force and direct the State Bar of Texas to review the issue of indigent self-represented litigants in the State's courts, including collecting data demonstrating the numbers of these litigants, gathering information about how these cases are handled by Courts throughout the state, and reviewing possible solutions." On January 9, 2012, the Chairman of the State Bar of Texas Family Law Section, Tom Ausley, sent a letter to Chief Justice Jefferson expressing support for President Black's suggestion that the State Bar take the lead in addressing the problems of pro se litigants.

4. On January 25, 2012, Chief Justice Jefferson sent a letter[3] to President Black, setting out the unmet needs of the State's poorest citizens to have access to the rule of law and noting that officially sanctioned forms have been adopted in most states. Chief Justice Jefferson noted the Supreme Court's March 15, 2011 Order in Misc. Docket No. 11-9046, creating the Uniform Forms Task Force, which said that "developing pleading and order forms approved by the Court for statewide use would increase access to justice and reduce the strain on courts posed by pro se litigants." Chief

Justice Jefferson noted that the Supreme Court had decided to refer the Task Force report to the SCAC. The Chief Justice said: "We expect the Advisory Committee members to engage in the careful critique they have always given on matters of profound importance to the administration of justice." The Chief Justice said: "We instruct the Committee to consider input from all sectors, including the judiciary, the legal profession, representatives of the Legislature, and the public." The Chief Justice went on to say:

> I anticipate that the Court will receive the Committee's recommendations in April and will begin to review them in May. Considering the importance of this enterprise, we encourage the State Bar to present recommendations to the Advisory Committee and to the Court. This should allow all who wish to participate to be heard.

The Chief Justice indicated that "[w]e will approve forms only if they are substantively correct and are reasonably calculated to accomplish the goal of greater access to the courts." The Chief Justice noted that "[u]niform forms are but one means of addressing the problems presented by pro se litigation. The State Bar may develop other recommendations." In the concluding paragraph, Chief Justice Jefferson wrote:

> The Constitution requires the Court to administer justice. This occurs not only by deciding cases, but also by establishing a judicial climate in which people who lack money to hire a lawyer have a reasonable chance to vindicate their rights in a court of law. We are pleased to have the Bar's full participation toward that end.

Also on January 25, 2012, the Supreme Court's liaison to the SCAC, Justice Nathan Hecht, referred the Task Force's proposed Divorce Forms to the SCAC for consideration. Justice Hecht wrote: "The Supreme Court requests the Advisory Committee to review the report and make recommendations regarding the forms and their use." Justice Hecht concluded: "The Court requests the Committee's recommendations following the April 13 meeting."

5. On January 20, 2012, President Black formed the Solutions 2012 Committee to consider the Divorce Forms, and to examine the larger issues surrounding self-represented litigants ("SRLs") in Texas courts.[4] One Co-Chair of the Solutions 2012 Committee is Weatherford attorney Tom Vick. The other Co-Chair of the Committee is Tim Belton, a lay member of the Board of Directors of the State Bar of Texas. The Subcommittee received the Solutions 2012 Committee Report mid-afternoon on April 9, 2012, 3-1/2 days prior to the SCAC meeting on April 13, 2012. The Report is 88 pages long, and raises many policy questions and questions directed to officially-approved forms generally. The Solutions 2012 Report did not address the specific Divorce Forms that were referred to the Subcommittee.

6. The Texas Family Law Foundation has recently become active in exploring the history of the movement to develop official forms to be used by SRLs in litigation, both nationwide and in Texas. The Foundation has provided to the Subcommittee the Foundation's input on the many policy issues implicated by the adoption of official divorce-related forms. The Subcommittee received the Family Law Section's criticisms of the proposed Divorce Forms mid-day on April 10, 2012. The

Subcommittee did not have the ability to evaluate these criticisms in the 2-1/2 days prior to the meeting on April 13.

7. In the ten weeks since receiving its assignment, different members of the Subcommittee have engaged in various activities relating to the proposed Divorce Forms. These activities include: attending the initial meeting of the Solutions 2012 Committee; communications with Carl Reynolds, Director of the Office of Court Administration; communications with Patricia McAllister, Executive Director of the Texas Access to Justice Commission; communications with Tom Ausley, Chair of the State Bar's Family Law Section; communications with Tom Vick, Co-Chair of the Solutions 2012 Committee; communications with Steve Bresnan, an Austin attorney who is spokesman for the Texas Family Law Foundation; communications with persons involved in SRLs at the local level in Texas. The Subcommittee held a telephone conference in which Carl Reynolds, Patricia McAllister, Tom Vick, Tim Belton, Ray Cantu (of the State Bar of Texas), Steve Bresnan, and Stewart Gagnon participated. The Subcommittee held a subsequent telephone conference involving solely Subcommittee members. The Subcommittee has also reviewed correspondence and reports from various sources, and reviewed materials submitted to the Subcommittee for consideration by interested persons. This has been a lot of information to digest in a relatively short period of time. And there has been information received shortly before the SCAC meeting that could not be discussed by Subcommittee members at all.

POLICY ISSUES

8. By far the greater amount of information received by the Subcommittee has related to the policy issues implicated by the large number of SRLs, and on the use of official forms to assist them in more effectively navigating their way through the complexities of adjudicating their claims without the assistance of a lawyer. The policy issues are wide-ranging, and extend beyond the specific content of the proposed Divorce Forms. The Subcommittee Report will address some of these policy issues, with no illusion that the different perspectives on these policy issues are fully identified or that solutions to these difficult questions have been reached.

9. According to both statewide data and data from major and mid-size metropolitan counties presented to the Subcommittee, there are large numbers of SRLs in Texas courts, especially in family law cases, especially divorces.

10. There are many forms, including family law forms, presently available to SRLs, some free, some for pay, some on-line and some in county courthouse libraries. The State Bar of Texas Family Law Practice Manual is available in many county law libraries. That form book is designed for cases that range from simple to complex, and in some respects informed discretion is required to know which paragraphs to include and which to excluded. The Texas Young Lawyers Association provides forms and information booklets for use by SRLs.[5] Texaslawhelp.org[6] is a web site established by the Texas Access to Justice Commission and the Texas Equal Access to Justice Foundation that is an easy-to-navigate Web portal that provides free information about a wide range of civil legal issues facing low-income individuals and families. The texaslawhelp.org website provides free divorce forms for use in Texas, and has an on-line document assembly process that

asks a series of questions and then assembles a divorce petition ready for filing. With so many forms already available to SRLs in Texas, the Subcommittee confined its focus to the potential effects of the Texas Supreme Court's approval of one set of forms, both in the cases for which they are intended and in cases for which they are not intended.

11. Most other states have implemented state-wide strategies to address the problems of SRLs, both in affording them access to the courts and in disposing of their claims in a safe and fair way. Texas has not, and is therefore to a degree "writing on a clean slate." The Subcommittee is not aware of a comprehensive assessment of the different approaches that have been implemented in other states. The Subcommittee believes that such a study would be extremely useful and should be undertaken by a committee of the Supreme Court, the Legislature, or the State Bar, or some combination of the three. Several members of the Subcommittee favored making the foregoing statement a recommendation from the Subcommittee to the SCAC and to the Supreme Court.

12. Some counties in Texas have implemented local procedures to accommodate SRLs in their county and district courts. The Subcommittee is not aware of a comprehensive assessment of the different approaches that have been implemented at the local level in Texas, and the Subcommittee's investigation on this has by necessity been ad hoc. The Subcommittee believes that such a study would be extremely useful and should be undertaken by a committee of the Supreme Court, the Legislature, or the State Bar, or some combination of the three. Several members of the Subcommittee favored making the foregoing statement a recommendation from the Subcommittee to the SCAC and to the Supreme Court. The Subcommittee recommends that care be taken, if officially-approved forms are promulgated on a statewide basis, not to disrupt functioning local solutions to the problems of SRLs.

13. SRLs with no education in substantive law, legal procures, and evidence law, present challenges to the proper functioning of the court system. Our court system is founded on the adversary process, which assumes that litigants will appear in court as witnesses, with the assistance of legally-educated, licensed professional advocates, who will manage their cases and who will advocate their interests before an impartial judge. The court system relies on lawyers' familiarity with legal procedure and evidence rules in order to function smoothly. When a lawsuit, hearing, or trial is conducted by a litigant who is both a witness and an advocate, and who has no education in the law and no training in procedure or evidence, the smooth functioning can break down. The burden then falls upon the court clerks, staff attorneys (if there are any), or judges, to shore up the litigation process where it breaks down. Some of the national literature on the subject of SRLs suggests a paradigm shift toward an inquisitorial model of litigation, where the judges assume responsibility for bringing out the evidence that is needed for the judge to make a decision. Adopting official form pleadings, orders, and judgments, does not require such a paradigm shift, but forms leave the issue of SRLs' presentation of evidence largely unsolved, especially if the case is contested.

14. There are reports that SRLs are appearing in Texas courts with forms from other states, and forms that they purchase on the Internet, and that some SRLs have paid for assistance in filling out the forms by persons who are not licensed to practice law in Texas. The promulgation of officially-

approved forms, available at no cost, may have the effect of driving out unofficial forms. If the officially-approved forms are substantively correct, and not used by SRLs for purposes for which they were not designed, officially-approved forms may reduce the risks that a SRL might inadvertently injure his/her rights or the rights of respondents and--in the case of family law-related forms–the rights of children. However, if officially-approved forms encourage litigants with complicated legal problems to undertake self-representation, or if the officially-approved forms are used for purposes beyond what they were designed to handle, then the danger exists that the officially-approved forms may themselves cause unintended harm. This last concern supports both the position that there should be no officially-approved forms, and the position that officially-approved forms should not only be well-designed and substantively correct, but also that safeguards should be implemented to ensure that the forms are not used for a purpose which they were not designed to handle.

15. It has been suggested that another effect of officially-approved forms is to encourage lawyers who are unfamiliar with family law practice to undertake pro bono representation, where the lawyers' responsibility is limited to helping the litigant fill out the forms, present the evidence in court, and draft a decree that disposes of the legal dispute. The Subcommittee has very little information on whether this has proved to be true in other states or in locales in Texas that have adopted forms for SRLs.

16. A frequent justification for adopting court-approved and court-mandated forms is based on the need to allow persons who cannot afford a lawyer to have access to the courts. The current set of proposed Divorce Forms are designed to allow those proficient in English, and who can understand the terminology used in the forms, to conduct their own divorce proceedings, from start to finish, without the assistance of a lawyer, provided they have no minor children and no real property. It is said that the potential for unintended harm to legal rights is curtailed by limiting the use of the forms to divorces that do not involve minor children and do not involve real property. The main purpose of such a case is to dissolve the marital bonds, and the property division usually amounts to nothing more than each party receiving the property in his or her possession or held in his or her name. If there are no children and the property is de minimis, it is presumed that little harm can come from a lack of legal representation. Some members of the Subcommittee feel that certain intangible rights, such as retirement pensions or other forms of deferred compensation, are as deserving of protection as title to real property. The Subcommittee recommends that serious consideration be given to how to ensure that the officially-approved forms are not used in divorces that do involve minor children, real property, and personalty of substantial value. A mere warning against using the forms in such situations is not as effective as requiring that the petitioner swear that the prohibitions do not apply to the case. The Subcommittee was divided (4-to-3) on the question of whether the Divorce Forms should have a means-related standard for the use of the forms, such as aggregate wealth of $50,000 or less, to reduce the risk that significant property rights might unintentionally be harmed. Some favored a $50,000 cap, while one favored a lower ceiling, and others would not have a limitation but would warn against using the form decree to divide pensions, by including a caveat in the warning box in the *Instructions* for the Divorce Forms.

17. The Supreme Court's adoption of court-approved forms that must be accepted by trial courts

invites inquiry into the basis for the Supreme Court's authority to issue such forms. The sources of Supreme Court authority are constitutional and statutory. Supreme Court case law recognizes the Court's powers as being express, implied, and inherent. On April 6, 2012, the Texas Access to Justice Commission filed a Brief in the Supreme Court "Regarding the Supreme Court's Authority to Promulgate Pleading Forms."[7] The Subcommittee has not had an opportunity to discuss this Brief. It does not appear that there is an established constitutional entitlement to self-representation in a civil court proceeding.

18. The Subcommittee did not consider it part of the SCAC's charge to examine other ways of helping those who are unable, with present indigent legal services funding and present levels of pro bono volunteers, to get a lawyer to help them with a divorce. It is the Subcommittee's understanding that the Texas Access of Justice Commission has been doing that for some time, and that the State Bar of Texas' Solutions 2012 Committee is doing that, as well.

GENERAL OBSERVATIONS ABOUT HAVING OFFICIAL FORMS

19. The Subcommittee puts forward the following recommendations regarding the Supreme Court's adoption of forms.

GENERAL RECOMMENDATION 1

Some Texas counties are more advanced in the use of local forms, and needs vary in different local communities. By a vote of 6-to-0, the Subcommittee recommends that any forms that the Supreme Court may promulgate for statewide use should be implemented in such a way that they do not preclude the use of locally-developed forms and practices.

FAILED GENERAL RECOMMENDATION 2

Five members of the Subcommittee support the following recommendation, while one opposes and one wants SCAC discussion on the question. If the Supreme Court decides to promulgate a rule requiring the acceptance of court-approved forms, then the Supreme Court should distinguish the requirements placed upon clerks to accept officially-approved forms and the requirements placed upon judges to rest their adjudications upon officially-approved forms. The Subcommittee believes that the court clerk must, upon payment of the required fee, accept pleadings and motions that are filed by a SRL regardless of whether they are hand-written, fill-in-the-blank, or fully word-processed, provided that the operative portions of the pleadings are in English. The Subcommittee believe that judges have the duty to determine the content of their orders and judgments. If the Supreme Court adopts a rule mandating the acceptance of officially-approved form orders and decrees, the Subcommittee suggests that the rule should only proscribe a trial courts' refusal to render a judgment based solely on the fact that the proposed judgment is a court-approved form. The Subcommittee believe that all orders and decrees should be supported by consent or by pleadings, and by evidence, and should apply the law correctly, and should be based on the judge's conclusion

that the order or judgment is substantively correct under the law applied to the facts of the case.

GENERAL RECOMMENDATION 3

Four members of the Subcommittee support the following recommendation, while one opposes it. Assuming that a rule is adopted requiring the acceptance of officially-approved forms in Texas courts, some members of the Subcommittee think that judges should be allowed to reject non-official fill-in-the-blank forms, on the theory that rejection of competing forms might hasten the demise of the use of forms from other states or forms from particular providers that may not be substantively correct. One member of the Subcommittee feels that judges should not be allowed to reject any forms just because they are forms. Another member of the Subcommittee would like to hear the SCAC's discussion on this point.

GENERAL RECOMMENDATION 4

If the Supreme Court decides to issue an order requiring the acceptance of officially-approved forms in Texas courts, the Subcommittee (6-to-0) suggests that the Court consider whether changes would be appropriate to Tex. R. Civ. P. 7, which establishes the right of litigants to have lawyers or to represent themselves in litigation, and/or whether to alter or add a rule to Part 1, Section 4 of the Texas Rules of Civil Procedure, that governs pleadings and/or Part 2, Subpart H, relating to judgments. The Order requiring the acceptance of court-approved protective order forms in 2005[8] was not reviewed by the SCAC in advance of its issuance. Since a mandate to accept officially-approved divorce forms would have a greater impact than the form protective orders have had, a majority of the voting Subcommittee members favors having such a rule vetted through the SCAC and exposed to public comment before it is promulgated. A minority of Subcommittee members would prefer to say that we stand ready to assist the Court if it decides to refer such an order to the SCAC.

GENERAL RECOMMENDATION 5

By a vote of 4-to-2, the Subcommittee believe that the promulgation of officially-approved forms for use in Texas courts extends beyond procedure and into the domain of determinations of substantive law to a greater extent than Rules of Procedure and Rules of Evidence. This is particularly true of instructions accompanying the forms, that state substantive law or have the effect of making outcome-determinative distinctions based on information provided by the pro se litigant. To date, the Supreme Court has refrained from editing Pattern Jury Charge instructions or definitions, or officially promulgating them, probably in recognition that the better context for such decisions is through the litigation process. The Subcommittee is divided on the question of whether to recommend that the Supreme Court should ensure that officially-approved forms do not misstate or misapply the law, and do not fail to inquire about important factual matters and that should in fairness be revealed to the court when either the petitioner or respondent is self-represented.

GENERAL RECOMMENDATION 6

The Subcommittee unanimously supports the following recommendation. The natural focus of the forms debate has been on giving petitioners better access to the court system. It is also important to consider the rights of self-represented respondents, who may decide whether to waive rights or allow a default judgment to be taken without legal advice and without being informed of the consequences of such a waiver or default. In order that the forms process not be biased in favor of petitioners, officially-approved forms that are designed to be used by self-representing respondents should contain reasonable warnings about the consequences of waiving rights.

GENERAL RECOMMENDATION 7

If forms are adopted to assist a specific class of litigants, and acceptance of such forms is mandated for the courts, it may be desirable to establish some feature or some mechanism to ensure that the forms are not used for purposes for which they were not designed. By a vote of 4-to-2, the Subcommittee believes that, if the forms are being used outside their intended scope, courts should be free to refuse to hear the case and to refuse to sign a form-based order or decree. One member of the Subcommittee thinks that judges should not ever be free to reject a pleading just because it is a form.

SPECIFIC RECOMMENDATIONS ABOUT THESE FORMS

20. When asked to vote "up or down" on whether the Texas Supreme Court should officially endorse these specific proposed Divorce Forms, the Subcommittee members voted 5 in favor and 4 against the Court officially endorsing these Divorce Forms. One Subcommittee member said that his/her vote was for forms "for use by pro se's, pro bono lawyers, etc. in no children, no or minimal property cases."

21. The Subcommittee makes the following specific suggestions about the Divorce Forms packet that was referred to the Subcommittee, after changes agreed to by the Task Force representative in discussion with the Subcommittee.

SPECIFIC RECOMMENDATION 1--Only these forms were considered

The Subcommittee supports the following recommendation by a vote of 6-to-0. The Subcommittee has reviewed nine forms forwarded to the Supreme Court by the Uniform Forms Task Force: Instructions, Affidavit of Inability to Pay Costs, Original Petition of Divorce, Answer, Waiver, Final Decree of Divorce, Certificate of Last Known Address, Notice of Change of Address, and Affidavit of Military Status. These forms have undergone some changes since they were forwarded to the Supreme Court, as a result of a discussions with the Subcommittee. There are suggestions made in the writings of some proponents of increased use of forms that, if implemented, could reshape the litigation process and the

traditional roles of courts and lawyers in Texas. There has been some concern expressed that the currently-proposed Divorce Forms are the first wave in a planned succession of forms that would cover increasingly broad areas of Texas law. There is apparently ongoing work to develop other forms to be proposed to the Supreme Court for official approval at a later time. The Subcommittee is not in a position to assess the impact of forms that have not been presented for review, so the Subcommittee's views about the currently-proposed forms should not be taken as a comment on the advisability of adopting other forms that may be proposed at a later date. The Subcommittee recommends that the SCAC state a position that any forms submitted in the future should by analyzed in the context of the policies that are implicated by those particular forms, and by any changes in the resources that become available to SRLs in Texas between now and then.

SPECIFIC RECOMMENDATION 2–For Uncontested Divorces Only

In discussions it has often been said that these proposed Divorce Forms are for use in uncontested cases. The instructions at the start of the Divorce Kit say: "These forms are intended for use in an uncontested divorce . . . ." The instructions also say: "You can use these forms when: Your case is uncontested, meaning: It is 'agreed' – you and your spouse agree about EVERY ISSUE in your divorce. -or- It is a 'default' – your spouse does not file (turn in) an answer with the court after being served (given) your divorce paperwork. -or- Your spouse signs the waiver in this Divorce Kit." The instructions also say not to use these forms if: "You and your spouse do not agree about every issue in your divorce." And yet Paragraph 7 of the form Petition for Divorce contains the sentences: "My spouse and I will try to make an agreement about how to divide the personal property and debts we acquired during our marriage. *If we cannot agree, I ask the Court to divide our personal property and debts according to Texas law.*" [Emphasis added.] Page 6 of the information packet poses the question: "Is it difficult to handle a contested case without a lawyer?," and then proceeds to say "yes' and give the reasons why. By a vote of 5-to-1, the Subcommittee recommends that officially-approved form pleadings, orders, and decrees should be limited to uncontested divorces. If the Divorce Forms are for use only in uncontested cases, then the instructions, pleadings, and decree should be adjusted to reflect that fact. The Subcommittee suggests that providing court-approved forms that SRLs can use in a contested divorce may encourage self-representation in contested cases, which would be potentially disruptive to dockets and would create an increased risk of unintended harm. One member of the Subcommittee would like to hear the SCAC's discussion on this point before deciding.

SPECIFIC RECOMMENDATION 3--Divorce Kit – No Minor Children, No Real Property, Instruction Forms[9]

--The instructions for the Divorce Kit contain the following warnings:

Do not use these forms if:

- "You and your spouse do not agree about every issue in your divorce.
- "The wife is pregnant (even if the husband is not the father).

¨A child was born during this marriage who is under 18 years old, regardless of who the father is.
¨A child was born during this marriage who is 18 years old or older and who is still in high school, regardless of who the father is.
¨You have a disabled child of any age.
¨You have an ongoing bankruptcy case. If this applies to you, talk to a bankruptcy lawyer before filing your divorce.
¨You and your spouse are not residents of Texas.
¨You or your spouse has a pension, retirement plan or 401(k) you want to divide.
¨You or your spouse owns or is buying a house, piece of land or other real property."

These warnings, which are an important safeguard to curtail unintended harm, can be ignored by SRLs, with no consequence. A majority of the Subcommittee member who voted suggest that the petitioner be required to swear that none of the disqualifying conditions exist, such as by an affidavit that is attached to the Petition, swearing that they are not aware of any opposition to the requested relief, and that the wife is not pregnant, that there are no minor children, that neither spouse owns or is buying real estate, etc. This would discourage the forms from being used for a purpose for which they were not intended. One member of the Subcommittee opposes requiring such an affidavit. Five members favored such a requirement.

–The current language in the instructions says not to use the forms if "you or your spouse has a pension, retirement plan or 401(k) you want to divide." The Subcommittee recommends that the instructions should preclude the use of forms if either party has a defined benefit retirement plan or other deferred compensation. Determining the community property portion of such benefits is more than we can expect an unrepresented petitioner and respondent to accomplish, and awarding such benefits to the employed spouse may award this potentially important benefit to the financially-advantaged spouse. By a vote of 4-to-0, the Subcommittee recommends that a judge make that decision.

–The Subcommittee is evenly divided (3-to-3) on whether the Supreme Court should consider a means-related standard for the use of these Divorce Forms, such as a cap on total value of the estate of $50,000.

–Post-divorce spousal maintenance--Even where the divorce involves no children and no real estate, a court can award post-divorce spousal maintenance under Chapter 8 of the Texas Family Code. This prospect is not adequately addressed in the current version of the Divorce Forms. The Subcommittee recommends that the SCAC and the Supreme Court consider what statements or warnings or orders to include in the Instruction Forms, the form petition, the form waiver, the form answer, and form decree of divorce, regarding post-divorce spousal maintenance.

–Step 7 should contain the instruction that, if the judgment is by default, the petitioner should file with the clerk a Military Status Affidavit and a Certificate of Last Known

Address.

–References to filing the divorce in county court should say "county court at law."

SPECIFIC RECOMMENDATION 4--The Affidavit of Indigency[10]

–The Subcommittee (3-to-0) has no suggestions regarding the Affidavit of Indigency. The form provides a space for the listing of "Real estate (house and land)," and the people using this form are not supposed to own real estate, but requesting information on real estate may be a safeguard to signal to the clerk of the court or to the court that the form is being misused by someone who does own real estate.

SPECIFIC RECOMMENDATION 5--The Form Petition for Divorce[11]

–The *Warning*, provides: "Do not use this form if you or your spouse has a pension, retirement plan, or 401(k) that the other spouse wants a part of. If each of you wants to keep your own retirement, you can still use this form." The rules governing the characterization of retirement pensions are complicated, and certain applications are not understood well even by lawyers. The Subcommittee expects that lay persons cannot reasonably be expected to know about community property rights in defined benefit pensions and other forms of deferred compensation and that they will make an ill-informed decision about such benefits if they have no legal advice. Five members voted (with no negative votes) to recommend that the SCAC discuss whether it is advisable to allow the form divorce petition and decree to be used by spouses who have a community property interest in a defined benefit pension plan and other forms of deferred compensation. If not, then the form should be disallowed for such cases, and pensions and deferred compensation should be listed in the "Do not use" box in the Instructions form and should be included in the affidavit if the requirement of an affidavit is adopted.

–By a vote of 6-to-0, the Subcommittee recommend that Paragraph 3, *Jurisdiction*, should be altered to request information that reveals whether a non-resident respondent has minimum contacts with Texas. If not, the court can only dissolve marital bonds but cannot adjudicate property rights or grant monetary claims against the non-resident respondent. Some members of the Subcommittee would like to hear the SCAC discuss this issue.

–Children in other states–the proposed Divorce Forms are not supposed to be used by persons with minor children, but a concern exists that they will be, if they are officially approved by the Texas Supreme Court. If the parties' children reside in another state, the Texas court's jurisdiction to adjudicate parental rights (other than child support which is based on minimum contacts) does not rest on the long-arm jurisdiction and minimum contacts analysis inquired about in the form petition, but rather rests upon subject matter jurisdiction under Texas' Uniform Child Custody Jurisdiction and Enforcement Act, Chapter 152 of the Family Code. That jurisdictional scheme involves home state jurisdiction, or if there is no home state then whether the forum state has a significant connection and

substantial evidence. *See* Tex. Fam. Code § 152.201. There are more complications to this elaborate statutory scheme than can be discussed here. The question the Subcommittee poses is whether the proposed Divorce Forms should include caveats about nonresident children, to ward off parties inadvertently securing a divorce decree that arguably is void as to the children.

–Paragraph 7, *Separate Personal Property*, asks the petitioner to identify the petitioner's separate personal property. It does not ask the petitioner to identify the respondent's separate property. A Texas court is not allowed to divest a spouse of separate property in connection with a divorce. The proposed form Final Decree of Divorce provides for findings as to each spouse's separate property. By a vote of 8-to-0, the Subcommittee recommends that the petitioner should be required to inform the court about the respondent's separate property.

–Paragraph 7, Subpart 2, *Other Money or Personal Property*, says "I received the following money damages from a lawsuit during my marriage. These damages are not compensation for lost wages: . . . ." In *Graham v. Franco*, 488 S.W.2d 390, 396 (Tex. 1972), the Court said: "To the extent that the marital partnership has incurred medical or other expenses and has lost wages, both spouses have been damaged by the injury to the spouse; and both spouses have a claim against the wrongdoer. The recovery, therefore, is community in character." Additionally, only lost wages during marriage are community property. By a vote of 7-to-0, the Subcommittee recommends that the form say: " These damages are not compensation for lost wages during marriage and are not a recovery for medical and other expenses incurred during marriage as a result of the injury: . . . ." Additionally, the SCAC and Supreme Court should determine whether to make the same inquiry about the other spouse's separate property personal injury recovery.

–Omission of Standing Orders. Many counties have adopted so-called "standing orders" that automatically spring into place when a divorce is filed. These orders typically are drawn from the Texas Family Code or the State Bar of Texas' Family Law Section TEXAS FAMILY LAW PRACTICE MANUAL. These standing orders typically require that a copy of the standing order must be attached to the divorce petition when it is filed. The form Petition for Divorce should anticipate such a requirement and provide for how a SRL should handle such standing orders. The forms adopted for use in Travis County contain such language.[12] By a vote of 5-to-1, the Subcommittee recommends that such language be included in the Divorce Forms. One member of the Subcommittee says the form petition should ask that Standing Orders not be issued. One member of the Subcommittee would like to hear SCAC discussion on this point before deciding.

–As courts rely upon the accuracy of pleadings, and back that expectation with the ability to impose sanctions of which an SRL is likely unaware, the Court should consider requiring that the form Petition for Divorce be sworn under oath. This might partially offset the fact that no officer of the court is vouching for the accuracy of the pleadings. By a vote of 5-to-1, the Subcommittee supports the requirement of an oath.

SPECIFIC RECOMMENDATION 6–Respondent's Answer to Divorce

--The form Answer does not provide for the respondent to plead separate property. As appellate cases require that separate property be pled in order to be proved and support a judgment, and in order to give a respondent an opportunity to advance such a claim, the Answer should provide for disclosure of the respondent's separate property in a manner similar to the way the form Petition discloses the petitioner's separate property. The Subcommittee supports this recommendation by a vote of 8-to-0.

SPECIFIC RECOMMENDATION 7–Waiver of Service[13]

–The form Waiver of Service contains a warning: "By signing this form you give up all of your legal rights in this case." This warning is so broad that it does not inform the respondent of the practical consequences of signing the waiver. It might be more meaningful to someone not educated in the legal process to spell out the rights that are being waived, more in the manner of a guilty plea in a criminal case. By a vote of 7-to-0, the Subcommittee supports this recommendation.

–The Waiver of Service provides a check box that waives not only service of process but also waives all the protections of due process of law without expressly saying what rights that are waived. All of the voting Subcommittee members (8-to-0) favor changing the title to "Waiver of Rights" or "Waiver of Constitutional Rights" or something similar.

–The Waiver should be constructed to list the individual rights that are being waived, like a checklist that says: "I waive the right to a jury trial; I waive the right to subpoena witnesses; I waive the right to call witnesses on my behalf; I waive the right to testify on my own behalf; I waive the right to object to inadmissible evidence; I waive the right to notice of hearings or trial. I understand that–if I do not object--the court may award property in my possession or control to my spouse; I understand that the court may take my separate property and award it to my spouse; I understand that the court may require me to pay monthly spousal maintenance payments to my spouse for a period of time after the divorce." By a vote of 8-to-0, the Subcommittee supports this recommendation.

SPECIFIC RECOMMENDATION 8–Final Decree of Divorce

–Under Paragraph 1, *Appearances*, the option for a default judgment reads: "The Respondent was not present and has defaulted." The conditions for default are not specified. A majority of the voting members of the Subcommittee make the following recommendations:

(1) the recital for default should require a representation that citation was served on a date to be disclosed in the form, and that the Respondent failed to file an Answer, or, having received notice of trial, failed to appear for trial. [By a vote of 4-to-0.]
(2) the Subcommittee is divided on whether the form decree should say that the trial is being held no sooner than 10am on the first Monday following the twentieth day

after the citation was served. [By a vote of 3-to-1.]

(3) The Subcommittee is divided on whether the form decree should say that the return of service has been on file for at least 10 days exclusive of the day of filing and the day of trial. See Tex. R. Civ. P. 99(b) & (c) (appearance day) and Rules 107 & 239 (requirement that return of service be on file for ten days exclusive of the day of filing and the day of judgment). The form Decree uses "12 days." One member of the Subcommittee thinks "10 days" should be used. [By a vote of 4-to-1.]

(4) where the petitioner is a SRL, the clerk or the court or the court itself should verify whether the conditions for a default judgment have been met, and that 60 days have elapsed since the divorce petition was filed.

(5) Additionally, if the pleadings are amended after service and the amended pleading is not also served on the respondent, then due process of law is violated. Where there has been no waiver of service, the Subcommittee is divided on the question of whether the Decree should contain a finding that the pleadings have not been amended after service upon the Respondent. Three members of the Subcommittee favor such a requirement. Three oppose it. One member of the Subcommittee would like to hear discussion by the SCAC on this point before deciding.

–Paragraph 2, *Record*, provides a box for the trial court to indicate whether a record was made of the proceedings. Three voting Subcommittee members believe that the name of the court reporter should also be included, to allow someone to more easily locate the record to have it transcribed should the need arise. Three oppose this suggestion. Some members of the Subcommittee would like to hear discussion by the SCAC on this point.

–Paragraph 6, *Property and Debts*, under Wife's property, reference is made under "debts" to "[a]ll taxes, bills, liens, and other charges, present and future, for all personal **and real property** that are in Wife's name alone or that this Order gives to Wife alone . . . ." This is an oversight. The form is not supposed to be used for parties who own real property. The Subcommittee is divided on whether to remove this reference to real estate. [By a vote of 4-to-2.]

SPECIFIC RECOMMENDATION 9--Certificate of Last Known Address[14]

–TRCP 239a requires that a certificate of last known address be filed "[a]t or immediately prior to the time an interlocutory or final default judgment is rendered." By a vote of 5-to-2, the Subcommittee recommends that the form should contain an instruction to that effect. One member of the Subcommittee would like to hear SCAC discussion on this point.

–Although a certificate of address is not required when the Respondent signs an agreed Decree of Divorce, or participates in trial, for simplicity's sake it may be better for the Divorce Kit to provide that a Certificate of Last Known Address be filed in every divorce. The Subcommittee members were divided on this recommendation: two support it, two oppose it, and two are neutral.

–TRCP 239a, *Notice of Default Judgment*, currently provides: "Immediately upon the signing of the judgment, the clerk shall mail written notice thereof to the party against whom the judgment was rendered at the address shown in the certificate, and note the fact of such mailing on the docket. The notice shall state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule shall not affect the finality of the judgment." The Supreme Court should consider, either in SRL cases or in all cases, adding to the notice of judgment words to the effect: "You may file a motion for new trial within 30 days of the date the judgment was signed. If you fail to do so, the judgment becomes final and non-modifiable. If you have questions about this, you should consult a lawyer." This warning might prompt a respondent to see a lawyer. If not, it might reduce the chance that the respondent can prove lack of negligence if s/he later brings a bill of review. The Subcommittee adopted this proposal by a vote of 5-to-1. Some members of the Subcommittee would like to hear SCAC discussion on this point before deciding.

SPECIFIC RECOMMENDATION 10--Notice of Change of Address[15]

–By a vote of 4-to-1, the Subcommittee members has no recommended changes. One member recommends further discussion.

SPECIFIC RECOMMENDATION 11--Military Status Affidavit[16]

–Five members of the Subcommittee offer no recommended changes. One member of the Subcommittee wishes to discuss changes.

PROPOSED RECOMMENDATIONS THAT FAILED TO GAIN MAJORITY SUPPORT OF THE SUBCOMMITTEE

22. Some members of the Subcommittee wished to make the following recommendations. Other members objected to them, or to the way are drafted. These proposals are therefore not part of the recommendations made by the Subcommittee. They are provided for information purposes in case the SCAC wishes to discuss them.

FAILED GENERAL RECOMMENDATION 1

A 4-to-2 majority of the Subcommittee endorsed this recommendation. However, three members preferred that the issue be articulated differently or be raised orally at the SCAC meeting and not in writing. Considering Chief Justice Jefferson's indication that the Supreme Court is relying on the SCAC to fully vet proposed forms before they are forwarded to the Supreme Court for consideration, unless there are external deadlines that make it impractical to do so, proposed forms should be referred to the SCAC with sufficient lead time to permit the SCAC to assign the forms to a Subcommittee, and with adequate time for the

Subcommittee to assess the forms with input from interested outsiders familiar with the area of practice involved. In keeping with normal practice, if the forms have an institutional sponsor (such as a Supreme Court Task Force or State Bar Committee or Section), then the sponsors should present the proposed forms to the SCAC along with the Subcommittee's presentation of its analysis of the proposals. If important changes are suggested during the SCAC meeting then, subject to the judgment of the SCAC Chair and the Supreme Court Liaison Justice, the task of preparing revisions or alternative versions should be assigned to the Subcommittee to accomplish in collaboration with interested parties, and then brought back to the SCAC at a following meeting. Unlike many Supreme Court Task Forces, whose final report is also their final act, the Uniform Forms Task Force is a continuing Task Force, and collaboration between the SCAC and the Task Force in making revisions is both possible and desirable. Of course, there may be situations in which the SCAC's initial debate is deemed adequate for Supreme Court purposes, and if so then the task of whether and how to make alterations is something for the Supreme Court to accomplish internally.

FAILED SPECIFIC RECOMMENDATION 1

The Subcommittee was evenly divided, 3-to-3 with one abstention, on whether to make the following recommendation. The Supreme Court's use of its authority to regulate the court system should not be extended to providing officially-approved forms for private relationships between individuals. This would include items like form powers of attorney, or a form last will and testament, and the like. Some forms advocates have written that such forms are a legitimate goal, but the Subcommittee thinks that they are too far distant from regulating the court system and cross into the domain of legislation. Some members of the Subcommittee believe that the Supreme Court did not ask for a recommendation on this issue and that we should make none. Others feel that the issue of future forms has been brought into the debate and that the ultimate limit on Supreme Court-approved forms should be discussed at this time, when the attention of the Bench and Bar has become focused on the question. One Subcommittee member "abstains" on the issue.

(Endnotes are web-enabled; click a link to go to the underlying document)

1. Texas Supreme Court Order Creating Uniform Forms Task Force (3-15-2011) <http://www.supreme.courts.state.tx.us/miscdocket/11/11904600.pdf>.

2. Letter from State Bar of Texas President Bob Black to Texas Supreme Court Chief Justice Wallace B. Jefferson <http://www.texasatj.org/files/file/14BarPresLettertoSupremeCourtJan52012.pdf>.

3. Letter from Chief Justice Wallace B. Jefferson to President Bob Black <http://www.texasatj.org/files/file/18CourtLettertoBarPresJan252011.pdf>.

4. <http://www.texasatj.org/files/file/21BarPresLettertoCourtreBarTaskForceJan302012.pdf>.

5.<http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/FamilyLaw/ProSeDivorceBookEnglish.pdf>

6. <http://www.texaslawhelp.org>.

7. <http://www.supreme.courts.state.tx.us/rules/pdf/SCAC_Brief_Access_to_Justice_Commission_040612.pdf>.

8. The 2005 Order mandating acceptance of the protective order forms in read:

Misc. Docket No. 05-9059
ORDER APPROVING PROTECTIVE ORDER FORMS

ORDERED that:

The following protective order forms are approved for use in obtaining a protective order under Title IV of the Texas Family Code. Use of the approved forms is not required. However, if the approved forms are used, the court should attempt to rule on the application without regard to technical defects in the application. A trial court must not refuse to accept the approved forms simply because the applicant is not represented by counsel.

SIGNED AND ENTERED this 12th day of April, 2005.

See <http://www.supreme.courts.state.tx.us/miscdocket/05/05905900.pdf>.

9. Form Instructions (Divorce Kit – No Minor Children, No Real Property)
<http://www.texasatj.org/files/file/1Instructions(1).pdf>
<http://www.texasatj.org/SRL>.

10. Form Affidavit of Inability to Pay Costs
<http://www.texasatj.org/files/file/2AffidavitofInabilitytoPayCosts.pdf>
<http://www.texasatj.org/SRL>.

11. Form Petition for Divorce
<http://www.texasatj.org/files/file/3OriginalPetitionofDivorce(1).pdf>
<http://www.texasatj.org/SRL>.

12. <http://www.lawhelp.org/documents/377271Special_Instructions_Travis_County_Texas.pdf?stateabbrev=/TX>.

13. Form Waiver of Service <http://www.texasatj.org/files/file/5Waiver(1).pdf>
<http://www.texasatj.org/SRL>.

14. Certificate of Last Known Mailing Address
<http://www.texasatj.org/files/file/7CertificateofLastKnownAddress.pdf>
<http://www.texasatj.org/SRL>.

15. Notice of Change of Address
<http://www.texasatj.org/files/file/8NoticeofChangeofAddress.pdf>
<http://www.texasatj.org/SRL>.

16. Affidavit of Military Status
<http://www.texasatj.org/files/file/9AffidavitofMilitaryStatus.pdf>
<http://www.texasatj.org/SRL>.

A REPORT TO THE SUPREME COURT ADVISORY COMMITTEE
FROM THE TEXAS ACCESS TO JUSTICE COMMISSION
ON THE COURT'S UNIFORM FORMS TASK FORCE
APRIL 6, 2012

INTRODUCTION

The Supreme Court of Texas established the Texas Access to Justice Commission ("Commission") in 2001 to serve as the statewide umbrella organization for all efforts to expand access to justice in civil legal matters for the poor. It is the role of the Commission to assess national and statewide trends on access to justice issues facing the poor, and to develop initiatives that increase access and reduce barriers to the justice system.[1] The Commission is comprised of ten appointees of the Court, seven appointees of the State Bar of Texas, and three ex-officio public appointees.

The Commission is fortunate to have a partner in the State Bar, with its strong commitment to increasing access to justice and to assisting pro se litigants. A main component of the Bar's mission is to "assure all citizens equal access to justice."[2] Its current Strategic Plan proposes to accomplish this goal in part by working "in collaboration with key partners to increase the availability and utilization of effective high quality pro se information, education, and support materials."[3]

Over the years, in recognition that it is always best to have a lawyer, the Commission has worked to increase the number of attorneys available to help the poor by augmenting funding to legal aid programs and by enlarging pro bono resources to serve the poor. The Commission, with the leadership of the Supreme Court, has been able to obtain much needed legislative funds for civil legal aid providers and has helped to increase statewide pro bono by working with firms, corporate counsel, and various sections and associations of the State Bar.

Despite these successful and continued efforts, the growth in the number of poor with civil legal assistance matters has far outpaced our ability to fund legal aid or recruit lawyers to assist on a pro bono basis. Without access to an attorney, the poor have no choice but to represent themselves.

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[1] Supreme Court of Texas Misc. Docket 01-9065, Order Establishing the Texas Access to Justice Commission, April 26, 2001. *See* Exhibit A.

[2] Per the State Bar of Texas website and its Strategic Plan FY2012 & FY2013: "The mission of the State Bar of Texas is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law and promote diversity in the administration of justice and the practice of law."

[3] State Bar of Texas Strategic Plan, *supra* note 2, at page 6.

The phenomenon of increasing numbers of pro se litigants is not new, nor is it unique to Texas.[4] Courts across the nation have experienced the same situation and have grappled with how to best go about addressing it. There have been countless conferences and journal articles within the judiciary, legal aid, and access to justice communities on this topic, including here in Texas.

In April 2010, a statewide Forum on Self-Represented Litigants was held in Dallas to discuss the issue of the burgeoning population of unrepresented litigants who cannot afford representation and who are unable to obtain representation through a legal service provider. A broad spectrum of stakeholders were invited to attend, including the private bar[5], the judiciary, clerks, law librarians, and legal service providers. National leaders were invited to discuss various best practices[6] and solutions that are widely accepted throughout the country. The Forum concluded with a consensus to pursue development of these best practices, including standardized forms.

Two entities were created in the wake of the Forum. The Texas Access to Justice Commission created its Self-Represented Litigants Committee in May 2010 to research and develop strategies to improve self-representation for the poor.[7] The Supreme Court of Texas created the Uniform Forms Task Force in March 2011 to develop standardized forms.[8]

The Court made clear in its order creating the Uniform Forms Task Force that it was "concerned about the accessibility of the court system to Texans who are unable to afford representation"[9] and believes that "developing pleadings and forms for statewide use would increase access to justice and decrease the strain on courts posed by pro se litigants."[10] Accordingly, it asked the Task Force to "develop proposed models of uniform pleading and order forms to be evaluated and approved by the Court for statewide use."[11]

To ensure broad representation of varying interests, the Court chose a diverse group of people as members of the Task Force, including two judges who regularly preside over family law matters, a district clerk, a county attorney, a court administrator, a local bar director, a legal aid family law lawyer, a law librarian of a large self-help center, a technology person, and three private board-certified family law lawyers.

At the initial meeting of the Task Force, the group spent time discussing its mission and priorities. Members agreed that the Task Force was to develop easy-to-use yet legally sound

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[4] *Documenting the Justice Gap in America, Current Unmet Civil Legal Needs of Low-Income Americans: An Updated Report of the Legal Services Corporation,* Legal Services Corporation, 2009, page 25.

[5] State Bar Sections encompassing substantive legal areas that interface with poverty law were invited to attend the forum, including the following sections: ADR, Bankruptcy, Consumer and Commercial Law, Family Law, Hispanic Issues, Immigration, Individual Rights and Responsibilities, Justice of the Peace, Labor and Employment, Litigation, Appellate, Asian-Pacific Islander, and Administrative and Public Law. State Bar Committees were also invited, including the Unauthorized Practice of Law Committee. The mission of the State Bar of Texas is to "...assure all citizens equal access to justice...."

[6] *Best Practices in Court-Based Programs for the Self-Represented*, the Self-Represented Litigation Network, 2008, funded by a grant from the State Justice Institute.

[7] Supplemental Report to the Court on the Activities of the Self-Represented Litigants Committee of the Texas Access to Justice Commission, February 6, 2012. *See* Exhibit B.

[8] Supreme Court of Texas Misc. Docket 11-9046. *See* Exhibit C.

[9] *Id.* at 1.

[10] *Id.* at 1.

[11] *Id.* at 2.

forms for non-complex, uncontested matters that were targeted for use by the poor. In deciding where to start, the Task Force reviewed data from various sources on the legal needs of the poor[12] and concluded that family law, specifically divorce, was by far the greatest area of need. Based on this information, the Task Force developed a set of instructions and forms for an uncontested divorce with no children and no real property. The leadership of the State Bar Family Law Section was asked for substantive input and criticisms of the forms in July 2012 and repeatedly asked thereafter. None was given. The set of forms was sent to the Court for approval on January 11, 2012. To this day, the alleged "72 flaws" have never been shared with the Task Force or the Commission.

There are no legitimate issues about whether people will represent themselves and use forms. Over 4 out of 5 people who qualify for legal aid are unable to get help from an attorney. People purchase family law forms from Craigslist, Google searches, office supply stores, etc. When one googles a family lawyer's name, often links to commercial forms appear in the search results. The real question is whether Court-approved standardized forms will improve access to justice and lessen the administrative burdens on the court system. Thirty-seven states have found it helps without damaging private practitioners.

THE CURRENT SITUATION IN TEXAS

More Poor, Fewer Lawyers to Help

There are over six million Texans who qualify for legal aid, yet legal aid and pro bono programs are only able to help at most twenty percent of the qualified people who seek it. Significant decreases in funding to legal aid programs from reduced Interest on Lawyer Trust Accounts ("IOLTA") revenue and federal funding cuts,[13] combined with one of the highest poverty rates in the nation at eighteen percent, means that that there will be fewer legal aid lawyers to help the growing numbers of poor who need assistance.

Substantial Number of Pro Se Litigants

Recent data from the Office of Court Administration ("OCA") has made clear what has been suspected anecdotally in Texas for years—people are representing themselves. OCA statistics show that 21.6% of all family law filings in Texas are filed by a pro se *petitioner*.[14]

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[12] This data included statistics provided by legal aid, TexasLawHelp.org, the Travis County Law Library Self-Help Center, and anecdotal information from Task Force members on the demand for legal services in their local areas. Legal aid and pro bono organizations consistently report that family law comprises over thirty percent of their case load. TexasLawHelp, an online resource for legal information and forms, shows that family law information and forms are the most frequently accessed on their website. The four most popular TexasLawHelp forms are family law forms, with 115,981 hits for just these four forms in comparison to 596,555 hits for the entire website. The Travis County Law Library, the largest self-help center in the state, states that family law forms are requested more than any other practice area.

[13] This year alone, Texas experienced a $6.2 million loss in federal funds to the three largest legal aid providers in the state due to federal funding cuts to the Legal Services Corporation. In just five years, funds generated from IOLTA have decreased over 75% from $20 million in 2007 to $4.4 million in 2011.

[14] Data collected by the Office of Court Administration from District and County Courts during September 1, 2010, through August 31, 2011. The statistic under-represents the number of pro se litigants in court. It does not include pro se litigants who are respondents, who become pro se after hiring an attorney, or who secure an attorney after filing pro se. The statistics also do not include Title IV child support cases filed by the Office of the Attorney General, nor do they include post-judgment filings. Finally, several counties failed to report data, so their filings are not captured. *See* Exhibit D for a summary of pro se statistics. *See* Exhibit F for a breakdown of pro se litigants by county.

Based on information from counties who collect statistics on the number of pro se filings for specific case types, we believe that the numbers are much higher for divorce. Specifically, Bell County reports a 52% pro se filing rate for divorce in 2011, up from 40% in 2010.[15] Lubbock County states that 44% of divorces filed over the past two years involved at least one pro se party.[16] In Travis County, 78% of divorces without children and 56% of divorces involving children were filed pro se.[17]

Statistics from the Office of the Attorney General show that 461,147 parents represented themselves in Title IV-D family law cases during 2011.[18] Title IV-D cases involve child custody, visitation, child support, and paternity issues. Approximately 50% of these cases involve the establishment of original orders, while the remainder involves modification or enforcement of those orders.[19]

Great Majority Pro Se by Necessity not Choice

Although OCA does not track the income levels of pro se filers in district and county courts, we do have information on user income levels of TexasLawHelp, the largest online self-help source for free legal information and free forms in Texas.[20] User income levels are extremely low. When viewing income levels with household size, approximately 81% of users qualify for food stamps.[21] Even excluding household size, users are clearly poor, with 24% earning less than $9,570 annually and 62% earning less than $29,000 annually.[22] Because all information and forms on the website are available at no cost, there is no incentive for users to lie about their income or household size.

We also have information on the income levels of unrepresented parents involved in Title IV-D cases. The Office of Attorney General reports that the great majority of unrepresented parents in Title IV-D cases are very low-income. Of the 1.3 million parents involved in currently open Title IV-D cases, approximately 750,000 are current or recent recipients of TANF (Temporary Aid for Needy Families) or Medicaid benefits.[23]

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[15] "Divorce-by-Form Riles Texas Bar," *The Wall Street Journal*, Nathan Koppel, February 24, 2012. Interview with Sheila Norman, Bell County District Clerk, and Judge Rick Morris, 146th Judicial District Court, Bell County, on January 10, 2012. Interview with Sheila Norman on March 27, 2012 confirms that the increase cannot be attributable to returning soldiers as it is her understanding, and Judge Morris' understanding, that soldiers are returning in units of 200-300 troops at a time, rather than a mass return as had previously been expected.

[16] "Divorce-by-Form Riles Texas Bar," *Id.* Interview with David Slayton, Director of Court Administration in Lubbock County, and Judge Judy Parker, County Court at Law Number Three, Lubbock County, on January 10, 2012.

[17] "Divorce-by-Form Riles Texas Bar," *Id.*

[18] Interview with Michael Hayes, Deputy for Family Initiatives, Office of the Attorney General, January 19, 2012.

[19] *Id.*

[20] In 2011, the site had 596,555 visits, averaging 1,634 visits per day. Interview with Colton Lawrence, Website and Special Projects Coordinator, Texas Legal Services Center, January 6, 2012.

[21] Graphic of TexasLawHelp user income and household size survey results from Feb 1, 2012 through March 6, 2012. *See* Exhibit F.

[22] *Id.*

[23] Interview with Michael Hayes, Deputy for Family Initiatives, Office of the Attorney General, February 8, 2012.

Increased Pro Bono Will Not Meet Need

Legal aid and pro bono programs closed over 120,000 cases last year.[24] Of those, the three large legal aid programs and the three largest pro bono programs closed 17,531 cases through the generosity of 7,022 pro bono attorneys.[25]

There are over 90,000 attorneys licensed by the State Bar of Texas. It has been suggested that increasing pro bono is the solution to the current situation. While laudable, the fact is that even if every lawyer were required to represent at least one pro bono client, we would still only be able to serve less than 40% of the poor who seek help from legal aid. A major additional barrier is that we do not currently have the infrastructure in place to coordinate urban pro bono lawyers with rural clients.

Forms are not an alternative to pro bono. Good Court-approved forms make it easier, not harder, to get more lawyers to handle family law cases on a pro bono basis. Pro bono attorneys who do not regularly practice poverty law are more willing to handle a pro bono matter when they have good forms to use to resolve it.

Improving Self-Representation for Poor is Vital to Increase Access to Courts

The stark reality is that there will never be enough legal aid and pro bono lawyers to help those who need it, and pro se litigants are here to stay.

While we must continue to strive towards the goal of providing attorneys to the poor, improving self-representation is one of the few avenues available to increase access to justice for the poor.

How can we realistically do so?

[24] Interview with Jonathan Vickery, Associate Director and Director of Grants, Texas Access to Justice Foundation, February 22, 2012.

[25] *Id.*

PART ONE

COURT-APPROVED FORMS

FORMS: A FUNDAMENTAL NECESSITY

Use of Forms Across the Nation

Many states have explored ways to improve self-representation and have started with standardized forms. Forms are not a radical or even new idea. They are simply a fundamental necessity without which a pro se litigant has little hope of redress.

Only Two States Do Not Have Court-Approved Forms

Research shows that 48 states have Court-approved family law forms and one state has forms approved by their state bar.[26] Family law forms are the most widely available, with 37 states having divorce forms and 30 states having divorce with real property forms. States have not shied away from dealing with more sensitive child custody and support issues, with 31 states having divorce with children forms, 33 states having child custody forms, and 39 states having child support forms. Additionally, 37 states require that their courts accept the standardized form when a pro se litigant chooses to use it. No state attempts to restrict use of the forms to low-income litigants.

Forms Effective at Increasing Access to Court with No Harm to Litigants or Lawyer Incomes

Forms are *the* most basic and common tool on the continuum of legal assistance[27] used by the many states faced with growing numbers of pro se litigants. States affirm that forms are effective at increasing access to the courts for the poor while not causing harm to the litigants or the livelihood of attorneys.[28]

Forms Effective at Improving Judicial Efficiency and Economy

States also report that forms improve judicial efficiency and economy by having a better prepared litigant with accurate forms that comport with state law.[29] Judges report that they spend less time reviewing the form for legal accuracy. Clerks and courtroom personnel are able to process pro se litigants and pro se cases more quickly and with less frustration and time.[30]

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[26] Research on uniform forms in the 50 states plus the District of Columbia was conducted by the Commission via personal interviews of those involved in promulgation of forms, surveys, and online research. *See* State Form Research Chart in Exhibit G. Alabama has Bar-approved forms.

[27] The continuum of legal assistance is based on the concept that legal matters present varying degrees of difficulty. While some cases require full representation by a lawyer, others may need only partial representation, and yet others may need little to no assistance. See Exhibit H for graphic of the Continuum of Legal Assistance.

[28] Research on uniform forms in the 50 states plus the District of Columbia was conducted by the Commission via personal interviews of those involved in promulgation of forms, surveys, and online research. *See* State Responses on Statewide Forms in Exhibit I.

[29] State Responses on Statewide Forms, *supra* note 26, and National Center for State Courts survey on forms, Exhibit J.

[30] *Id.*

Use of Forms in Texas

Forms Already Exist

In Texas, the issue is not whether or not to have forms. Forms already exist and have for years.

Even the Family Law Section sells do-it-yourself forms. Its Texas Family Law Practice Manual has almost every form one would need. The manual is available for sale to anyone who wishes to purchase it for $645 plus tax.[31] These forms are also available for free in law libraries across the state. Additionally, the Family Law Section's website provides a link to LawGuru, where forms for a variety of situations, including divorce and complex matters such as premarital agreements, can be purchased at a lower cost than the Texas Family Law Practice Manual.[32]

The Texas Young Lawyer's Association *Pro Se Handbook* has forms and is available on the State Bar of Texas website at no cost.[33] Forms are available for sale at retail stores like Office Depot or by vendors like LegalZoom. A quick search of the internet reveals multiple sources for forms, such as on websites like Craigslist and Google, including those with promises of assistance by attorneys who are no longer licensed to practice by the State Bar of Texas.[34]

Available Forms Often Inadequate

Unfortunately, the forms currently available are often inadequate for use by pro se litigants. Many forms do not comport with Texas law. Others are incorrect or outdated. Both cause litigants to arrive at the courthouse with improper pleadings that must be redone, and require judges to review the form itself for accuracy. Still others are simply too complex for use by the average pro se litigant. While no one would deny that the Texas Family Law Practice Manual has as accurate and complete a set of forms as one could need at no cost to those who have access to it through a local law library, it is highly unlikely that a pro se litigant could navigate the six volume set to determine which forms to use, much less understand the technical legal language in which the forms are written or the daunting 123 page Final Decree of Divorce form.

Available Forms Not Accepted by Some Courts

The situation is complicated by the fact that although there are some adequate forms available though TexasLawHelp.org at no cost, not all Texas courts will accept them. Some courts prohibit the use of pleadings with fill-in-the blanks or check-boxes, or otherwise make it difficult for pro se litigants to proceed in court.

Court-Approved Protective Order Forms Have Existed Since 2005 with Success

In 2005, the Supreme Court of Texas approved a Protective Order Kit so that pro se litigants could obtain a protective order against an abusive partner. Since these forms

[31] *See* Exhibit K.

[32] *See* Exhibit L.

[33] *See* Exhibit M.

[34] *See* Exhibit N.

were approved for use, they have benefitted countless victims of domestic violence. They have helped many people navigate the court system in the midst of a serious situation, yet are simple, accessible, effective, and enforceable. The kit has also had the added benefit of increasing the number of pro bono attorneys willing to handle domestic violence cases.

It is important to note that there was no disagreement over these forms, even though the circumstances were similar to those today. Everyone agreed that it was better for a victim of domestic violence to have an attorney. There were not enough legal aid and pro bono attorneys to meet the need, especially in rural areas. Barriers to relief existed as they do now, in that some courts would not allow women to use other available forms to pursue protective orders on their own, and some district and county attorney offices would not pursue protective orders. However, protective orders are typically handled by local legal aid attorneys and county or district attorney offices rather than the private bar, which could account for the lack of controversy over this kit.

WHY COURT-APPROVED FORMS ARE NEEDED

Benefits to the Public

Access to Judicial System

1. Provision of Means to Comply with Legislative Requirements

   In Texas, we require the public to resolve certain legal matters, such as divorce, in court. For the poor who cannot afford an attorney, it is imperative that the Court, as the entity entrusted with ensuring access to justice, provides a sound means for them to comply with this requirement. Failing to do so effectively bars the poor from the judicial system, a result that is incompatible with the notion of justice for all upon which our country was founded.

   Some have argued that access to justice embraces more than access to the courts and can only be ensured by access to a lawyer, even if that lawyer is only able to provide advice. We agree that access to justice is a broad concept and that it is always better to have a lawyer, yet there can be no access to justice without access to the courts. Access to the courts starts with access to forms. Advice from a lawyer is unquestionably helpful, if one can obtain it, but advice cannot be filed in court. Only a form can be filed in court. No case can be filed without one. No case can be completed without one.

2. Provision of Safe Harbor

   Although Rule 7 of the Texas Rules of Civil Procedure makes it clear that a party is allowed to represent himself[35], the unrepresented poor face many hurdles in getting heard in court. Current practices in various counties and courts put unnecessary constraints on pro se litigants, such as refusing to accept fill-in-the blank forms or requiring pro se litigants to retype any pre-printed form. As with the 2005 Protective Order kit and its subsequent revisions, courts would be required to accept forms

[35] "Any party to a suit may and prosecute or defend his rights therein, either in person or by an attorney of the court." TCRP 7

approved by the Supreme Court when presented by a litigant, thus providing a safe harbor against such barriers to access by the poor.

Additionally, the Supreme Court imprimatur on forms will give the poor confidence in the legal sufficiency of the forms and help abate the predatory form sale and advice practices that are currently occurring in Texas. A review of Craigslist ads from February 1, 2012, through February 14, 2012, revealed that there are paralegals, "notarios," and lawyers no longer licensed to practice law offering their services to help people with forms or selling forms that are available at no cost online. Ironically, during the time that this paragraph has been written, we were notified of two separate people attempting to file a divorce in the same county who had been sold outdated forms from two separate sources that were once available at no cost online.[36]

3. Increase of Pro Bono Attorneys Willing to Handle Divorce Cases

We have every reason to believe that Court-approved forms will increase the number of pro bono attorneys who are willing to handle a divorce case. We have anecdotal evidence from attorneys who state that they would not have handled a protective order case without the Court-approved Protective Order kit forms as well as reports from judges who have had pro bono lawyers using the forms in their courts. National research supports this conclusion, in that states report an increase in pro bono lawyers who use the forms, as well as lawyers who use the forms for their paying clients.[37]

Efficient Use of Available Attorney Resources

The three largest legal aid programs are required to conduct a needs assessment study to determine how to best allocate their resources amongst the various needs of the poor. Based on the results of the study, they develop program priorities in terms of who is helped before others. In family law, the legal aid program priority is victims of domestic violence.

At a time when it is clear that there are not enough legal aid attorneys to meet the needs of the poor, it is important to look at the most efficacious use of available pro bono attorney resources. While we recognize that Court-approved forms make it easier to recruit pro bono attorneys to handle a divorce, we must also state that as matter of public policy, it does not make sense to use scarce pro bono attorney resources to handle simple, uncontested divorce matters. It makes more sense to improve pro se representation by the poor by providing easy-to-use, legally sound Court-approved forms and reserve limited pro bono attorney resources for the more complex and contested matters so that they can bring their considerable knowledge of the law to bear in a situation that no poor pro se litigant could handle.

Issues of Harm to the Poor

The Texas Family Law Foundation ("TFLF"), the lobbying arm of the State Bar of Texas Family Law Section, states that Court-approved forms are a trap for the unwary and will ultimately harm the public. This argument ignores our current use of a plethora of

[36] Interview with Paula Pierce, Texas Legal Services Center, March 7, 2012.

[37] State Responses on Statewide Forms, *supra* note 26.

commercial forms in Texas and the harm that comes from failing to provide simple, sound forms.

1. Good Forms Will Clearly Improve the Status Quo

   TFLF states that Court-approved forms will cause more harm than good. It is true that inaccurate or otherwise bad forms can cause harm to those who use them. This happens on a regular basis with the forms currently available in Texas. It is a fundamental reason that good, easy-to-use and legally sound Court-approved forms are needed.

2. Most People Use Forms Correctly

   TFLF further suggests that the quality of the form ultimately does not matter because people will either intentionally or inadvertently use the forms incorrectly to their disadvantage. Certainly, we all hear the horror stories—both by those who have been harmed by using forms incorrectly and by those who have been harmed by attorneys who have mishandled their case. We hear the anecdotal evidence of the case about the woman who lost her rights to her husband's retirement or the man who spent thousands of dollars trying to correct mistakes made by doing his own divorce. We also hear the anecdotal evidence about the woman who paid thousands of dollars to an attorney who failed to get her share of the equity in the house or who took no action on her case at all. We hear these stories because they are not the norm. They are the outliers that make great stories for the press and for our friends at cocktail parties but are not representative of the majority of pro se litigants who use legally-sound forms correctly, or those who have good experiences with their family law attorney.

3. Court-Approved Forms Minimize Risk of Harm

   Those who use forms incorrectly often do so because the forms lack instructions for completion, or they are so poorly written that it would be hard for anyone to fill them out. Instead of banning Court-approved forms, which would effectively bar thousands of poor from resolving their legal matter, it makes more sense to create good forms with detailed instructions on accurate use to minimize the risk of harm. Court-approved forms would be standardized, making it easier for a judge to catch mistakes.

   Clearly, the provision of Court-approved forms will not *add* to the level of harm that is presently happening from forms currently available for use. While it is true that more people are likely to use Court-approved forms than others, better forms will improve the situation, not worsen it.

4. Proposed Forms Narrowly Drawn to Minimize Risk of Harm

   The forms developed by the Uniform Forms Task Force have been narrowly tailored to apply to extremely limited situations. The express purpose of creating forms tailored to such narrow situations is to create as little risk of harm as possible.

   The forms and instructions for the Divorce with No Minor Children and No Real Property clearly state the appropriate use of the forms and provide warnings

against using them for other situations. They also admonish people to get a lawyer, if they can, and provide statewide hotline numbers for legal advice referrals to legal representation.

5. Lack of Court-Approved Forms Harms the Poor

A lack of Court-approved forms causes great harm to the growing numbers of poor who have no access to an attorney. The inability of the poor to resolve their legal matters in a timely fashion can cause significant problems in later years. It can also be costly to the litigants and burdensome on the courts.

With respect to divorce, even when the divorce is amicable and uncontested, it is much more complicated for a couple to get divorced ten years after they have separated and gone their own ways, than it is for them to get divorced when needed. They may have acquired assets that are presumed to be community property even though they have not lived together for years. More commonly, they may have had children with another partner. These children are presumed to be children of the marriage because they were born during the marriage. A divorce with children born during the marriage but not of the marriage involves at least two respondents, or more, depending on the number of fathers of children born during the marriage. There may need to be additional legal action to determine paternity, which is burdensome to the court and costly to the parties. Another common issue is the inability of one spouse to locate the other spouse. Instead of simple service, the cost of which is covered under an Affidavit of Inability to Pay Costs for those who qualify for it, the party may be required to issue citation by publication at significant cost. Ultimately, what may have been able to be handled through the provision of Court-approved forms, may no longer be appropriate for such relief at a later date.

Aside from the many complicating factors that can occur from simply living life, failing to provide Court-approved forms continues the status quo of harm discussed herein where people are accessing forms from a wide variety of inferior sources, are being taken advantage of by unscrupulous people purporting to help, and are even prevented from using forms in certain courts

Benefits to Judicial System

The poor and pro se litigants will always be with us and their numbers are growing. In Texas, 21.6% of family law filings are pro se. Based on data from various counties, we believe that more than 40% of divorce filings are pro se. The overriding benefit of Court-approved forms to the court system, as indicated by national research, is increased judicial economy and efficiency.[38]

For Judges

Currently, judges are presented with forms from multiple sources with varying degrees of quality. Court-approved forms provide judges with a reliable, standard form that is legally sound and comports with Texas law. Judges become familiar with the forms and no longer have to spend time reviewing the forms to ensure that they meet Texas law and can simply focus on reviewing the documents for completeness. Judges also report

[38] State Responses on Statewide Forms, *supra* note 26; National Center for State Courts survey, *supra* note 27.

that pro se litigants are better prepared when they come to court, which reduces the amount of time that the judge spends on the bench handling their case.[39]

For Clerks and Courtroom Personnel

Anecdotal evidence suggests that clerks and courtroom personnel presently spend three times longer servicing pro se litigants than those familiar with the legal process. They are often the first people that interface with a pro se litigant and deal with the multiple questions that pro se litigants have about resolving their case.

Court-approved forms reduce time spent by court personnel with pro se litigants in a variety of ways. They have a place to refer pro se litigants for good, accurate forms, reducing the stress from upset litigants frustrated with a system not set up for public use.[40] Pro se litigants tend to be better informed on how to proceed, with the result that they reduce the number of trips to the courthouse with incorrect forms.[41] Court personnel also become familiar with Court-approved forms and know where to look for key information in the pleadings, such as is needed for service of process.[42]

For the Public

Court-approved forms improve the public's perception that the judicial system is truly open to all. Public faith in the accessibility of our judicial system helps in the acceptance of unfavorable rulings as fair, rather than concluding that the system is corrupt.

Benefit to Bar

The TFLF has suggested that Court-approved forms will harm the bar by changing the practice of law as lawyers currently know it. They worry that allowing forms for uncontested matters will quickly lead to forms for contested matters. The TFLF is also concerned that forms will negatively impact the ability of an attorney to earn a living, especially the "bread and butter" lawyers who rely on uncontested divorces to maintain their practices.

Many of the TFLF concerns about statewide forms were shared by attorneys in the numerous states that have them.[43] No state has reported that these concerns have materialized.[44] In fact, many states have seen lawyers benefit by assisting pro se litigants on a limited scope basis with completion of the forms, or by providing advice on their particular situation.[45] Typically, these clients represent new business to attorneys because they are not those who could have afforded the lawyer to handle their entire case.

Aside from a potential financial benefit to lawyers, states report that Court-approved forms makes it easier for pro bono attorneys to handle a case. Pro bono attorneys may be unfamiliar with practice areas that often affect the poor and are more willing to help when they are provided with good forms.

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[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

PART TWO

COLLATERAL ISSUES RAISED BY
THE STATE BAR OF TEXAS FAMILY LAW SECTION
AND THE STATE BAR OF TEXAS SOLUTIONS 2012 TASK FORCE

AUTHORITY OF SUPREME COURT OF TEXAS TO PROMULGATE FORMS

The TFLF has raised the question whether the Court has the authority to promulgate forms for use by pro se litigants in court. The Commission has prepared a brief to address this issue, which has been filed with the Court and included in the materials sent by the Commission to the Supreme Court Advisory Committee. The brief concludes that the Court clearly has the authority to promulgate pleading forms under the Texas Constitution, statutory law, and common law.

Of note in the brief is the review of other forms created by the Court. Specifically, in 2009, the Court promulgated a form petition for tenants to use when filing suit to require a landlord to repair a condition materially affecting the health or safety of a tenant.[46] The form petition was promulgated along with an amendment to Texas Rule of Civil Procedure 737. While the Legislature had instructed the Court to promulgate the amendment to Rule 737, it had not instructed the Court to promulgate the accompanying form.[47]

The Court has also promulgated numerous forms for use in the legislatively created "judicial bypass" procedure by which a court may authorize a pregnant minor to obtain an abortion absent parental notification.[48] The Court-approved documentation includes a set of detailed, plain language instructions regarding the judicial-bypass procedure, an application for the litigant to complete and file in court, a form for the litigant to use to request a continuance of a court hearing, and numerous other forms. Unlike the protective order and landlord-tenant forms, the judicial-bypass forms were promulgated at the Texas Legislature's direction.[49] In doing so, the Legislature implicitly recognized the Court's constitutional authority to promulgate such forms.

The Texas Rules of Civil Procedure contain numerous forms that litigants can use in judicial processes. Texas Rule of Civil Procedure 592b contains a template form that a litigant may use in submitting an attachment bond.[50] Rule 736(2) sets forth a form that a litigant may use to give notice of a suit to foreclose on certain liens.[51] Rule 750 contains a form for litigants to use in filing an appeal bond in a forcible entry and detainer case.[52] And Rule 117a sets forth a fill-in-the-blank form for citing by publication or personal service in suits for delinquent ad valorem taxes.[53]

FORMS MAINTENANCE AND COST

The TFLF is concerned that a new bureaucracy will need to be created, at significant cost, to maintain any forms created. This fear does not comport with the seven years of experience we

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[46] Brief of the Texas Access to Justice Commission on the Supreme Court's Authority to Promulgate Forms filed on April 6, 2012 at page 9 and Exhibit K of the Brief. The Brief and its exhibits are available on the Supreme Court Advisory Committee website and in the packet of materials for the April 13, 2012 meeting.

[47] *Id.*at page 9 and Exhibit L of the Brief.

[48] *Id.*at page 9 and Exhibits M, N, and O of the Brief.

[49] *Id.*at page 9 and Exhibit M of the Brief.

[50] *Id.*at page 10 and Exhibit P of the Brief.

[51] *Id.*at page 10 and Exhibit Q of the Brief.

[52] *Id.*at page 10 and Exhibit R of the Brief.

[53] *Id.*at page 10 and Exhibit S of the Brief.

have with the Protective Order Kit. That Kit is maintained by the Court's Protective Order Task Force, a small group of volunteers who drafted the original forms and who regularly update the Kit as needed. Likewise, the Uniform Forms Task Force, a standing group that meets monthly, will be responsible for the maintenance of the forms it creates.

The TFLF suggests that maintenance of Court-approved forms will be similar to its experience with the six-volume Family Law Practice Manual in which it expended $240,716 in print and travel costs to revise. However, to date, the Uniform Forms Task Force has *produced* the entire instructions and forms for an uncontested divorce with no children and no real property at a cost of less than $10,000. To compare the two sets of forms is baseless. There is a vast difference in the complexity of these two sets of forms. For example, there are only 29 pages to the entire Uncontested Divorce with No Children and No Real Property kit including instructions, whereas the Family Law Practice Manual's divorce decree alone is 123 pages.

MEANS-TESTING USE OF FORMS

The TFLF has suggested that the forms be restricted for use by the poor. While the forms have been designed for use by the poor, the Commission does not recommend it.

No Other State Restricts Form Use to Poor

Of the 48 states plus the District of Columbia, none attempt to restrict their statewide forms to low-income people. Such an attempted restriction would make Texas the only state to do so. Texans have a right to self-representation under Texas Rule of Civil Procedure 7. What legitimate basis could there be for depriving citizens of the right to use the forms?

Several Problems Associated with Means-Testing Court-Approved Forms

Difficult to Means-Test Forms Available Online

If the forms were to be means-tested, who would conduct the means-testing? A human means-test would lead to creating the exact bureaucracy and expense that the TFLF fears would happen with form maintenance.

Correlating Forms with Pauper's Oath Potentially Bars Poor from Use

It has been suggested that the forms be restricted only to those who file an affidavit of inability to pay costs at the same time they file the forms. There are millions who qualify for legal aid who may be able to afford court costs but not the far greater cost of hiring a lawyer. There are multiple other problems associated with this approach. Currently, there are several large counties in Texas that automatically contest every pauper's oath filed. The likelihood of default for a low-income pro se litigant is extremely high, with the unintended consequence that the poor, for whom these forms were designed, would be barred from using them.

Additionally, Texas Rule of Civil Procedure 145 provides a safeguard to the poor's ability to access the court system while being mindful of each county's need to fund their courts. It does not make sense to combine Rule 145 with Court-approved forms. These forms are about increased access to, and efficient administration of, the justice system, not about generating additional revenue.

The TFLF has stated that their objection to forms is not financial, so it is unclear what purpose they think a Court-imposed restriction on their use would serve in the administration of justice. Decency calls for a judicial system where the poor can access the courts. The small minority of people who could afford a lawyer but choose not to retain one, as is their right, can use forms now, choosing from the array of forms that are widely available.

No Uniform Definition of Poor Across Counties and Courts

Additionally, there is no uniform definition of poor throughout the 254 counties in Texas. A person may qualify as poor in one county but not in another. In fact, there are multiple definitions of poor operating within our state and nation. To qualify for legal aid at a Texas Access to Justice Foundation ("TAJF") funded organization, a person's income must be at or below 125% of the federal poverty guideline. To qualify for food stamps, or for legal aid at a Legal Service Corporation ("LSC") funded provider, a person's income must be at or below 200% of the federal poverty guideline. However, both TAJF and LSC allow victims of crime to have income levels of up to 187.5% of the federal poverty guideline. Finally, to qualify for public housing, the project-based Section 8 program, and the Section 8 voucher program, a person's income may not exceed 80% of the median income for the area in which he lives, as determined by the United States Department of Housing and Urban Development.[54] Statewide housing guidelines are approximately 300% of the federal poverty guideline for smaller families and less than 200% of the federal poverty guidelines for larger families. However, each county has specific guidelines that may be more or less than the statewide guidelines.

Due Process and Other Public Policy Concerns

Finally, there may be due process concerns with the Court promulgating a form and restricting its use to only one category of people. Additionally, it is unclear how restricting use of the forms to the poor is rationally related to a legitimate government interest. Protecting the earning capacity of the private bar would not qualify as a legitimate government interest. However, it is in everyone's interest to ensure access to the judicial system.

ALLEGATION OF MISSION DRIFT

The TFLF is purportedly concerned that the Commission has strayed from its mission to increase access to justice for low-income people by pursuing efforts to improve self-representation that may have a consequence of benefitting those who could afford a lawyer but choose to represent themselves.[55] National leaders in access to justice matters and the Commission respectfully disagree. Those who can afford a lawyer, but unwisely choose not to, have ready access to forms now, including those sold on line by the Family Law Section.

[54] See 24 C.F.R §982.201 (2011) (Section8housing voucher program); 24 C.F.R. § 960.201 (2011) (public housing); 24 C.F.R. § 5.653 (2011) (project-based section 8).

[55] *Why It Won't Work: The Access to Justice Seven-Point Plan for Pro Se Litigants*, the Texas Family Law Foundation, January 18, 2012. Exhibit O.

Majority of ATJ Commissions Work to Improve Self-Representation

Developing strategies to improve self-representation falls squarely within the mission of anyone dedicated to seeking justice for the poor. Three-quarters of the Access to Justice Commissions across the nation, with the same mission of increasing legal services to the poor, are actively developing initiatives to improve self-representation, *regardless* of income level.[56] *No other* Access to Justice Commission has been challenged by their bar, or any other outside entity, for working on these efforts.[57]

Access to Justice Commissions are working on pro se litigant issues without regard to income because, as previously discussed, the vast majority of pro se litigants are poor. In Texas, we know that 81% of TexasLawHelp users qualify for food stamps. TexasLawHelp is the primary online resource for pro se litigants in Texas to access free legal information and free forms.

The Commission simply must pursue all efforts that lead to increasing access to justice. The small number of people who do not meet legal aid income levels and choose not to hire a lawyer can do so under the status quo. None of the 48 states with officially approved forms has found that such forms adversely affect the business of private practitioners.

The State Bar of Texas Agrees with the Commission

The State Bar of Texas has a strong commitment to increasing access to justice and to assisting pro se litigants, as indicated in its current Strategic Plan, which proposes to help pro se litigants by working "in collaboration with key partners to increase the availability and utilization of effective high quality pro se information, education, and support materials."[58] This commitment is visible in the report of State Bar's Solutions 2012 Task Force ("Solutions 2012") which identified many of the same pro se solutions currently being pursued by the Commission's Self-Represented Litigants Committee and its six subcommittees.[59] By identifying these same solutions, the State Bar affirms the Commission's work to improve self-representation and agrees that this work falls within the Commission's mission. Conversely, it appears that the State Bar disagrees with the TFLF's assertion that these solutions will not work.[60]

The Commission's Self-Represented Litigant Committee and its six subcommittees are currently working on the following areas that were identified by the Commission in 2010 and were recommended by Solutions 2012. As is clear from this list, forms are fundamental basis for many of these efforts.

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[56] Interview with Robert Echols, State Support Consultant at ABA Resource Center for Access to Justice Initiatives, March 22, 2012.

[57] *Id.*

[58] State Bar of Texas Strategic Plan, *supra* note 2, at page 6.

[59] Indigent Pro Se Litigant Subcommittee Workgroup Report contained in Appendix 1 of the State Bar of Texas Solutions 2012 Task Force Report.

[60] *Supra* note 55.

Assisted Pro Se Efforts

Solutions 2012 recommends expanding assisted pro se clinics that use volunteer attorneys to help low-income people with their uncontested legal matters. Most pro bono programs and legal aid providers have assisted pro se clinics. Almost all are assisted pro se divorce clinics. Forms are a basic need for these clinics because the litigants cannot file their case without one. Solutions 2012 also suggests using online chat or video conferencing to assist pro se individuals in need.[61]

The Commission's Assisted Pro Se Subcommittee has been working to develop best practices for providing assisted pro se help, and acts as a resource to counties and legal aid programs wishing to develop, expand, or improve their current assisted pro se services.[62] The Commission's Technology Committee is also looking at ways to connect rural clients with urban pro bono attorneys via video conferencing or other less expensive technology. Additionally, the Commission educates the public and the legal community about other available resources, such as the online chat program offered on the TexasLawHelp website.

Education

Solutions 2012 suggests developing judicial and court personnel education regarding pro se litigants, including discussing the difference between advice and information.[63] The Commission has already developed this training and has given it several times to resounding review.[64] In fact, the presentation is in such demand that Commission has a wait list for those wishing to receive the training.

Self-Help Centers

Solutions 2012 advises establishing self-help centers throughout the state for indigent unrepresented litigants.[65] Whether the self-help center is a kiosk, a court-based full-service center, or a mobile self-help center, access to information and forms are typically the base level services provided.

The Commission's Self-Help Center Subcommittee has collected information on the various models of self-help centers across Texas and the nation, and serves as a resource to counties who seek its help in establishing self-help centers within their own communities.[66] Recognizing that each community has different needs and different resources, the Commission does not purport to know what is best for any given community. The Commission leaves it to the local community leaders to determine what type of self-help center to establish and who it wishes to serve. Some

[61] Indigent Pro Se Litigant Workgroup Report of Solutions 2012 Report, *supra* note 59 at page 2.

[62] Supplemental Report to the Supreme Court of Texas on the Activities of the Texas Access to Justice Commission's Self-Represented Litigant Committee and its Subcommittee, *supra* note 7.

[63] Indigent Pro Se Litigant Subcommittee of Solutions 2012 Report, *supra* note 59 at page 3.

[64] Supplemental Report on Commission SRL Activities, *supra* note 7 at pages 2-4.

[65] Indigent Pro Se Litigant Subcommittee of Solutions 2012 Report, *supra* note 59 at page 5.

[66] Supplemental Report on Commission SRL Activities, *supra* note 7 at page 7.

communities prefer to restrict services to low-income pro se litigants, while other communities choose to serve any pro se litigant regardless of income.

Limited Scope Representation

Solutions 2012 proposes using volunteer lawyers or self-help center lawyers to staff a mobile self-help center on visits to communities within a specific county.[67] The example provided is the Mobile Self-Help Legal Access Center from Ventura County Superior Court, which is equipped with computers, video stations, books, pamphlets, self-help instruction manuals and packets of Court-approved forms.[68] The Mobile Center also maintains a list of lawyers who are willing to provide legal services on a task-by-task basis, also known as a "limited scope" or "unbundled" basis.

In recognition that it is always best to have the help of an attorney, the Commission's Limited Scope Representation Subcommittee has been working on several limited scope representation presentations. The Commission is interested in limited scope representation because it increases access to justice for low-income people by allowing those who cannot afford full representation to get the help they need from a lawyer in more affordable way.[69] While the poor may not be able to afford a retainer fee, they might be able to pay an attorney for a discrete task. The Subcommittee has found that there is much confusion and fear around limited scope representation. To address these issues, the Subcommittee has been working on presentations to educate lawyers, judges, and the public about its benefits and drawbacks, as well as when it is appropriate or inappropriate for use.[70]

Rules or Legislative Changes

Solutions 2012 suggests developing a rule to let judges know that it is not a violation of the Code of Judicial Conduct to assist pro se litigants through the court system.[71] The Commission's Rules Subcommittee discussed whether revisions were needed to the current provision regarding self-represented litigants in the Code of Judicial Conduct but determined that a rule was not needed at this time, preferring to rely on education.[72]

Solutions 2012 also suggests offering reduced liability coverage to attorneys who handle decrees for uncontested cases, stating that it might require a legislative or other disciplinary rule. While the Commission did not investigate this exact issue, it did investigate the possibility of providing malpractice coverage for attorneys who were willing to handle matters on a limited scope basis through the current State Bar program that pays a portion of the malpractice coverage for approved legal service providers in Texas. It learned that discounted malpractice coverage cannot be provided to an individual attorney unless the attorney is associated with a 501(c)(3) organization. In essence, the attorney must volunteer, or take cases on a reduced-fee basis, through a

[67] Indigent Pro Se Litigant Subcommittee of Solutions 2012 Report, *supra* note 59 at page 6.

[68] Ventura County Superior Court's Mobile Self-Help Center Overview, Exhibit Q, page 5.

[69] Supplemental Report on Commission SRL Activities, *supra* note 7 at page 5.

[70] Supplemental Report on Commission SRL Activities, *supra* note 7 at pages 5-7.

[71] Indigent Pro Se Litigant Subcommittee of Solutions 2012 Report, *supra* note 58 at page 2.

[72] Supplemental Report on Commission SRL Activities, *supra* note 7 at page 8.

current legal service provider. The result is basically the same program that is in place through the State Bar of Texas.

The Commission looks forward to partnering with the State Bar on their proposed solutions and has included an updated list of the Solutions 2012 proposed solutions to give more detailed information about efforts happening within our state.[73]

CONCLUSION

It is clear that there will never be enough lawyers to help the growing number of poor who need legal assistance. The poor are already representing themselves in court, and there is no reason to believe that they will stop. They have no choice.

The greatest civil legal need of the unrepresented poor is with family law matters. It may be their only interaction with the court system. Forms are a requirement for accessing the court system. Without forms, the poor who cannot get legal aid have no access.

Court-approved forms are broadly accepted nationwide as a tool to increase access to justice and judicial efficiency and economy. Almost all states provide family law forms, and a significant majority of states provide divorce forms.

Finally, it is important that the *Court* promulgate forms so that the poor have confidence that the forms are legally sound and will be accepted throughout the State. It is the role of the *Court* to ensure access to justice, not vendors on Craigslist or Legal Zoom.

The tens of thousands of people forced by poverty to try to use their right of self-representation desperately need improved access to justice. States have uniform forms because they improve this situation. We support and work for increased funding and increased pro bono efforts by lawyers. No one with knowledge of the facts can legitimately claim that these efforts can deal with multitudes who cannot obtain legal assistance.

Harry M. Reasoner
Chair
Texas Access to Justice Commission

Patricia E. McAllister
Executive Director
Texas Access to Justice Commission

James B. Sales
Chair Emeritus
Texas Access to Justice Commission

[73] Updated Solutions 2012 proposed solutions. *See* Exhibit Q.

EXHIBIT A

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 01- 9065

ORDER ESTABLISHING TEXAS ACCESS TO JUSTICE COMMISSION

1. In 1999, a statewide planning process for legal services to the poor was initiated in Texas. The Texas planning group consisted of a broad range of individuals representing this Court, the State Bar of Texas, the Texas Equal Access to Justice Foundation, the Texas Bar Foundation, and the network of legal-service providers throughout the state.

2. During the statewide planning process, the following problems were identified:

- many gaps exist in developing a comprehensive, integrated statewide civil legal-services delivery system in Texas;
- many poor people in Texas are underrepresented, in that they receive limited advice from a legal-services provider when they would in fact be better served by full representation on a civil legal matter;
- inadequate funding and well-intentioned but uncoordinated efforts stand in the way of a fully integrated civil legal-services delivery system;
- achieving a committed and active justice community in Texas is essential to the effective delivery of civil legal services;
- while many organizations throughout the state share a commitment to improving access to justice, no single group is widely accepted as having ultimate responsibility for progress on the issues; and
- leadership that is accepted by the various stakeholder organizations committed to achieving full access, and empowered to take action, is essential to realizing equal justice for all in Texas.

3. At the conclusion of the statewide planning process, the planning group adopted an action plan with a broad range of goals and strategies. The cornerstone of the recommendations was that

an Access to Justice Commission be established by this Court to serve as the umbrella organization for all efforts to expand access to justice in civil matters in Texas. The organization would serve as a coordinator to assist all participants in developing strategic alliances to effectively move ideas to action. The Commission would report semi-annually on its progress to both the Court and the State Bar of Texas. The Court, having reviewed the report of the planning group and having received the endorsement of the Board of Directors of the State Bar of Texas, **HEREBY ORDERS**:

1. The Texas Access to Justice Commission is created to develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents.

2. The Texas Access to Justice Commission will:

- identify and assess current and future needs for access to justice in civil matters by low-income Texans;
- develop and publish a strategic plan for statewide delivery of civil legal services to low-income Texans;
- foster the development of a statewide integrated civil legal-services delivery system;
- work to increase resources and funding for access to justice in civil matters and to ensure that the resources and funding are applied to the areas of greatest need;
- work to maximize the wise and efficient use of available resources, including the development of local, regional, and statewide coordination systems and systems that encourage the coordination or sharing of resources or funding;
- develop and implement initiatives designed to expand civil access to justice;
- work to reduce barriers to the justice system by addressing existing and proposed court rules, procedures, and policies that negatively affect access to justice for low-income Texans; and
- monitor the effectiveness of the statewide system and services provided and periodically evaluate the progress made by the Commission in fulfilling the civil legal needs of low-income Texans.

3. The Texas Access to Justice Commission consists of fifteen members appointed by this Court and by the State Bar of Texas. A member of the Commission serves a three-year term. The terms of the members are staggered. A member may not be appointed to serve more than two successive full three-year terms. A member who has served two successive full terms is not eligible for reappointment until the third anniversary of the date that the member's last full term on the Commission expired.

4. This Court will appoint eight members to the Texas Access to Justice Commission as follows:

- a justice of the Supreme Court of Texas;
- a judge or justice from a county with a population of 650,000 or more;
- a judge or justice from a county with a population of less than 650,000;
- a member of the Texas Equal Access to Justice Foundation Board of Directors;
- two representatives of a state or federally funded legal-services program; and
- two at-large members who have demonstrated a commitment to and familiarity with access-to-justice issues in Texas.

5. The State Bar of Texas will appoint seven members to the Texas Access to Justice Commission as follows:

- two members of the State Bar of Texas Board of Directors;
- an attorney member of the State Bar of Texas;
- a member of the Texas Bar Foundation Board of Directors;
- two representatives of a state or federally funded legal-services program; and
- an at-large member who has demonstrated a commitment to and familiarity with access-to-justice issues in Texas.

6. This Court and the State Bar of Texas will coordinate appointments to the Texas Access to Justice Commission to assure that:

- at least three members of the Commission are nonattorney public representatives;
- members of the Commission appointed to represent a state or federally funded legal-services program reflect a diversity among Legal Service Corporation funded programs and programs funded from other sources, staff and pro bono based programs, and general civil legal-services programs and specific service- or client-based programs; and
- the members of the Commission reflect the diverse ethnic, gender, legal, and geographic communities located in Texas.

7. This Court will designate the presiding officer of the Texas Access to Justice Commission, after consultation with the President of the State Bar of Texas.

8. The Governor is invited to designate a person to serve as an ex-officio member of the Commission. The Speaker of the House and the Lieutenant Governor each are invited to designate one member of that presiding officer's chamber to serve as an ex-officio member of the Texas Access to Justice Commission. A member appointed by the Governor, Speaker, or Lieutenant Governor serves at the pleasure of the appointing officer.

9. In making initial appointments to the Texas Access to Justice Commission, this Court will designate three members as having a one-year term, three members as having a two-year term, and two members as having a full three-year term.

10. In making initial appointments to the Texas Access to Justice Commission, the State Bar of Texas will designate two members as having a one-year term, two members as having a two-year term, and three members as having a full three-year term.

11. The Texas Access to Justice Commission will submit any strategic plan for statewide delivery of legal services to low-income Texans to this Court and the Executive Committee of the State Bar Board for approval.

12. The State Bar of Texas has agreed to provide staff and financial support for the Texas Access to Justice Commission. Proposed budgets of the Texas Access to Justice Commission will be subject to the State Bar's annual budgetary process for presentation to the Board of Directors and ultimate approval by this Court. Supervision of the budget of the Commission is the responsibility of the State Bar of Texas. The Commission and staff supporting the Commission will comply with the fiscal policies of the State Bar of Texas.

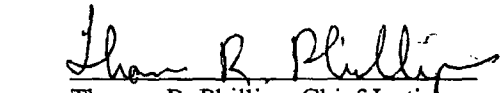
13. The Texas Access to Justice Commission is subject to sections 81.033 and 81.034 of the Texas Government Code, and is also subject to other relevant provisions of Chapter 81 of the Texas Government Code.

14. The Texas Access to Justice Commission may adopt rules as necessary for the performance of the Commission's duties.

15. The Texas Access to Justice Commission will file, at least every six months, a status report on the progress of the Commission's duties. The Commission will send a copy of the report to both this Court and the State Bar of Texas. The initial progress report will be filed not later than December 1, 2001. The Commission will also provide an oral progress report at each State Bar board meeting.

BY THE COURT, IN CHAMBERS, this 26th day of April, 2001.

Misc. Docket No. 01-9065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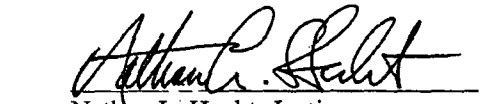
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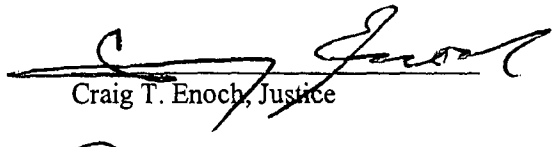
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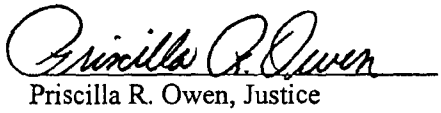
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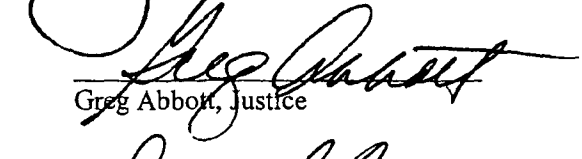
James A. Baker, Justice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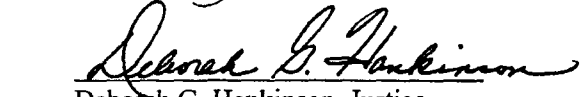
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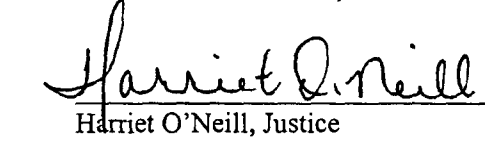
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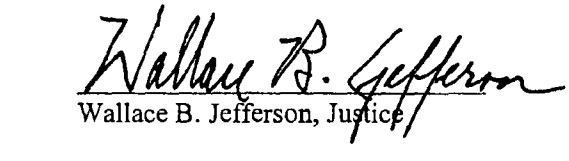

Wallace B. Jefferson, Justice

Misc. Docket No. 01-9065

EXHIBIT B

A Supplemental Report to the Supreme Court of Texas
on the Texas Access to Justice Commission's
Self-Represented Litigants Committee and Subcommittees

Background Information

In April 2010, a statewide Forum on Self-Represented Litigants was held to discuss the issue of the burgeoning population of self-represented litigants who cannot afford representation and who are unable to obtain representation through a legal service provider. A broad spectrum of stakeholders were invited to attend, including the private bar[1], the judiciary, clerks, law librarians, and legal service providers. National leaders were invited to discuss various best practices[2] and solutions that are widely accepted throughout the country. The Forum concluded with a consensus to pursue development of these best practices, including standardized forms.

Two entities were created in the wake of the Forum. The Texas Access to Justice Commission created its Self-Represented Litigants Committee in May 2010 to research and develop strategies to improve self-representation for the poor. The Supreme Court of Texas created the Uniform Forms Task Force in March 2011 to develop standardized forms.

The Self-Represented Litigants Committee

The Self-Represented Litigants Committee ("SRL Committee") is charged with addressing the challenges presented by the increasing number of self-represented litigants who cannot afford an attorney. The SRL Committee is comprised of a wide range of those who interface with, or are impacted by, pro se litigants, including two private bar attorneys, three judges, one county clerk, one local bar association director, three legal aid representatives, one pro bono organization representative, one Office of Court Administration attorney, and one law librarian. The SRL Committee had its initial meeting in October 2010 to discuss follow up from the Forum and get a baseline idea of what self-represented litigant initiatives currently existed in the state. At its February 2011 meeting, the SRL Committee spent a great deal of time identifying priorities on how to best proceed in improving self-representation for the poor. The SRL Committee discussed the various best practices that have been implemented nationally to address the issue and decided to form five working subcommittees based on these best practices.

At the time, these subcommittees were an education subcommittee, a self-help center subcommittee, an assisted pro se subcommittee, a rules and guidelines subcommittee, and a communication and information dissemination subcommittee. In July, the assisted pro se subcommittee determined that the scope of its work was too broad to effectively accomplish in one subcommittee, and split into a sixth subcommittee focused on limited scope representation.

[1] State Bar Sections encompassing substantive legal areas that interface with poverty law were invited to attend the forum, including the following sections: ADR, Bankruptcy, Consumer and Commercial Law, Family Law, Hispanic Issues, Immigration, Individual Rights and Responsibilities, Justice of the Peace, Labor and Employment, Litigation, Appellate, Asian-Pacific Islander and Administrative and Public Law. State Bar Committees were also invited, including the Unauthorized Practice of Law Committee.

[2] *Best Practices in Court-Based Programs for the Self-Represented*, the Self-Represented Litigation Network, 2008, funded by a grant from the State Justice Institute.

We believe that these six subcommittees plus the Court's Uniform Forms Task Force make up the nonexistent "Seven Point Plan" referenced in emails from the Family Law Section leadership and materials produced by the Texas Family Law Foundation. This report will provide detailed information on the work of each subcommittee to date, and hopefully, dispel the myth that the Commission has a calculated plan to re-engineer the practice of law or force attorneys to adopt business models that they would otherwise not choose to adopt.

It is important to remember that the SRL Committee and it subcommittees are a resource for courts, communities, lawyers, and the poor on access to justice matters. It lacks the ability to force any entity or person to adopt any of the following best practices. When a court or community or lawyer asks for help addressing problems related to self-represented litigants, the appropriate subcommittee responds to that request with suggestions. It is up to each community to determine what is best for their particular situation.

Education Subcommittee

The Education Subcommittee seeks to inform and educate judges, clerks, court personnel and the private bar on self-represented litigant issues. The goals are to increase judicial economy and efficiency by more effectively handling self-represented litigants and to involve the private bar in assisting the self-represented litigant population through pro bono or limited assistance.

The Education Subcommittee decided to offer presentations as a means of providing this information. So far, it has developed three presentations and has been invited to give these presentations as detailed below:

1. Judiciary: The general judicial presentation gives an overview of the problems facing pro se litigants and proposes solutions that fit within the confines of their judicial ethical canons. This training will be given by judges to judges and will be tailored to the needs of the particular audience at any given conference (e.g. judges hearing child protection cases versus general jurisdiction judges). A modified version was given at the Shared Solutions Summit held by the Texas Judicial Council and the Office of Court Administration in January 2011.

   Self-represented litigant training has been given at the CPS Associate Judge Conference and is given annually at the College of New Judges. Upcoming self-represented litigant training will be given in September at the Annual Judicial Conference sponsored by the Center for the Judiciary, and possibly in April at the College for Judicial Studies, although this is not yet confirmed.

2. Clerk and Court Personnel: The clerk and court personnel presentation focuses on the difference between legal advice and legal information. While clerk and court personnel are clear that they cannot give advice, they are often not clear what the actual difference between advice and information is. To ensure that they do not err on the side of giving advice, it is important that they understand this critical difference. It is also important that they understand what they can do to facilitate judicial efficiency when dealing with an unrepresented person. The training teaches them how to discern the difference, and how to provide information while remaining neutral and impartial, maintaining confidential information, and avoiding *ex parte* communications.

In 2011, the Education Subcommittee was invited to give this presentation at three regional court clerk conferences in Galveston, Waco, and Amarillo. In all instances, the feedback was overwhelmingly positive, and many district and county clerks have asked the speakers to return to educate their entire staff.

In January 2012, the presentation was given at the County and District Clerk School at Texas A&M University. The Subcommittee is scheduled to speak in Abilene and Hondo, and has many other requests to make the presentation in 2012. The Subcommittee is currently determining how to prioritize filling these requests in light of limited staff resources.

3. Private Bar: There are three different presentations given to the private bar. The initial presentation is typically an overview of access to justice issues, which contains brief information on self-represented litigants and limited scope representation. The second presentation focuses primarily on self-represented litigant issues, with a brief amount of limited scope information. The third presentation focuses primarily on limited scope representation information.

    a. **Access to Justice Presentation** – This presentation existed prior to the development of the SRL Committee and has been given to many local bar associations. It discusses the overwhelming need for civil legal services to the poor, legal aid funding issues, the current systems in place to deliver legal services – including legal aid and pro bono providers – touches on self-represented litigant issues, and encourages pro bono.

    b. **Self-Represented Litigant Presentation** – This presentation is an abbreviated version of the Access to Justice presentation in terms of civil legal needs of the poor and funding issues, and provides more detailed information on self-represented litigant issues and solutions. It acknowledges that it is best to have an attorney and encourages the bar to help by increasing local and national funding and by increasing pro bono. It then discusses alternative best practices when low-income people do not have access to a lawyer and the concept of a continuum of legal services from full representation to no representation. Topics covered include limited scope representation (addressed in full under the Limited Scope Representation Subcommittee section of this Report), assisted pro se with legal advice, assisted pro se without legal advice, staffed self help centers, and standardized forms. The self-represented litigant presentation, in conjunction with a series of self-represented litigant workshops, was given at the annual Local Bar Leaders Conference held by the State Bar in July 2011.

    c. **Limited Scope Representation Presentations** – Two different limited scope representation presentations are planned. One is directed to attorneys and the other is directed to the judiciary.

        The purpose of the attorney presentation is to make attorneys aware, if not already so, that limited scope representation is allowed under the Texas Disciplinary Rules of Professional Conduct 1.02(b) and to address common questions and concerns that lawyers have when contemplating representing someone on a limited scope basis. It addresses malpractice insurance and provides tips to avoid common pitfalls, such as using a written agreement specifying exactly what the attorney will do and what the client will do. It also

addresses when it is not appropriate to use limited scope representation. Further, it opens a dialogue on attorney concerns that a judge will try to expand the scope of representation beyond what the attorney had contemplated. The financial benefits of adding limited scope representation to an attorney's practice are also covered, in that low-income people who could not afford their services on a full scope basis, or come up with a retainer fee, may be able to afford their hourly rate for a discrete task. The first presentation was given in January 2012 to the Solo and Small Firm Section of the Austin Bar Association.

The judicial presentation has not yet been developed as a stand-alone training. Once developed, the presentation will approach limited scope representation from a judicial economy and efficiency standpoint because the more contact a litigant has with an attorney, the better prepared that person is. It will also address common concerns around attorney entry and withdrawal on cases and best practices in handling these situations.

Assisted Pro Se Subcommittee

The Assisted Pro Se Subcommittee is working towards expanding the availability of legal services for low-income pro se litigants. Assisted pro se programs are an important component of legal service delivery because they provide pro se litigants with some level of attorney assistance, although less than full representation. It is an efficient way to help many people while maximizing limited attorney resources.

Assisted pro se programs essentially offer pro bono legal services on a limited scope basis to low-income individuals who are unable to get an attorney through legal aid. Assisted pro se projects run the gamut from simple advice clinics to document preparation (such as drafting a demand letter for landlord repairs or preparing court pleadings) to settlement or hearing preparation. The underlying consistency in all assisted pro se projects is that the litigant ultimately represents him or herself in the legal matter.

Many pro bono programs in Texas already use this model as an efficient means of helping several low-income people with similar uncontested legal problems at one time, while preserving valuable attorney resources for more complex or contested legal issues. The most common example is an assisted pro se clinic for those with uncontested divorces. Pro bono and legal aid programs are often able to help ten or more low-income litigants at one time using only one or two attorneys to walk them through the process of completing forms, filing their case, obtaining service, and proving up their final divorce decree.

To date, the Assisted Pro Se Subcommittee has compiled a comprehensive list of assisted pro se programs in Texas. It has also finished its review and modification of the portions of an existing best practices guide that relate to assisted pro se programs and practices. The Subcommittee will now turn to offering technical assistance to programs who wish to learn more about assisted pro se projects or request help with starting a project.

Limited Scope Representation

Limited scope representation, also known as unbundled services, is the provision of discrete legal services to a client rather than handling all aspects of the client's case. A common

example is document review or preparation, where the attorney reviews or prepares pleadings and the litigant handles all other aspects of the case.

Limited scope representation increases access to justice for low-income people by allowing those who cannot afford full representation to get the help they need from a lawyer in a more affordable way. Limited scope representation is allowed in Texas under the Texas Disciplinary Rules of Professional Conduct 1.02(b), which states, "A lawyer may limit the scope, objectives, and general methods of representation if the client consents after consultation."

While the poor may not be able to afford a retainer fee, they might be able to afford the hourly rate that an attorney sets for specific discrete tasks. As such, limited scope representation has the potential to create a new market of clients from those who would otherwise not have hired an attorney. It can be a useful tool for attorneys who are trying to build a practice, or who prefer to focus on a particular aspect of their overall practice, such as drafting pleadings. However, the Subcommittee's experience has been that there is much confusion about limited scope representation among attorneys, suggesting that further education is needed.

Limited scope representation also promotes judicial efficiency and economy by increasing the number of pro se people who have access to an attorney. The result is a better prepared and more informed litigant, which reduces the time needed to move these cases through the judicial system.

It is important to remember, however, that limited scope representation is not appropriate in all situations, especially those that are very complex or highly contested.

Therefore, the purpose of the Limited Scope Representation Subcommittee is two-fold:

1. To educate and increase awareness among the judiciary, the bar, and those who cannot afford to hire an attorney about limited scope representation, including addressing common questions and concerns, and when it is inappropriate to use limited scope representation; and

2. To develop limited scope representation as a model of increasing access to justice for the poor by connecting attorneys who handle, or want to start handling, matters on a limited scope basis with low-income Texans.

The following work has been done by this Subcommittee towards these goals:

1. Research: Research on the experience of other states with limited scope representation has been conducted. The Limited Scope Representation Subcommittee is keeping up to date on current trends and developments, and updates its research accordingly.

2. Educational and Outreach Efforts

    a. **Information Sheets** – The Limited Scope Representation Subcommittee developed information sheets geared to lawyers and judges explaining what limited scope representation is, why it is beneficial, and covering common questions and concerns. This resource was included with other self-represented litigant materials at the Texas Association for Court

Administration conference in October 2011 and will continue to be distributed when possible. A second handout will be developed for people seeking to hire an attorney on a limited scope basis.

b. **Presentations** – In July 2011, the self represented litigant presentation at the annual State Bar Local Bar Leaders Conference included a breakout session for a discussion on limited scope representation. Participants voiced interest in participating in a training conducted by Sue Talia, a nationally-known limited scope representation expert. Participants currently providing limited scope representation described their experiences in a positive light, and common concerns and questions were voiced and discussed.

In early January 2012, the Education Subcommittee developed a stand-alone presentation on limited scope representation for local bar association audiences. It is described above under the work of the Education Subcommittee.

Future education and outreach plans include identifying key people in the local bar and judiciary to partner with in each community. The Limited Scope Representation Subcommittee seeks their advice and knowledge to facilitate local conversations with the local bar and judiciary and make live presentations on a local level. Other outreach strategies may include:

- Presenting at annual conferences and partnering with the State Bar to develop a CLE on how to best develop a limited scope practice;
- Helping local bars develop a resource for low-income people listing attorneys who handle matters on a limited scope basis;
- Helping local lawyer referral service providers create a limited scope representation referral panel; and
- Developing limited scope representation toolkits with sample retainer agreements, withdrawal pleadings and the like.

3. Limited Scope Representation Rules

a. **Texas Disciplinary Rules of Professional Conduct 1.02(b)** – The Commission's Rules Subcommittee reviewed and assessed the possible need for a rule change regarding limited scope representation. The Rules Subcommittee looked at the current limited scope representation rule, Texas Disciplinary Rules of Professional Conduct 1.02(b), as well as the ABA model rule and various rules in other states. Because the current rule allows for the practice of limited scope representation, the Rules Subcommittee did not recommend a rule change at this time. If, in the future, an explanatory comment or rule change appears necessary, the Limited Scope Representation Subcommittee will ask the Rules Subcommittee to revisit the situation, determine if any action is needed, and draft a proposal if needed.

b. **Local Limited Scope Representation Rules Efforts (not Efforts of the Limited Scope Representation Subcommittee)** – The Limited Scope Representation Subcommittee was asked by members of the Travis County bar and judiciary to review a limited scope rule they wished to propose on a local level. The Subcommittee reviewed the rule and gave its input. On October 19, 2011, the local rule was presented to the Travis County District

and County Court Judges for consideration. The judges supported the local rule and recommended it proceed to the Texas Supreme Court for approval.

The Commission and its SRL Committee were also asked to pass a resolution in support of local efforts to increase limited scope representation. The Commission and the SRL Committee voted to pass the resolution. The resolution was then presented to Travis County District and County Judges.

Self-Help Center and Services Subcommittee

The Self-Help Center Subcommittee provides technical assistance to courts and communities that are interested in developing or expanding self-help projects and have requested help in doing so. Self-help centers are a best practice because they increase judicial economy and efficiency by more effectively managing the ever-increasing numbers of pro se litigants moving through the courthouse. Self-help centers are typically established in courthouses or law libraries, and range from something as simple as an unmanned computer station where someone can access information or forms, to a full-service self-help center staffed by volunteer or staff attorneys.

Self-help centers reflect the needs and the resources of the particular community or court in which they are established. The local community, rather than the Self-Help Center Subcommittee, makes all the decisions regarding each aspect of their self-help center, including who the self-help center will serve and how it will be funded. For example, self-help centers can be established to serve only low-income pro se litigants or to serve all litigants regardless of income.

The Self-Help Center Subcommittee has developed a list of self-help centers available in Texas to serve as a contact list for those who wish to establish a similar center. The Subcommittee updates the list as needed. The Subcommittee will provide technical assistance to counties who request it. This assistance will be tailored to the needs and requests of particular jurisdictions.

Uniform Rules and Guidelines Subcommittee

The Rules Subcommittee researches and reviews possible rules, legislation, and policies that impact low-income self-represented litigants. The role of the Subcommittee is to:

1. Research and monitor the rule, legislative, and policy efforts of other states that impact self-represented litigants;

2. Research and review rule, legislative and policy issues as they arise within the other SRL Subcommittees; and

3. Make recommendations regarding the need for, or efficacy of, a proposed rule, legislative, or policy change.

To date, the Rules Subcommittee has not found the need for any rule, legislative, or policy changes in Texas.

The Rules Subcommittee has addressed the following issues:

1. Rule Regarding Uniform Forms: The Rules Subcommittee researched whether a rule was needed for any standardized forms that the Supreme Court might approve. The Subcommittee reviewed relevant Texas rules and procedures as well as what was done in the various states that currently have uniform forms. The Subcommittee learned that some states do not promulgate rules for their forms, while others have rules ranging from requiring court acceptance of forms to requiring self-represented litigants, and sometimes attorneys, to use the forms. The Subcommittee determined that a rule regarding forms was not necessary at this time. It will periodically review the need for such a rule in the future.

2. Provision Regarding Self-Represented Litigants in the Code of Judicial Conduct: The Rules Subcommittee researched whether revisions were needed to the current provision regarding self-represented litigants in the Code of Judicial Conduct. They looked at the American Bar Association model judicial rule, adopted by 12 states, as well as similar rules in other states. The Rules Subcommittee determined that the current Code of Judicial Conduct provision did not need revision. The Subcommittee felt that the issue of self-represented litigants is already on the minds of the judiciary and that education on what is and is not allowed under the Code of Judicial Conduct would be more helpful and timely. The Subcommittee plans to conduct further research on the effectiveness of judicial training alone in improving judicial efficiency regarding self-represented litigant issues.

3. Limited Scope Representation: As mentioned above, the Rules Subcommittee and the Limited Scope Subcommittee decided that no revision was needed to our current limited scope representation rule, Texas Disciplinary Rules of Professional Conduct 1.02(b).

The Rules Subcommittee is currently addressing the following issue:

1. Rule on Determining Indigence: The Rules Subcommittee is reviewing whether to propose changes to Rule 145 of the Texas Rules of Civil Procedure regarding determining indigence in civil courts. Currently, a person who qualifies for an affidavit of inability to pay costs in one court may not be deemed to qualify in another court.

Communications and Clearinghouse Subcommittee

The Communications and Clearinghouse Subcommittee is formulating a plan on how to communicate effectively with the judiciary, private bar, and general public about self-represented litigant issues. This subcommittee will also create a clearinghouse of available information and resources regarding self-represented litigants. Currently, the Subcommittee is collecting communications reports from the other Subcommittees to create a comprehensive communications plan.

EXHIBIT C

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9046

ORDER CREATING UNIFORM FORMS TASK FORCE

The Texas Access to Justice Commission, in collaboration with the Office of Court Administration, the Texas Legal Services Center, and the Texas Access to Justice Foundation, hosted the Texas Forum on Self-Represented Litigants and the Courts in Dallas on April 8-9, 2010. Over 120 attendees, including members of the judiciary, legal services attorneys, court clerks and administrators, and law librarians participated.

Participants at the Forum considered the impact pro se litigants have on the court system and evaluated tools to enable the courts to help pro se litigants navigate the legal system and to improve court efficiencies. An issue that arose consistently throughout the Forum was the need for statewide standardized forms for pleadings frequently used by pro se litigants.

The legal system functions most effectively when each litigant is represented by an attorney. But there are currently insufficient resources to meet the continually growing demand for civil legal aid. As a result, an increasing number of litigants will appear in courts pro se because they cannot afford an attorney and are unable to secure representation from legal aid.

The Court is concerned about the accessibility of the court system to Texans who are unable to afford legal representation. After consultation with the State Bar of Texas and the Texas Access to Justice Commission, the Court agrees that developing pleading and order forms approved by the Court for statewide use would increase access to justice and reduce the strain on courts posed by pro se litigants.

Accordingly, it is **ORDERED** that:

1. The Supreme Court Uniform Forms Task Force is created to:

a. monitor local efforts to create, amend, or modify forms and incorporate local efforts within the Task Force's purview;

b. evaluate best practices for the creation and distribution of forms;

c. consult with and seek input from stakeholders including the Texas Access to Justice Commission, the Texas Access to Justice Foundation, and legal services providers;

d. draft an implementation plan that will identify legal areas that would benefit from the availability of uniform pleading and order forms and that will make the forms readily available;

e. develop proposed models of uniform pleading and order forms to be evaluated and approved by the Court for statewide use.

2. The members of the Task Force shall represent, at a minimum, the judiciary, the private bar, legal services attorneys, court clerks and administrators, and law librarians.

3. The following members are appointed:

Stewart Gagnon, Houston
Hon. Tracy Gilbert, Conroe
Hon. Diane M. Guariglia, Houston
Casey Kennedy, Austin
Cristy Keul, Tyler
Hon. Marilea Lewis, Dallas
Karen Miller, Austin
Steve Naylor, Fort Worth
Lisa Rush, Austin
Hon. Phylis J. Speedlin, San Antonio
Ed Wells, Houston
Sheri Woodfin, San Angelo
Michael Wyatt, El Paso

4. The Task Force will deliver minutes of its meetings to the Court and report to the Court by September 1, 2011, on progress made and challenges faced, efforts underway to develop forms throughout the state and steps taken to incorporate those efforts into the Task Force's charge, forms that have been completed, documents to be developed and a schedule for creation of those documents, and best practices for use with statewide forms.

5. Justice Hecht is designated the Court's liaison to the Task Force.

Dated: March 15, 2011

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

EXHIBIT D

Pro Se Statistics

Nationwide

- 2009 survey by Self-Represented Litigation Network
  - 60% judges reported increase in pro se litigants in their courtrooms
  - Only 29% reported no impact, and many were criminal court judges

- Data on Unrepresented Litigants from *Documenting the Justice Gap in America*, an Updated Report of the Legal Service Corporation, September 2009

  - **Judicial Impact**:
    - References the 2009 Self-Represented Litigation Network study mentioned above.
  - **Unrepresented by Necessity**
    - 2005 study of pro se litigants in New York City Family and Housing Courts found that 57% had incomes under $20,000 and 80% had incomes under $30,000 per year.
    - 2003 California Report to the Legislature found that more than 90% of the 450,000 people who use court self-help programs in the state earn less than $24,000 per year.

- Maryland
  - Has very detailed data capturing information on SRLs who appear at any point in the case. They are able to capture very accurate data because reporting is tied to court funding.
  - 70% of cases involve at least one SRL at some point in the case.
  - Number of SRLs has remained steady over time.

- Oregon
  - Estimate 65% pro se in total family law. Based on a sample study data and extrapolated.

Texas

Data obtained from the Office of Court Administration, except poverty statistics and unless otherwise noted. Poverty statistics were obtained from Data from U.S. Census Bureau Small Area Income & Poverty Estimates (SAIPE). Data does not include pro se respondent filings, Title IV-D cases in which the parties are not represented, or post-judgment filings.

Total Cases Filed September 1, 2010 – August 31, 2011

- 57,597 family law cases in which petitioner filed pro se, representing 21.6% of total family law case filings
- 16,862 for other civil and probate cases in which petitioner filed pro se

Sample Counties:

- **Bell County (Central Texas)**
  - 27.4% total family law filings are pro se
  - 52.0% divorce filings are pro se, up from 40% in 2010 (*per the Bell County Clerk. Represents January 1, 2011 – December 31, 2011 time frame.*)
  - 20.9% increase in divorce filings over 5 year period from 2006-2010
  - 26.0% increase in poverty population over 5 year period from 2006-2010

- **Collin County (Northeast Texas)**
  - 34.8% total family law filings are pro se
  - 17.7% increase in divorce filings over 5 year period from 2006-2010
  - 44.4% increase in poverty population over 5 year period from 2006-2010

- **Galveston County (Southeast Texas)**
  - 54.0% total family law filings are pro se
  - 1.7% decrease in divorce filings over 5 year period from 2006-2010
  - 3.6% decrease in poverty population over 5 year period from 2006-2010

- **Midland County (West Texas)**
  - 36.9 total family law filings are pro se
  - 10.9% increase in divorce filings over 5 year period from 2006-2010
  - 10.7% increase in poverty population over 5 year period from 2006-2010

Family Law Filings in Counties with Population Size of 150,000 or more:

		Family (no post-judgment)		
County	2010 Population	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed
Harris	4,092,459	7,513	42,501	17.7%
Dallas	2,368,139	5,702	24,297	23.5%
Tarrant	1,809,034	4,139	19,119	21.6%
Bexar	1,714,773	3,421	21,594	15.8%
Travis	1,024,266	3,091	9,512	32.5%
El Paso	800,647	1,109	8,179	13.6%
Collin	782,341	2,301	6,609	34.8%
Hidalgo	774,769	880	7,408	11.9%
Denton	662,614	1,531	5,673	27.0%
Fort Bend	585,375	983	4,981	19.7%
Montgomery	455,746	1,321	4,979	26.5%
Williamson	422,679	1,241	3,925	31.6%
Cameron	406,220	421	4,083	10.3%
Nueces	340,223	793	4,226	18.8%
Brazoria	313,166	850	3,744	22.7%
Bell	310,235	1,526	5,569	27.4%
Galveston	291,309	1,874	3,470	54.0%
Lubbock	278,831	544	4,076	13.3%
Jefferson	252,273	458	3,329	13.8%
Webb	250,304	197	2,687	7.3%

McLennan	234,906	520	2,446	21.3%
Smith	209,714	684	2,854	24.0%
Brazos	194,851	73	296	24.7%
Hays	157,107	409	1,418	28.8%
Johnson	150,934	1,394	2,143	65.0%

Title IV-D Child Support Cases (custody and visitation are also determined in these orders)in 2011

- The OAG had 243,015 Title IV-D cases with legal filings or dispositions in calendar year 2011.
- 92.5% of non-custodial parents were pro se and 97.2% of custodial parents were pro se.
- A total of **461,147** non-custodial parents and custodial parents represented themselves or 94.9% of Title IV-D cases involved at least one pro se litigant.

TexasLawHelp Data, an online self-help website specific to Texas

- In 2011, TexasLawHelp.org had 596,555 visits, averaging 1634 visits a day.
- Top Forms:

Title	Page Views
Do-It-Yourself Court Forms Free	56221
Protective Order Kit	34794
Divorce Without Children in Texas	13200
Divorce With Children in Texas	11766
Divorce - Special Instructions for Filing in Travis County	7559
Common Questions About Divorce	6588
Affidavit of Inability to Pay Costs	5927

- User Income Levels:
  - 24% of LawHelp users make below $9,570 annually.
  - 62% of LawHelp customers earn less than $26,000 annually.
- Top Three Reason People Visit TexasLawHelp:
  - The main reason people visit LawHelp is to get forms that they download, print, and fill in later (43%).
  - The second reason is to obtain A2J forms, interactive forms that are completed online and printed (27%).
  - The third top reason people come to LawHelp is to find legal aid organizations (22%).
  - Divorce is by far the most popular resource people are looking for (66%), followed by child support (18%). No other category reaches more than 10%.
- User Demographics:
  - The majority of our users come from the following counties: Dallas (13.6%), Harris (11%), Tarrant (8.3%), and Travis (6%).

EXHIBIT E

September 1, 2010 through August 31, 2011
District and County-Level Courts

Statewide Totals

		Family (no post-judgment)			Civil			Probate		
County	2010 Population	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed
Statewide	25,029,490	57,597	267,095	21.6%	14,742	344,972	4.3%	2,151	88,540	2.4%

Data By County

		Family (no post-judgment)			Civil			Probate		
County	2010 Population	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed
Harris	4,092,459	7,513	42,501	17.7%	702	71,459	1.0%	0	10,875	0.0%
Dallas	2,368,139	5,702	24,297	23.5%	1,235	30,121	4.1%	89	6,183	1.4%
Tarrant	1,809,034	4,139	19,119	21.6%	54	15,668	0.3%			#DIV/0!
Bexar	1,714,773	3,421	21,594	15.8%	811	22,294	3.6%	38	23,459	0.2%
Travis	1,024,266	3,091	9,512	32.5%	421	19,711	2.1%	0	5,878	0.0%
El Paso	800,647	1,109	8,179	13.6%	623	8,476	7.4%	0	5,451	0.0%
Collin	782,341	2,301	6,609	34.8%	476	10,048	4.7%	17	1,602	1.1%
Hidalgo	774,769	880	7,408	11.9%	505	11,818	4.3%	373	1,517	24.6%
Denton	662,614	1,531	5,673	27.0%	346	8,422	4.1%	41	1,011	4.1%
Fort Bend	585,375	983	4,981	19.7%	104	7,101	1.5%	23	882	2.6%
Montgomery	455,746	1,321	4,979	26.5%	71	5,306	1.3%	51	1,269	4.0%
Williamson	422,679	1,241	3,925	31.6%	193	4,447	4.3%	29	772	3.8%
Cameron	406,220	421	4,083	10.3%	67	6,756	1.0%	33	629	5.2%
Nueces	340,223	793	4,226	18.8%	51	4,868	1.0%	50	871	5.7%
Brazoria	313,166	850	3,744	22.7%	382	4,314	8.9%	73	724	10.1%
Bell	310,235	1,526	5,569	27.4%	60	3,959	1.5%	25	672	3.7%
Galveston	291,309	1,874	3,470	54.0%	43	6,281	0.7%	25	991	2.5%
Lubbock	278,831	544	4,076	13.3%	83	3,271	2.5%	8	1,842	0.4%
Jefferson	252,273	458	3,329	13.8%	60	5,234	1.1%	2	1,121	0.2%
Webb	250,304	197	2,687	7.3%	50	4,075	1.2%	0	233	0.0%
McLennan	234,906	520	2,446	21.3%	66	3,929	1.7%	3	1,175	0.3%
Smith	209,714	684	2,854	24.0%	290	2,670	10.9%	5	667	0.7%
Brazos	194,851	73	296	24.7%	28	355	7.9%	4	130	3.1%
Hays	157,107	409	1,418	28.8%	30	1,910	1.6%			#DIV/0!
Johnson	150,934	1,394	2,143	65.0%	1,178	2,370	49.7%	29	454	6.4%
Ellis	149,610	2	1,589	0.1%	0	1,999	0.0%	0	338	0.0%
Ector	137,130	313	2,079	15.1%	104	1,786	5.8%	0	373	0.0%
Midland	136,872	606	1,642	36.9%	256	2,185	11.7%	19	510	3.7%

Guadalupe	131,533	221	1,173	18.8%		12	1,308	0.9%		11	321	3.4%
Taylor	131,506	362	1,922	18.8%		31	1,450	2.1%		7	416	1.7%
Wichita	131,500	148	1,815	8.2%		20	1,943	1.0%		136	436	31.2%
Gregg	121,730	306	1,887	16.2%		22	1,622	1.4%		5	408	1.2%
Potter	121,073	357	1,611	22.2%		98	1,871	5.2%		9	339	2.7%
Grayson	120,877	464	1,478	31.4%		43	1,702	2.5%		22	508	4.3%
Randall	120,725	317	1,385	22.9%		46	966	4.8%		12	381	3.1%
Parker	116,927	224	992	22.6%		44	1,625	2.7%		9	345	2.6%
Tom Green	110,224	176	1,375	12.8%		11	1,241	0.9%		2	554	0.4%
Comal	108,472	29	1,043	2.8%		0	1,521	0.0%		0	513	0.0%
Kaufman	103,350	333	1,274	26.1%		15	1,589	0.9%		6	211	2.8%
Bowie	92,565	199	1,441	13.8%		1	28	3.6%		0	286	0.0%
Victoria	86,793	228	1,134	20.1%		7	1,090	0.6%		4	286	1.4%
Angelina	86,771	300	1,133	26.5%		22	777	2.8%		3	271	1.1%
Hunt	86,129	358	1,098	32.6%		714	1,762	40.5%		11	289	3.8%
Orange	81,837	0	0	#DIV/0!		0	669	0.0%		7	354	2.0%
Henderson	78,532	312	960	32.5%		126	1,518	8.3%		13	150	8.7%
Rockwall	78,337	236	793	29.8%		195	1,201	16.2%		4	101	4.0%
Liberty	75,643	275	1,085	25.3%		153	987	15.5%		29	210	13.8%
Coryell	75,388	31	970	3.2%		2	448	0.4%		0	119	0.0%
Bastrop	74,171	225	743	30.3%		77	1,189	6.5%		11	221	5.0%
Walker	67,861	151	572	26.4%		67	949	7.1%		0	318	0.0%
Harrison	65,631	8	827	1.0%		16	994	1.6%		4	228	1.8%
San Patricio	64,804	142	817	17.4%		39	1,012	3.9%		0	164	0.0%
Nacogdoches	64,524	435	789	55.1%		101	569	17.8%		11	225	4.9%
Starr	60,968	5	617	0.8%		3	903	0.3%		0	47	0.0%
Wise	59,127	132	604	21.9%		22	1,172	1.9%		1	138	0.7%
Anderson	58,458	177	652	27.1%		22	493	4.5%				#DIV/0!
Hardin	54,635	1	745	0.1%		0	890	0.0%		0	271	0.0%
Rusk	53,330	1	76	1.3%		86	560	15.4%		11	242	4.5%
Van Zandt	52,579	296	695	42.6%		253	728	34.8%		14	196	7.1%
Hood	51,182	285	575	49.6%		98	916	10.7%		21	252	8.3%
Cherokee	50,845	293	597	49.1%		110	580	19.0%		144	148	97.3%
Lamar	49,793	182	670	27.2%		65	498	13.1%		1	39	2.6%
Kerr	49,625	105	546	19.2%		12	672	1.8%		5	308	1.6%
Val Verde	48,879	0	480	0.0%		8	447	1.8%		3	107	2.8%
Navarro	47,735	190	632	30.1%		167	791	21.1%		53	169	31.4%
Medina	46,006	108	495	21.8%		13	310	4.2%		0	0	#DIV/0!
Polk	45,413	583	749	77.8%		198	1,041	19.0%		15	211	7.1%
Atascosa	44,911	6	641	0.9%		0	874	0.0%		0	85	0.0%
Waller	43,205	97	421	23.0%		20	400	5.0%				#DIV/0!
Wilson	42,918	59	411	14.4%		39	404	9.7%		5	32	15.6%
Burnet	42,750	17	49	34.7%		1	244	0.4%		1	189	0.5%
Wood	41,964	0	473	0.0%		15	642	2.3%		4	200	2.0%
Wharton	41,280	305	498	61.2%		303	671	45.2%		7	139	5.0%
Jim Wells	40,838	0	686	0.0%		0	1,089	0.0%		0	87	0.0%

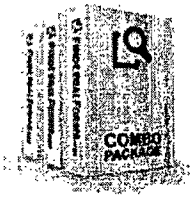
Upshur	39,309	100	509	19.6%	32	466	6.9%			#DIV/0!
Cooke	38,437	120	452	26.5%	85	436	19.5%	29	131	22.1%
Brown	38,106	93	587	15.8%	59	421	14.0%	5	167	3.0%
Caldwell	38,066	71	371	19.1%	34	269	12.6%			#DIV/0!
Erath	37,890	64	293	21.8%	216	571	37.8%	32	216	14.8%
Matagorda	36,702	79	443	17.8%	8	463	1.7%	0	122	0.0%
Hale	36,273	51	498	10.2%	4	271	1.5%			#DIV/0!
Jasper	35,710	186	507	36.7%	36	528	6.8%	5	149	3.4%
Hopkins	35,161	139	378	36.8%	122	529	23.1%	10	127	7.9%
Chambers	35,096	204	401	50.9%	294	701	41.9%	8	92	8.7%
Hill	35,089	118	296	39.9%	46	703	6.5%	0	136	0.0%
Howard	35,012	100	479	20.9%	7	434	1.6%	4	142	2.8%
Fannin	33,915	83	352	23.6%	6	403	1.5%	6	98	6.1%
Washington	33,718	56	307	18.2%	5	469	1.1%	0	187	0.0%
Kendall	33,410			#DIV/0!			#DIV/0!	2	125	1.6%
Titus	32,334	78	356	21.9%	231	662	34.9%	7	101	6.9%
Kleberg	32,061	68	179	38.0%	49	266	18.4%	6	88	6.8%
Bee	31,861	292	419	69.7%	194	366	53.0%	0	70	0.0%
Cass	30,464	81	429	18.9%	24	296	8.1%	13	128	10.2%
Austin	28,417	58	267	21.7%	5	227	2.2%	1	121	0.8%
Palo Pinto	28,111	366	372	98.4%	369	459	80.4%	47	93	50.5%
Grimes	26,604	0	247	0.0%	0	270	0.0%	0	26	0.0%
Uvalde	26,405	31	212	14.6%	37	292	12.7%	1	44	2.3%
San Jacinto	26,384	91	299	30.4%	21	466	4.5%	1	159	0.6%
Shelby	25,448	0	263	0.0%	0	350	0.0%	0	85	0.0%
Gillespie	24,837			#DIV/0!	0	45	0.0%	0	181	0.0%
Milam	24,757	39	294	13.3%	2	602	0.3%	3	102	2.9%
Panola	23,796	34	314	10.8%	6	308	1.9%	1	126	0.8%
Houston	23,732	8	151	5.3%	2	262	0.8%	0	91	0.0%
Limestone	23,384	30	322	9.3%	5	261	1.9%	3	93	3.2%
Aransas	23,158	19	300	6.3%	2	417	0.5%	0	133	0.0%
Hockley	22,935	53	604	8.8%	109	298	36.6%	49	71	69.0%
Gray	22,535	1	309	0.3%	0	442	0.0%	0	110	0.0%
Hutchinson	22,150	57	301	18.9%	2	305	0.7%	0	95	0.0%
Willacy	22,134	0	170	0.0%	5	407	1.2%	1	40	2.5%
Moore	21,904	16	242	6.6%	1	290	0.3%	0	72	0.0%
Tyler	21,766	225	280	80.4%	15	233	6.4%	60	113	53.1%
Calhoun	21,381	0	76	0.0%	0	90	0.0%	0	58	0.0%
Colorado	20,874	0	179	0.0%	0	268	0.0%	0	75	0.0%
Bandera	20,485	38	187	20.3%	3	278	1.1%	0	88	0.0%
Jones	20,202	0	116	0.0%	0	305	0.0%	0	52	0.0%
De Witt	20,097	8	209	3.8%	4	323	1.2%	0	111	0.0%
Freestone	19,816	6	166	3.6%	99	294	33.7%	11	77	14.3%
Gonzales	19,807	47	201	23.4%	14	269	5.2%	0	69	0.0%
Montague	19,719			#DIV/0!	0	55	0.0%	0	94	0.0%
Lampasas	19,677	4	245	1.6%	28	288	9.7%	0	75	0.0%

Deaf Smith	19,372			#DIV/0!	0	54	0.0%	0	5	0.0%
Llano	19,301	81	227	35.7%	15	449	3.3%	6	149	4.0%
Lavaca	19,263	0	151	0.0%	1	331	0.3%	0	87	0.0%
Eastland	18,583	201	208	96.6%	183	289	63.3%	88	88	100.0%
Young	18,550	128	339	37.8%	88	396	22.2%	13	87	14.9%
Bosque	18,212	189	317	59.6%	75	259	29.0%	7	100	7.0%
Falls	17,866	191	195	97.9%	76	138	55.1%	0	19	0.0%
Gaines	17,526	9	126	7.1%	1	148	0.7%	0	37	0.0%
Frio	17,217	0	244	0.0%	0	181	0.0%			#DIV/0!
Burleson	17,187	25	101	24.8%	2	103	1.9%			#DIV/0!
Scurry	16,921	33	148	22.3%	2	205	1.0%	0	83	0.0%
Leon	16,801	36	162	22.2%	12	256	4.7%	1	102	1.0%
Robertson	16,622	0	108	0.0%	1	255	0.4%	1	86	1.2%
Lee	16,612	11	50	22.0%	0	38	0.0%	0	58	0.0%
Pecos	15,507			#DIV/0!	0	36	0.0%	0	31	0.0%
Nolan	15,216	0	265	0.0%	0	335	0.0%	0	106	0.0%
Karnes	14,824	13	162	8.0%	11	364	3.0%	0	42	0.0%
Andrews	14,786	24	154	15.6%	19	167	11.4%	0	42	0.0%
Trinity	14,585	0	169	0.0%	10	180	5.6%	8	98	8.2%
Newton	14,445			#DIV/0!	0	9	0.0%	0	45	0.0%
Jackson	14,075	22	149	14.8%	0	282	0.0%	0	52	0.0%
Zapata	14,018	38	155	24.5%	4	168	2.4%	0	30	0.0%
Lamb	13,977			#DIV/0!	0	20	0.0%	0	64	0.0%
Comanche	13,974	16	159	10.1%	3	184	1.6%	0	63	0.0%
Dawson	13,833	5	124	4.0%	0	134	0.0%	0	44	0.0%
Reeves	13,783	11	146	7.5%	6	142	4.2%	0	27	0.0%
Madison	13,664	0	154	0.0%	36	287	12.5%	7	54	13.0%
Callahan	13,544	0	26	0.0%	0	53	0.0%	0	71	0.0%
Wilbarger	13,535	3	65	4.6%	1	191	0.5%	0	67	0.0%
Morris	12,934	49	189	25.9%	19	137	13.9%	1	49	2.0%
Red River	12,860	201	189	106.3%	133	149	89.3%	6	41	14.6%
Terry	12,651	25	178	14.0%	0	114	0.0%	0	5	0.0%
Camp	12,401	10	162	6.2%	0	95	0.0%	0	50	0.0%
Duval	11,782	8	105	7.6%	0	277	0.0%	0	21	0.0%
Zavala	11,677	0	157	0.0%	5	146	3.4%	0	12	0.0%
Live Oak	11,531	13	13	100.0%	20	54	37.0%	0	38	0.0%
Rains	10,914	30	119	25.2%	2	139	1.4%	0	40	0.0%
Sabine	10,834	40	138	29.0%	0	114	0.0%	0	46	0.0%
Clay	10,752	3	114	2.6%	2	76	2.6%	0	18	0.0%
Ward	10,658	3	152	2.0%	0	162	0.0%	0	43	0.0%
Franklin	10,605	27	93	29.0%	1	158	0.6%	2	61	3.3%
Marion	10,546	22	132	16.7%	13	150	8.7%	36	51	70.6%
Runnels	10,501	6	95	6.3%	2	124	1.6%	2	37	5.4%
Blanco	10,497	39	92	42.4%	12	127	9.4%	46	48	95.8%
Parmer	10,269	6	65	9.2%	3	134	2.2%	0	36	0.0%
Ochiltree	10,223	37	116	31.9%	29	101	28.7%	16	27	59.3%

Dimmit	9,996	1	108	0.9%		0	149	0.0%		0	22	0.0%
Stephens	9,630	12	129	9.3%		1	143	0.7%		0	78	0.0%
Mitchell	9,403	12	95	12.6%		5	141	3.5%		0	32	0.0%
Archer	9,054	18	75	24.0%		0	140	0.0%		0	36	0.0%
Jack	9,044	14	89	15.7%		0	68	0.0%		0	32	0.0%
Coleman	8,895	15	147	10.2%		19	177	10.7%		2	22	9.1%
San Augustine	8,865	0	80	0.0%		0	121	0.0%		0	63	0.0%
Hamilton	8,517	32	89	36.0%		20	95	21.1%		23	61	37.7%
Somervell	8,490	49	87	56.3%		43	140	30.7%		0	30	0.0%
McCulloch	8,283	4	90	4.4%		0	111	0.0%		0	48	0.0%
Yoakum	7,879	6	90	6.7%		0	96	0.0%		0	23	0.0%
Swisher	7,854	8	77	10.4%		4	75	5.3%		0	36	0.0%
Presidio	7,818	0	43	0.0%		0	88	0.0%		0	3	0.0%
Refugio	7,383	14	79	17.7%		22	141	15.6%		3	35	8.6%
Brooks	7,223	0	55	0.0%		0	93	0.0%		0	2	0.0%
Goliad	7,210	2	22	9.1%		13	76	17.1%		28	31	90.3%
Bailey	7,165	7	62	11.3%		4	80	5.0%		0	21	0.0%
Winkler	7,110	7	108	6.5%		1	82	1.2%		0	21	0.0%
Childress	7,041	0	73	0.0%		0	116	0.0%		0	27	0.0%
La Salle	6,886	0	55	0.0%		0	222	0.0%		0	8	0.0%
Floyd	6,446	37	84	44.0%		0	73	0.0%		0	34	0.0%
Carson	6,182	0	71	0.0%		0	280	0.0%		0	14	0.0%
San Saba	6,131	14	58	24.1%		5	65	7.7%		0	31	0.0%
Hartley	6,062	2	18	11.1%		1	54	1.9%		0	10	0.0%
Crosby	6,059	0	69	0.0%		0	47	0.0%		0	24	0.0%
Lynn	5,915	0	44	0.0%		0	108	0.0%		0	17	0.0%
Haskell	5,899	11	60	18.3%		2	79	2.5%		0	29	0.0%
Hansford	5,613	14	33	42.4%		4	65	6.2%		1	36	2.8%
Wheeler	5,410	4	58	6.9%		3	93	3.2%		0	23	0.0%
Jim Hogg	5,300	0	18	0.0%		0	45	0.0%				#DIV/0!
Delta	5,231	4	38	10.5%		2	107	1.9%		1	20	5.0%
Mills	4,936	5	44	11.4%		0	64	0.0%		0	32	0.0%
Kimble	4,607	3	48	6.3%		0	66	0.0%		0	32	0.0%
Crane	4,375	0	40	0.0%		0	38	0.0%		0	18	0.0%
Hardeman	4,139	0	46	0.0%		0	127	0.0%		0	0	#DIV/0!
Sutton	4,128	3	40	7.5%		0	30	0.0%		0	7	0.0%
Concho	4,087	0	17	0.0%		1	45	2.2%		0	14	0.0%
Mason	4,012	8	41	19.5%		5	49	10.2%		0	29	0.0%
Fisher	3,974	1	47	2.1%		0	100	0.0%		0	19	0.0%
Hemphill	3,807	0	31	0.0%		0	69	0.0%		0	20	0.0%
Baylor	3,726	0	41	0.0%		0	53	0.0%		0	0	#DIV/0!
Crockett	3,719	1	34	2.9%		1	48	2.1%		0	16	0.0%
Knox	3,719	0	41	0.0%		0	55	0.0%		0	23	0.0%
Donley	3,677	2	38	5.3%		0	58	0.0%		0	23	0.0%
Kinney	3,598	1	16	6.3%		0	86	0.0%		0	16	0.0%
Hudspeth	3,476	0	0	#DIV/0!		0	12	0.0%		0	0	#DIV/0!

Schleicher	3,461	0	19	0.0%	0	26	0.0%	0	8	0.0%
Shackelford	3,378	0	38	0.0%	0	64	0.0%	0	11	0.0%
Reagan	3,367	1	28	3.6%	18	76	23.7%	0	0	#DIV/0!
Upton	3,355			#DIV/0!	0	26	0.0%	4	133	3.0%
Hall	3,353	2	26	7.7%	1	77	1.3%	0	13	0.0%
Coke	3,320	8	27	29.6%	0	31	0.0%	0	0	#DIV/0!
Real	3,309	0	27	0.0%	0	40	0.0%	0	18	0.0%
Lipscomb	3,302	0	32	0.0%	0	45	0.0%	0	19	0.0%
Cochran	3,127	16	45	35.6%	4	27	14.8%	4	11	36.4%
Collingsworth	3,057	1	35	2.9%	0	94	0.0%	0	27	0.0%
Sherman	3,034	0	11	0.0%	0	27	0.0%	0	16	0.0%
Dickens	2,444	1	25	4.0%	0	20	0.0%	0	10	0.0%
Culberson	2,398	2	27	7.4%	3	58	5.2%	0	3	0.0%
Jeff Davis	2,342	0	14	0.0%	0	39	0.0%	0	2	0.0%
Menard	2,242	1	20	5.0%	0	33	0.0%	0	14	0.0%
Oldham	2,052	0	7	0.0%	5	36	13.9%	0	3	0.0%
Armstrong	1,901	0	15	0.0%	0	25	0.0%	0	9	0.0%
Throckmorton	1,641	4	11	36.4%	0	54	0.0%	0	10	0.0%
Briscoe	1,637	0	11	0.0%	0	71	0.0%	0	15	0.0%
Irion	1,599	0	0	#DIV/0!	0	5	0.0%	0	7	0.0%
Cottle	1,505	0	15	0.0%	0	29	0.0%	0	3	0.0%
Stonewall	1,490	1	11	9.1%	0	14	0.0%	1	6	16.7%
Foard	1,336	1	10	10.0%	0	7	0.0%	0	7	0.0%
Glasscock	1,226	0	1	0.0%	0	19	0.0%	0	4	0.0%
Motley	1,210	2	13	15.4%	0	13	0.0%	0	7	0.0%
Sterling	1,143	0	8	0.0%	1	21	4.8%	0	8	0.0%
Terrell	984	0	8	0.0%	0	5	0.0%			#DIV/0!
Roberts	929	2	9	22.2%	0	20	0.0%	1	8	12.5%
Kent	808	0	7	0.0%	0	14	0.0%	0	4	0.0%
McMullen	707	0	8	0.0%	0	59	0.0%	0	4	0.0%
Borden	641	0	4	0.0%	0	9	0.0%	0	2	0.0%
Kenedy	416	0	2	0.0%	0	149	0.0%	0	1	0.0%
King	286	0	0	#DIV/0!	0	0	#DIV/0!	0	2	0.0%
Loving	82	0	1	0.0%	0	11	0.0%	0	1	0.0%
Statewide	25,029,490	57,597	267,095	21.6%	14,742	344,972	4.3%	2,151	88,540	2.4%

EXHIBIT F



PREVIEW FORM

Divorce Forms Combo Package (with No Children)

View Reviews (2)

Price: $44.95

Select Your State

ADD TO CART

Overview | Specifications | Package Includes | Reviews

Going through a Divorce can be a very difficult time. You know that it is crucial to protect your rights and your property. This easy to use, attorney-prepared packet will help you understand better the process of divorce, and will provide you with forms necessary to go through a divorce.

Why pay more to buy forms one-by-one when you can get everything you need for a fraction of the cost? Our attorney-prepared packet contains our Divorce Forms for your state

With this attorney-prepared packet you will:

- **Avoid Headaches:** Know that you have all the forms you need
- **Save Money:** You won't pay expensive attorney's fee, and you won't pay for each form individually
- **Gain peace of mind:** Know that your forms are up-to-date and comply with the laws of your state

Writing a legal document yourself or using out-of-date forms can be a costly mistake. Protect yourself, your rights and your property - without expensive lawyer fees. Our Forms are prepared by attorneys, not just attorney-reviewed, up-to-date, and specifically designed for your state.

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Borrowing, Lending &...
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Contracts
Copyright
Corporations
Credit
Declarations
Deeds
Divorce & Separation
Employment
Entertainment Contracts ...
Events
Family Law
Government

Divorce Forms Combo Packages

Best Value - These attorney-prepared Divorce Forms Combo Packages are specifically designed to provide you many of the most frequently used forms and agreements needed in divorce proceedings. Including worksheets, petitions, agreements and more, for couples with or without children, these Combo Packages will save you time, money, and headaches. Available to download immediately.

Divorce Forms Combo Package - No Children

Divorce Forms Combo Package for Couples **without children**. Our experienced attorneys have created this Combo Package to help you navigate often complicated divorce laws, saving you time, money and headaches. Containing the most frequently used divorce forms in one convenient, easy to use and inexpensive package, this Combo Package is specifically for use by couples without children.

Divorce Forms Combo Package - With Children

Divorce Forms Combo Package for Couples **with children** for use in all states. As difficult as divorce can be, it is far more stressful when children are involved. This Combo Package, created by our experienced attorneys, will provide you with the forms and instructions to help you deal with often complicated laws and will save you time, money and headaches by providing all of the most frequently used divorce forms in one convenient, easy to use and inexpensive package. These forms are specifically designed for use by couples with children, to give you the tools you will need to navigate the process with them in mind.

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Affidavits
Assignments
Attorney Forms
Bankruptcy
Bill of Sale Forms
Borrowing, Lending &...
Business
Confidentiality
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Copyright
Corporations
Credit
Declarations
Deeds
Divorce & Separation
Employment
Entertainment Contracts ...
Events
Family Law
Government
Health Care
Homestead
Indemnity Agreements
Intellectual Property
Internet
Landlord & Tenant
Leases & Rentals
Letters
Limited Liability Co
Living Trusts
Living Wills
Name Change
Non-Compete
Non-Disclosure
Notices
Partnership
Power of Attorney
Promissory Notes
Real Estate
Receipts
Releases
Sales & Purchases
Technology
UCC Forms
Wills

Spanish Forms
Canadian Legal Forms

Legal Forms | FAQ

Divorce & Separation

Popular -These attorney-prepared Divorce & Separation Kits are specifically designed to provide you with the agreements and forms frequently used in divorce proceedings, all in one convenient location. These Kits contains property settlement, separation annulment forms, alimony forms, premarital agreements and more. Available to download immediately.

Divorce Forms Combo Packages

Best Value - These attorney-prepared Divorce Forms Combo Packages are specifically designed to provide you many of the most frequently used forms and agreements needed in divorce proceedings. Including worksheets, petitions, agreements and more, for couples with or without children, these Combo Packages will save you time, money, and headaches. Available to download immediately.

Divorce Petitions & Complaints

Popular - These attorney-prepared Divorce Petitions & Complaint Kits are specifically designed to be used when formally requesting from the court the termination of your marriage. These Kits include petitions and complaints for couples with children and without children, and include the guidelines and forms you will need to tailor to your unique situation. Available to download immediately.

Final Judgment & Decree of Divorce

Popular - This Final Judgment and Decree of Divorce includes the instructions you need to lawfully record the final judgment, decree and/or dissolution of your divorce. This document is the legally binding court order that declares that the marriage between the parties is dissolved and that the parties are restored to the status of being single. When you download this form, you will gain the benefit of our experienced attorneys at a fraction of the cost of hiring your own counsel.

Marital Settlement & Separation Agreements

Popular - These attorney-prepared Marital Settlement & Separation Agreements Kits are specifically designed for use by divorcing couples with or without children. These Kits contain the guidelines and forms to tailor a marital/settlement or property settlement agreement to your unique situation. Available to download immediately.

Postnuptial Agreements & Amendments

Popular - Postnuptial Agreements and Amendments for use in all states. These packets contain the instructions and forms you will need to draft a postnuptial agreement that specifically designates the distribution of your assets, as well as the form to amend an existing agreement. These attorney-prepared documents ensure compliance with governing laws, while helping you create an agreement that fits your unique needs.

Premarital (Prenuptial) Agreements & Amendments

Popular - These Premarital (Prenuptial) Agreements & Amendments will assist you and your fiance to set forth your rights and duties before getting married. Take advantage of the work of our experienced attorneys when you download these forms and gain the benefit of their legal expertise at a fraction of the cost of hiring your own legal counsel.

Alimony Past Due Notice

Alimony Past Due Notice is a written communication with your former spouse that serves the purpose of informing them that the alimony payment(s) that he/she is obligated to make has not been received and is now past due. Beyond the reminder of his/her obligation to pay alimony in a timely manner, an Alimony Past Due Notice provides a crucial written record of your efforts and the failure of your former spouse to meet his/her legal obligations. This form is available for download immediately in all states.

Annulment Package

Marriage Annulment Package for use in the State of Georgia. This attorney-prepared package contains the necessary forms to file a Petition for Annulment and other important factors to consider when annulling your marriage. By purchasing this attorney-prepared form you can protect your rights at a fraction of the cost of hiring an attorney.

EXHIBIT G

TexasLawHelp User
Income and Household Size Survey Results
February 1 - March 6, 2012

Household Size	125% Legal Aid Guideline	200% Food Stamps & LSC Guideline	below 9,570	9,571 - 12,830	12,831- 16,090	16,091- 19,350	19,351- 22,610	22,611- 25,870	25,871- 29,130	29,131- 32,390	33,391- 35,650	35,651- 38,910	38,911- 42,170	45,431- 50,000	Over 50,000	Totals
1	$13,963	$22,340	9	10	0	3	6	2	1	2	0	2	0	0	2	37
2	$18,913	$30,260	8	8	7	3	2	2	0	2	0	1	2	0	4	39
3	$23,863	$38,180	7	5	4	0	3	0	2	1	2	0	0	2	4	30
4	$28,816	$46,100	10	4	4	0	1	1	1	0	1	2	1	1	3	29
5	$33,763	$54,020	3	0	3	1	1	0	0	0	0	0	0	0	0	8
6	$38,713	$61,940	0	0	1	0	0	3	0	1	0	0	0	0	1	6
7	$43,663	$69,860	1	1	0	0	0	0	0	0	0	0	0	0	0	2
8	$48,613	$77,780	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Totals			38	29	20	7	13	8	4	6	3	5	3	3	14	153

Legend

124	81%	Meet Federal Poverty Guidelines & R145a
28	18%	Do Not Meet Federal Poverty Guidelines & R145a
1	1%	Uncertain if Meets or Does Not Meet Guidelines

Notes

1. Clients served through funds provided through the Texas Access to Justice Foundation to legal aid and pro bono providers must be at or below 125% of the federal poverty guideline, unless the client is a victim of crime (187.5% allowed) or a veteran (200% allowed)
2. Clients served through funds provided by the Legal Services Corporation, the federal funding source to the 3 largest legal aid providers, must be at or below 200% of the federal poverty guidelines
3. Food stamp eligibility is 200% of the federal poverty guidelines
4. Rule 145a of the Texas Rules of Civil Procedure states that a person qualifies for an Affidavit of Inability to Pay Costs if they are currently receiving a public benefit, e.g. food stamps

EXHIBIT H

Statewide Uniform Forms - All 50 states + D.C.

Executive Summary:

Total states + D.C. with standardized forms: 49

Total states requiring courts to accept forms if presented by litigant or lawyer: 37

Total states with family law forms: 48

Total states with divorce forms: 37

(31 states have divorce with children, 30 have divorce with real property, 33 have forms for custody matters, and 39 have forms for child support matters)

Total states with forms available online: 49

Total states which limit access to forms to low-income litigants only: 0

Total states with a self-help website: 39

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Totals	49	37		48	37	31	30	49	0	39
Alabama	Yes	------	State Bar created 25 forms and 20 Court approved forms: landlord/tenant, SAPCR, divorce	Yes	Yes	------	------	Yes	No	------
Alaska	Yes	------	18 different categories of forms including appeals. SRL forms issued in past 12 years	Yes	Yes	Yes	Yes	Yes	No	Yes
Arizona	Yes	Yes (protective order kit only)	12 categories of forms: divorce, small claims, appeals, eviction protective order, etc. & 16 Family Procedure Forms 01/2009	Yes	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	------	Protective order and some probate forms are approved by the Supreme Court. Other form kits for SRLs are provided by the ATJ Commission in collaboration with legal aid. While these forms are not court ordered, they are supported by the Court and widely accepted.	Yes- protective order Kit	------	------	------	Yes	No	------
California	Yes	Yes	Hundreds of forms in existence for over 30 years. Forms are accepted and required by all courts in the state.	Yes	Yes	Yes	Yes	Yes	No	Yes
Colorado	Yes	------	Adoption, family, domestic relations, appeals, probate, protective order, small claims, water, juvenile, criminal, civil, paternity, misc.	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Connecticut	Yes	Yes	Administrative, civil, criminal, family, general, housing, juvenile, probate, small claims, appellate, protective order	Yes	Yes	Yes	Yes	Yes	No	Yes
Delaware	Yes	Yes	Civil, family, criminal, traffic, appeals	Yes	Yes	Yes	Yes	Yes	No	Yes
D.C.	Yes	Yes	Family, domestic relations, protective order, civil, small claims, landlord/tenant, criminal, probate. Additional family law forms, including divorce forms, are provided on the Bar website	Yes	Yes	Yes	Yes	Yes	No	Yes
Florida	Yes	------	Family, probate, landlord/tenant, small claims, guardianship	Yes	Yes	Yes	Yes	Yes	No	Yes
Georgia	Yes	------	Juvenile, probate, protective order, criminal, domestic relations	Yes- protective order Kit	------	------	------	Yes	No	Yes
Hawaii	Yes	------	Family, civil, small claims, landlord/tenant, traffic, criminal, protective order	Yes	Yes***	Yes	Yes	Yes	No	Yes
Idaho	Yes	Yes	Family, landlord/tenant, name change, small claims, protective order, judicial consent to abortion.	Yes	Yes	Yes	Yes	Yes	No	Yes
Illinois	------	------	------	------	------	------	------	------	------	------
Indiana	Yes	Yes	Civil, criminal, and appellate matters. Started 10 years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Iowa	Yes	Yes	Civil, small claims, family, divorce, protective order, commitments.	Yes	Yes	------	Yes	Yes	No	Yes
Kansas	Yes	Yes	Civil, family, landlord/tenant, probate and juvenile. 20+ categories. 100+ forms.	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Kentucky	Yes	Yes	Probate and protective order form appear to be available for use by non-attorneys. All other forms (wide variety) available on Court's website appear to be for lawyers only. Bar provides ongoing divorce self-help clinics.	Yes- protective order Kit	------	------	------	Yes	No	------
Louisiana	Yes	Yes	Protective order forms available for attorneys and non-attorneys/victims of domestic violence.	Yes- protective order Kit	------	------	------	Yes	No	------
Maine	Yes	Yes	Consumer, civil, criminal, family, foreclosures, money judgment, protective order, small claims, protective custody, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Family, landlord/tenant, small claims, traffic, protective order, and more. Started 20+ years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Massachusetts	Yes	------	Family, limited scope representation, probate, small claims, landlord/tenant, municipal courts.	Yes	Yes	Yes	Yes	Yes	No	Yes
Michigan	Yes	Yes	Adoption, civil, criminal, guardianship, protective order, name change, emancipation, parental consent, juvenile, mental commitment, probate.	Yes	------	------	------	Yes	No	Yes
Minnesota	Yes	Yes	33 categories including divorce, protective order, traffic, small claims, bankruptcy, etc. Packets started being developed in mid-1990's. Court and Bar studied and concluded forms were needed.	Yes	Yes	Yes	Yes	Yes	No	Yes
Mississippi	*forms are currently in develop-ment*	------	------	------	------	------	------	------	------	------

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Missouri	Yes	Yes	Family: divorce, modification of protective order and custody, name change and paternity. SRLs MUST USE these forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Montana	Yes	------	Over 50 categories of forms including family law, discovery, appeals, protective order, landlord/tenant, probate, taxes, small claims.	Yes	Yes	Yes	Yes	Yes	No	Yes-Bar
Nebraska	Yes	Yes	Appeals, court records, children and family, estates, financial/medical, parental consent waiver, general trial procedure, guardianship, name change, small claims, worker's comp and protective order.	Yes	Yes	Yes	------	Yes	No	Yes
Nevada	Yes	Yes	Civil, protective order, family, guardianship, landlord/tenant, appellate, divorce.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Hampshire	Yes	Yes	Appeals, divorce, domestic relations, child welfare, juvenile, adoption, estates, guardianship, probate.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Jersey	Yes	Yes	Civil, criminal, family, municipal, landlord/tenant, tax, appellate, foreclosures, small claims, juvenile, protective order.	Yes	------	------	------	Yes	No	Yes
New Mexico	Yes	Yes	Civil, criminal, municipal, landlord/tenant, guardianship, domestic relations.	Yes	Yes	Yes	Yes	Yes	No	Yes
New York	Yes	Yes	Family law, divorce, protective order, criminal, and variety of civil forms. Civil forms have been used for decades.	Yes	Yes	Yes	Yes	Yes	No	Yes
North Carolina	Yes	------	Criminal (88), civil (131), protective order, child support, paternity, juvenile. Divorce packets and self-help center provided at local district court level.	Yes	Yes	------	------	Yes	No	------

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
North Dakota	Yes	Yes	Appeals, child support, visitation, guardianship, probate, protective order, small claims, simple divorce.	Yes	Yes	------	------	Yes	No	Yes
Ohio	Yes	Yes	Protective order and some custody & support forms. Other domestic relations forms, including simple divorce forms, are provided by local courts.	Yes- protective order Kit	------	------	------	Yes	No	------
Oklahoma	Yes	Yes	Protective order, child support, civil, appeals, criminal appeals.	Yes	------	------	------	Yes	No	------
Oregon	Yes	Yes	300+ family law forms, small claims, landlord/tenant, some criminal. Coalition of family law lawyers sought legislative mandate to create forms. Maintained by the Family Law Council, State Court Administrator and State Court Advisory Committee.	Yes	Yes	Yes	------	Yes	No	Yes
Pennsylvania	Yes	------	Probate, foreign adoptions, appeals, civil, landlord/tenant, expungements. Other forms including family law and divorce forms are provided at local court level.	------	------	------	------	Yes	No	------
Rhode Island	Yes	Yes	Administrative appeals, civil, family, landlord/tenant, traffic, pre-trial. Limited family law forms. Criminal and small claims forms are "coming soon."	Yes	------	------	------	Yes	No	Yes
South Carolina	Yes	Yes	Some civil and simple divorce created for SRLs. Divorce forms: uncontested, no kids, no property, But the SRL can modify the forms to include kids and property and contested matters. Also a lot of court-approved forms that are geared to attorneys.	Yes	Yes	------	------	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
South Dakota	Yes	------	Protective order, divorce, name change, parenting time, civil	Yes	Yes	Yes	Yes	Yes	No	Yes
Tennessee	Yes	Yes	Divorce no kids, no property were approved by the Supreme Court in 2011. They are the only Court approved forms. Tennessee's OCA has developed other forms available to lawyers and non-lawyers, but they have not been approved by the Court. These OCA forms include: protective order, child support, criminal, probate, small claims, traffic.	Yes	Yes	------	------	Yes	No	Yes
Texas	Yes	Yes	Protective Order Kit in 2005	Yes-protective order Kit	------	------	------	Yes	No	------
Utah	Yes	Yes	Divorce, child support, enforcement, protective order, landlord/tenant, guardianship, parentage, probate, small claims, expungement.	Yes	Yes	Yes	Yes	Yes	No	Yes
Vermont	Yes	Yes	Civil, small claims, family, protective order, criminal, probate, name change, guardianship, partner adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
Virginia	Yes	Yes	Protective order, traffic, paternity, child support, juvenile, mental health, civil.	Yes	------	------	------	Yes	No	------
Washington	Yes	Yes	Divorce, custody, child support, protective order, juvenile, title, financial, criminal, adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
West Virginia	Yes	Yes	Divorce, family, appeals, child support, custody, protective order, guardianship,	Yes	Yes	Yes	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Divorce, family law, small claims, name change, juvenile, probate, protective order, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Divorce, child support, child custody.	Yes	Yes	Yes	Yes	Yes	No	Yes

EXHIBIT I

Continuum of Legal Assistance

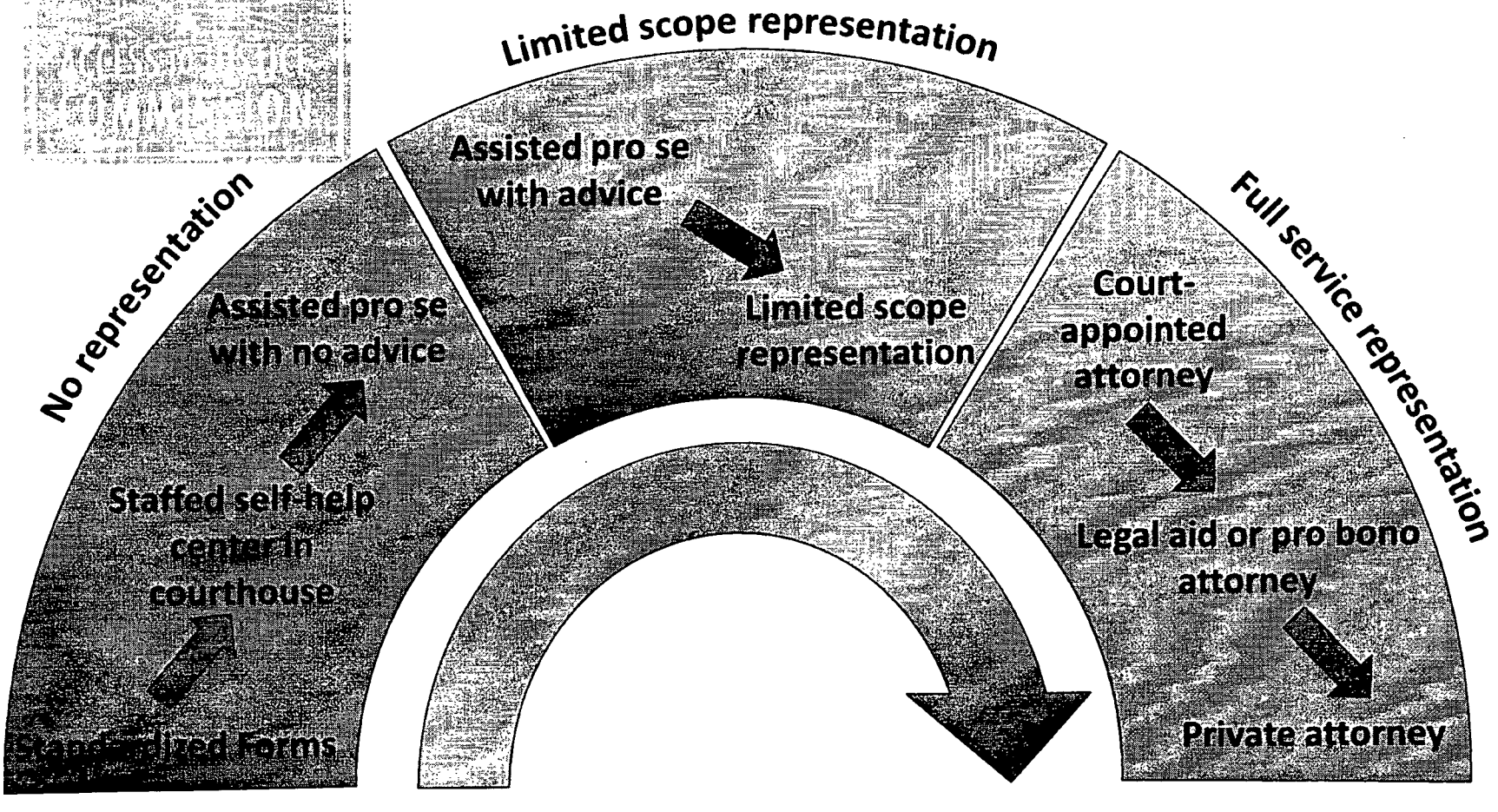

EXHIBIT J

State Responses on Standardized Forms

Commission staff has conducted extensive research on the availability of standardized forms in all 50 states and the District of Columbia. This information is a compilation of interviews with representatives from 22 states who were involved in the promulgation of their state's forms.[1]

1. **Is there any evidence that forms have harmed the public?**
   - No state reported any evidence of harm to the public. Not one person interviewed knew of a litigant who had been hurt by using the standardized forms.
   - States reported benefits to self-represented litigants. Many states echoed **Kansas**, which reported "There already were a wide number of forms being used by the public before we made our forms available. The public was downloading the forms off the internet or purchasing at local stores. Many of these are not Kansas specific and do more harm to the public than the forms we developed."

2. **What has been the impact of state forms on the ability of lawyers to earn a living?**
   - No state reported any evidence that the forms negatively impacted lawyers' businesses.
   - Many states reported that forms positively impacted attorney businesses.
   - **Maryland**'s observations:
     - Attorneys could attract more clients by cutting fees and having clients prepare their initial filings while the attorney focused on the more complex matters involved in the case.
     - While forms and self-help centers are good at initiating a case, litigants still have challenges navigating the process, especially in contested trials and complex matters. Lawyers benefit from the state's efforts with self-represented litigant by referring litigants to the self-help center to complete a portion of the case on their own and then recommend the litigant hire the lawyer to handle other portions.

3. **Are the forms restricted to use by the poor?**
   - No state has restricted the use of state forms to the poor.
   - All states report that the majority of litigants accessing various self-represented litigant services are low-income.
   - Many states' access to justice commissions helped develop the state's forms.

4. **What is the impact on judicial efficiency and economy?**
   - All states report an increase in judicial efficiency and economy.
   - Susan Ledray, Senior Pro Se Services Manager, Hennepin County Courts, **Minnesota**, stated:
     - "Forms result in the judge getting the information she needs, instead of struggling to make sense of free-form documents filed by self-represented litigants.

[1] The states interviewed were: Alabama, Alaska, Arkansas, California, Delaware, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New York, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, and Washington.

- Staff and judges get used to the forms and where to find the information, and this makes it faster and easier to review forms before and during hearings.
- Form blanks that are not filled in draw attention to the fact that information is missing – while with a customized pleading, the court might not realize at the most opportune time that something is lacking.

- Court staff save a lot of time when able to refer people to written forms and instructions, instead of trying to explain, write notes, or get into an unpleasant conversation with a person who is angry that 'you won't do your job and answer my questions.'"

- Every state indicated that pro se litigation is not increased by the promulgation of uniform forms; the forms only make the process more efficient for the courts. Nancy Strauss, Director of Judicial Council of **Kansas** stated, "They are going to be representing themselves anyway so we might as well give them some tools so it's not a nightmare for all of us."

5. **How have state bars been involved in their state's efforts to assist pro se litigants?**
   - A variety of state bars have been actively involved in efforts to address the problem of pro se litigants. State bars are involved in all levels of pro se programs.
   - In **Michigan**, the self-help website is administered by the state bar.
   - In the **District of Columbia** and **Minnesota**, the state bar actively promulgates and distributes uniform forms.
   - Uniform forms were promulgated by the State Bar of **Alabama**. In 2005, the state bar appointed a task force to determine if there was a problem with self-represented litigants in the court system. The Task Force studied the issue and arrived at the conclusion that Alabama indeed did have a problem with pro se litigants. The Task Force recommended two courses of action that could be completed without a large expenditure: 1) creating standardized forms and 2) implementing a rule and other tools to further limited scope representation. The Bar approved the Task Force to proceed on creating standardized forms.
   - In **Oregon,** it was the Family Law Section of the state bar that initially recommended that uniform forms be created. The forms were created as a joint effort between the Family Law Council, the State Court Administrator, and the State Court Advisory Committee. There are now over 300 family law forms in existence in that state.
   - In addition, the **American Bar Association** has a pro se resource center located on their website to assist state bar associations with programs aimed at the pro se population.

6. **Has the private bar opposed the promulgation of uniform forms in any organized fashion in other states?**
   - States like **Nebraska** and **South Carolina,** which have experienced significant opposition, involved their opponents in the process and in the end came up with better forms. Robin Wheeler, Director of the South Carolina Access to Justice Commission stated that the opponents' "feedback was incorporated into the forms and ultimately made them better."
   - While some states indicated that there were grumblings here and there by individual attorneys or judges, the Commission's research did not yield any other states that face organized opposition to uniform forms by the private bar.

EXHIBIT K

We have received the following two questions from Carl Reynolds, Administrative Director of the Texas Office of Court Administration, regarding the use by self-represented litigants of state-approved forms for matters such as uncontested divorce:

1. Have you seen evidence that using the forms has harmed individuals or the public?

2. What is the impact of using the forms on judicial and court efficiency?

State/Respondent	Response
Alaska/Stacey Marz	I am the Alaska Court System Director for the self-help program and draft the forms for use by self-represented litigants so Christine Johnson asked me to respond to the questions about usage of self-help forms. **1. Have you seen evidence that using the forms has harmed individuals or the public?** No, we have seen no evidence that using self-help forms has harmed individuals or the public. The Alaska Court System has been providing self-help forms for many years. Our self-help center was created in 2001 and began producing many forms to be used specifically by self-represented litigants. See www.courts.alaska.gov/shcforms.htm for a list of family law forms designed for self-represented litigants and www.courts.alaska.gov/shc/appeals/appealsforms.htm for a list of forms for civil appeals to the Alaska Supreme Court. The court system also provides forms in other case types: www.courts.alaska.gov/forms.htm. These forms have increased the ability of self-represented litigants to access the courts to resolve their legal matters. **2. What is the impact of using the forms on judicial and court efficiency?** Judges report that filings are more complete and include more relevant information about the issues in the case. In fact, in custody family law cases, the judges regularly issue final findings and conclusions of law and decrees on forms designed to be filed by self-represented litigants. Judicial officers routinely use other self-help orders designed for self-represented litigants. They appreciate the fill-in-the blank and check box formatting and the inclusion of all necessary provisions. Judges have also reported that filings on self-help forms are sometimes better than those drafted by attorneys.

	Court clerks report a reduced need to issue deficiency notices because the fill-in-the blank forms address many common problems (they are formatted correctly and include certificate of service sections) that historically have caused documents to be deemed deficient filings because of non-compliance with court rules.
Arizona/Dave Byers	I have never heard of any instance of harm due to the forms....Of course regardless of the forms, pro pers can make mistakes in filings and what they request (e.g. not asking for a portion of a pension) The impact of the forms on the court are all positive...They are legible. Instructions help make forms more complete...
California/Bonnie Hough	I am responding to the question you posed regarding the usage of self-help forms on behalf of Mr. Ronald Overholt, Interim Administrative Director of the Courts. California has used standard forms since the 1970's. We currently have about 1,400 forms that have been approved by the Judicial Council including translations of those that are most commonly used by self-represented litigants. For a list of all forms and link to each, please see: http://www.courts.ca.gov/forms.htm The procedure for adopting a rule or form is attached. The Judicial Council adopts legal forms in one of two ways. Under Government Code section 68511, the council may "prescribe" certain forms. Use of those forms is mandatory. The council may also "approve" forms. Use of an approved form is not mandatory, but the form must be accepted by all courts in appropriate cases (rule 1.35). Forms thus are "adopted" for mandatory use and "approved" for optional use. Some forms are for information only (including all translations). Most forms can be downloaded to a local computer and filled out. They are also available at clerks' offices, law libraries, and self-help centers. Parties can also print any form and fill it out by hand. See the section on the website re: "How to fill out court forms."

	We have no evidence that forms have hurt litigants in any way. Judges, clerks and practicing attorneys generally find them extremely helpful as they know where to look on forms for the information they need and do not have to worry about basic issues not being set out before the court. Self-represented litigants can prepare appropriate pleadings – often with the guidance of an attorney. Cases such as divorce, child support, domestic violence, small claims, guardianship, conservatorship, probate, adoption and a wide variety of other matters precede primarily using forms. It saves a huge amount of time in training and judicial review to know that the key elements are set forth in the forms. We have a relatively small number of judges given our population and I think that part of the reason that the system works is because of standardized forms. While we have a large number of self-represented litigants in California, our figures do not seem to be different than in most other states that report that data. We also have many litigants who may not be able to afford an attorney for the entire case, but are able to get help with a portion of the case, including completion or review of forms.  howprorule.pdf
Guam/Geraldine Amparo Cepeda	The inquiry was the effects of the use of state-approved forms by self-represented litigants. Here is the response from the Judiciary of Guam: The Judiciary of Guam has self-help computer kiosks that allow self-represented litigants to complete pre-approved forms, which are then printed and filed by these litigants. **Have you seen evidence that using the forms has harmed individuals or the public?** No, the court has no evidence that the use of the self-help kiosks and forms has resulted in any harm. Those who cannot afford an attorney but do not qualify for assistance from Guam Legal Services are able to generate court filings for less

	complex court proceedings, such as guardianships and uncontested divorces. **What is the impact of using the forms on judicial and court efficiency?** The impact on members of the public who use the kiosks and the forms has been positive. They are able to represent themselves in less complex court proceedings, and save money. The impact on efficiency in the court system has been positive as well, because the court documents generated by the kiosk are correct and in proper format for filing. As a result, there is no hold up in the filing process.
Idaho/Michael Dennard	1. **Have you seen evidence that using the forms has harmed individuals or the public?** No. We try and limit our forms to court proceedings which are not complex, although that is difficult to do in family law cases which have the greatest need for assistance and the greatest inability to retain legal counsel. While there might be an occasional circumstance where instructions are not followed, or errors occur, the same thing happens in cases where the parties are represented by attorneys. Our goal is to provide access to the courts for citizens of limited means who are unable to retain legal counsel. If there were adequate resources for these people to assist them in retaining counsel, we would not have to provide this kind of assistance for self-represented parties. But the reality is, there is no other option. The "harm" to the public would be to provide no help for those unable to retain an attorney. For those who have dealt with this issue for many years, the argument that providing access to justice through court approved forms "harms" the public is very disingenuous. 2. **What is the impact of using the forms on judicial and court efficiency?** If statistics are examined for the past 10 to 15 years, in particular in family cases, one will see an extremely high and consistent rate of self-representation. This is not the result of any action or inaction on the part of the courts, but driven by the high cost of legal representation in proceedings where parties have no choice but to go to court. Prior to our use of court approved forms, these parties were trying to create their own forms, or using inadequate or inappropriate forms they found from a variety of sources, which did nothing but frustrate court staff and judges who had to deal with the problems created by those documents. By having correct forms and instructions approved by the courts, these issues have diminished greatly. Less time is spent correcting or redirecting the self-represented litigants by court staff and judges, and matters are resolved more quickly and efficiently. But the greatest "impact" on the judiciary, however, is the appreciation expressed by the public and the public's very appropriate perception that everyone is ensured access to justice in our courts.

Indiana/Camille Wiggins	Here are several responses from Indiana per your request to the COSCA listserv: In response to your email dated February 8, 2012, to Indiana Supreme Court Division of State Court Administration Executive Director, Lilly Judson, I forwarded the survey questions to our SRL Committee for response. Our Committee is comprised of judges, lawyers, court librarians, legal service organizations, court clerks, law schools, and pro bono organizations. Below you will find the responses received from several of the Committee members: From judges..... People tend to use the forms without a full understanding of what they are supposed to be used for. They also think that once they file the forms their relief will either be automatically granted or the Court or court staff will assist them through the process. Many people do not bother to read or follow the directions that accompany the forms. They become frustrated when they cannot get the relief they are requesting. The impact on the Court and judicial efficiency is that court staffs are glad to be able to refer people to the website for forms. However, the staff is not sufficiently aware that there are not forms available to fit all situations. The litigants return to the court frustrated that they cannot find the correct forms or resort to using the wrong forms just to get something on file. We often go in to Court to hear an emancipation only to discover that the moving party is seeking modification of custody or some other relief. I don't think the answer is creating forms to fit more situations. Litigants need to understand the limitations of the website. ——— The forms help separate the simple cases that can be done with little or no professional assistance, from the more complicated matters that genuinely require legal specialist and other professional guidance. ——— Please allow me to respond to your questions in reverse order. The forms generally save the court time in two ways. First, they are recognizable as pleadings, which mean I do not spend as much time guessing what the litigant wants. Second, the forms are a huge improvement over handwritten pleadings because they are much easier to read. I do not believe that the forms have harmed individuals or the public. Litigants are harmed by incomplete forms, missing important information or issues, and lack of understanding the legal process. As long as people are self represented, that is not likely to change.

	The existence and use of the forms is incidental to that problem. That said, having the forms may give some persons a false a sense of security that can be risky. The philosophical question of whether it is better to let people engage in legal combat where they may be overmatched and "outgunned" or not let them get into the fray at all is for those wiser than me. ***From a court clerk.....*** ***Have you seen evidence that using the forms has harmed individuals or the public?*** *no* ***What is the impact of using the forms on judicial and court efficiency? Our Courts really appreciate the forms. Without them pro-se litigants turn the Court and Clerk staffs into interpreters.*** From pro bono organizations.... Harm? I don't believe that I have ever seen the forms themselves result in harm to litigants that would not have occurred regardless. Certainly, litigants mis-use the forms sometimes, use them for the wrong reasons, or try and modify them to fit a situation that they aren't designed to address, but they would likely do that regardless of the existence of our court forms (using forms from the internet or other sources or no forms at all). There are times when litigants don't read the directions or understand the implications of court actions, but that is not the fault of the forms. That is the fault of a society that doesn't have adequate access to counsel – which is a different issue entirely. I do think litigants are sometimes frustrated that our forms cannot work the magic they hope and pray for. Efficiency? The forms have absolutely improved judicial and court efficiency, especially since the advent of the new versions that help litigants only use the appropriate forms for their specific situation (no more filing for both and final hearing and a waiver of the final hearing because they are in the same packet). When combined with pro se assistance, we have seen the number of continuances in litigated matters drop substantially with litigants completing matters more quickly and with fewer scheduled hearings. ***Have you seen evidence that using the forms has harmed individuals or the public?*** I have not seen any such evidence. All feedback to me has been positive. ***What is the impact of using the forms on judicial and court efficiency?*** I do not work in the courts but the pro bono plan administrators' observation is that the forms increase court efficiency and access to justice.

Iowa/John Goerdt on behalf of David Boyd	David Boyd asked me to respond to this inquiry. The Iowa courts have offered a form for filing a small claims case for at least 15 years. In 2007, the Iowa courts began offering forms and instructions for self-represented parties in a divorce that does not include children. In 2008, our courts also began providing forms and instructions for parties involved in a proceeding to modify child support only. The committee that developed these forms expects to complete the forms and instructions for a divorce involving children sometime during 2012. You can find the forms and instructions for domestic relations cases on the Iowa courts' website at: http://www.iowacourts.gov/Representing_Yourself/DivorceFamily_Law/index.asp **1. Have you seen evidence that using the forms has harmed individuals or the public?** We have not received any complaints or feedback from the public or judges that use of these forms has harmed any individuals. Many or most of the people who have used the forms and instructions developed by the Iowa judicial branch would have found forms someplace (e.g., on the internet or at Walmart) -- and those generic forms often do not meet some specific requirements under Iowa law. By using the forms and instructions approved by the Iowa Supreme Court, parties and judges can be confident that the forms and instructions meet the requirements of Iowa law. Consequently, the forms and instructions probably prevent harm, rather than cause harm. It should be noted that at approximately the same time when the forms and instructions for divorce without children were released (in 2007), the supreme court amended the Code of Professional Conduct for attorneys to allow them to handle just part of a case (i.e., unbundled legal services), rather than requiring them to handle everything in a case from start to finish. The instructions that accompany the forms for self-represented litigants encourage the parties to consult with an attorney whenever they have questions about a form or procedure described in the instructions. **2. What is the impact of using the forms on judicial and court efficiency?** Under the Iowa Court Rules, a self-represented party who uses forms in any case for which the supreme court has made forms available must use the approved forms. The forms are very simple and clearly explained by the instructions. Use of these forms almost certainly increases the likelihood that self-represented parties provide the type of information judges need to make decisions and move the case to the next step. Judges also know exactly where to find the information they need on the forms because the forms are standardized. Consequently, the forms and instructions have almost certainly increased the courts' efficiency in handling cases involving self-represented parties.

Massachusetts/Kim Wright	Your inquiry to Listserv members regarding questions from Carl Reynolds regarding self help forms has been referred to me relative to a question about Probate and Family Court forms. We have a court promulgated form for filing an uncontested divorce, a Joint Petition, but we do not provide a form for the agreement that must be submitted with it that contains all the substantive information about the parties agreement relative to custody, visitation, child support, property division etc. We have various other complaint and petition forms for other case types available at our courthouse and some on our website. Please feel free to contact me with further questions.
Michigan/Amy El Garoushi	I am responding from Michigan. We have not yet started using court-approved forms for divorce proceedings in Michigan. We are in the process of developing them now for use with a pilot website being developed by the Michigan Poverty Law Program through a project funded by the State Bar Foundation and overseen an advisory group established by the Solutions on Self Help Task Force. The use of these forms and the website will be evaluated for effectiveness and impact on the judiciary in the upcoming year. If you would like more details, you can contact Angela Tripp of the Michigan Poverty Law Program. Feel free to contact me for more information.
Missouri/Greg Linhares	Missouri has no survey or other empirical data to determine if the public or individuals have been harmed by our forms, nor do we have such information to determine impact on court efficiency. Anecdotal evidence suggests both benefits and drawbacks to use of such forms in Missouri, with improved access to court process for pro se litigants being identified anecdotally as a benefit, and improper use of forms or improper attempts to represent oneself when an attorney should be used being identified anecdotally as a drawback.
Montana/Erin Farris	I am responding to this message on behalf of the Montana Supreme Court Court-Help Program. As the current Program Administrator, these comments are a reflection of the feedback I receive from clerks of court and judges statewide regarding the State's provision of forms for self representation. ***Have you seen evidence that using the forms has harmed individuals or the public?*** I cannot report a single incident where the use of self represented forms created and distributed by the State has harmed

	a self represented litigant. Although form development is challenging, especially in light of legal progress, obstacles encountered by self represented litigants are only made easier by the State's provision of forms. A large contributing factor to Montana's success in form development and distribution is the administrative safeguards in place. The Montana Supreme Court has a Commission on Self Represented Litigation. One of the purposes of the Commission is to approve form development and revisions. The Commission has a process of determining what materials are most appropriate for self representation and endorses the development of only those forms. The Commission also delegates legal experts to review form content. The decision of whether to provide forms on a particular subject often hinges on whether the materials might put the litigant at risk of harm due to predictable or unpredictable legal outcomes. An example of near harm created by self representation forms was due to a litigant's utility of a form found from a foreign online source. The forms used were not provided by the State. This was only a situation of near harm because the presiding judge was able to identify the unfamiliar form and consult community and State resources about its inappropriateness. Through the provision of well defined state approved forms and communication with the court, Court based legal programs act as a safeguard to the multitude of misinformation available to people through various online legal resources. ***What is the impact of using the forms on judicial and court efficiency?*** Prior to the provision of forms, litigants were largely undirected. Given the relative unpreparedness of an individual attempting to navigate the court system, court staff had a very difficult time administering justice. Judges found themselves in uncomfortable positions in the court room; making difficult decisions in answering litigant questions and instructing litigants on filing. Clerks of court similarly had to regularly instruct litigants on filing requirements. Judges observations are that the State's provision of forms dramatically increased court efficiency by enhancing the effectiveness of scheduling and completing effective court hearings. However, complaints about forms are ongoing. Judges complain the "one size fits all" approach to form development results in overly lengthy forms. Judges have also complained that the forms are unconstructively vague. However, the solution in those jurisdictions has not been to abandon forms. Rather, judges developed county or district specific forms to address their concerns. Clerks of court are extremely appreciative of state wide form provision. Prior to form development, clerks of court would receive multiple visits from self represented litigants in their jurisdictions and found it very difficult to manage their time and avoid instructing individuals on filing instructions from the counter. Many clerks describe the ability to direct individuals to state forms as an option they couldn't do without. Some clerks have fully endorsed forms to the extent of

	actually providing printed forms to litigants at the clerk counter. I hope this brief description of our experience is helpful to your research. Feel free to contact me if you have additional questions. For a complete list of Commission endorsed self representation forms see: http://courts.mt.gov/library/topic/default.mcpx For more information on the Commission on Self Represented Litigants see: http://courts.mt.gov/supreme/boards/self_represented_litigants/default.mcpx
New Hampshire/Don Goodnow	**Have you seen evidence that using the forms has harmed individuals or the public?** Assuming "state-approved" refers to forms created by the judicial branch which are made available to the public, we have not seen any evidence that the use of these forms has harmed individuals of the public. **What is the impact of using the forms on judicial and court efficiency?** Our pre-made forms include spaces for individuals to include information set forth in statute or court rules and thus they provide a compliance roadmap for any filing party. The use of these forms increase efficiency because they reduce the explanation time required by clerical staff to the filing party, and both clerical and judicial staff know immediately where on the form to look for specific information to screen and review. These forms are updated by the court, thereby reducing the likelihood that they will have to be returned to the party for the inclusion of information newly required by law or court rule.
New Mexico/Arthur Pepin	**1. Have you seen evidence that using the forms has harmed individuals or the public?** NM introduced statewide uncontested divorce forms over ten years ago. The main problem with the form was that people did not understand the difference between contested and uncontested (no matter how clearly that was addressed in the form) and would try to file uncontested forms for contested matters. Because the need for pro se forms is so severe in NM, the NM Supreme Court is seeking to establish forms for use in both contested and uncontested cases through the interactive format of the LawHelp website. **2. What is the impact of using the forms on judicial and court efficiency?** The initial impact was confusion on the part of court staff and judges, but continued use resulted in familiarity and

	suggestions to streamline the process. There has never been a major push to pull the forms off the shelf once they were introduced, only to improve them. The forms improve court efficiency because court staff has forms and/or referrals to give to pro se litigants, who otherwise clog up the lines and phones with questions and requests for legal advice that court staff cannot give. Trained on the difference between legal advice and procedural information, and equipped with available, approved referrals, court staff are able to provide access to the courts to pro se litigants rather than turn them away with no help.
North Carolina/Todd Nuccio on behalf of Judge John Smith	Judge Smith forwarded the below email to my attention for comment and direct submission. I am the court administrator in Mecklenburg County, NC and we generally have the widest use of self-help forms and services in the state. Please let me know if you need any further clarification regarding the below responses. Thanks. **Q. Have you seen evidence that using the forms has harmed individuals or the public?** A. We have not seen any evidence which indicates the use of legal form packets by pro se litigants has harmed individuals or the public. To use the example of absolute divorce, litigants who wish to file for absolute divorce are required to meet all the same legal standards as an attorney filing for absolute divorce. A judge is assigned to review all documents filed by the individual in the case and determine that all legal standards have been met prior to signing the order granting an absolute divorce. The Mecklenburg County SelfServe Center has developed step by step instructions and local county forms that require the litigant to answer all of the legal requirements for filing for absolute divorce, child support, custody and other claims for relief. These forms have been reviewed and approved for distribution by various Family Court Judges in Mecklenburg County. We have found that these and the other steps mentioned below have helped in reducing harm to individuals and the public. In fact, the standardized forms actually assist in reducing errors, increasing efficiency and improving litigant satisfaction. In addition to forms and instructions, we provide supplemental services which further reduce any potential harm. One additional service is providing a list of attorneys willing to provide "unbundled services." This term is used to describe the wide range of discreet tasks that an attorney might provide without providing full representation. Unbundled services allow the litigant to seek assistance for those tasks that are beyond either their educational means, financial means or both. As such, they can elect to use an attorney for their entire case or just a particular phase of the case. Other measures we have implemented which reduce any potential harm to individuals or the public include the offering of educational workshops (clinics) for pro se litigants. In partnership with the Charlotte School of Law and the Latin American

	Coalition we conduct clinics in both English and Spanish during the lunch hour, in the evening and on weekends. These clinics cover the legal standards required and increase the accuracy and completeness of the forms. After attending a legal clinic, the litigant, if financially qualified, may also sign up for an Attorney for the Day appointment. This is a 30 minute consultation with a licensed North Carolina attorney. These attorneys have also attended a continuing legal education (CLE) on assisting self-represented litigants navigate the court system. The Mecklenburg County SelfServe Center hosts, on average, three (3) days per month where an attorney conducts up to six (6) consultations per day. This allows 18 litigants per month to have their documents reviewed for accuracy, completeness and the ability to ask additional questions about the divorce process. **Q. What is the impact of using the forms on judicial and court efficiency?** A. Each week one judge is charged with reviewing up to 135 divorce files. The judges have openly expressed their preference in reviewing and processing local template forms. Their preference is expressly based on uniformity, the ability to review the information at a glance for completeness, and the formatting of the documents. In fact, for ease in processing, most judges first separate the divorce files into two piles, local forms and other pleadings. The time spent processing the template forms is minimized greatly in comparison to those drafted by members of the Bar. The same preference is true for handling forms dealing with other case types. The completeness and uniformity serve to ensure that the Court has what it needs to address the relief being sought.
North Dakota/Sally Holewa	1. **Have you seen evidence that using the forms has harmed individuals or the public?** We have not done a study on this. Anecdotally, some judges and lawyers have raised this as an issue, but have not provided any specific examples. 2. **What is the impact of using the forms on judicial and court efficiency?** Judges and court staff frequently raise this as an issue, but we have not done any type of study to determine whether that is actually the case or whether <u>not</u> having forms available for self-represented litigants would make the process more efficient.
Ohio/Jo Ellen Cline on behalf of Steve Hollon	**Have you seen evidence that using the forms has harmed individuals or the public?** None to our knowledge. **What is the impact of using the forms on judicial and court efficiency?** Allowing the use of standardized forms has a significant impact on judicial economy both in terms of administrative matters and case processing. Ohio uses standard forms in domestic relations cases, civil protection order cases, and in probate matters extensively.

Oklahoma/Mike Evans	Occasionally the Oklahoma legislature has directed that the Administrative Office of the Courts prepare subject matter forms that are available to judges and litigants; however, these forms are not designed or specifically designated for use by self-represented litigants only. These forms have been used on a very limited basis. I am not aware of any particular concerns with their use in any Oklahoma trial court.
South Carolina/Cody Lidge	**1. Have you seen evidence that using the forms has harmed individuals or the public?** No, but SC Court Administration has learned of isolated events where individuals have attempted to sell the Self-Represented Litigant Divorce Packet to litigants even though the packet is offered free of charge. **2. What is the impact of using the forms on judicial and court efficiency?** Our forms are easily accessible on the website and, in some cases, provided in the Clerks of Court offices for a nominal fee. When the court forms are used correctly, they benefit all players and help judicial proceedings run smoothly.
Utah/Jessica Van Buren on behalf of Dan Becker	The answers provided are based on anecdotal experience. **1. Have you seen evidence that using the forms has harmed individuals or the public?** We have not. We have, however, seen people harmed by **not** using the free court-approved forms. For example, people who pay for divorce packets that don't include vital forms, like the petition. **2. What is the impact of using the forms on judicial and court efficiency?** There has been a positive effect on clerical and judicial efficiency. The court-approved forms are also used by clinic staff and practicing attorneys.

EXHIBIT L

Deposition/Trial Testimony DVDs | Texas Family Law Practice Manual | Family Lawyer's Essential Tool Kit Checklists | Texas Pattern Jury Charges - Family Law | Client Handbook for Family Lawyers

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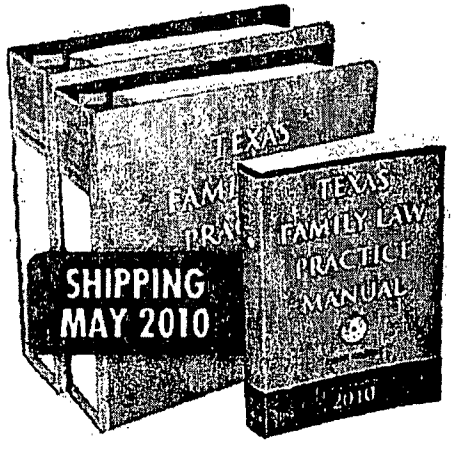

In statewide use for more than three decades, the Texas Family Law Practice Manual and its predecessors have demonstrated their value to every lawyer who practices any family law—in drafting forms, answering questions, and making family law practice more efficient.

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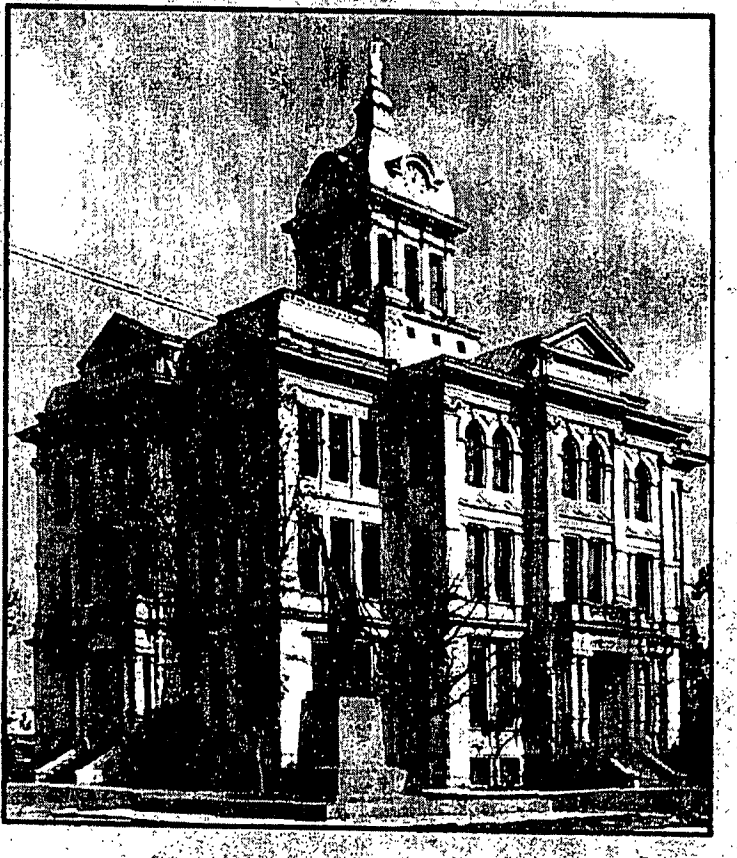
EXHIBIT M

PRO SE
DIVORCE HANDBOOK

"Representing Yourself in Family Court"



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2010

IMPORTANT INFORMATION
– PLEASE READ THIS FIRST –

IN THE EVENT YOU OR ANY MEMBER OF YOUR FAMILY IS THE VICTIM OF DOMESTIC VIOLENCE, YOU SHOULD IMMEDIATELY CONTACT 1 (800) 799-SAFE (1-800-799-7233).

YOU SHOULD ALSO CONTACT A PRIVATE ATTORNEY OR YOUR LOCAL LEGAL AID PROVIDER BEFORE FILING FOR DIVORCE. THIS HANDBOOK AND THE PRO SE DIVORCE PROCESS MAY NOT BE APPROPRIATE FOR A DIVORCE WHERE DOMESTIC VIOLENCE IS INVOLVED. DOMESTIC VIOLENCE CAN INCLUDE PHYSICAL, MENTAL, EMOTIONAL AND VERBAL ABUSE.

The Texas Family Code (Section 71.004) defines Family Violence as: *(1) An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault, but does not include defensive measures to protect oneself; (2) Abuse by a member of a family or household toward a child of the family or household; or (3) Dating violence (as defined by Texas Family Code Section 71.0021.)*

The Texas Council of Family Violence defines Battering (or Abuse) as: *A pattern of coercive control that one person exercises over another. Battering is a behavior that physically harms, arouses fear, prevents a woman from doing what she wishes or forces her to behave in ways she does not want. Battering includes the use of physical and sexual violence, threats and intimidation, emotional abuse and economic deprivation.*

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EXHIBIT N

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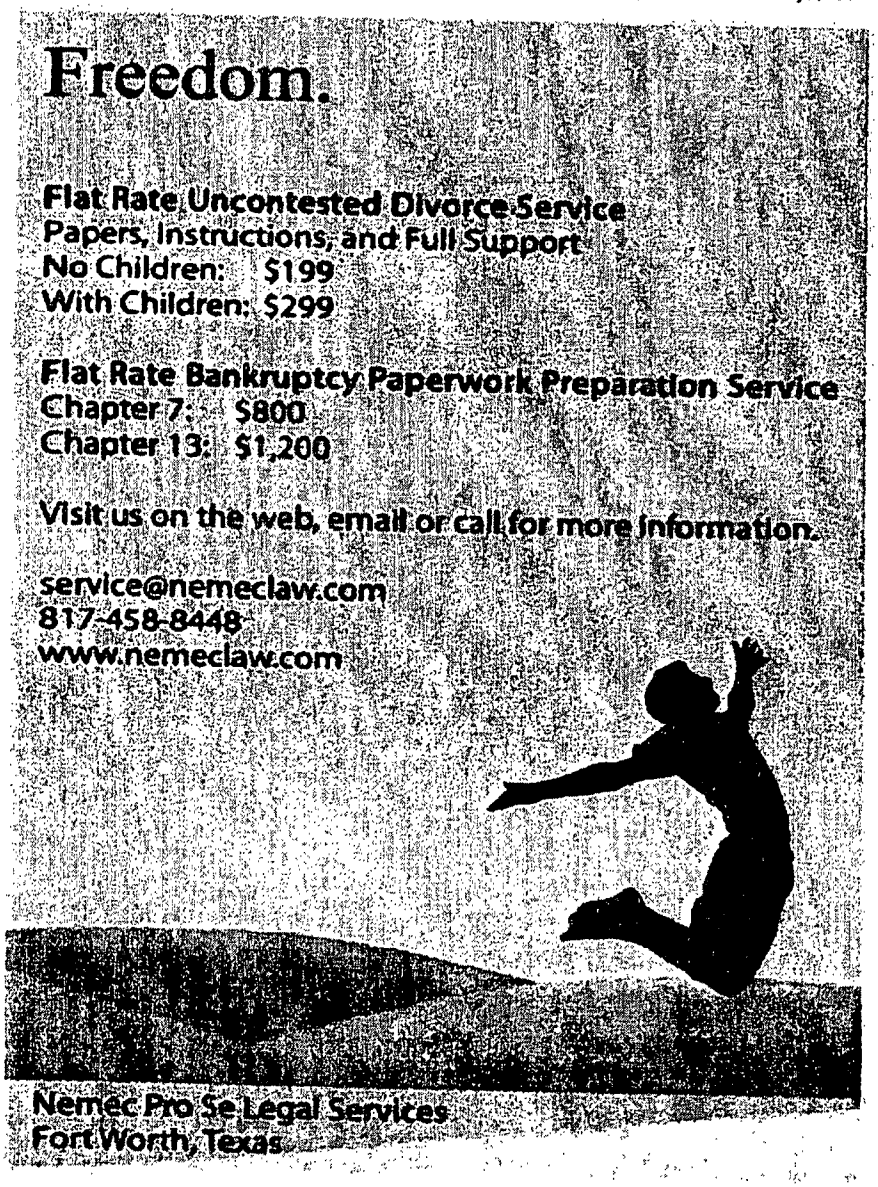

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Mr. Donald Craig Nemec

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Fort Worth, TX 76116-6074

Work Phone Number: 817-458-8448

Primary Practice Location: Fort Worth , Texas

Current Member Status
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(VISIT LAWYER WEBSITE)

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LICENSE INFORMATION

Bar Card Number: 24049967

Texas License Date: 03/07/2008

PRACTICE INFORMATION

Firm: Nemec Law Offices

Firm Size: None Specified

Occupation: Private Law Practice

Practice Areas: Administrative and Public, ADR, Appellate, Bankruptcy, Business, Technology, Consumer, Creditor-Debtor, Environmental, Ethics-Legal Malpractice, Family, Government/Administrative, Health Care, Insurance, Intellectual Property, International, Labor-Employment, Litigation: Commercial, Litigation: Personal Injury, Law Office Management, Oil & Gas, Real Estate, Taxation, Wills-Trusts-Probate, Other, Elder Law, Entertainment, Immigration, Aviation, Construction, Juvenile, Military, Public Utility, School Law, LGBT Law, Social Security Law, Securities Law

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Federal

Texas Northern Bankruptcy Court

Texas Northern District Court

Other Courts

None Reported By Attorney

OTHER STATES LICENSED

None Reported By Attorney

LAW SCHOOLS

Law School	Graduation Date	Degree Earned
Texas Wesleyan University	05/2007	Doctor of Jurisprudence/Juris Doctor (J.D.)

PUBLIC DISCIPLINARY HISTORY

State of Texas*

Sanction	Date of Entry	Sanction Date	Probation Date

EXHIBIT O

Texas Family Law Foundation

Why It Won't Work:
The Access to Justice Seven-Point Plan for Pro Se Litigants

Executive Summary

The Access to Justice Commission (ATJ), funded by mandatory dues paid by Texas lawyers, is championing a seven-point plan ("The Plan") to help litigants without lawyers handle their own cases—regardless of ability to pay. The Plan proposes a system. It designed to affect probate, consumer, family, landlord/tenant, employment and other practice areas.

The Plan's proponents say forms alone won't work; the whole system has to be there. Because most of that system's elements won't happen, The Plan will fail, leaving pro se litigants with nothing but a set of blank forms, endorsed—"Safe for Use: Texas Supreme Court." Unwary pro se litigants lured into a false sense of safety will inevitably be hurt. If the damage can ever be undone it will only be at great cost—with the help of a lawyer.

The Plan can't succeed because it relies on:

- Centralized authority: The Supreme Court orders everyone beneath it—represented parties, trial courts, clerks, librarians, lawyers—to carry out a service for unrepresented litigants. Rather than being solved by people at the local level, statewide elected officials would impose ATJ's "vision."

- Redistribution of money from some for the benefit of others: Diverting lawyers' Bar dues to pay for new infrastructure and services and, eventually, taxing all civil litigants, including the people who *do* pay their own lawyers (or key elements of the proposal must be jettisoned).

- New spending—statewide—for new services to be grafted onto our judicial infrastructure.

- Establishing a new social service that does not exist today.

- Significant change in the historic relationship between lawyers and their clients.

- Driving lawyers into using new business models.

Source Note: The following information is based on some 2500 pages of documentation, including extensive email traffic, obtained from the State Bar of Texas through an open records request for materials relating to ATJ and the seven-point plan.

Background

What Is The Seven-Point Plan? As described in the documents and public statements by ATJ Chairman Harry Reasoner, The Plan includes:

(1) The development of uniform forms applicable to *numerous legal practice areas*—family law, probate, guardianship, landlord/tenant, consumer, employment, etc. Uniform forms have been described by the proponents as the "foundation" of The Plan. Mr. Reasoner has said: "This is the first step in a much larger plan."

(2) New Supreme Court rules requiring use of the new forms and acceptance by the state's trial courts, as well as "...legislation and other policies to assist self-represented litigants or to clarify how various stakeholders in the court system *properly interact with self-represented litigants.*"

(3) Creating "self-help centers" added to courthouses across the state. ATJ's literature describes "document assembly" facilities, or kiosks, video and written materials and staff guidance made available at these centers. This new infrastructure exists today only in a handful of localities based on local decisions. Who's going to pay for new ones in over 250 counties?

(4) Retraining and education of the private bar, clerks, court staff, clerks and trial judges regarding how to "...more effectively serve self-represented litigants..."

(5) Expanding so-called "assisted pro se" services legal aid or pro bono lawyers, perhaps paralegals, to provide limited services targeting discrete elements of litigants' cases.

(6) Moving private sector attorneys into "limited scope representation," including "...new rules to allow attorneys to more easily assist people on a limited scope basis..." and training them to "...develop it as a new business model of practice."

(7) Establishing a centralized clearinghouse to "...develop a plan of how to effectively communicate with the judiciary, private bar and public about self-represented litigant issues..." initiatives and resources.

The Plan, as described above does not differ in any material way from a proposal put before ATJ as long ago as 2008 (see Where Did It Come From? below). And yet, although the proponents recognized its far-reaching implications (one said in May, 2009: "I have seen sunrises that are less breathtaking than this fine document that begins our journey together down the road of history..."), at no juncture did they comprehend that such fundamental changes called for the input and acceptance of the State Bar membership, which was apparently never sought.

Where Did It Come From? In 2008, a small group, dubbing itself the Texas Self-Represented Litigants Work Group, met in Baltimore, Maryland, and decided that they were "committed to improve services to Texas self-represented litigants." That group was led by one representative

of each of the following agencies: Texas Office of Court Administration, Texas Legal Services Center, Travis County Courthouse Self-Help Center, Travis County Law Library, Texas Access to Justice Foundation. Similar kinds of representatives were added later.

NOTICE there is no mention of the State Bar of Texas or any of its Sections in that list.

On March 26, 2009, ATJ adopted the Workgroup's mission as a "special project" and decided to "...explore all avenues (with regard to self-representation strategies) and come up with a proposal(s)..." In May of 2009, the Texas Supreme Court and State Bar Executive Committee approved the most recent guidelines governing the Commission's work. Buried at the bottom of Page 4 was an activity vaguely described as "*Study and make recommendations* regarding self-representation." There was no other mention, nor any more detail, of what ATJ had in mind, although the Workgroup had already spelled out in detail the proposals ATJ would soon adopt.

About that time, the Workgroup provided the Commission a document with what it described as "The Plan" and outlined "How We Propose to Get It." All of the elements of the Commission's seven-point plan for assisting pro se litigants, and their rationale, are laid out in that document.

The Workgroup's intention was stated at that time: "The point of this exercise is to get *advance support* for our effort *from the highest levels...*" so they proposed to get the Supreme Court to "...*direct* the Commission and the OCA [Office of Court Administration]..." with regard to developing programs to assist pro se litigants. And, that's what's going on today.

In short, the seven-point plan was always intended by its proponents to be directed from the central authority of the judicial system—the Texas Supreme Court—so everyone affected by it would have to fall into line. That remains the lynchpin today—and it has begun.

The ***first*** step under The Plan was to hold a forum by which various stakeholders would be "educated" about pro se issues, which occurred in the Spring of 2010. In a chronology given the Court, ATJ claims that The Plan "came in the wake of the forum," when in reality the forum was the first step in selling The Plan.

The ***second*** step under The Plan was for ATJ to appoint a Self-Represented Litigants Committee to carry out The Plan, which was done later in 2010. The ***third*** step: the Committee then established six subcommittees to carry out six elements of The Plan.

The ***fourth*** step came in the fall of 2010, as ATJ began executing the seventh point by giving Justice Nathan Hecht a draft Supreme Court Order establishing a Task Force on Uniform Forms. It took him a while, but Justice Hecht assured ATJ he'd get it done, which he eventually did in the spring of 2011, and the Task Force met for the first time in mid-March, 2011.

The **remaining steps** are being readied for implementation at this time.

Why The Plan Won't Work

Besides the fact that it shouldn't be implemented for policy reasons, those pushing the seven-point plan have failed to recognize certain basic realities—financial, institutional and policy realities—that will render the scheme a failure.

The most important reasons, as will be seen below, are:

- The Plan will inevitably fail, leaving unwary pro se litigants with nothing but forms they do not understand applied to the most sensitive interests a human being can have with inevitably disastrous results for many people.

- Well-organized spaces on pieces of paper for categories of information aren't what litigants need, it is legal advice based on a clear understanding of what's at stake—the information and the vitally important ramifications of that information presented to advance the litigants' interests.

- The Supreme Court's imprimatur will act as a lure for people who wrongly think they're interests are safe because the Court gave its seal-of-approval. But, those people will be denied other services ATJ considers critical to the system; forms are all they will get.

A national proponent of the self-help movement, relied upon extensively by ATJ, has stated:

> "...The bench and bar need to help assure the availability of *that full range of services* to ensure that persons representing themselves obtain the results that the facts and law applicable to their causes warrant..."
>
> "Provision of forms is the foundational task of every program...[of assistance to pro se litigants]...While necessary for litigants to assert their rights, forms by themselves *are not sufficient to ensure that self-represented litigants will be able to assert those rights effectively.* The forms must be part of a more comprehensive process..." (See Greacen, John, *"Resources to Assist Self-Represented Litigants."* National Edition June 2011. ATJ has relied extensively on Mr. Greacen's work.) [emphasis added]

More on why The Plan's elements will fail:

- *The Plan relies on the exercise of centralized authority and new bureaucracy.* The Plan explicitly calls for the Texas Supreme Court to order its implementation in every locality, a massive new assertion of the Court's authority into a judicial system that, although some have described it pejoratively as "fragmented," is fragmented for a reason.

  ✓ Texas is not a "big government" state and generally abhors the exercise of centralized authority.

Texas voters choose their trial judges and those judges work for those citizens, not the Supreme Court. Trial judges have the power to handle pro se cases as they deem proper considering local conditions and the needs of individual litigants and that is an element of discretion afforded them by the voters. If local voters think they ought to be doing more for pro se litigants, those voters can make that decision, as they have in various ways (see Travis County or Lubbock County for varying approaches).

✓ Pro se litigants have a right to represent themselves (see Tex. R. Civ. P. 7) and case law makes clear that trial courts have *the discretion* to provide a liberal reading of pro se litigants' pleadings and briefs. Trial judges can help pro se litigants to an extent, but those litigants must be held to the same procedural and substantive standards as represented parties—otherwise a dual system of laws would arise, one for the unrepresented and one for those with lawyers.

✓ Requiring use and acceptance of uniform forms statewide, for example, requires the maintenance of a permanent capability—*at the state level*—to continually revise the forms as required by constant changes in the statutes and case law that govern each practice area. The more legal practice areas for which uniform forms are prescribed, the larger the capacity that will be required to continually revise them (not to mention merely monitoring changes in law and exercising judgment regarding *when* form changes are needed as a result).

This expanded state-level capability is what is called "bureaucracy" when it occurs in the Executive Branch.

✓ Alongside the "forms maintenance" bureaucracy will be the "education, training and communications" bureaucracy called for by The Plan. Indeed, The Plan's proponents have suggested in the past having the Supreme Court designate their Task Force as a permanent entity with authority over forms that would have no necessity to obtain Court approval for periodic revisions. *The Plan depends on the creation of new entities with new powers.*

✓ Re-ordering the relationship between lawyers and consumers will require yet another kind of top-down direction from the Supreme Court. That subject is discussed below.

- *The Plan's proposed new system, like all social services, necessarily requires funding—**but there is no funding and won't be.*** The Plan envisions a complete prescription for a new social service. Each part is an element of an envisioned *system* of services.

The failure of funding for the remaining parts of the system will leave consumers armed with a set of forms that will inevitably explode on them due to the absence of the support, guidance and advice that The Plan's proponents envision. There would be nothing benign

about a forms-alone world. In fact, it would increase the danger for the very people the proponents seek to serve.

- ✓ The Texas Supreme Court may be able to order some aspects of The Plan into existence, but the Court has no authority to establish a funding mechanism or to appropriate funding for these new services.

- ✓ Self-help centers do not exist today, except in one or two counties where local money is being spent. New resources would have to be found to pay for equipment, space, materials and staff. The Smith County Bar Association received a $65,000 *one-time* grant in 2010 from the Access to Justice Foundation to establish a self-help center, but the Foundation cannot be counted on to sustain that effort year after year in Smith County, much less in each of the 254 counties of Texas.

- ✓ The permanent forms maintenance and education, training and communications bureaucracies envisioned by ATJ do not exist today. They'd have to be created, managed and funded continuously.

- ✓ County governments have historically funded court-related facilities and services. Texas counties are seriously limited in their resources, both by the current economy and the notorious lack of will within the Legislature to allow new or increased fees. If the Legislature won't adequately fund legal services for the poor through existing programs, it is naïve at best to think the Legislature or the counties will fund these new services, especially for those who can afford a lawyer but choose not to.

- ✓ So far, the costs of *developing* and selling this plan to a limited audience has been funded by diversions of mandatory State Bar dues paid by lawyers. The word "diversion" is appropriate because nothing in the charter establishing ATJ speaks to it performing any of these functions.

  Many lawyers object to this diversion and will continue to do so, which makes larger incursions into the State Bar's budget that would be needed to fund the state-level forms maintenance and education, training and communications bureaucracies far from certain.

- *The Plan explicitly calls for significant changes in the historic relationship between lawyers and their clients*—the "Jiffy Lube approach: we'll agree to change your oil, but a wheel alignment is your problem."

  - ✓ To carry out this element of The Plan, either new Disciplinary Rules or other Supreme Court directives—or legislated changes—are anticipated.

- ✓ Disciplinary Rule 1.02(b) and its associated comments expressly authorize limited scope representation after consultation with and agreement of the client. Therefore, the "limited scope representation" plank of The Plan is not needed, unless the proponents have in mind to further modify the attorney-client relationship on a basis that has yet to be detailed.

- ✓ The Plan calls for "new business models" that lawyers would move to in response to this new system. The policy is to drive down prices by "unbundling" services.

  Since current law allows limited scope services, the market would seem capable of allocating those services were there a demand for them. It is not clear what market-forcing mechanisms (a.k.a., new regulations) ATJ proposes to resolve this "market failure."

- ✓ ATJ's mission, as defined in its charter, does not include reordering the relationship between lawyers and consumers, nor does it have the expertise to do so. If that function is to be performed, it is the State Bar of Texas that should initiate and govern that process.

Why The Plan Should Not Be Implemented

1. Forms alone will prove dangerous to pro se litigants and the entire system cannot be sustained. As demonstrated above and below, forms alone is what may well result.

2. The Plan depends on a redistribution of resources of a kind that is anathema to most Texans and cannot be sustained in the Texas political environment.

   What has gone unmentioned in ATJ's literature is the recommendation of the Workgroup for a $10 fee imposed on all civil filings that could be used to fund the system envisioned by The Plan. (To date, ATJ has not advocated this fee increase.) That would mean that civil litigants who can afford a lawyer—but choose not to—would be subsidized by the rest of the universe of civil litigants who choose to use a lawyer.

   As has been shown above, a diversion of the mandatory State Bar dues paid by lawyers have been relied upon by ATJ so far to develop The Plan and there will be much future resistance to continuing that, much less expanding it.

   It is unlikely the Legislature will further expand general revenue funding to provide services to litigants who can afford a lawyer, seeing that it was tough enough in the 2011 session to get even substandard funding for actual legal services for poor people.

3. The Plan was developed by people who did apparently did not question whether existing resources were being allocated in the most appropriate manner. Any efforts to assist pro se people should start with an examination of the use of existing resources.

4. No one thinks there are currently sufficient resources to serve the low-income population of Texas. However, The Plan has already diverted resources from the service of low-income people and The Plan is not limited to providing services to low-income people. It would also authorize legal aid organizations and others to serve people who are not eligible for legal services from those organizations.

5. The Plan was developed based upon an analysis of the pro se litigant issue that can charitably be described as thin. That is because the resources of the State Bar were diverted only to the uses favored by those with a preconceived mindset, who developed The Plan. That mindset was produced by people who see their mission as "helping pro se litigants," but the proposals have systemic implications that affect many more people than just those they are anxious to serve.

   The basis and description of the problem to date is as simple as:

   A. There is an increasing number of pro se litigants; and

   B. There are complaints from some judges, clerks, law librarians and others that pro se litigants cause problems.

   But, those elements don't dictate the "solutions" that have been proposed.

   In short, no effective public policy development processes were employed in solving this problem. The proposal started and stopped with what others have done because the proponents apparently looked only in that direction. After that, it was a sales job.

4. The kind of policy development approach that might result in a sustainable solution, would include the kinds of efforts described below and require the kinds of resources and decision making that only the State Bar of Texas and its Sections could deploy:

   A. There will need to be a complete inventory of the current uses of the existing resources at all levels (federal, state, local, other local) for assisting low-income people.

   B. Evaluate whether existing resource uses match up with the priorities of this state, so that current resources are targeted toward those priorities.

   C. An inevitable question will be whether family law, landlord/tenant law, employment law or some other practice area, such as immigration, are the first, second or third priorities (or levels of a priority scheme) for the use of current resources.

      The answer to those questions must be based on tough decisions that identify the hierarchy of needs of the people of Texas and transparent criteria for determining that hierarchy.

For example: The United States and Texas Constitutions have treated family-related concerns as heavily connected with constitutional rights. So, it might be argued that providing lawyers to people who need them in family law cases using existing resources intended for assisting low-income people (and some other classes) is of the highest priority. This would be true whether the client is a citizen, a legal alien or an illegal resident.

By contrast, some other uses of existing resources would not rise to the level of most family-issues, although, as in family law cases, all clients would have a constitutional interest in procedural Due Process. In one sense, it might be said that people with family law cases have both substantively constitutional issues (e.g., the rights of fit parents) as well as procedurally constitutional issues and that may trump other uses of the current scarce resources.

Accordingly, if legal aid organizations and others are not fulfilling the demand for family law services, if the Access to Justice Foundation is bleeding resources off to lower priorities, if the Access to Justice Commission is diverting its resources to lower priorities, etc. then the efforts of each and every one of those organizations and their funding should be directed to the higher priorities first.

D. Once priorities are established, the existing resources should be laid alongside those priorities. There will need to be a cost identified for meeting each priority.

   At some point down the list of priorities, the money runs out.

E. A decision will need to be made whether any of the remaining functions must be provided in order to have a decent society and what must be done to achieve that goal.

F. To the extent there are remaining functions that need to be provided, they must be paid for. ATJ's current approach is to divert lawyers' Bar dues to fund their costs of developing and administering the new system and they'll need some new source of revenue, likely to be charged to all civil litigants, to fund the operational aspects of the system they espouse.

   This kind of approach went down in flames in the Legislature when there was an attempt to impose a bed tax on those paying for nursing home care out-of-pocket or with insurance to match and draw down federal Medicaid money for those without means or insurance.

   A proposal to pay for these services will more likely find support with the public, the Legislature and lawyers if the solutions rest on a sound policy basis, careful adherence to priorities and broad support from the State Bar membership.

EXHIBIT P

VENTURA COUNTY SUPERIOR COURT'S MOBILE SELF-HELP CENTER

Project Summary:

In November, 1999 the Ventura County Superior Court acquired a Mobile Self-Help Center to expand the court's existing self-help programs to meet the needs of those in the community who have difficulty accessing the Self-Help Legal Access (SHLA) and Family Law Self-Help Centers in the courthouses and the *Colonia* neighborhood of Oxnard. The Mobile Self-Help Center provides the same informational assistance, educational materials, and referrals to non-profit agencies and organizations that the SHLA Centers provide, but it does so in the form of a "book mobile" type unit housed in a 35 foot custom built motorhome. The Mobile Self-Help Center travels around the county visiting communities geographically remote from the courthouse on an established schedule. It is also used to respond to special requests from schools, health care districts and community based law enforcement programs to participate in educational forums.

The Existing Process and Specific Problem:

The court recognizes that for a variety of reasons, primarily economic ones, many people needing to access the courts must do so without an attorney. Often these people are elderly, disabled, single women with children, or others having special needs. Courts have traditionally operated with attorneys representing their clients in an adversarial system. The complexities of the law create minefields for those who find themselves in court without an attorney. As greater numbers of self-represented people access the courts the level of frustration and barriers to justice increase.

Many other people find themselves in crisis situations, without the knowledge of where they can go for assistance. They may have special needs arising from physical or mental disabilities, or children with special needs. They may be in the midst of a financial crisis and on the brink of homelessness, or are already homeless. Courts are not designed to address people's crisis or special needs. Courts are empowered to resolve disputes by applying the law to the facts. Often people need comprehensive assistance with problems that the court cannot begin to resolve, yet failure to address the underlying problems can lead to court actions that compound the original problem.

De-mystifying the law and making it accessible to people enhances their participation in, and respect for, our democratic institutions. As is often said, "knowledge is power." By educating people about the law, their rights and obligations as landlords, tenants, parents, minors, employers, employees, neighbors, etc., we can empower people to take responsibility for their lives, and their contacts with others.

The court acquired a Mobile Self-Help Center (Mobile Center) as part of its comprehensive program to augment existing self-help centers in helping self-represented litigants navigate their way through the court system. The Mobile Center provides informational and referral assistance to those facing a life crisis, and educational materials to those desiring to learn more about the law. The SHLA and Family Law Self-Help Centers located in the courthouses, and in the *Colonia* neighborhood of Oxnard, were not able to meet all the needs within the county because of geographic limitations. For some people living in outlying communities, limited public transportation creates barriers between the court and those needing services. Funding limits preclude the court from establishing permanent centers in each community. The Mobile Center can travel from city to city within the county bringing desperately needed services at a fraction of the cost of renting and staffing multiple facilities.

The Mobile Center staffed by a court attorney and driver, with the assistance of volunteer attorneys and law student interns, can travel to different communities within the county and target those who encounter the greatest obstacles in coming to court. Often these are the elderly, disabled, victims of domestic violence who lack transportation and live isolated in their communities, and the homeless. They are often unaware of court and community resources available to help them. Bringing court information and assistance to the people will help ensure access to justice to all segments of our population, particularly the poor, disenfranchised, and under represented.

Target Groups:

Since the court established its self-help programs many people have been able to get assistance at the court and its branch SHLA Center in Oxnard. For many however, remote geographic location combined with poverty, language differences and cultural issues often created an access barrier that they found insurmountable. Additionally, certain populations may be reluctant to come to the government centers where the courts are located for fear of reprisal from a batterer, or in some cases, fear of inquiry about their immigration status. For homeless individuals, coming to court posses unique challenges because they may not have a place to secure their meager possessions while in court. Also, many avoid coming to court for fear of being taken into custody on outstanding failure to appear warrants for unresolved infractions. The Mobile Center provides access to court information and related services directly in the communities it visits. The very act of going to people, instead of waiting for them to find a way to the court, helps to break down barriers, build public trust and confidence, and improve access to justice.

The people we see in the Mobile Center confirm the nature of the target populations we seek to serve. Many are elderly. Even if they still drive, they do not drive on the freeway or venture far from home. Many are non-English speaking and face language and cultural barriers. Many are homeless, suffering from advanced stages of liver disease or mental illness. Some also have immigration issues in addition to other legal problems. Almost all are low-income.

Work Team:

The court's then Assistant Executive Officer, Florence Prushan, first broached the idea of a mobile center. She had been intimately involved with the development of all the court's self-help programs. Her background with libraries allowed her to envision a mobile center similar to a "book mobile," that could take the self-help program on the road. The success of the branch SHLA Center in Oxnard proved the need for court services directly within low-income communities, and disclosed the special needs and concerns of immigrant populations when accessing government or court resources. Budgetary constraints made the opening of branch centers throughout the county a financial impossibility. A mobile center could meet the unique needs of distinct populations and communities without incurring the cost of opening more permanent facilities.

Through the dean of a local law school and one of the SHLA Center coordinators, a private foundation donor was approached to provide seed money to purchase the 35 foot custom built Winnebago. Sheila Gonzalez, then Executive Officer of the court, strongly supported the project. Under her direction, court administrators and staff designed the interior of the coach, and stocked the Mobile Center with materials consistent with those maintained in the SHLA Centers.

Existing "partnerships" between the SHLA Centers and other community agencies were utilized to ascertain community need and determine locations and schedules for the Mobile Center. The "work team" continues to expand to incorporate representatives from various community groups, as the court's outreach programs evolve.

Law students intern in the Mobile Center just as they do in the SHLA Centers. The students learn first hand how to interview those needing legal assistance, how to recognize legal issues and salient facts, and where to direct people for additional help. Students learn court procedure, not only from books, but also from actual contact with the court. Most importantly, students are exposed to the myriad needs of the community, and will hopefully take to heart their duty, when they become attorneys, "Never to reject, for any consideration personal to him or herself, the cause of the defenseless or the oppressed." (Business and Professions Code section 6068(h))

Alternatives and Selected Solution:

The success of the branch SHLA Center in Oxnard demonstrated the need for the court to reach communities geographically and culturally distant from the courthouse. Opening other branch SHLA Centers throughout the county might achieve the same objective as the Mobile Center, but the cost would be prohibitive. The Mobile Center can also be used in conjunction with other outreach programs to better acquaint the community with the court, how our justice system works, the importance of jury service, and general legal information. The Mobile Center can go to schools and health care districts to complement existing education programs where a legal component is missing.

Project Details:

It took approximately one year for the Mobile Center to go from an idea to its maiden voyage. A partnership of court administration, the presiding judge, SHLA Center attorneys and court staff, a local law school dean, a private foundation, and community volunteers brought the project from an idea to reality. Fortunately the court was able to build on its very successful and comprehensive self-help programs in designing and equipping the Mobile Center with the materials and staff necessary to provide quality service to the community.

A. DESIGNING THE MOBILE SELF-HELP CENTER

The Mobile Center was designed to replicate the resources in the SHLA Centers. The motorhome is equipped with video stations, computer terminals, and a law library with self-help style materials such as *Nolo Press* books and many step-by-step instructional materials developed by Mobile Center staff. Tables, chairs and workstations are arranged in a comfortable, easy to access fashion. An expandable wall allows for greater ease of movement within the Mobile Center. Court staff involved in designing court facilities and computer systems worked on the Mobile Center design so it would integrate well with existing court programs and services. The Mobile Center includes the following:

Education Materials for Youth. Videos and publications written for adolescents including subjects such as date rape, violence free relationships, youth law, rights of students and Teen Court. Information for parents dealing with troubled teens is also available, including referrals to programs on anger management, Teen Court, substance abuse programs, and parenting classes.

Computer Stations. Computer terminals linked to the court case management system allow the public to access information about their cases and other legal information located on the Internet. Legal sites are bookmarked for easy reference. Those with limited computer skills can receive assistance from center staff in accessing the information.

Video Stations. Video stations allow people to view videotapes on many subjects including conservatorship, which is mandated viewing by anyone seeking to be appointed as a conservator in a case. Other topics include landlord/tenant, consumer law, debt management and bankruptcy, parental responsibility, mediation, labor law, probate, law and motion, and how to read a contract. Many videos are available in English and Spanish, and special equipment is available for the hearing impaired. Many of the court's videos were produced in conjunction with the local bar association and a local cable company that filmed the videos free of charge in exchange for the right to air them on local public access programming. Through this partnership the public can become better educated about the laws that affect them, and the court can expand its video library without incurring additional costs.

Books, Pamphlets and Brochures. The Mobile Center has a comprehensive library with books written for non-lawyers, such as *Nolo Press* books, on subjects commonly

encountered by self-represented litigants. The Mobile Center also carries brochures published by the State Bar of California, community organizations, and the court targeted toward consumers of legal services, and other matters of interest to the public. A variety of materials are available to the public on Alternative Dispute Resolution (ADR), both explaining what it is and how to proceed in different ADR forums. Through its "partnerships" with other community organizations, the Mobile Center is able to carry materials specifically related to resources within each community in which it travels. Thus people needing referral to a battered women's shelter or consumer credit counselor can obtain resource information targeted to the particular geographic area convenient to them.

Self-Help Instruction Manuals and Packets. The Mobile Center carries on board the same instructional materials developed by the SHLA Center staff and used successfully in the stationary centers. These step-by-step booklets gently walk people through the complicated process of a lawsuit. There are step-by-step instructions for unlawful detainer cases, guardianships, breach of contract/collection type cases, personal injury, name change, small claims and traffic cases. Sample Judicial Council forms and local forms are provided as well as sample self-drafted pleadings for certain motions for which form pleadings do not exist.

Expanding Access to Legal Representation. The Mobile Center carries extensive information about how people can access legal representation, even if only for a limited aspect of their case. The Mobile Center staff works with the local bar association and the court developing strategies to encourage private attorney *pro bono* involvement. People are referred to the Ventura County Bar Association's Lawyer Referral and Information Service, its Voluntary Legal Services Program (*Pro Bono*), and local legal aid providers. With the expansion of "unbundled" legal services, or task-by-task representation, greater options are available to the public in accessing private legal advice for at least a portion of their cases. The Ventura County Superior Court continues to encourage *pro bono* attorney involvement by publicly recognizing contributions, and giving priority on the court calendar to those cases in which the attorney is appearing *pro bono* through one of the established volunteer attorney programs in the county.

Preventative Law. A major component of the Mobile Center focuses on education as well as comprehensive assistance for those whose problems reach beyond the traditional court process. The Mobile Center staff "partner" with the local bar association, legal aid providers, and community organizations such as Interface; The Coalition Against Domestic and Sexual Violence; Catholic Charities; Jewish Family Service; Tri-Counties Regional; Protection and Advocacy, Inc; and the Greater Los Angeles Area Agency on Deafness, among others. These agencies and organizations help the Mobile Center staff to address the comprehensive needs of self-represented litigants, especially those with special needs.

The Mobile Center staff also works with the community to present information on substantive areas of law in an effort to reduce legal conflict necessitating court intervention. The Mobile Center has traveled to communities in response to requests for

workshops on specific topics such as landlord/tenant law and guardianship. Problems encountered by people in the community become the subject of additional workshops, videos, and question and answer columns in local newspapers.

B. SCHEDULING THE MOBILE UNIT

One of the greatest challenges with the Mobile Center was in developing a schedule that accommodates the needs of the community, and provides consistency and dependability for those relying on its services. The work hours of farmworkers and day laborers, and their inability to get time off from work during the day, also created challenges in scheduling the Mobile Center. The Mobile Center's original schedule provided for stops on the second and fourth Tuesdays, or first and third Mondays in four different communities. The court found it was difficult for people to compute when the Mobile Center was coming, so the schedule was changed. The Mobile Center now goes weekly to the communities of South Oxnard and Santa Paula, both with large farm worker populations, and biweekly to Ojai and Thousand Oaks, communities geographically remote from the courthouse with pockets of poverty amidst a largely affluent population. It travels weekly to Ventura Avenue where it serves a primarily homeless population, and on the first Wednesday of each month, visits Leisure Village, a senior community in Camarillo. Other cities have requested they be added to the Mobile Center's schedule, and requests are being addressed on a needs priority basis.

The Mobile Center spends two and a half to three hours at each location and assists people with matters ranging from traffic infractions, to landlord/tenant, to family law. The number of people helped at any given time varies. When the Mobile Center staff met with community leaders to find suitable sites to park the mobile unit they were told how some communities are divided along ethnic lines with one population residing primarily on one side of town, and another residing on the other side. It was suggested that the Mobile Center alternate where it parked so it would be equally accessible to both populations. The court found two locations to park in each of the cities of Fillmore and Santa Paula, with one of the locations in each city located within the ethnic *barrios*. After several months of parking in alternating locations it was apparent that the sites in the *barrios* were not getting as much traffic as the other sites. It was also confusing for the public to figure out which site the Mobile Center would be parked at each week, so the court established a new schedule of parking just at one site in each of the cities it visits.

C. STAFFING AND THE USE OF VOLUNTEERS

The SHLA Center coordinators, along with a driver and various volunteers staff the Mobile Center on a rotating basis. Each SHLA Center coordinator is an attorney with strong ties to the community. Besides going out with the Mobile Center to assist the public, the coordinators meet regularly with community leaders. They participate on advisory boards, committees and boards of directors of numerous non-profit organizations in the county. This allows them to network with those agencies to which people may be referred to for further assistance, and helps the court to establish a relationship of trust with the communities the Mobile Center visits. One of the attorney

coordinators is fully bilingual and the other is studying Spanish, in part through a class that was taught at the court during the lunch hour. In order to serve the large volume of people needing one-on-one assistance with a limited budget, the self-help programs have developed an extensive volunteer program recruiting from local law schools, legal secretary and bar associations. Retired business people have also been a good resource for volunteers.

Most of the volunteers who help with the Mobile Center also volunteer in the SHLA Centers. They are usually attorneys, or in some cases, third and fourth year law students who have sufficient familiarity with legal principles to assist self-represented litigants in completing most standardized court forms, under the guidance and direction of an attorney. The students benefit by earning school credits, learning civil procedure first hand, and improving communication skills with the people they serve. The public benefits by having knowledgeable people ready to assist them, without having to wait in line for a single attorney. The attorney coordinators and volunteer attorneys staffing the Mobile Center benefit by having a law student interview the self-represented litigant to distill the relevant facts, and then present the legal issue to the attorney. This spares the attorney's time listening to people vent, while still providing the public with a sympathetic ear to express themselves.

D. COST/BUDGET

Initial funding for the Mobile Center was obtained from a private grant. The grant was for $40,000 with the opportunity to submit a request for the entire $108,000 purchase price of the motorhome. Operating costs are contained by the court's reliance on volunteers. Even before the Mobile Center was fully operational, the court received many offers from private attorneys volunteering to help.

Evaluation:

The Mobile Center uses exit questionnaires to evaluate its effectiveness with the public using the service. Because of its ability to move from place to place, the Mobile Center is able to continually adjust its schedule and location to better serve the needs of its constituents. Thus in addition to using questionnaires, one of the best evaluation measures is the level of response from the community as a whole. Are people coming to the center when it arrives? Are people comfortable getting help from the court? These questions can be answered by the number of people we see. The Mobile Center is both a community outreach program and an ongoing experiment to learn how the court can best reach the most marginalized populations, who are often in the greatest need of help.

Transfer or Replication Characteristics:

The Mobile Center concept can be replicated in any jurisdiction where the commitment to serving the public has a high priority. Because it builds on existing resources in the community, the Mobile Center can provide a broad range of assistance with limited staff and money. Private or public grants can often provide seed money to start a program or

purchase a motorhome, but the ongoing costs can be contained through judicious use of existing resources and volunteers. Because of its mobility, the Mobile Center can be adapted to a wide range of needs and services. It lends itself to rural and urban settings, and can be easily adapted to unique demographics in terms of the languages spoken, or materials carried on board. It allows a court to maximize the gain from limited resources.

Additional Process Analysis:

As mentioned above, the Mobile Center presented some unique problems in terms of reaching the target groups. The court, perhaps naively, thought, "if we park, they will come." This did not prove to be the case, especially in the low-income communities with large numbers of immigrants. One would think the need is greatest in these communities, thus the demand for service would be the greatest. On the contrary, while the need is great, language and cultural barriers, and the inability of laborers and farmworkers to take time off from work during the day, collectively created enormous obstacles, even when the court came right to the communities. The program went back to the drawing board to arrive at a schedule most suitable for the communities we serve. The court also began an intensive outreach program including having the Mobile Center coordinators address city council hearings, post flyers in laundromats, *tiendas* and *panaderías*, and bring the Mobile Center to Sunday Mass at those churches that serve primarily Spanish speaking populations. The outreach is working, but it is a process that requires patience and has been a tremendous learning experience for those involved in the Mobile Center project. Those who have used the services of the Mobile Center and completed exit questionnaires, by an overwhelming majority indicated the mobile center services were "very helpful."

The Mobile Center will continue to evolve as it faces new challenges in meeting the needs of an ever-growing diverse population. Through the process of overcoming the obstacles we face as a court in reaching the public we serve, we are helping people overcome the obstacles of achieving access to justice. The learning experience on both sides has been invaluable, and hopefully will lay a solid foundation for improved community relations, public trust and confidence and better access to justice for this and future generations.

EXHIBIT Q

Indigent Pro Se Litigant
Subcommittee Report
Received and Approved by SOLUTIONS 2012, March 9, 2012

The possible solutions identified below by the Indigent Pro Se Litigant Subcommittee are solutions that either A) Incentivize volunteers; B) Expand current programs or projects, or C) are based on ideas that are different from current programs or projects. No fiscal note or feasibility study has been done regarding any of these programs but are offered as options that might be acceptable or built upon throughout the state to address issues of particular concern.

Premise: These solutions are to address the needs of people who are indigent under TEAJF/LSC standards. They are not listed in any particular order.

STATEWIDE Potential Solutions

Possible Solutions	Description	Comments
A) Offer CLE based incentives	Provide free or reduced price incentives to attorneys that handle pro-bono cases. Use of TXBAR scholarships to provide to lawyers for CLE's .	Is there a way to incentivize non Texas Bar CLE organizations to participate as well? What is the impact on the TXBAR CLE bottom line? Attorneys who do pro bono can be nominated for a Texas Bar CLE scholarship via LSSD. Members of the Pro Bono College have free access to Texas Bar CLE's on-line library. Additionally, all the organized pro bono programs offer free CLE in exchange for handling pro bono matters.
C) Pro-Bono Smart Phone Application	Use an app to help connect lawyers with indigents in need of representation to greater access to the justice system.	An attorney in Arkansas has developed the first interactive pro bono mobile app to create "iProBono" available to Arkansas pro bono attorneys free of charge through iTunes. Would need technical assistance to build the application. The state of Illinois is also using such an app.
A & B) Pro Bono Matching Website	Use a website to post pro-bono cases to be handled by volunteer attorneys.	Some case matching websites currently exist (such as Legal Match) where the public can post their case and a lawyer will respond to it if they want to handle the case. Consider developing such websites for pro bono cases. A statewide matching website currently exists in Texas.

		called TexasLawyersHelp. Pro bono and legal aid organizations can post pro bono cases online and pro bono attorneys can choose which cases they are interested in handling via the "Take a Case" feature." The feature has been in existence for four years.
B)Online Chat/Video Programs	Use online chat or video programs through websites to provide one to one assistance to individuals in need of assistance.	Encourage legal aid, volunteer groups and local bars to develop an online chat feature on websites. Use remote access terminals in rural counties with video conferencing and online chat capabilities. TexasLawHelp, a statewide online resource for free information and forms that has been in existence for X years, has an online chat feature. Indigent people can talk to an attorney via online chat to get advice and information about their legal situation. The Live Chat feature is hugely popular and is used by more Texas residents than any other state using the LawHelp platform.
B) Expand clinics throughout the state	Set up clinics (or develop a model clinic for bars to use) where volunteer attorneys provide assistance directly to low income persons in specified cases. Example: Community Justice Programs.	The Dallas Volunteer Attorneys Program (DVAP and Legal Aid of NW Texas) sponsors four Assisted Divorce Clinics per month. They use volunteer attorneys to help low-income clients with uncontested family law cases. Staff and volunteers help low-income clients prepare their uncontested family law cases. Malpractice insurance for volunteers is provided by Legal Aid of Northwest Texas. Give bar leaders a project like this with training at the Local Bar Leaders Conference.
A) Reduce liability for attorneys who handle decrees	Offer or reduce liability for attorneys who handle decrees for uncontested cases.	Might require legislative or other disciplinary rule amendments or petitioners can be screened by a local legal services provider. Provided by SBOT liability coverage? The Commission investigated the possibility of SBOT liability coverage for attorneys who handle matters for low-income clients who were not referred by a 501c3 legal service provider. Discounted malpractice coverage cannot be provided to an individual attorney unless the attorney is a member of a group associated with a 501c3.

A) Extend liability coverage to attorneys who handle pro bono cases	For attorneys that handle pro bono cases through a legal aid service, they would be covered under the liability insurance coverage provided through the SBOT.	Provided by SBOT liability coverage.
C) Use technology to provide CLE training.	Utilize resources such as webinars, phone seminars, or tools such as Skype, to provide free CLE training to attorneys on how to handle pro-bono cases.	No commentary.
B) Judicial Education Component	Develop rule to say that it is not a violation to help an indigent pro-se litigant through the court system. Have judges/court clerks hand-out a one page information sheet about the court process to those individuals who are indigent and who are not represented by a lawyer.	Providing information vs. providing legal advice, including their staff. Coordination between Supreme Court, State Bar, and Texas Center for the Judiciary (TCJ). The TCJ receives grants from the Court of Criminal Appeals. The Commission and the Office of Court Administration have partnered to provide presentations on the difference between providing information versus legal advice. The presentation has been made multiple times and is well received. The Commission investigated the need for a rule clarifying that it is not a violation of judicial ethics nor is it a violation of UPL. The Commission determined that a rule is not needed at this time and opted in favor of education.
B) Pre Paid Legal Insurance Programs	Explore the use of Pre-Paid insurance programs to determine their effectiveness in assisting indigents. Encourage the public to use Pre-Paid Legal programs for reduced cost legal services.	There are currently Pre-Paid legal insurance programs in the state. The Commission is exploring use of pre-paid insurance programs and has met with the outreach director of the Texas Legal Protection Plan.

Regional Solutions

A) Offer incentives to	Identify incentives for attorneys	Conduct annual seminars to recruit and train lawyers to take

attorneys who provide training (such as clinics) to attorneys on how to handle pro-bono cases.	who provide training to other attorneys on how to handle pro-bono cases. Such incentives include CLE credit, free or reduced price CLE's, reduced price section memberships, etc.	family law cases through Volunteer Legal services. Lower potential impact on TXBAR CLE. May not benefit small firms or solo practitioner, or in rural areas.
B) Education of indigent pro se litigants	Require indigent pro-se litigants to attend mandatory training (such as a clinic) on how to file pro-se.	It will be difficult to enforce the mandatory requirement of attending training sessions in order to proceed with a case. In Colorado, legal clinics are staffed by legal aid providers. Development of resources to assist pro se litigants; not necessarily as a prerequisite to self-representation. Remove the mandatory requirement and look for resources to offer. Lubbock County offers an optional video training to pro se litigants. Bell County has a standing order requiring all pro se litigants to attend training, however, anyone who does not want to take the training is provided a waiver.
A or B) Encourage local bar associations to create lawyer referral services	Educate local bar's on the benefits of implementing a certified referral service	Currently, the State Bar, and most of the local bar referral services throughout the state require its members to have Professional Liability Insurance as a condition of membership. Largely this is done because the ABA requires it as a condition of its certification. Additionally, referral services generate revenue, and are meant to refer indigent callers to private attorneys. Rather referral services refer such callers to legal aid providers and resources. For example, in 2011, the State Bar of Texas Lawyer Referral Service referred 26% of its calls to legal aid resources (including legal aid services, other community services, agencies, websites, etc.) Two referral services in the state offer modest means panels that provide services to individuals above the poverty line, but that have limited means (as defined by the referral service). May need to inquire with the ABA about dropping the requirement (for ABA Certification) that lawyer referral services must require professional liability insurance from its members.
B) Establish more Domestic	Using existing DRO's as a model,	Need technical assistance in establishing a DRO in other

Relations offices using public/private partnerships	find ways to use public and private partnerships to create additional DRO's throughout the state.	communities.
B) Use of Self Help Centers	Establish self help centers available to indigent pro se litigants throughout the state to provide access to self help. Such help can be kiosks, volunteer/staff attorneys, reference materials, etc. Ideally a lawyer is available to assist in the self help center	Currently, there are self help centers in Angelina County, Bexar County, Collin County Law Library, Fort Bend County, Grayson County, Harris County Courthouse, Hidalgo County, Lubbock County, Montgomery County, Nacogdoches County, Smith County, Tarrant County, Travis County, and the Lutheran Ministries and Social Services of Waco. Bringing together stakeholders is critical.
C) Local Volunteer Attorney Group	Create volunteer board/group to be contacted by listserv or monthly email alerting lawyers/local bar associations to needs in their communities.	Waco has a monthly volunteer attorney gathering where bar assns. get together at churches with printers, etc., lawyers do the screening and pass on to the next table where someone prepares forms; perhaps local bar assns. Should form local ATJ committees to explore these types of activities. SBOT can provide technical assistance.
B) Mentoring Programs for attorneys	Offer CLE credit for attorneys to serve as mentors	SBOT Pro Bono Mentor Program offers 5 hours of CLE credit for taking a case referred by a pro bono program or legal aid program. The Dallas Volunteer Attorney Program (DVAP) and other volunteer attorney programs offer mentoring for pro bono attorneys. Houston Volunteer Lawyers Mentoring program provides mentoring to an attorney who handles an HVLP case. HLVP mentors are available to answer any procedural or substantive law questions that may arise in pro-bono cases.
B) Legal hotline	Develop a model legal hotline for local bars to use to provide assistance to indigents in need of legal assistance.	Similar to the Legal Line hotline run by Dallas Bar Association. Consider expanding sources for hotlines to local lawyer referral services. The Lawyer Referral Service of Central Texas holds a monthly legal hotline. The Texas Advocacy Project has three statewide legal hotlines with one each for sexual assault, domestic violence and general family law issues.

In The

Supreme Court of Texas

Brief of the Texas Access to Justice Commission

Regarding the Supreme Court's
Authority To Promulgate Pleading Forms

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ISSUE PRESENTED

Does the Supreme Court of Texas have constitutional, statutory, or inherent authority to promulgate family-law pleading forms that will help pro se litigants gain access to the justice system to vindicate their rights in Texas courts and create efficiencies for judges and court staff in Texas?

ARGUMENT

The Supreme Court of Texas may promulgate family-law pleading forms for two separate reasons. First, the Court has authority to promulgate pleading forms under its power to administer the judicial branch of government and to create rules of procedure. *See* Part I, *infra*. Second, the Court may promulgate pleading forms under its power to create efficiencies for Texas courts. *See* Part II, *infra*. The Supreme Court's authority to promulgate pleading forms is confirmed by local and nationwide practice: forty-seven states—including Texas—offer court-approved, statewide pleading forms. *See* Part III, *infra*. A decision that the Supreme Court *cannot* promulgate pleading forms would uproot years of Supreme Court practice and make Texas the *only state in the country* to forbid its Supreme Court to promulgate such forms. *Id.*

I. The Supreme Court Of Texas Has Power To Promulgate Pleading Forms Under The Court's Authority To Administer The Judicial Branch Of Government And To Create Rules Of Procedure.

The Texas Constitution, the Texas Government Code, and Texas common law uniformly recognize the Supreme Court's authority to administer the judicial branch of government and to create rules of procedure. High courts from other states have promulgated pleading forms under powers that are substantively identical to those of the Supreme Court, and research has not revealed any instance

in which a state's high court has concluded that it *lacks* authority to promulgate pleading forms.

A. The Supreme Court Of Texas Has Authority To Administer The Judicial Branch Of Government And To Create Rules Of Procedure.

The Supreme Court of Texas enjoys constitutional, statutory, and inherent authority to administer the judicial branch of government. The Texas Constitution states that "[t]he Supreme Court is responsible for the efficient administration of the judicial branch." TEX. CONST. art. V, § 31(a). The Texas Constitution also requires the Supreme Court to "promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts," and to "promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts." *Id.* § 31(a)–(b). The Court has interpreted its constitutional charge as conveying an overarching "obligation to supervise and administer the judicial branch." *In re Castillo*, 201 S.W.3d 682, 684 (Tex. 2006) (orig. proceeding). Although the Texas Constitution identifies *duties* rather than *powers* of the Court, "[i]t is elementary that . . . the imposition of a definite duty upon any . . . court confers by implication the authority to do whatever may be necessary in

order . . . to perform the duty imposed." *Brown v. Clark*, 102 Tex. 323, 333, 116 S.W. 360, 364 (Tex. 1909).

The Supreme Court's authority to administer the judicial branch of government extends to helping indigent Texans protect their rights in Texas courts. As Chief Justice Jefferson recently explained: "The Constitution requires the [Texas Supreme] Court to administer justice. This occurs not only by deciding cases, but also by establishing a judicial climate in which people who lack money to hire a lawyer have a reasonable chance to vindicate their rights in a court of law." Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012) (attached as Exhibit A).

In addition to that constitutional authority, the Legislature has confirmed by statute the Supreme Court's authority to administer the judicial branch. The Texas Government Code provides that "[t]he [S]upreme [C]ourt has supervisory and administrative control over the judicial branch" and is "responsible for the orderly and efficient administration of justice." TEX. GOV'T CODE § 74.021; *accord Castillo*, 201 S.W.3d at 684.

Finally, the Supreme Court enjoys inherent power over the judicial branch of government. "The Inherent judicial power of a court is not derived from legislative grant or specific constitutional provision, but from the very fact that the

court has been created and charged by the constitution with certain duties and responsibilities." *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979). The Court's inherent authority includes powers that the Court "may call upon . . . in the administration of justice . . . and in the preservation of its independence and integrity," *id.*, and enables the Court to "regulate judicial affairs," *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994).

B. Courts In Other States Have Promulgated Pleading Forms Based On Powers That The Supreme Court Of Texas Possesses.

Multiple high courts in other jurisdictions have relied on their supervisory, administrative, and rule-making authority—powers also belonging to the Supreme Court of Texas—to promulgate pleading forms. According to the Arizona Constitution, the Supreme Court of Arizona has "administrative supervision over all the courts of the state." ARIZ. CONST. art. VI, § 3 (attached as Exhibit B). The Supreme Court of Arizona relied on that constitutional authority to promulgate "usable and understandable legal forms," reasoning that such forms are "uniform and efficient" and "enhance the public's access to the courts." Admin. Order No. 89-22 (Ariz. 1989) (attached as Exhibit C[1]).

The Supreme Court of Florida promulgated family-law pleading forms under its constitutional rule-making authority. *In re Family Law Rules of Procedure*, 663 So.2d 1049, 1051 (Fla. 1995); *In re Petition for Approval of Forms Pursuant to*

[1] Available at http://www.azcourts.gov/Portals/22/admorder/Orders89/pdf89/8922.pdf.

Rule 10-1.1(b) of Rules Regulation the Fla. Bar—Stepparent Adoption Forms, 613 So.2d 900, 900 (Fla. 1992). That authority entitles the Florida Supreme Court to "adopt rules for the practice and procedure in all courts." FLA. CONST. art V, § 2(a) (attached as Exhibit D).

In *Nichols v. State*, 191 N.W. 333 (Neb. 1922), the Nebraska Supreme Court replaced a longwinded form for criminal information with a much shorter and plainer form. *Id.* 335–36. The court held that it had the constitutional authority to promulgate the shorter form under the court's authority to promulgate rules for the "effectual administration of justice" and the "prompt disposition" of cases. *Id.*

Finally, the Supreme Court of South Carolina has promulgated basic family-law pleading forms, including a Complaint for Divorce form. Admin. Order. No. 11-12-2009 (S.C. 2009) (attached as Exhibit E[2]). In promulgating those forms, the court relied on a constitutional provision stating that "[t]he [South Carolina] Supreme Court shall make rules governing the administration of all the courts of the State" and "rules governing the practice and procedure in all such courts." S.C. CONST. art. V, § 4 (attached as Exhibit F).

As the following table indicates, the Supreme Court of Texas possesses authority that is substantively identical to authority on which high courts of other states have relied in promulgating pleading forms.

[2] *Available at* http://www.sccourts.org/courtOrders/HTMLFiles/2009-11-12-01.htm.

State	*Authority Under Which Court Promulgates Pleading Forms*	
	Supervisory Authority	*Rule-Making Authority*
Texas:	"The Supreme Court is responsible for the efficient administration of the judicial branch." TEX. CONST. art. V, § 31(a) (emphasis added).	"The Supreme Court . . . shall promulgate rules of administration . . . as may be necessary for the efficient and uniform administration of justice . . . ." TEX. CONST. art. V, § 31(a) (emphases added). "The Supreme Court shall promulgate rules of civil procedure . . . as may be necessary for the efficient and uniform administration of justice . . . ." TEX. CONST. art. V, § 31(b) (emphases added).
Arizona:	"The supreme court shall have administrative supervision over all the courts of the state." ARIZ. CONST. art. VI, § 3 (emphasis added).	
Florida:		"The supreme court shall adopt rules for the practice and procedure in all courts including . . . the administrative supervision of all courts." FLA. CONST. art V, § 2(a) (emphases added).
Nebraska:		"For the effectual administration of justice and the prompt disposition of judicial proceedings, the supreme court may promulgate rules of practice and procedure for all courts . . . ." NEB. CONST. art. V, § 25 (emphases added).
South Carolina:	"The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system." S.C. CONST. art. V, § 4 (emphases added).	"The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." S.C. CONST. art. V, § 4 (emphases added).

Thus, a state court's authority to administer the judicial branch of government and to create rules of procedure enables the court to promulgate statewide pleading forms. Because the Supreme Court of Texas possesses those powers, the Supreme Court has ample power to promulgate the proposed family-law forms.

II. The Supreme Court Has Authority To Promulgate Pleading Forms Under The Court's Power To Achieve Administrative Efficiencies.

As explained above, the Texas Constitution states that "[t]he Supreme Court is responsible for the *efficient* administration of the judicial branch." TEX. CONST. art. V § 31(a) (emphasis added). Similarly, in the Government Code, the Legislature has recognized that the Court is "responsible for the *orderly and efficient* administration of justice." TEX. GOV'T CODE § 74.021 (emphasis added). The Supreme Court of Texas, as well as courts from other jurisdictions, have rightly acknowledged that uniform pleading forms for pro se litigants create significant efficiencies for judges and court staff alike.

When the Supreme Court created the Uniform Forms Task Force in 2011, the Court recognized that "developing pleading and order forms approved by the Court for statewide use w[ill] . . . reduce the strain on the courts posed by pro se litigants." Misc. Docket No. 11-9046 (Tex. 2011) (attached as Exhibit G). The Court's finding is confirmed by other jurisdictions' experience with standardized,

court-approved forms. Judges in jurisdictions that have promulgated standardized forms report numerous efficiencies from the use of such forms:

- North Carolina: "The judges have openly expressed their preference in reviewing and processing local template forms . . . based on uniformity, the ability to review the information at a glance for completeness, and the formatting of the documents. In fact, for ease in processing, most judges first separate the divorce files into two piles, local forms and other pleadings. The time spent processing the template forms is minimized greatly in comparison to those drafted by members of the Bar." National Center for State Courts, Use of Self-Help Forms (2012) (attached as Exhibit H).

- Alaska: "Judges report that filings are more complete and include more relevant information about the issues in the case." *Id.*

- California: "[Standardized forms] save[] a huge amount of time in training and judicial review to know that the key elements are set forth in the forms. We have a relatively small number of judges given our population and I think that part of the reason that the system works is because of standardized forms." *Id.*

- Iowa: "Use of these forms almost certainly increases the likelihood that self-represented parties provide the type of information judges need to make decisions and move the case to the next step. Judges also know exactly where to find the information they need on the forms because the forms are standardized. Consequently, the forms and instructions have almost certainly increased the courts' efficiency in handling cases involving self-represented parties." *Id.*

The use of court-approved, standardized forms also creates efficiencies for court staff:

- New Mexico: "The forms improve court efficiency because court staff has forms and/or referrals to give to pro se litigants, who otherwise clog up the lines and phones with questions and requests for legal advice that court staff cannot give." *Id.*

- Alaska: "Court clerks report a reduced need to issue deficiency notices because the fill-in-the blank forms address many common problems (they are formatted correctly and include certificate of service sections) that historically have caused documents to be deemed deficient filings because of non-compliance with court rules." *Id.*

- Idaho: "Prior to our use of court approved forms, these parties were trying to create their own forms, or using inadequate or inappropriate forms they found from a variety of sources, which did nothing but frustrate court staff and judges who had to deal with the problems created by those documents. By having correct forms and instructions approved by the courts, these issues have diminished greatly. Less time is spent correcting or redirecting the self-represented litigants by court staff and judges, and matters are resolved more quickly and efficiently." *Id.*

- New Hampshire: "The use of these forms increases efficiency because they reduce the explanation time required by clerical staff to the filing party, and both clerical and judicial staff know immediately where on the form to look for specific information to screen and review." *Id.*

In short, standardized, court-approved forms reduce the time that judges spend on each pleading by enabling the judge to know in advance where to look for key information and, indeed, ensuring that each pleading contains the information that the judge needs to make a decision. The forms also create efficiencies for court staff by enabling staff to refer inquiring litigants to standardized forms and associated instructions, to spend less time rejecting forms for deficiencies, and to avoid having to correct other problems in pro se pleadings. Because the proposed family law forms will promote the efficient operation of the

judicial branch, the Supreme Court has authority to promulgate the forms under its authority to achieve efficient administration of justice in Texas.

III. A Decision That The Supreme Court Cannot Promulgate Pleading Forms Would Uproot Years Of Established Supreme Court Practice And Make Texas The *Only State In The Country* To Forbid Its Supreme Court To Promulgate Pleading Forms.

Forty-seven states offer court-approved pleading forms. *See* Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C. (attached as Exhibit I). As Chief Justice Jefferson recently recognized, pleading and order forms "have been officially sanctioned by courts in most states." Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012) (attached as Exhibit A). Thirty-seven states offer court-approved forms for an uncontested divorce with no children – *i.e.*, one of the family law forms that the Uniform Forms Task Force is proposing. *See* Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C. (attached as Exhibit I). The ability of state high courts to promulgate pleading forms is so broadly accepted that a contrary decision would create a minority rule by which a single state supreme court—the Supreme Court of Texas—cannot promulgate pleading forms, while *forty-six other* states continue to offer court-approved forms. *Id.*

A decision that the Supreme Court of Texas cannot promulgate pleading forms would also displace the Supreme Court's practice of doing just that. In

2005, the Supreme Court approved protective-order forms for pro se litigants to use in obtaining protective orders. Misc. Docket No. 05-9059 (Tex. 2005) (attached as Exhibit J). The Court-approved documentation includes extensive instructions on the process for obtaining a protective order, sample forms indicating where the litigant should list certain items of information, and a template form for the litigant to complete and file in court. *Id.*

In 2009, the Supreme Court promulgated "a form petition that tenants may use" in filing suit to require a landlord "to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant." Misc. Docket No. 09-9195 (Tex. 2009) (attached as Exhibit K). The form petition was promulgated along with an amendment to Texas Rule of Civil Procedure 737. The Legislature had instructed the Court to promulgate the amendment to Rule 737, but the Legislature had not instructed the Court to promulgate the accompanying form. *See* Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448) (attached as Exhibit L).

The Supreme Court has also promulgated numerous forms for use in the legislatively created "judicial bypass" procedure by which a court may authorize a pregnant minor to obtain an abortion absent parental notification. Misc. Docket No. 99-9243 (Tex. 1999) (attached as Exhibit M); Misc. Docket No. 00-9171 (Tex. 2000) (attached as Exhibit N); Misc. Docket No. 07-9035 (Tex. 2007) (attached as

Exhibit O). The Court-approved documentation includes a set of detailed, plain-language instructions regarding the judicial-bypass procedure, an application for the litigant to complete and file in court, a form for the litigant to use to request a continuance of a court hearing, and numerous other forms. Unlike the protective-order and landlord-tenant forms, the judicial-bypass forms were promulgated at the Legislature's direction. Misc. Docket No. 99-9243 (Tex. 1999) (attached as Exhibit M). In directing the Supreme Court to promulgate pleading forms, the Texas Legislature implicitly recognized the Supreme Court's constitutional authority to promulgate such forms.

The Texas Rules of Civil Procedure contain numerous forms that litigants can use in judicial processes. Texas Rule of Civil Procedure 592b contains a template form that a litigant may use in submitting an attachment bond. TEX. R. CIV. P. 592b (attached as Exhibit P). Rule 736(2) sets forth a form that a litigant may use to give notice of a suit to foreclose on certain liens. *Id.* 736(2) (attached as Exhibit Q). Rule 750 contains a form for litigants to use in filing an appeal bond in a forcible entry and detainer case. *Id.* 750 (attached as Exhibit R). And Rule 117a sets forth a fill-in-the-blank form for citing by publication or personal service in suits for delinquent ad valorem taxes. *Id.* 117a(5) (attached as Exhibit S).

Thus, nearly every state in the country—including Texas—offers court-approved pleading forms. A decision that a state high court lacks this authority is an unsupportable and unprecedented argument under both the constitution and case law that would undermine the Supreme Court's established practice of promulgating pleading forms, and would withhold from the Supreme Court of Texas powers that most other state courts routinely exercise without controversy.

CONCLUSION

The Texas Constitution, statutory law, and common law all provide that the Supreme Court of Texas has the authority to administer the judicial branch of government, to create rules of procedure, and to achieve efficiencies for Texas courts. The Supreme Court may promulgate pleading forms in exercise of those powers.

Respectfully submitted,

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Counsel for the Texas Access to Justice Commission

LIST OF EXHIBITS

A. Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012).

B. ARIZ. CONST. art. VI, § 3.

C. Admin. Order No. 89-22 (Ariz. 1989).

D. FLA. CONST. art V, § 2(a).

E. Admin. Order. No. 11-12-2009 (S.C. 2009).

F. S.C. CONST. art. V, § 4.

G. Misc. Docket No. 11-9046 (Tex. 2011).

H. National Center for State Courts, Use of Self-Help Forms (2012).

I. Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C.

J. Misc. Docket No. 05-9059 (Tex. 2005).

K. Misc. Docket No. 09-9195 (Tex. 2009).

L. Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448).

M. Misc. Docket No. 99-9243 (Tex. 1999).

N. Misc. Docket No. 00-9171 (Tex. 2000).

O. Misc. Docket No. 07-9035 (Tex. 2007).

P. TEX. R. CIV. P. 592b.

Q. TEX. R. CIV. P. 736(2)

R. TEX. R. CIV. P. 750.

S. TEX. R. CIV. P. 117a(5).

Exhibit A

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

January 25, 2012

Mr. Bob Black
President, State Bar of Texas
P.O. Box 12487
Austin, TX 78711

Dear President Black:

The Court met yesterday to consider comments we have received about how best to provide our poorest citizens access to the rule of law. We greatly appreciate and accept the State Bar's offer to assist with this shared mission. No Court can accomplish this goal alone; the profession must help. The Court and the profession cannot do it alone; the State must help. No easy solution exists. Yet we must try.

Six million Texans qualify for legal aid. Even with the strong support of the Texas Legislature, economic conditions continue to force funding levels downward. Legal aid providers are cutting back as funding dissipates. They can provide help to fewer than one in five who apply. Texas lawyers have generously contributed both money and time toward legal services, yet each year tens of thousands of Texans are compelled to seek justice in our courts without legal representation. They need legal services they cannot afford.

For that reason, after consulting with the State Bar, we announced last year that "developing pleading and order forms approved by the Court for statewide use would increase access to justice and reduce the strain on courts posed by pro se litigants." Order in Misc. Docket No. 11-9046. Such forms have been officially sanctioned by courts in most states. The Court created the Supreme Court Uniform Forms Task Force with broad representation to develop similar forms and to provide counsel on their most effective use. The Task Force delivered its first report earlier this month.

In accordance with its usual practice, the Court has decided to refer the Task Force report to the Supreme Court Advisory Committee. We expect the Advisory Committee members to engage in the careful critique they have always given on matters of profound importance to the administration of justice. We instruct the Committee to consider input from all sectors, including the judiciary, the legal profession, representatives of the Legislature, and the public. I anticipate that the Court will receive the Committee's recommendations in April and will begin to review them in May. Considering the importance of this enterprise, we encourage the State Bar to present recommendations to the Advisory Committee and to the Court. This should allow all who wish to participate to be heard.

We will approve forms only if they are substantively correct and are reasonably calculated to accomplish the goal of greater access to the courts. Uniform forms are but one means of addressing the problems presented by pro se litigation. The State Bar may develop other recommendations.

The Constitution requires the Court to administer justice. This occurs not only by deciding cases, but also by establishing a judicial climate in which people who lack money to hire a lawyer have a reasonable chance to vindicate their rights in a court of law. We are pleased to have the Bar's full participation toward that end.

Sincerely,

Wallace B. Jefferson

Wallace B. Jefferson
Chief Justice

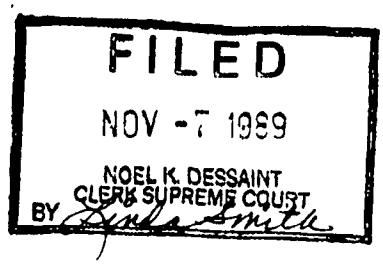
Exhibit B

Arizona Constitution Article VI, § 3

Section 3. The supreme court shall have administrative supervision over all the courts of the state. The chief justice shall be elected by the justices of the supreme court from one of their number for a term of five years, and may be reelected for like terms. The vice chief justice shall be elected by the justices of the supreme court from one of their number for a term determined by the court. A member of the court may resign the office of chief justice or vice chief justice without resigning from the court.

The chief justice, or in his absence or incapacity, the vice chief justice, shall exercise the court's administrative supervision over all the courts of the state. He may assign judges of intermediate appellate courts, superior courts, or courts inferior to the superior court to serve in other courts or counties.

Exhibit C



SUPREME COURT OF ARIZONA

LEGAL FORMS DEVELOPMENT AND APPROVAL AUTHORITY

Administrative Order No. 89-22

In order to promote development and use of uniform and efficient legal forms at all levels of the court system and to enhance the public's access to the courts through the availability of useable and understandable legal forms,

IT IS ORDERED, pursuant to the Ariz. Const. Art. VI, Sec. 3 authority of the Court, that the Administrative Office of the Courts develop and approve all legal forms required by statute.

IT IS FURTHER ORDERED that the Administrative Office of the Courts shall develop and approve for discretionary use by the public such other forms as the Administrative Office deems appropriate to enhance public access to the courts and to improve the efficiency of the courts.

DATED AND ENTERED this 7th day of November , 1989 at the State Capitol, Phoenix, Arizona.

FRANK X. GORDON, JR.
Chief Justice

Exhibit D

Florida Constitution Article V, § 2

SECTION 2. **Administration; practice and procedure.—**

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(c) A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(d) A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

Exhibit E

The Supreme Court of South Carolina

Re: Revisions to Self-Represented Litigant Simple Divorce Packet

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ADMINISTRATIVE ORDER

From April 1, 2009 to June 1, 2009, the South Carolina Bar allowed its members to send recommendations to improve the Self-Represented Litigant Simple Divorce Packet previously approved by this Court. The responses were forwarded to South Carolina Court Administration and to the Family Court Judges Advisory Committee for consideration. While a number of recommendations were submitted, the advisory committee endorsed only the revisions listed below in keeping with the goal to provide documents to obtain a simple, uncontested divorce based on one year separation.

Pursuant to the provisions of South Carolina Constitution Article V § 4,

IT IS ORDERED that the revisions in the following forms in the Self-Represented Litigant Simple Divorce Packet, with a revision date of (11/2009), are approved as follows:

SCCA 400P SRL-DIV - Plaintiff's Instructions

- A warning and disclaimer are included at the top of Page 1.
- Page 5 is revised to indicate that a notarized SCCA 430- Financial Declaration should be attached to the SCCA 405F - Motion to Affidavit to Proceed In Forma Pauperis if it is filed with the Clerk of Court.

SCCA 400.02 SRL-DIV - Complaint for Divorce

- On Page 1, the residency requirements have been revised for the Plaintiff to specify the length of time the parties have lived in South Carolina and their county of residence.
- Paragraph 4 now indicates that the parties have remained living separate and apart "without cohabitation".
- Paragraph 5 on Page 2 includes a table to list the name(s) and date(s) of birth of any child(ren).

SCCA 400.05 SRL-DIV – Defendant's Answer

- Page 3 has been revised slightly in the form of a Counterclaim. This section now gives the Defendant the option to request a change of name.

SCCA 400.08 SRL-DIV - Request for Hearing for Divorce

- A section has been added at the bottom of the form for the Clerk of Court to input the date and time of the scheduled hearing.

SCCA 400.10 SRL-DIV - Final Order of Divorce

- In Paragraph 2, the residency requirements have been revised to indicate the length of time

the parties have lived in South Carolina and their county of residence.

- Paragraph 12 includes a table to list the name(s) and date(s) of birth of any child(ren).

SCCA 400D SRL-DIV - Defendant's Instructions

A warning and disclaimer are included at the top of Page 1.

IT IS SO ORDERED.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

November 12, 2009
Columbia, South Carolina

Exhibit F

South Carolina Constitution Article V, § 4

SECTION 4. Powers of Chief Justice; rules; admission to practice of law and discipline of persons admitted.

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Exhibit G

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9046

ORDER CREATING UNIFORM FORMS TASK FORCE

The Texas Access to Justice Commission, in collaboration with the Office of Court Administration, the Texas Legal Services Center, and the Texas Access to Justice Foundation, hosted the Texas Forum on Self-Represented Litigants and the Courts in Dallas on April 8-9, 2010. Over 120 attendees, including members of the judiciary, legal services attorneys, court clerks and administrators, and law librarians participated.

Participants at the Forum considered the impact pro se litigants have on the court system and evaluated tools to enable the courts to help pro se litigants navigate the legal system and to improve court efficiencies. An issue that arose consistently throughout the Forum was the need for statewide standardized forms for pleadings frequently used by pro se litigants.

The legal system functions most effectively when each litigant is represented by an attorney. But there are currently insufficient resources to meet the continually growing demand for civil legal aid. As a result, an increasing number of litigants will appear in courts pro se because they cannot afford an attorney and are unable to secure representation from legal aid.

The Court is concerned about the accessibility of the court system to Texans who are unable to afford legal representation. After consultation with the State Bar of Texas and the Texas Access to Justice Commission, the Court agrees that developing pleading and order forms approved by the Court for statewide use would increase access to justice and reduce the strain on courts posed by pro se litigants.

Accordingly, it is **ORDERED** that:

1. The Supreme Court Uniform Forms Task Force is created to:

a. monitor local efforts to create, amend, or modify forms and incorporate local efforts within the Task Force's purview;

b. evaluate best practices for the creation and distribution of forms;

c. consult with and seek input from stakeholders including the Texas Access to Justice Commission, the Texas Access to Justice Foundation, and legal services providers;

d. draft an implementation plan that will identify legal areas that would benefit from the availability of uniform pleading and order forms and that will make the forms readily available;

e. develop proposed models of uniform pleading and order forms to be evaluated and approved by the Court for statewide use.

2. The members of the Task Force shall represent, at a minimum, the judiciary, the private bar, legal services attorneys, court clerks and administrators, and law librarians.

3. The following members are appointed:

Stewart Gagnon, Houston
Hon. Tracy Gilbert, Conroe
Hon. Diane M. Guariglia, Houston
Casey Kennedy, Austin
Cristy Keul, Tyler
Hon. Marilea Lewis, Dallas
Karen Miller, Austin
Steve Naylor, Fort Worth
Lisa Rush, Austin
Hon. Phylis J. Speedlin, San Antonio
Ed Wells, Houston
Sheri Woodfin, San Angelo
Michael Wyatt, El Paso

4. The Task Force will deliver minutes of its meetings to the Court and report to the Court by September 1, 2011, on progress made and challenges faced, efforts underway to develop forms throughout the state and steps taken to incorporate those efforts into the Task Force's charge, forms that have been completed, documents to be developed and a schedule for creation of those documents, and best practices for use with statewide forms.

5. Justice Hecht is designated the Court's liaison to the Task Force.

Dated: March 15, 2011

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Exhibit H

We have received the following two questions from Carl Reynolds, Administrative Director of the Texas Office of Court Administration, regarding the use by self-represented litigants of state-approved forms for matters such as uncontested divorce:

1. Have you seen evidence that using the forms has harmed individuals or the public?

2. What is the impact of using the forms on judicial and court efficiency?

State/Respondent	Response
Alaska/Stacey Marz	I am the Alaska Court System Director for the self-help program and draft the forms for use by self-represented litigants so Christine Johnson asked me to respond to the questions about usage of self-help forms. **1. Have you seen evidence that using the forms has harmed individuals or the public?** No, we have seen no evidence that using self-help forms has harmed individuals or the public. The Alaska Court System has been providing self-help forms for many years. Our self-help center was created in 2001 and began producing many forms to be used specifically by self-represented litigants. See www.courts.alaska.gov/shcforms.htm for a list of family law forms designed for self-represented litigants and www.courts.alaska.gov/shc/appeals/appealsforms.htm for a list of forms for civil appeals to the Alaska Supreme Court. The court system also provides forms in other case types: www.courts.alaska.gov/forms.htm. These forms have increased the ability of self-represented litigants to access the courts to resolve their legal matters. **2. What is the impact of using the forms on judicial and court efficiency?** Judges report that filings are more complete and include more relevant information about the issues in the case. In fact, in custody family law cases, the judges regularly issue final findings and conclusions of law and decrees on forms designed to be filed by self-represented litigants. Judicial officers routinely use other self-help orders designed for self-represented litigants. They appreciate the fill-in-the blank and check box formatting and the inclusion of all necessary provisions. Judges have also reported that filings on self-help forms are sometimes better than those drafted by attorneys.

	Court clerks report a reduced need to issue deficiency notices because the fill-in-the blank forms address many common problems (they are formatted correctly and include certificate of service sections) that historically have caused documents to be deemed deficient filings because of non-compliance with court rules.
Arizona/Dave Byers	I have never heard of any instance of harm due to the forms....Of course regardless of the forms, pro pers can make mistakes in filings and what they request (e.g. not asking for a portion of a pension) The impact of the forms on the court are all positive...They are legible. Instructions help make forms more complete...
California/Bonnie Hough	I am responding to the question you posed regarding the usage of self-help forms on behalf of Mr. Ronald Overholt, Interim Administrative Director of the Courts. California has used standard forms since the 1970's. We currently have about 1,400 forms that have been approved by the Judicial Council including translations of those that are most commonly used by self-represented litigants. For a list of all forms and link to each, please see: http://www.courts.ca.gov/forms.htm The procedure for adopting a rule or form is attached. The Judicial Council adopts legal forms in one of two ways. Under Government Code section 68511, the council may "prescribe" certain forms. Use of those forms is mandatory. The council may also "approve" forms. Use of an approved form is not mandatory, but the form must be accepted by all courts in appropriate cases (rule 1.35). Forms thus are "adopted" for mandatory use and "approved" for optional use. Some forms are for information only (including all translations). Most forms can be downloaded to a local computer and filled out. They are also available at clerks' offices, law libraries, and self-help centers. Parties can also print any form and fill it out by hand. See the section on the website re: "How to fill out court forms."

	We have no evidence that forms have hurt litigants in any way. Judges, clerks and practicing attorneys generally find them extremely helpful as they know where to look on forms for the information they need and do not have to worry about basic issues not being set out before the court. Self-represented litigants can prepare appropriate pleadings – often with the guidance of an attorney. Cases such as divorce, child support, domestic violence, small claims, guardianship, conservatorship, probate, adoption and a wide variety of other matters precede primarily using forms. It saves a huge amount of time in training and judicial review to know that the key elements are set forth in the forms. We have a relatively small number of judges given our population and I think that part of the reason that the system works is because of standardized forms. While we have a large number of self-represented litigants in California, our figures do not seem to be different than in most other states that report that data. We also have many litigants who may not be able to afford an attorney for the entire case, but are able to get help with a portion of the case, including completion or review of forms.  howprorule.pdf
Guam/Geraldine Amparo Cepeda	The inquiry was the effects of the use of state-approved forms by self-represented litigants. Here is the response from the Judiciary of Guam: The Judiciary of Guam has self-help computer kiosks that allow self-represented litigants to complete pre-approved forms, which are then printed and filed by these litigants. **Have you seen evidence that using the forms has harmed individuals or the public?** No, the court has no evidence that the use of the self-help kiosks and forms has resulted in any harm. Those who cannot afford an attorney but do not qualify for assistance from Guam Legal Services are able to generate court filings for less

	complex court proceedings, such as guardianships and uncontested divorces. **What is the impact of using the forms on judicial and court efficiency?** The impact on members of the public who use the kiosks and the forms has been positive. They are able to represent themselves in less complex court proceedings, and save money. The impact on efficiency in the court system has been positive as well, because the court documents generated by the kiosk are correct and in proper format for filing. As a result, there is no hold up in the filing process.
Idaho/Michael Dennard	1. **Have you seen evidence that using the forms has harmed individuals or the public?** No. We try and limit our forms to court proceedings which are not complex, although that is difficult to do in family law cases which have the greatest need for assistance and the greatest inability to retain legal counsel. While there might be an occasional circumstance where instructions are not followed, or errors occur, the same thing happens in cases where the parties are represented by attorneys. Our goal is to provide access to the courts for citizens of limited means who are unable to retain legal counsel. If there were adequate resources for these people to assist them in retaining counsel, we would not have to provide this kind of assistance for self-represented parties. But the reality is, there is no other option. The "harm" to the public would be to provide no help for those unable to retain an attorney. For those who have dealt with this issue for many years, the argument that providing access to justice through court approved forms "harms" the public is very disingenuous. 2. **What is the impact of using the forms on judicial and court efficiency?** If statistics are examined for the past 10 to 15 years, in particular in family cases, one will see an extremely high and consistent rate of self-representation. This is not the result of any action or inaction on the part of the courts, but driven by the high cost of legal representation in proceedings where parties have no choice but to go to court. Prior to our use of court approved forms, these parties were trying to create their own forms, or using inadequate or inappropriate forms they found from a variety of sources, which did nothing but frustrate court staff and judges who had to deal with the problems created by those documents. By having correct forms and instructions approved by the courts, these issues have diminished greatly. Less time is spent correcting or redirecting the self-represented litigants by court staff and judges, and matters are resolved more quickly and efficiently. But the greatest "impact" on the judiciary, however, is the appreciation expressed by the public and the public's very appropriate perception that everyone is ensured access to justice in our courts.

Indiana/Camille Wiggins	Here are several responses from Indiana per your request to the COSCA listserv: In response to your email dated February 8, 2012, to Indiana Supreme Court Division of State Court Administration Executive Director, Lilly Judson, I forwarded the survey questions to our SRL Committee for response. Our Committee is comprised of judges, lawyers, court librarians, legal service organizations, court clerks, law schools, and pro bono organizations. Below you will find the responses received from several of the Committee members: From judges..... People tend to use the forms without a full understanding of what they are supposed to be used for. They also think that once they file the forms their relief will either be automatically granted or the Court or court staff will assist them through the process. Many people do not bother to read or follow the directions that accompany the forms. They become frustrated when they cannot get the relief they are requesting. The impact on the Court and judicial efficiency is that court staffs are glad to be able to refer people to the website for forms. However, the staff is not sufficiently aware that there are not forms available to fit all situations. The litigants return to the court frustrated that they cannot find the correct forms or resort to using the wrong forms just to get something on file. We often go in to Court to hear an emancipation only to discover that the moving party is seeking modification of custody or some other relief. I don't think the answer is creating forms to fit more situations. Litigants need to understand the limitations of the website. ——— The forms help separate the simple cases that can be done with little or no professional assistance, from the more complicated matters that genuinely require legal specialist and other professional guidance. ——— Please allow me to respond to your questions in reverse order. The forms generally save the court time in two ways. First, they are recognizable as pleadings, which mean I do not spend as much time guessing what the litigant wants. Second, the forms are a huge improvement over handwritten pleadings because they are much easier to read. I do not believe that the forms have harmed individuals or the public. Litigants are harmed by incomplete forms, missing important information or issues, and lack of understanding the legal process. As long as people are self represented, that is not likely to change.

	The existence and use of the forms is incidental to that problem. That said, having the forms may give some persons a false a sense of security that can be risky. The philosophical question of whether it is better to let people engage in legal combat where they may be overmatched and "outgunned" or not let them get into the fray at all is for those wiser than me. ***From a court clerk.....*** ***Have you seen evidence that using the forms has harmed individuals or the public? no*** ***What is the impact of using the forms on judicial and court efficiency? Our Courts really appreciate the forms. Without them pro-se litigants turn the Court and Clerk staffs into interpreters.*** From pro bono organizations.... Harm? I don't believe that I have ever seen the forms themselves result in harm to litigants that would not have occurred regardless. Certainly, litigants mis-use the forms sometimes, use them for the wrong reasons, or try and modify them to fit a situation that they aren't designed to address, but they would likely do that regardless of the existence of our court forms (using forms from the internet or other sources or no forms at all). There are times when litigants don't read the directions or understand the implications of court actions, but that is not the fault of the forms. That is the fault of a society that doesn't have adequate access to counsel – which is a different issue entirely. I do think litigants are sometimes frustrated that our forms cannot work the magic they hope and pray for. Efficiency? The forms have absolutely improved judicial and court efficiency, especially since the advent of the new versions that help litigants only use the appropriate forms for their specific situation (no more filing for both and final hearing and a waiver of the final hearing because they are in the same packet). When combined with pro se assistance, we have seen the number of continuances in litigated matters drop substantially with litigants completing matters more quickly and with fewer scheduled hearings. ***Have you seen evidence that using the forms has harmed individuals or the public?*** I have not seen any such evidence. All feedback to me has been positive. ***What is the impact of using the forms on judicial and court efficiency?*** I do not work in the courts but the pro bono plan administrators' observation is that the forms increase court efficiency and access to justice.

Iowa/John Goerdt on behalf of David Boyd	David Boyd asked me to respond to this inquiry. The Iowa courts have offered a form for filing a small claims case for at least 15 years. In 2007, the Iowa courts began offering forms and instructions for self-represented parties in a divorce that does not include children. In 2008, our courts also began providing forms and instructions for parties involved in a proceeding to modify child support only. The committee that developed these forms expects to complete the forms and instructions for a divorce involving children sometime during 2012. You can find the forms and instructions for domestic relations cases on the Iowa courts' website at: http://www.iowacourts.gov/Representing_Yourself/DivorceFamily_Law/index.asp **1. Have you seen evidence that using the forms has harmed individuals or the public?** We have not received any complaints or feedback from the public or judges that use of these forms has harmed any individuals. Many or most of the people who have used the forms and instructions developed by the Iowa judicial branch would have found forms someplace (e.g., on the internet or at Walmart) -- and those generic forms often do not meet some specific requirements under Iowa law. By using the forms and instructions approved by the Iowa Supreme Court, parties and judges can be confident that the forms and instructions meet the requirements of Iowa law. Consequently, the forms and instructions probably prevent harm, rather than cause harm. It should be noted that at approximately the same time when the forms and instructions for divorce without children were released (in 2007), the supreme court amended the Code of Professional Conduct for attorneys to allow them to handle just part of a case (i.e., unbundled legal services), rather than requiring them to handle everything in a case from start to finish. The instructions that accompany the forms for self-represented litigants encourage the parties to consult with an attorney whenever they have questions about a form or procedure described in the instructions. **2. What is the impact of using the forms on judicial and court efficiency?** Under the Iowa Court Rules, a self-represented party who uses forms in any case for which the supreme court has made forms available must use the approved forms. The forms are very simple and clearly explained by the instructions. Use of these forms almost certainly increases the likelihood that self-represented parties provide the type of information judges need to make decisions and move the case to the next step. Judges also know exactly where to find the information they need on the forms because the forms are standardized. Consequently, the forms and instructions have almost certainly increased the courts' efficiency in handling cases involving self-represented parties.

Massachusetts/Kim Wright	Your inquiry to Listserv members regarding questions from Carl Reynolds regarding self help forms has been referred to me relative to a question about Probate and Family Court forms. We have a court promulgated form for filing an uncontested divorce, a Joint Petition, but we do not provide a form for the agreement that must be submitted with it that contains all the substantive information about the parties agreement relative to custody, visitation, child support, property division etc. We have various other complaint and petition forms for other case types available at our courthouse and some on our website. Please feel free to contact me with further questions.
Michigan/Amy El Garoushi	I am responding from Michigan. We have not yet started using court-approved forms for divorce proceedings in Michigan. We are in the process of developing them now for use with a pilot website being developed by the Michigan Poverty Law Program through a project funded by the State Bar Foundation and overseen an advisory group established by the Solutions on Self Help Task Force. The use of these forms and the website will be evaluated for effectiveness and impact on the judiciary in the upcoming year. If you would like more details, you can contact Angela Tripp of the Michigan Poverty Law Program. Feel free to contact me for more information.
Missouri/Greg Linhares	Missouri has no survey or other empirical data to determine if the public or individuals have been harmed by our forms, nor do we have such information to determine impact on court efficiency. Anecdotal evidence suggests both benefits and drawbacks to use of such forms in Missouri, with improved access to court process for pro se litigants being identified anecdotally as a benefit, and improper use of forms or improper attempts to represent oneself when an attorney should be used being identified anecdotally as a drawback.
Montana/Erin Farris	I am responding to this message on behalf of the Montana Supreme Court Court-Help Program. As the current Program Administrator, these comments are a reflection of the feedback I receive from clerks of court and judges statewide regarding the State's provision of forms for self representation. ***Have you seen evidence that using the forms has harmed individuals or the public?*** I cannot report a single incident where the use of self represented forms created and distributed by the State has harmed

	a self represented litigant. Although form development is challenging, especially in light of legal progress, obstacles encountered by self represented litigants are only made easier by the State's provision of forms. A large contributing factor to Montana's success in form development and distribution is the administrative safeguards in place. The Montana Supreme Court has a Commission on Self Represented Litigation. One of the purposes of the Commission is to approve form development and revisions. The Commission has a process of determining what materials are most appropriate for self representation and endorses the development of only those forms. The Commission also delegates legal experts to review form content. The decision of whether to provide forms on a particular subject often hinges on whether the materials might put the litigant at risk of harm due to predictable or unpredictable legal outcomes. An example of near harm created by self representation forms was due to a litigant's utility of a form found from a foreign online source. The forms used were not provided by the State. This was only a situation of near harm because the presiding judge was able to identify the unfamiliar form and consult community and State resources about its inappropriateness. Through the provision of well defined state approved forms and communication with the court, Court based legal programs act as a safeguard to the multitude of misinformation available to people through various online legal resources. ***What is the impact of using the forms on judicial and court efficiency?*** Prior to the provision of forms, litigants were largely undirected. Given the relative unpreparedness of an individual attempting to navigate the court system, court staff had a very difficult time administering justice. Judges found themselves in uncomfortable positions in the court room; making difficult decisions in answering litigant questions and instructing litigants on filing. Clerks of court similarly had to regularly instruct litigants on filing requirements. Judges observations are that the State's provision of forms dramatically increased court efficiency by enhancing the effectiveness of scheduling and completing effective court hearings. However, complaints about forms are ongoing. Judges complain the "one size fits all" approach to form development results in overly lengthy forms. Judges have also complained that the forms are unconstructively vague. However, the solution in those jurisdictions has not been to abandon forms. Rather, judges developed county or district specific forms to address their concerns. Clerks of court are extremely appreciative of state wide form provision. Prior to form development, clerks of court would receive multiple visits from self represented litigants in their jurisdictions and found it very difficult to manage their time and avoid instructing individuals on filing instructions from the counter. Many clerks describe the ability to direct individuals to state forms as an option they couldn't do without. Some clerks have fully endorsed forms to the extent of

	actually providing printed forms to litigants at the clerk counter. I hope this brief description of our experience is helpful to your research. Feel free to contact me if you have additional questions. For a complete list of Commission endorsed self representation forms see: http://courts.mt.gov/library/topic/default.mcpx For more information on the Commission on Self Represented Litigants see: http://courts.mt.gov/supreme/boards/self_represented_litigants/default.mcpx
New Hampshire/Don Goodnow	**Have you seen evidence that using the forms has harmed individuals or the public?** Assuming "state-approved" refers to forms created by the judicial branch which are made available to the public, we have not seen any evidence that the use of these forms has harmed individuals of the public. **What is the impact of using the forms on judicial and court efficiency**? Our pre-made forms include spaces for individuals to include information set forth in statute or court rules and thus they provide a compliance roadmap for any filing party. The use of these forms increase efficiency because they reduce the explanation time required by clerical staff to the filing party, and both clerical and judicial staff know immediately where on the form to look for specific information to screen and review. These forms are updated by the court, thereby reducing the likelihood that they will have to be returned to the party for the inclusion of information newly required by law or court rule.
New Mexico/Arthur Pepin	**1. Have you seen evidence that using the forms has harmed individuals or the public?** NM introduced statewide uncontested divorce forms over ten years ago. The main problem with the form was that people did not understand the difference between contested and uncontested (no matter how clearly that was addressed in the form) and would try to file uncontested forms for contested matters. Because the need for pro se forms is so severe in NM, the NM Supreme Court is seeking to establish forms for use in both contested and uncontested cases through the interactive format of the LawHelp website. **2. What is the impact of using the forms on judicial and court efficiency?** The initial impact was confusion on the part of court staff and judges, but continued use resulted in familiarity and

	suggestions to streamline the process. There has never been a major push to pull the forms off the shelf once they were introduced, only to improve them. The forms improve court efficiency because court staff has forms and/or referrals to give to pro se litigants, who otherwise clog up the lines and phones with questions and requests for legal advice that court staff cannot give. Trained on the difference between legal advice and procedural information, and equipped with available, approved referrals, court staff are able to provide access to the courts to pro se litigants rather than turn them away with no help.
North Carolina/Todd Nuccio on behalf of Judge John Smith	Judge Smith forwarded the below email to my attention for comment and direct submission. I am the court administrator in Mecklenburg County, NC and we generally have the widest use of self-help forms and services in the state. Please let me know if you need any further clarification regarding the below responses. Thanks. **Q. Have you seen evidence that using the forms has harmed individuals or the public?** A. We have not seen any evidence which indicates the use of legal form packets by pro se litigants has harmed individuals or the public. To use the example of absolute divorce, litigants who wish to file for absolute divorce are required to meet all the same legal standards as an attorney filing for absolute divorce. A judge is assigned to review all documents filed by the individual in the case and determine that all legal standards have been met prior to signing the order granting an absolute divorce. The Mecklenburg County SelfServe Center has developed step by step instructions and local county forms that require the litigant to answer all of the legal requirements for filing for absolute divorce, child support, custody and other claims for relief. These forms have been reviewed and approved for distribution by various Family Court Judges in Mecklenburg County. We have found that these and the other steps mentioned below have helped in reducing harm to individuals and the public. In fact, the standardized forms actually assist in reducing errors, increasing efficiency and improving litigant satisfaction. In addition to forms and instructions, we provide supplemental services which further reduce any potential harm. One additional service is providing a list of attorneys willing to provide "unbundled services." This term is used to describe the wide range of discreet tasks that an attorney might provide without providing full representation. Unbundled services allow the litigant to seek assistance for those tasks that are beyond either their educational means, financial means or both. As such, they can elect to use an attorney for their entire case or just a particular phase of the case. Other measures we have implemented which reduce any potential harm to individuals or the public include the offering of educational workshops (clinics) for pro se litigants. In partnership with the Charlotte School of Law and the Latin American

	Coalition we conduct clinics in both English and Spanish during the lunch hour, in the evening and on weekends. These clinics cover the legal standards required and increase the accuracy and completeness of the forms. After attending a legal clinic, the litigant, if financially qualified, may also sign up for an Attorney for the Day appointment. This is a 30 minute consultation with a licensed North Carolina attorney. These attorneys have also attended a continuing legal education (CLE) on assisting self-represented litigants navigate the court system. The Mecklenburg County SelfServe Center hosts, on average, three (3) days per month where an attorney conducts up to six (6) consultations per day. This allows 18 litigants per month to have their documents reviewed for accuracy, completeness and the ability to ask additional questions about the divorce process. **Q. What is the impact of using the forms on judicial and court efficiency?** A. Each week one judge is charged with reviewing up to 135 divorce files. The judges have openly expressed their preference in reviewing and processing local template forms. Their preference is expressly based on uniformity, the ability to review the information at a glance for completeness, and the formatting of the documents. In fact, for ease in processing, most judges first separate the divorce files into two piles, local forms and other pleadings. The time spent processing the template forms is minimized greatly in comparison to those drafted by members of the Bar. The same preference is true for handling forms dealing with other case types. The completeness and uniformity serve to ensure that the Court has what it needs to address the relief being sought.
North Dakota/Sally Holewa	1. **Have you seen evidence that using the forms has harmed individuals or the public?** We have not done a study on this. Anecdotally, some judges and lawyers have raised this as an issue, but have not provided any specific examples. 2. **What is the impact of using the forms on judicial and court efficiency?** Judges and court staff frequently raise this as an issue, but we have not done any type of study to determine whether that is actually the case or whether <u>not</u> having forms available for self-represented litigants would make the process more efficient.
Ohio/Jo Ellen Cline on behalf of Steve Hollon	**Have you seen evidence that using the forms has harmed individuals or the public?** None to our knowledge. **What is the impact of using the forms on judicial and court efficiency?** Allowing the use of standardized forms has a significant impact on judicial economy both in terms of administrative matters and case processing. Ohio uses standard forms in domestic relations cases, civil protection order cases, and in probate matters extensively.

Oklahoma/Mike Evans	Occasionally the Oklahoma legislature has directed that the Administrative Office of the Courts prepare subject matter forms that are available to judges and litigants; however, these forms are not designed or specifically designated for use by self-represented litigants only. These forms have been used on a very limited basis. I am not aware of any particular concerns with their use in any Oklahoma trial court.
South Carolina/Cody Lidge	**1. Have you seen evidence that using the forms has harmed individuals or the public?** No, but SC Court Administration has learned of isolated events where individuals have attempted to sell the Self-Represented Litigant Divorce Packet to litigants even though the packet is offered free of charge. **2. What is the impact of using the forms on judicial and court efficiency?** Our forms are easily accessible on the website and, in some cases, provided in the Clerks of Court offices for a nominal fee. When the court forms are used correctly, they benefit all players and help judicial proceedings run smoothly.
Utah/Jessica Van Buren on behalf of Dan Becker	The answers provided are based on anecdotal experience. **1. Have you seen evidence that using the forms has harmed individuals or the public?** We have not. We have, however, seen people harmed by **not** using the free court-approved forms. For example, people who pay for divorce packets that don't include vital forms, like the petition. **2. What is the impact of using the forms on judicial and court efficiency?** There has been a positive effect on clerical and judicial efficiency. The court-approved forms are also used by clinic staff and practicing attorneys.

Exhibit I

Statewide Uniform Forms - All 50 states + D.C.

Executive Summary:

Total states + D.C. with standardized forms: 49

Total states requiring courts to accept forms if used by litigant or lawyer: 37

Total states with family law forms: 48

Total states with divorce forms: 37

(Of divorce forms, 31 states have divorce with children, 30 have divorce with real property, 33 have forms for custody matters, and 39 have forms for child support matters)

Total states with forms available online: 49

Total states which limit access to forms to low-income litigants only: 0

Total states with a self-help website: 39

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Totals	**49**	**37**		**48**	**37**	**31**	**30**	**49**	**0**	**39**
Alabama	Yes	------	State Bar created 25 forms and 20 Court approved forms: landlord/tenant, SAPCR, divorce	Yes	Yes	------	------	Yes	No	------
Alaska	Yes	------	18 different categories of forms including appeals. SRL forms issued in past 12 years	Yes	Yes	Yes	Yes	Yes	No	Yes
Arizona	Yes	Yes (protective order kit only)	12 categories of forms: divorce, small claims, appeals, eviction protective order, etc. & 16 Family Procedure Forms 01/2009	Yes	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	------	Protective order and some probate forms are approved by the Supreme Court. Other form kits for SRLs are provided by the ATJ Commission in collaboration with legal aid. While these forms are not court ordered, they are supported by the Court and widely accepted.	Yes-protective order Kit	------	------	------	Yes	No	------
California	Yes	Yes	Hundreds of forms in existence for over 30 years. Forms are accepted and required by all courts in the state.	Yes	Yes	Yes	Yes	Yes	No	Yes
Colorado	Yes	------	Adoption, family, domestic relations, appeals, probate, protective order, small claims, water, juvenile, criminal, civil, paternity, misc.	Yes	Yes	Yes	Yes	Yes	No	Yes
Connecticut	Yes	Yes	Administrative, civil, criminal, family, general, housing, juvenile, probate, small claims, appellate, protective order	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Delaware	Yes	Yes	Civil, family, criminal, traffic, appeals	Yes	Yes	Yes	Yes	Yes	No	Yes
D.C.	Yes	Yes	Family, domestic relations, protective order, civil, small claims, landlord/tenant, criminal, probate. Additional family law forms, including divorce forms, are provided on the Bar website	Yes	Yes	Yes	Yes	Yes	No	Yes
Florida	Yes	------	Family, probate, landlord/tenant, small claims, guardianship	Yes	Yes	Yes	Yes	Yes	No	Yes
Georgia	Yes	------	Juvenile, probate, protective order, criminal, domestic relations	Yes-protective order Kit	------	------	------	Yes	No	Yes
Hawaii	Yes	------	Family, civil, small claims, landlord/tenant, traffic, criminal, protective order	Yes	Yes***	Yes	Yes	Yes	No	Yes
Idaho	Yes	Yes	Family, landlord/tenant, name change, small claims, protective order, judicial consent to abortion.	Yes	Yes	Yes	Yes	Yes	No	Yes
Illinois	------	------	------	------	------	------	------	------	------	------
Indiana	Yes	Yes	Civil, criminal, and appellate matters. Started 10 years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Iowa	Yes	Yes	Civil, small claims, family, divorce, protective order, commitments.	Yes	Yes	------	Yes	Yes	No	Yes
Kansas	Yes	Yes	Civil, family, landlord/tenant, probate and juvenile. 20+ categories. 100+ forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Kentucky	Yes	Yes	Probate and protective order form appear to be available for use by non-attorneys. All other forms (wide variety) available on Court's website appear to be for lawyers only. Bar provides ongoing divorce self-help clinics.	Yes-protective order Kit	------	------	------	Yes	No	------

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Louisiana	Yes	Yes	Protective order forms available for attorneys and non-attorneys/victims of domestic violence.	Yes- protective order Kit	------	------	------	Yes	No	------
Maine	Yes	Yes	Consumer, civil, criminal, family, foreclosures, money judgment, protective order, small claims, protective custody, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Family, landlord/tenant, small claims, traffic, protective order, and more. Started 20+ years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Massachusetts	Yes	------	Family, limited scope representation, probate, small claims, landlord/tenant, municipal courts.	Yes	Yes	Yes	Yes	Yes	No	Yes
Michigan	Yes	Yes	Adoption, civil, criminal, guardianship, protective order, name change, emancipation, parental consent, juvenile, mental commitment, probate.	Yes	------	------	------	Yes	No	Yes
Minnesota	Yes	Yes	33 categories including divorce, protective order, traffic, small claims, bankruptcy, etc. Packets started being developed in mid-1990's. Court and Bar studied and concluded forms were needed.	Yes	Yes	Yes	Yes	Yes	No	Yes
Mississippi	*forms are currently in develop-ment*	------	------	------	------	------	------	------	------	------
Missouri	Yes	Yes	Family: divorce, modification of protective order and custody, name change and paternity. SRLs MUST USE these forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Montana	Yes	------	Over 50 categories of forms including family law, discovery, appeals, protective order, landlord/tenant, probate, taxes, small claims.	Yes	Yes	Yes	Yes	Yes	No	Yes-Bar

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Nebraska	Yes	Yes	Appeals, court records, children and family, estates, financial/medical, parental consent waiver, general trial procedure, guardianship, name change, small claims, worker's comp and protective order.	Yes	Yes	Yes	------	Yes	No	Yes
Nevada	Yes	Yes	Civil, protective order, family, guardianship, landlord/tenant, appellate, divorce.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Hampshire	Yes	Yes	Appeals, divorce, domestic relations, child welfare, juvenile, adoption, estates, guardianship, probate.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Jersey	Yes	Yes	Civil, criminal, family, municipal, landlord/tenant, tax, appellate, foreclosures, small claims, juvenile, protective order.	Yes	------	------	------	Yes	No	Yes
New Mexico	Yes	Yes	Civil, criminal, municipal, landlord/tenant, guardianship, domestic relations.	Yes	Yes	Yes	Yes	Yes	No	Yes
New York	Yes	Yes	Family law, divorce, protective order, criminal, and variety of civil forms. Civil forms have been used for decades.	Yes	Yes	Yes	Yes	Yes	No	Yes
North Carolina	Yes	------	Criminal (88), civil (131), protective order, child support, paternity, juvenile. Divorce packets and self-help center provided at local district court level.	Yes	Yes	------	------	Yes	No	------
North Dakota	Yes	Yes	Appeals, child support, visitation, guardianship, probate, protective order, small claims, simple divorce.	Yes	Yes	------	------	Yes	No	Yes
Ohio	Yes	Yes	Protective order and some custody & support forms. Other domestic relations forms, including simple divorce forms, are provided by local courts.	Yes-protective order Kit	------	------	------	Yes	No	------

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Oklahoma	Yes	Yes	Protective order, child support, civil, appeals, criminal appeals.	Yes	------	------	------	Yes	No	------
Oregon	Yes	Yes	300+ family law forms, small claims, landlord/tenant, some criminal. Coalition of family law lawyers sought legislative mandate to create forms. Maintained by the Family Law Council, State Court Administrator and State Court Advisory Committee.	Yes	Yes	Yes	------	Yes	No	Yes
Pennsylvania	Yes	------	Probate, foreign adoptions, appeals, civil, landlord/tenant, expungements. Other forms including family law and divorce forms are provided at local court level.	------	------	------	------	Yes	No	------
Rhode Island	Yes	Yes	Administrative appeals, civil, family, landlord/tenant, traffic, pre-trial. Limited family law forms. Criminal and small claims forms are "coming soon."	Yes	------	------	------	Yes	No	Yes
South Carolina	Yes	Yes	Some civil and simple divorce created for SRLs. Divorce forms: uncontested, no kids, no property, But the SRL can modify the forms to include kids and property and contested matters. Also a lot of court-approved forms that are geared to attorneys.	Yes	Yes	------	------	Yes	No	Yes
South Dakota	Yes	------	Protective order, divorce, name change, parenting time, civil	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Tennessee	Yes	Yes	Divorce no kids, no property were approved by the Supreme Court in 2011. They are the only Court approved forms. Tennessee's OCA has developed other forms available to lawyers and non-lawyers, but they have not been approved by the Court. These OCA forms include: protective order, child support, criminal, probate, small claims, traffic.	Yes	Yes	------	------	Yes	No	Yes
Texas	Yes	Yes	Protective Order Kit in 2005	Yes- protective order Kit	------	------	------	Yes	No	------
Utah	Yes	Yes	Divorce, child support, enforcement, protective order, landlord/tenant, guardianship, parentage, probate, small claims, expungement.	Yes	Yes	Yes	Yes	Yes	No	Yes
Vermont	Yes	Yes	Civil, small claims, family, protective order, criminal, probate, name change, guardianship, partner adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
Virginia	Yes	Yes	Protective order, traffic, paternity, child support, juvenile, mental health, civil.	Yes	------	------	------	Yes	No	------
Washington	Yes	Yes	Divorce, custody, child support, protective order, juvenile, title, financial, criminal, adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
West Virginia	Yes	Yes	Divorce, family, appeals, child support, custody, protective order, guardianship,	Yes	Yes	Yes	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Divorce, family law, small claims, name change, juvenile, probate, protective order, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Divorce, child support, child custody.	Yes	Yes	Yes	Yes	Yes	No	Yes

Exhibit J

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9059

ORDER APPROVING PROTECTIVE ORDER FORMS

ORDERED that:

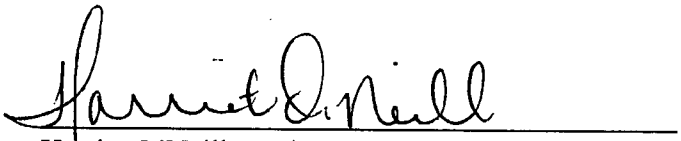
The following protective order forms are approved for use in obtaining a protective order under Title IV of the Texas Family Code. Use of the approved forms is not required. However, if the approved forms are used, the court should attempt to rule on the application without regard to technical defects in the application. A trial court must not refuse to accept the approved forms simply because the applicant is not represented by counsel.

SIGNED AND ENTERED this 12th day of April, 2005.

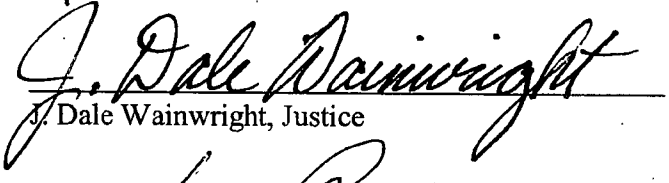
Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

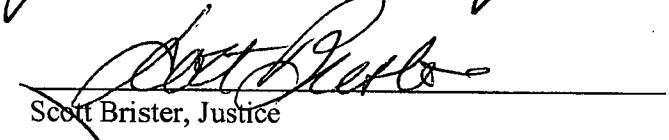
Priscilla R. Owen, Justice



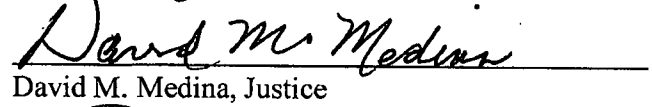
Harriet O'Neill, Justice



J. Dale Wainwright, Justice

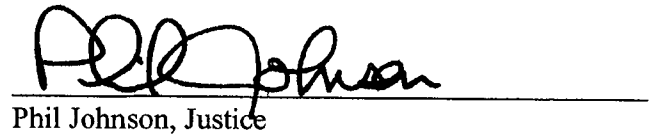


Scott Brister, Justice



David M. Medina, Justice

Paul W. Green, Justice



Phil Johnson, Justice

Protective Orders

What is a protective order?

It is a court order that protects you from someone who has been violent or threatened to be violent.

How can a protective order help me?

It can order the other person to:

- Not hurt you or threaten to hurt you
- Not contact you or go near you, your children, other family relatives, your home, where you work, or your children's schools
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a protective order?

You can get a protective order if:

- Someone has hurt you, or threatened to hurt you, **and**
- You have a close relationship with that person (you were or are married, dating or living together, have a child together or are close relatives), **and**
- You are afraid that person may hurt you again.

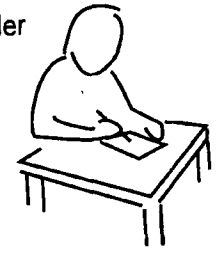
How much does it cost?

It is free for you.

How do I ask for a protective order?

Fill out the forms in this kit:

- Application for Protective Order
- Temporary Ex Parte Protective Order
- Protective Order
- Respondent Information



Where do I file the forms?

After you fill out the forms, take the forms with 2 copies to the courthouse. File them in the county where you or the other person lives. But if you have a divorce or custody case pending against the other person, file the forms in that same county or the county where you live.

What if the other person and I live together or have children together?

The judge can make orders about who gets to use the house, apartment or car.

The judge can also make other orders, like child custody, child support, visitation, and spousal support.

Can I get protection right away?

The judge may give you a temporary order that protects you until your court hearing. This order is called a "Temporary Ex Parte Protective Order".

In some cases, the judge orders the other person to leave the home right away. If you want this, you should ask the judge. Be ready to testify at a hearing when you file your Application.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks. The judge will decide if you should have protection and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court* in this kit. Or get it from the court clerk or from:
www.texaslawhelp.org/protectiveorderkit

How will the other person know about the protective order?

You must have the other person "served" ***before*** the court hearing. This means someone—not you—will serve the other person a copy of your application for a protective order.

The clerk can arrange for law enforcement to serve the other person the court papers for FREE (for you).

Need help?

There is an instruction sheet for each form. But, if you need more help, contact:

Family Violence Legal Line: **800-374-HOPE**

Or, go to:
www.texaslawhelp.org/protectiveorderkit

Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help for free. The State Bar of Texas may also be able to refer you to a lawyer if you call 800-252-9690.

Get Ready for Court

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end and you will have to start from the beginning.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you.
- Bring any evidence you have, like photographs, medical records, torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative or police. The judge may ask them to testify.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court.

Get there 30 minutes early.

- Find the courtroom.
- When the courtroom opens, go in and tell the clerk or officer that you are present.
- Watch the other cases so you will know what to do.
- When your name is called, go to the front of the courtroom.

What if I don't speak English?

When you file your papers, tell the clerk you will need an interpreter.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you file your papers, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE**

Practice what you want to say.

Make a list of the orders you want and practice saying them. Do not take more than 3 minutes to say what you want.

If you get nervous at the hearing, just read from your list. Use that list to see if the judge has made every order you asked for.

The judge may ask questions.

The other person or his or her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers.

If you don't understand, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What happens after the hearing?

If the judge agrees you need protection, the judge will sign your Protective Order.

Take your signed order to the court clerk. Ask for copies of your order (or make extra copies) and keep one with you at all times.

Give copies of your order to your children's day care, babysitter, or school. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call Family Violence Legal Line: **800-374-HOPE**

Or go to: **www.texaslawhelp.org/protectiveorderkit**

Case No.: _____

Applicant: Your name here. You are the Applicant. _____ § In the _____ Court

§

v §

§

The clerk fills out this part

Respondent: Name of person you want protection from. This is the Respondent. § _____ County, Texas

Application for Protective Order

1 Parties

Name: County of Residence:

Applicant: Your name here _____ _____

Respondent: Name of person you want protection from _____ County where each person lives

Respondent's address for service: Best address to give the other person a copy of this form

Check all that apply:

- ☐ The Applicant and Respondent are or were members of the same family or household.
- ☐ The Applicant and Respondent are parents of the same child or children.
- ☐ The Applicant and Respondent used to be married.
- ☐ The Applicant and Respondent are or were dating.
- ☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?	County of Residence:
a.	_____	☐ Yes ☐ No	_____
b.	_____ Names of children needing protection	☐ Yes ☐ No	_____ County where each person lives
c.	_____	☐ Yes ☐ No	_____
d.	_____	☐ Yes ☐ No	_____

Check all that apply:

- ☐ Other children are listed on a sheet attached to this Application.
- ☐ The Children are or were members of the Applicant's family or household.
- ☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household:

Name: County of Residence:

a. _____ _____

b. Names of other adults needing protection _____ County where each person lives

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children? ☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," *(check one)*: ☐ A copy of the final order is attached.

☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? Read and check one or both

- ☐ The Respondent committed family violence and is likely to commit family violence in the future.
- ☐ The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is *(check one)*: ☐ Attached, or

☐ Not available now but will be filed before the hearing on this Application.

The Applicant requests a Protective Order and asks the C Check all the orders you want the judge to make **with a check** ✔

6 ☐ Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to *(Check all that apply):*

a. ☐ Not commit family violence against any person named on page 1 of this form.
b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.
c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.
d. ☐ Not communicate or attempt to communicate in any manner with *(Check all that apply):*
☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.
e. ☐ Not go within 200 yards of the *(Check all that apply):*
☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
f. ☐ Not go within 200 yards of the residence, workplace or school of the *(Check all that apply):*
☐ Applicant ☐ Other Adults named on page 1 of this form.
g. ☐ Not go within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a possession schedule entered by the Court.
h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders *(Check all that apply):*

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.
j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.
k. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

The Residence located at: _____ Your home address here, unless you want it to be confidential. _____

(Check one):
☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders *(Check all that apply):*

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.
☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.
☐ The Applicant to have exclu[illegible] Respondent jointly own or lease: _____ List the property you want to use or control, like a car or furniture, even if the other person owns it with you. _____
☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

Sample Only – Do Not File

8 ☐ Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks Check here if you want spousal support. ort in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Applicant's children: _____

Check here and fill out this section if you want the judge to make orders about who the children can stay with, restrictions on travel, and child support.

_____

_____

rest of the people named on page 1 of this form.

Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☑ Temporary Ex Parte Protective Order

Based on the information in the attached Affidavit, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: Your home address here or has resided at this Residence prior to filing this Application. The Respondent committed family violence against Check here if you want the judge to order the other person to move out. days prior to the filing of this Application, as described in the attached Affidavit. There is danger that the Respondent is likely to commit family violence against a member of the Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

Check here if you want to keep your contact information private. addresses and telephone numbers for residences, workplaces, schools, and

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

Sign Here

_____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

Phone # where Applicant may be contacted: _____

List your address/phone or another address/phone if you want yours kept confidential.

(List another address/phone if you want yours kept confidential)

Sample Only – Do Not File

Affidavit

County of _____ (Write the name of your county here) _____
State of Texas

My name is _____ (Your name here) _____. I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1 Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____

_____ (Answer every question on this form.) _____

_____

_____

2 What date did this happen? (If it happened in the last 30 days, the judge can order the Respondent to move out.)

3 Was a weapon involved? ☐ Yes

4 Were any children there? ☐ Yes ☐ No If yes, who? _____

5 Did you call the police? ☐ Yes ☐ No If yes, what happened? _____

6 Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____

_____

_____

7 Has the Respondent ever threatened or hurt you ***before?*** Describe below, including date(s).

_____

_____

_____

8 Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____

9 Were any children there? ☐ Yes ☐ No If yes, who? _____

10 Have the police ever been called? ☐ Yes ☐ No

11 Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____

_____

_____

▶ _____ (Do NOT sign until the notary tells you to.)
Applicant signs here

On ____ / ____ / _____, the Applicant _____ personally appeared before me, the undersigned [illegible]rn, the Applicant stated that she/he is qualified to make this oath, that she/he has (Notary fills out this part.) and Affidavit, that she/he has personal knowledge of the facts asserted, and the fact[illegible] to the best of her/his knowledge and belief.

Subscribed and sworn to before me on ____ / ____ / _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

Sample Only – Do Not File

Case No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Application for Protective Order

1 Parties

	Name:	County of Residence:
Applicant:	_____	_____
Respondent:	_____	_____

Respondent's address for service: _____

Check all that apply:

- ☐ The Applicant and Respondent are or were members of the same family or household.
- ☐ The Applicant and Respondent are parents of the same child or children.
- ☐ The Applicant and Respondent used to be married.
- ☐ The Applicant and Respondent are or were dating.
- ☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?	County of Residence:
a.	_____	☐ Yes ☐ No	_____
b.	_____	☐ Yes ☐ No	_____
c.	_____	☐ Yes ☐ No	_____
d.	_____	☐ Yes ☐ No	_____

Check all that apply:

- ☐ Other children are listed on a sheet attached to this Application.
- ☐ The Children are or were members of the Applicant's family or household.
- ☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household:

	Name:	County of Residence:
a.	_____	_____
b.	_____	_____

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children? ☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," *(check one)*:
- ☐ A copy of the final order is attached.
- ☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both:*

- ☐ The Respondent committed family violence and is likely to commit family violence in the future.
- ☐ The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is *(check one)*:
  - ☐ Attached, or
  - ☐ Not available now but will be filed before the hearing on this Application.

The Applicant requests a Protective Order and asks the Court to make all Orders marked with a check ☑

6 ☐ Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to *(Check all that apply):*

a. ☐ Not commit family violence against any person named on page 1 of this form.

b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.

c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.

d. ☐ Not communicate or attempt to communicate in any manner with *(Check all that apply):*
☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the *(Check all that apply):*
☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.

f. ☐ Not go within 200 yards of the residence, workplace or school of the *(Check all that apply):*
☐ Applicant ☐ Other Adults named on page 1 of this form.

g. ☐ Not go within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a possession schedule entered by the Court.

h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders *(Check all that apply):*

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.

j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.

k. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

The Residence located at: _____

(Check one):
☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders *(Check all that apply):*

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

☐ The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease: _____

_____

☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 ☐ Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks the Court to order the Respondent to pay support in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Respondent is a parent of the following of the Applicant's children: _____

_____

_____

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☑ Temporary Ex Parte Protective Order

Based on the information in the attached Affidavit, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: _____ or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

The Applicant asks the Court to keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

Phone # where Applicant may be contacted: _____ Fax #: _____

(List another address/phone if you want yours kept confidential)

Affidavit

County of _____
State of Texas

My name is _____. I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1 Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____
_____
_____
_____

2 What date did this happen? ____ / ____ / _____

3 Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____

4 Were any children there? ☐ Yes ☐ No If yes, who? _____

5 Did you call the police? ☐ Yes ☐ No If yes, what happened? _____

6 Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____
_____
_____

7 Has the Respondent ever threatened or hurt you ***before?*** Describe below, including date(s).

_____
_____
_____

8 Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____

9 Were any children there? ☐ Yes ☐ No If yes, who? _____

10 Have the police ever been called? ☐ Yes ☐ No

11 Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____
_____
_____

▶ _____
Applicant signs here

On ____ / ____ / _____, the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is qualified to make this oath, that she/he has read the foregoing Application and Affidavit, that she/he has personal knowledge of the facts asserted, and the facts asserted are true to the best of her/his knowledge and belief.

Subscribed and sworn to before me on ____ / ____ / _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

Case No.: _____

Applicant: _____ Look at the top of your Application for Protective Order and copy the same information here. _____ Court

v. of

§
§
§

Respondent: _____ _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: ____ ☐ a.m. ☐ p.m. The court fills out this part.

Court Address: _____

Findings: The Court finds from the sworn Affidavit attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 Respondent: The person named below must follow all Orders marked with a check.

Name: _____ Who do you want protection from? _____ County of Reside What county does s/he live in?

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	Your name here	
☐ **Children:**	Names of children you want to be protected by this order	County where each person lives
☐ **Other Adults:**	Names of other adults needing protection	

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above th harm, bodily injury, assault, or sexual assault or that is a t people in fear of imminent physical harm, bodily injury, a

b. ☐ Not communicate in a threatening or harassing manner with a

c. ☐ Not communicate a threat through any person to any person named in **2** above.

The Court fills out the rest of this form. The judge may ask you questions before making the orders.

Sample Only – Do Not File

d. ☐ Not communicate or attempt to communicate in any manner with: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: *(Check all that apply)*
☐ Applicant ☐ Other Adults named in **2** above

The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not interfere with the Applicant's use of the Residence located at: _____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

m. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

n. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not)

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____

(Check one):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before:
_____ ☐ a.m. ☐ p.m. on *(date):* _____ and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the court hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

This Ex Parte Order signed on *(date):* _____ Time: _____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No [illegible] Court can change this Order.

Case No.: _____

Applicant: _____ § In the _____ Court
§
v. § of
§
Respondent: _____ § _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time: ____ ☐ a.m. ☐ p.m.

Court Address: _____

Findings: The Court finds from the sworn Affidavit attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 Respondent: The person named below must follow all Orders marked with a check.

Name: _____ County of Residence: _____

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____
	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: *(Check all that apply)*
☐ Applicant ☐ Other Adults named in **2** above

The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not interfere with the Applicant's use of the Residence located at: _____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

m. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

n. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

4 Order: Vacate Residence Immediately

The Court finds that the Residence located at: _____

(Check one):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before:
_____ ☐ a.m. ☐ p.m. on *(date):* _____ and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the court hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

This Ex Parte Order signed on *(date):* _____ Time: _____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Case No.: _____

Applicant: _____ _____ Court

Look at the top of your Application for Protective Order and copy the same information here

v. of

Respondent: _____ § _____ County, Texas

Protective Order

Write the date and time of your hearing here.

A court hearing was held on: Date: _____ Time: _____ n.

Findings: All legal requirements have been met, and the Court has juris[illegible] parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32).
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. *(Check one or both):*

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: *(Check any that apply):*

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	Your name here	
☐ **Children:**	Names of children needing protection	County where each person lives
☐ **Other Adults:**	Names of other adults needing protection	

3 A Record of Testimony *(Check one):* ☐ was made by: _____ ☐ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑ **The Respondent must:**

The Court fills out the rest of this form. The judge may ask you questions before making the orders.

a. ☐ Not commit an act against any person named in **2** ab[illegible] bodily injury, assault, or sexual assault or that is a t[illegible] imminent physical harm, bodily injury, assault, or sex[illegible]

b. ☐ Not communicate in a threatening or harassing manner with any per[illegible]

c. ☐ Not communic[illegible]

Sample Only – Do Not File

d. ☐ Not communicate or attempt to communicate in any manner with: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults in **2** above (except through: _____)
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: *(Check all that apply)*
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than __ / __ / __, and to complete the program by __ / __ / __. *(Check one):*

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____
(Check one):

- ☐ is jointly owned or leased by the Applicant and Respondent;
- ☐ is solely owned or leased by the Applicant; or
- ☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on *(date):* _____.

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on __ / __ / __ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both:*

The Respondent must:

- ☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.
- ☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one:*

- ☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.
- ☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession schedule hereby ordered supersedes any previous ord

☐ The possession schedule previously entered on __ / __ / __, in case number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one:*

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on __ / __ / __, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The child support Order previously entered on __ / __ / __, in case number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:
Total to be paid: $_____
(This includes fees for service: $ _____ + all other Court fees and costs: $ _____)
Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.
Attorney Fees awarded by the Court: $ _____
Attorney's name: _____
Attorney's address: _____

Attorney *(name)*_____ shall have and recover judgment against the Respondent *(name)* _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order *(Check all that apply):*

☐ Was served on the Respondent in open court.
☐ Shall be personally served on the Respondent.
☐ Shall be mailed by the Clerk of the Court to the Respondent[illegible]
☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or [illegible]d by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to *(Check all that apply):*

☒ Sheriff and Constable of _____ County, Texas

☐ Police Chief of the City of _____

☐ Children's child-care facility/schools listed above.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until *(date)* _____ (Texas law provides that the Protective Order may last for two years after the date it is signed.) If the Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

Warning: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on *(date):* _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

▶ _____ ▶ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

▶ _____

Respondent

Case No.: _____

Applicant: _____ § In the _____ Court
§
v. § of
§
Respondent: _____ § _____ County, Texas

Protective Order

A court hearing was held on: Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32).
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. *(Check one or both):*

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: *(Check any that apply):*

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____
	_____	_____

3 A Record of Testimony *(Check one):* ☐ was made by: _____ ☐ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑ **The Respondent must:**

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults in **2** above (except through: _____)
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: *(Check all that apply)*
☐ Applicant ☐ Children ☐ Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: *(Check all that apply)*
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: *(Check all that apply)*
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than __/__/__, and to complete the program by __/__/__. *(Check one):*

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____

(Check one):

☐ is jointly owned or leased by the Applicant and Respondent;

☐ is solely owned or leased by the Applicant; or

☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on *(date):* _____.

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on __ / __ / __ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both:*

The Respondent must:

☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one:*

☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.

☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on __ / __ / __, in case number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one:*

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on __ / __ / __, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The child support Order previously entered on __ / __ / __, in case number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:
Total to be paid: $_____
(This includes fees for service: $ _____ + all other Court fees and costs: $ _____)
Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.
Attorney Fees awarded by the Court: $ _____
Attorney's name: _____
Attorney's address: _____

Attorney *(name)*_____ shall have and recover judgment against the Respondent *(name)* _____ for $_____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order *(Check all that apply):*

☐ Was served on the Respondent in open court.
☐ Shall be personally served on the Respondent.
☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to *(Check all that apply):*

☒ Sheriff and Constable of _____ County, Texas

☐ Police Chief of the City of _____

☐ Children's child-care facility/schools listed above.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until *(date)* _____ (Texas law provides that the Protective Order may last for two years after the date it is signed.) If the Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

Warning: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on *(date):* _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

▶ _____ ▶ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

▶ _____

Respondent

Respondent Information

Fill out this form then file it with the clerk. Law enforcement needs this information to serve the Respondent and enter it into the state database for protective orders.

Respondent's Name: _____

Alias (Nickname): _____

Respondent's relationship to Applicant: _____

Respondent lives in: _____ County

Street: _____ City: _____ State: _____ Zip: _____

Sex ☐ M ☐ F **DoB** ____/____/____ **DL #** _____

Height ___ ft ___ ___ in **Place of birth** _____ **Other ID#** _____

Weight ___ ___ ___ lbs **SS #** _____ **State** ____ **Expires** _____

Race

- ☐ American Indian or Alaskan Native (I)
- ☐ Asian Pacific Islander (A)
- ☐ Black (B)
- ☐ White (W)
- ☐ Unknown (All other non-whites) (U)

Other: _____

Ethnicity

- ☐ Hispanic (H)
- ☐ Non-Hispanic (N)
- ☐ Unknown (U)

Eye color

- ☐ Black (BLK)
- ☐ Blue (BLU)
- ☐ Brown (BRO)
- ☐ Gray (GRY)
- ☐ Green (GRN)
- ☐ Hazel (HAZ)
- ☐ Maroon (MAR)
- ☐ Pink (PNK)
- ☐ Multicolored (MUL)
- ☐ Unknown (XXX)

Other: _____

Hair color

- ☐ Black (BLK)
- ☐ Blond or Strawberry (BLN)
- ☐ Brown (BRO)
- ☐ Gray or partially gray (GRY)
- ☐ Red or Auburn (RED)
- ☐ White (WHI)
- ☐ Sandy (SDY)
- ☐ Completely Bald or Unknown (xxx)

Other (style/length): _____

Skin

- ☐ Albino (ALB)
- ☐ Black (BLK)
- ☐ Dark (DRK)
- ☐ Dark Brown (DBR)
- ☐ Fair (FAR)
- ☐ Light (LGT)
- ☐ Light Brown (LBR)
- ☐ Medium (MED)
- ☐ Medium Brown (MBR)
- ☐ Olive (OLV)
- ☐ Ruddy (RUD)
- ☐ Sallow (SAL)
- ☐ Yellow (YEL)
- ☐ Unknown (XXX)

Other:

You do not have to fill out the rest of this form. But, it may help law enforcement serve the Respondent.

Other Identifying Information *Check all that apply*

- ☐ Glasses
- ☐ Beard
- ☐ Moustache
- ☐ Missing front teeth
- ☐ Bald

Unusual markings on body *(describe)*

- ☐ Tattoos _____
- ☐ Scars _____
- ☐ Markings _____
- ☐ Piercings _____

- ☐ Mental Problems _____
- ☐ Drug/Alcohol Problems _____
- ☐ Weapons _____

Respondent works at *(name of business):* _____

Street: _____ City: _____ State: _____ Zip: _____

Phone: _____ Hours/Dept: _____ Supervisor: _____

Respondent's Vehicle: VIN _____ Color: _____ Year: _____ Make/Model: _____

License Plate # _____ State: _____ Exp. _____

Respondent's Attorney *(Name):* _____

Phone: _____ Address: _____

Other contacts who may have information to help find Respondent:

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Exhibit K

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 09- 9195

ORDER ADOPTING AMENDED TEXAS RULE OF CIVIL PROCEDURE 737

ORDERED that:

1. As required by the Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448), and in accordance with its mandatory deadlines, the Supreme Court of Texas amends Rule 737 of the Texas Rules of Civil Procedure as follows, effective January 1, 2010.

2. To facilitate the proper filing of a suit brought under SB 1448 and Rule 737, the Supreme Court of Texas also promulgates a form petition that tenants may use in these suits. This form petition should be appended, as Appendix A, to the end of the Texas Rules of Civil Procedure.

3. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

3. These amendments may be changed in response to comments received on or before April 1, 2010. Any interested party may submit written comments directed to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin TX 78711, or kennon.peterson@courts.state.tx.us.

SIGNED this 14th day of December, 2009.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

PART VII

RULES RELATING TO SPECIAL PROCEEDINGS

* * *

SECTION 2. JUSTICE COURT PROCEEDINGS
TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY
RESIDENTIAL RENTAL PROPERTY

Rule 737.1. Applicability of Rule

This rule applies to a suit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. Rules 523-574b also apply to the extent they are not inconsistent with this rule.

Rule 737.2. Contents of Petition; Copies; Forms and Amendments

(a) *Contents of Petition.* The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies.* The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments.* A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

Rule 737.3. Citation: Issuance; Appearance Date

(a) *Issuance.* When the tenant files a written petition with a justice court, the justice must immediately issue citation directed to the landlord, commanding the landlord to appear before such justice at the time and place named in the citation.

(b) *Appearance Date.* The appearance date on the citation must not be earlier than the sixth day nor later than the tenth day after the date of service of the citation. For purposes of this rule, the appearance date on the citation is the trial date.

Rule 737.4. Service and Return of Citation; Alternative Service of Citation

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 536 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least six days before the appearance date. At least one day before the appearance date, the person serving the citation must return the citation, with the action written on the citation, to the justice who issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) *Alternative Service of Citation.*

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the sheriff, constable, or other person authorized by Rule 536 is unsuccessful in serving the citation on the landlord under (a), the sheriff, constable, or other person authorized by Rule 536 must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or

(B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the sheriff, constable, or other person authorized by Rule 536 is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the sheriff, constable, or other person authorized by Rule 536 must execute and file in the justice court a sworn statement that the sheriff, constable, or other person authorized by Rule 536 made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The justice may then authorize the sheriff, constable, or other person authorized by Rule 536 to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of sixteen years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and any attachments to the front door or main entry to the business street address;

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least six days before the appearance date. At least one day before the appearance date, the citation, with the action written thereon, must be returned to the justice who issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

Rule 737.5. Representation of Parties

Parties may represent themselves. A party may also be represented by an authorized agent, but nothing in this rule authorizes a person who is not an attorney licensed to practice law in this state to represent a party before the court if the party is present.

Rule 737.6. Docketing and Trial; Failure to Appear; Continuance

(a) *Docketing and Trial.* The case shall be docketed and tried as other cases. The justice may develop the facts of the case in order to ensure justice.

(b) *Failure to Appear.*

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the justice may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the justice shall render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the justice may dismiss the suit.

(c) *Continuance.* The justice may continue the trial for good cause shown. Continuances should be limited, and the case should be reset for trial on an expedited basis.

Rule 737.7. Discovery

Reasonable discovery may be permitted. Discovery is limited to that considered appropriate and permitted by the justice and must be expedited. In accordance with Rule 215, the justice may impose any appropriate sanction on any party who fails to respond to a court order for discovery.

Rule 737.8. Judgment: Amount; Form and Content; Issuance and Service; Failure to Comply

(a) *Amount.* Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $10,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a suit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content.*

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the justice may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(3) If the justice orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the justice orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 21a, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service.* The justice must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 21a at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the justice serves the landlord in open court or by other means provided in Rule 21a, the sheriff, constable, or other person authorized by Rule 536 who serves the landlord must promptly file a certificate of service in the justice court.

(d) *Failure to Comply.* If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Government Code.

Rule 737.9. Counterclaims

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

Rule 737.10. Post-Judgment Motions: Time and Manner; Disposition; Number

(a) *Time and Manner.* A party may file a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution. The motion must be in writing and filed within ten days after the date the justice signs the judgment or dismissal order.

(b) *Disposition.*

(1) If the justice grants a motion for new trial or a motion to set aside a default judgment or a dismissal for want of prosecution, the resulting trial must occur within ten days after the date the justice signs the order granting the motion.

(2) If the justice grants a motion to amend the judgment, the justice must amend the judgment within fifteen days after the date the justice signs the original judgment.

(3) If the justice does not rule on a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution with a written, signed order within fifteen days after the justice signs the judgment or dismissal order, the motion is considered overruled by operation of law on expiration of that period.

(c) *Number.* A party may file only one motion for new trial, one motion to amend the judgment, and one motion to set aside a default judgment or a dismissal for want of prosecution.

Rule 737.11. Plenary Power

The justice court's plenary power expires when a party perfects an appeal. If a party does not perfect an appeal, the justice court has plenary power to grant a new trial, amend or vacate the judgment, or set aside a default judgment or a dismissal for want of prosecution within fifteen days after the date the justice signs the judgment or dismissal order.

Rule 737.12. Appeal: Time and Manner; Perfection; Effect; Costs; Trial on Appeal

(a) *Time and Manner.* Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within twenty days after the date the justice signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within twenty days after the date the justice signs the new judgment, in the same manner set out in this rule.

(b) *Perfection.* The posting of an appeal bond is not required for an appeal under these rules, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) *Effect.* The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) *Trial on Appeal.* On appeal, the parties are entitled to a trial de novo. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment

of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

Rule 737.13. Effect of Writ of Possession

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

Comment to 2010 change: The heading of repealed Rule 737, regarding bills of discovery, is deleted. New Rule 737 is promulgated pursuant to Senate Bill 1448 to provide procedures for a tenant's request for relief in a justice court under Section 92.0563(a) of the Property Code. Except when otherwise specifically provided, the terms in Rule 737 are defined consistent with Section 92.001 of the Property Code. All suits must be filed in accordance with the venue provisions of Chapter 15 of the Civil Practice and Remedies Code.

Cause No. _____

Tenant: _____
V.
Landlord: _____

In the Justice Court
Precinct _____ **Place** _____
_____ **County, Texas**

PETITION FOR RELIEF UNDER SECTION 92.0563 OF THE TEXAS PROPERTY CODE

1. **COMPLAINT**: Tenant files this petition against the above-named Landlord pursuant to Section 92.0563 of the Texas Property Code because there is a condition in Tenant's residential rental property that would materially affect the health or safety of an ordinary tenant.
Information Regarding Residential Rental Property:

_____
Street Address | Unit No. (if any) | City | County | State | Zip

Landlord's Contact Information (to the extent known):

_____
Business Street Address | Unit No. (if any) | City | County | State | Zip | Phone Number

2. **SERVICE OF CITATION**: Check the box next to each statement that is true.

☐ Tenant received in writing Landlord's name and business street address.

☐ Tenant received in writing the name and business street address of Landlord's management company.

☐ The name of Landlord's management company is _____. To Tenant's knowledge, this is the management company's contact information:

_____
Business Street Address | Unit No. (if any) | City | County | State | Zip | Phone Number

☐ The name of Landlord's on-premise manager is _____. To Tenant's knowledge, this is the on-premise manager's contact information

_____
Business Street Address | Unit No. (if any) | City | County | State | Zip | Phone Number

☐ The name of Landlord's rent collector serving the residential rental property is _____. To Tenant's knowledge, this is the rent collector's contact information:

_____
Business Street Address | Unit No. (if any) | City | County | State | Zip | Phone Number

3. **LEASE AND NOTICE**: Check the box next to each statement that is true.

☐ The lease is oral. ☐ The lease is in writing. ☐ The lease requires the notice to repair or remedy a condition to be in writing.

☐ Tenant gave written notice to repair or remedy the condition on _____. ☐ The written notice to repair or remedy the condition was sent by certified mail, return receipt requested, or registered mail on _____.

☐ Tenant gave oral notice to repair or remedy the condition on _____.
Name of person(s) to whom notice was given: _____
Place where notice was given: _____

4. **RENT**: At the time Tenant gave notice to repair or remedy the condition, Tenant's rent was: ☐ current (no rent owed), ☐ not current but Tenant offered to pay the rent owed and Landlord did not accept it, or ☐ not current and Tenant did not offer to pay the rent owed. Tenant's rent is due on the _____ day of the ☐ month ☐ week ☐ _____(specify any other rent-payment period). The rent is $_____ per ☐ month ☐ week ☐ _____(specify any other rent-payment period). Tenant's rent (check one): ☐ is not subsidized by the government ☐ is subsidized by the government as follows, if known: $_____ paid by the government, and $_____ paid by Tenant.

5. **PROPERTY CONDITION:** Describe the property condition materially affecting the physical health or safety of an ordinary tenant that Tenant seeks to have repaired or remedied:_____

_____

6. **RELIEF REQUESTED**: Tenant requests the following relief: ☐ a court order to repair or remedy the condition, ☐ a court order reducing Tenant's rent (in the amount of $_____ to begin on _____), ☐ actual damages in the amount of $_____, ☐ a civil penalty of one month's rent plus $500, ☐ attorney's fees, and ☐ court costs. Tenant states that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees.

Tenant Signature: _____ Date: _____

_____ _____
Street address | Unit No. (if any) Phone Number

_____
City | State | Zip

Exhibit L

AN ACT

relating to actions in a justice court regarding the repair of residential rental property.

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

SECTION 1. Section 92.0563, Property Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) The justice, county, and district courts have concurrent jurisdiction in [~~of~~] an action under Subsection (a) [~~of this section except that the justice court may not order repairs under Subdivision (1) of Subsection (a) of this section~~].

(d) If a suit is filed in a justice court requesting relief under Subsection (a), the justice court shall conduct a hearing on the request not earlier than the sixth day after the date of service of citation and not later than the 10th day after that date.

(e) A justice court may not award a judgment under this section, including an order of repair, that exceeds $10,000, excluding interest and costs of court.

(f) An appeal of a judgment of a justice court under this section takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner's appeal and stays the effect of the judgment without the

necessity of posting an appeal bond.

SECTION 2. Not later than January 1, 2010, the Texas Supreme Court shall adopt rules of civil procedure applicable to orders of repair issued by a justice court under Subdivision (1), Subsection (a), Section 92.0563, Property Code.

SECTION 3. Section 92.0563, Property Code, as amended by this Act, applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2010.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1448 passed the Senate on April 22, 2009, by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 1448 passed the House on May 19, 2009, by the following vote: Yeas 145, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Exhibit M

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 99- 9243

PROMULGATION OF FORMS FOR USE IN PARENTAL NOTIFICATION PROCEEDINGS UNDER CHAPTER 33 OF THE FAMILY CODE

ORDERED that:

1. In compliance with the Legislature's directive, *see* Act of May 25, 1999, 76th Leg., R.S., ch. 395, §§ 2 and 6, 1999 Tex. Gen. Laws 2466 (S.B. 30), the attached forms are adopted for use in proceedings under chapter 33 of the Family Code.

2. The Clerk is directed forthwith:

   a. to file a copy of this Order with the Secretary of State;

   b. to mail a copy of this Order to each Member of the Legislature, to each court in which proceedings under chapter 33 may be heard, and to the clerks of such courts; and

   c. to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

SIGNED AND ENTERED this 15th day of December, 1999.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

James A. Baker, Justice

Greg Abbott, Justice

Deborah G. Hankinson, Justice

Harriett O'Neill, Justice

Alberto R. Gonzales, Justice

INSTRUCTIONS FOR APPLYING TO THE COURT FOR A WAIVER OF PARENTAL NOTIFICATION

(Form 1A)

Your situation and the law

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parent(s), managing conservator, or guardian. (A "managing conservator" is a parent, other adult, or agency appointed by a court to have custody or control of you.)

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

• your doctor first informs your parent(s), managing conservator, or guardian at least 48 hours before you can have an abortion,

or unless

• a judge issues an order that "waives," or removes, the requirement that you must let your parent(s), managing conservator, or guardian know about your planned abortion.

How to get a waiver of parental notification

• Fill out the application

To get a court order waiving the requirement that you tell your parent(s), managing conservator, or guardian about your planned abortion, you or someone acting on your behalf must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the "Cover Page' for the Application; it requests basic information about why you are seeking the order. Form 2B is the "Verification Page," which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone, pager, beeper, or fax number, or other way that you can be contacted. You can but need not give your own number — instead, you can ask the court to contact you through someone who is helping you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court-at-law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the application is confidential. You do not have to pay a fee to file this application.

• Your hearing

The court will tell you when to come to the courthouse for your "hearing." In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within two days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a "guardian ad litem." In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free. The person appointed to be your lawyer might also be appointed to be your guardian ad litem.

• Keeping it confidential

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

• The court's decision

The court must "rule" — issue a decision on your application — before 5:00 p.m. on the second day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, it counts as an "OK" to you — it is an automatic waiver of the requirement that you inform your parent(s), managing conservator, or guardian about your planned abortion. If this happens, you can get a certificate from the court clerk that says that your request is "deemed granted," which means that your application was approved.

If the court *does* rule within the required time, the court issues an order that does one of the following four things:

(1) Approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

(2) Approves your request because it is in your best interests to *not* notify your parent(s), managing conservator, or guardian before getting the abortion;

(3) Approves your request because notifying your parent(s), managing conservator, or guardian before getting the abortion may lead to physical, sexual, or emotional abuse of you; or

(4) Denies your request because the court does not find (1), (2) or (3).

If you claim that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

• Appealing the court's decision

If the court denies your request, you may ask another court to hear your case. This request is called an "appeal," and the new court will be the Court of Appeals.

To appeal the first court's decision, have your own lawyer or your court-appointed lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding.*** The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the Court of Appeals. Instead, the Court of Appeals will review the written record and will issue a written ruling on your appeal no later than 5:00 p.m. on the second day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The Court of Appeals will provide its ruling to you, the lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

• Getting the forms you need

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding,* should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court-at-law, county, or probate court or Court of Appeals. These forms are also available on the Texas Judiciary Internet website at www.courts.state.tx.us.

Attention Clerk: Please Expedite

Confidential Application for Waiver of Parental Notification: Cover Page (Form 2A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

(Do not complete this section. Court staff will complete this section.)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You or someone acting on your behalf must complete both of these forms. If you are completing this application for a minor, remember that "I" or "my" refers to the minor rather than to you.

---

1. I ask the court for an order that allows me to have an abortion without first telling my parent(s), managing conservator, or guardian before I have an abortion. I swear or affirm that **(place a check mark in all the blanks for which you answer "yes")**:

   _____ I am pregnant.

   _____ I am unmarried and younger than 18 years of age.

   _____ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.

2. I request this order for one of the following reasons **(place a check mark beside any that apply)**:

   _____ I am mature enough to decide to have an abortion without telling my parent(s), managing conservator, or guardian. I also know enough about abortion to make this decision.

Please continue to the next page.

_____ Telling my parent(s), managing conservator, or guardian that I want an abortion is not in my best interest.

_____ Telling my parent(s), managing conservator or guardian that I want an abortion may lead to physical or emotional abuse of me.

_____ Telling my parent(s), managing conservator or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check one of the following statements:

_____ I **do not** have a lawyer. (The court will appoint one for you).

_____ I have a lawyer, who is:

Lawyer's name: _____

Lawyer's address: _____

Lawyer's phone: _____

4. The court must appoint a "guardian ad litem" for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or other adult, or your lawyer. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.

_____ I am requesting that the court appoint someone I know as my guardian ad litem (you will identify this person on your verification page)

_____ I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses).

5. Please state whether you have filed a Confidential Application for Waiver of Parental Notification other than this one.

_____ I have filed another Confidential Application for Waiver of Parental Notification.

_____ I have **not** filed another Confidential Application for Waiver of Parental Notification.

(End of Cover Page)

CAUSE NO. _____

(Do not fill in the blank above. Court staff will fill in the blank.)

Confidential Application for Waiver of Parental Notification: Verification Page (Form 2B)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code §33.003(m)

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You or someone acting on your behalf must complete both of these forms. If you are completing this application for a minor, remember that "I" or "my" refers to the minor rather than to you.

---

1. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 4 on the Cover Sheet, Form 2A), please identify them:

   Name: _____ Relationship: _____

   Address: _____ Phone: _____

2. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone, pager/beeper, or any other method by which you can be contacted immediately and confidentially. You do not have to give us your own telephone number, and you can have us contact someone else who helps you.

_____	_____
Person to be contacted (you or another person)	Another person to be contacted (optional)
_____	_____
Phone/pager/beeper/fax number(s)	Phone/pager/beeper/fax number(s)

Important: Please sign your name in the blank below. You must sign your name before a notary public, court clerk, or other person authorized to give oaths.

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

_____	_____
Signature of minor or other person completing this form	Full name of minor printed or typed (if minor is not person completing this form)
_____	_____
Name of person completing this form printed or typed	Minor's date of birth

Sworn to or affirmed in my presence this _____ day of _____, ____.

_____

Notary Public, Clerk or other person authorized to give oaths

Form Approved 12/15/99

REQUEST TO POSTPONE TRIAL COURT HEARING IN PARENTAL NOTIFICATION PROCEEDING; DESIGNATION OF ALTERNATIVE TIME FOR HEARING (Form 2C)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

Please check and complete any questions below that apply:

_____ I request that the court postpone its hearing on my application. The hearing currently is due to be held on or by _____ at _____ a.m./p.m.

_____ Please rule on my application by 5 p.m. on the second business day after (please state a date after which you will be ready to have the hearing): _____. The clerk will notify you concerning the specific time of the hearing.

_____ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW ON APPLICATION IN PARENTAL NOTIFICATION PROCEEDING (Form 2D)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

This matter was heard on this _____ day of _____, _____. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.

2. The applicant is unmarried and under 18 years of age.

3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.

4. The applicant wishes to have an abortion without her doctor notifying either of her parents, her managing conservator or guardian.

5. A preponderance of the evidence supports the following [State "yes" beside any issue for which the court finds in favor of the applicant by a preponderance of the evidence. If any one issue is decided in favor of the applicant, the court need not consider other issues]:

   _____ The applicant is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents, her managing conservator or guardian.

   Comment: _____

   _____

   _____

   _____

   _____

   _____

_____ Notifying either of the applicant's parents, managing conservator or guardian would not be in her best interest.

Comment: _____

_____

_____

_____

_____

_____

_____ Notifying either of the applicant's parents, managing conservator or guardian may lead to physical, sexual, or emotional abuse of the applicant.

Comment: _____

_____

_____

_____

_____

_____

THEREFORE, IT IS ORDERED

_____ The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying either of her parents or a managing conservator or guardian.

_____ The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Texas Parental Notification Rules and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

_____

Judge Presiding

CERTIFICATE OF DEEMED GRANTING OF APPLICATION IN PARENTAL NOTIFICATION PROCEEDING (Form 2E)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

This will certify that on the _____ day of _____, _____, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code. The court did not rule on the application by 5:00 p.m. on the second business day after the day the application was filed. Accordingly, under Section 33.003(h), Family Code, the application is deemed to be GRANTED.

Signed this _____ day of _____, _____.

_____

Judge Presiding or Clerk

Form Approved 12/15/99

ORDER THAT COSTS IN PARENTAL NOTIFICATION PROCEEDING BE PAID BY STATE PURSUANT TO TEXAS FAMILY CODE §33.007 (Form 2F)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

ORDER

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the _____ day of _____, _____, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of $_____ to:

   Name: _____ State Bar No. _____

   Address: _____

   Telephone: _____ Federal Tax ID: _____

2. Reasonable and necessary guardian ad litem fees and expenses of $_____ to:

   Name: _____

   Address: _____

   Telephone: _____ Federal Tax ID: _____

3. Court reporter's fees certified by the court reporter to:

   Name: _____

   Address: _____

   Telephone: _____ Federal Tax ID: _____

4. All court costs certified by the clerk.

_____
Judge Presiding

Form Approved 12/15/99

Attention Clerk: Please Expedite

Notice of Appeal in Parental Notification Proceeding (Form 3A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

(Important: Your lawyer or court-appointed lawyer should fill out the information below.)

On this _____ day of _____, _____, notice is hereby given that Jane Doe appeals to the _____ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification required by Section 33.002, Family Code.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

Form Approved 12/15/99

REQUEST TO POSTPONE COURT OF APPEALS' RULING IN PARENTAL NOTIFICATION PROCEEDING; DESIGNATION OF ALTERNATIVE TIME FOR RULING (Form 3B)

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

Please check and complete any questions below that apply:

_____ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by _____ at _____ a.m./p.m.

_____ Please rule on my appeal by 5:00 p.m. on the second business day after (please state a date after which you will be ready to have the hearing): _____. The clerk will notify you concerning the specific time of the hearing.

_____ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

JUDGMENT ON APPEAL IN PARENTAL NOTIFICATION PROCEEDING
(Form 3C)

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code, is:

_____ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Texas Parental Notification Rules and furnished a Notice of Appeal form, Form 4A.

_____ Reversed and the application is GRANTED.

_____ Opinion to follow.

_____ No opinion to follow.

_____
Justice

Other Members of the Panel:

Justice _____ Justice _____

Date: _____

Form Approved 12/15/99

CERTIFICATION OF DEEMED REVERSAL OF ORDER ON APPEAL IN PARENTAL NOTIFICATION PROCEEDING
(Form 3D)

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

This will certify that on the _____ day of _____, _____, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code. The court of appeals did not rule on her appeal by 5:00 p.m. on the second business day after the day the notice of appeals was filed. Accordingly, under Section 33.004(b), Family Code, the order is deemed to be REVERSED and the application is deemed to be GRANTED.

Signed this _____ day of _____, _____.

_____

Judge Presiding or Clerk

ATTENTION CLERK: PLEASE EXPEDITE

NOTICE OF APPEAL TO TEXAS SUPREME COURT IN PARENTAL NOTIFICATION PROCEEDING (Form 4A)

CAUSE NO. _____

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

On this _____ day of _____, _____, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. _____, in the _____ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

THE SUPREME COURT OF TEXAS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711
TEL: (512) 463-1312
FAX: (512) 463-1365

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

January 7, 2000

Office of the Secretary of State
Statutory Filings Section
Room 214 Rudder Building
1019 Brazos Street
Austin, Texas 78701

By order of the Supreme Court of Texas, the enclosed two orders are forwarded for appropriate filing. Please contact this office if you have questions in this matter.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

THE SUPREME COURT OF TEXAS

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ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

January 7, 2000

Ms. Kelley King, Editor
The Texas Bar Journal
1414 Colorado Street
Austin, Texas 78701

Dear Ms. King,

Please find enclosed, copies of two orders of the Supreme Court of Texas. Per these orders, copies are to be published as soon as possible in the Texas Bar Journal. You may contact the undersigned if there are any questions in this matter.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

Exhibit N

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 00- 9171

**ORDER APPROVING AMENDMENTS TO
TEXAS PARENTAL NOTIFICATION RULES AND FORMS
FOR USE IN PROCEEDINGS UNDER CHAPTER 33 OF THE FAMILY CODE**

ORDERED that:

1. The Texas Parental Notification Rules, adopted by Order dated December 22, 1999, in Misc. Docket No. 99-9247, are revised as follows:

   a. Rules 1.4(b), 1.6(a), 1.9, and 3.3(b) are amended;

   b. Comments 3 and 8 to Rule 1 and Comment 1 to Rule 2 are amended; and

   c. Rule 1.10 and Comment 9 to Rule 1 are added.

2. The Texas Parental Notification Forms, adopted by Order dated December 15, 1999, in Misc. Docket No. 99-9243, are revised as follows:

   a. Forms 1A, 2D, and 2F are amended; and

   b. Forms 2G and 2H are added.

3. These changes, with any modifications made after public comments are received, take effect March 1, 2001.

4. In a proceeding under Chapter 33 of the Family Code in which the final ruling in the proceeding occurred on or before February 28, 2001, an order for the State to pay fees and costs under Rule 1.9, Texas Parental Notification Rules, is valid only if the order is signed by the judge and sent to the Texas Department of Health not later than May 30, 2001.

5. The Clerk is directed forthwith to:

a. file a copy of this Order with the Secretary of State;

b. to mail a copy of this Order to each member of the Legislature;

c. to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*; and

d. to cause a copy of this Order to be posted on the website of the Supreme Court of Texas at http://www.supreme.courts.state.tx.us.

BY THE COURT, IN CHAMBERS, this 8th_day of November, 2000.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

James A. Baker, Justice

Greg Abbott, Justice

Deborah G. Hankinson, Justice

Harriet O'Neill, Justice

Alberto R. Gonzales, Justice

1.4 Confidentiality of Proceedings Required; Exceptions.

(b) ***Documents and information pertaining to the proceeding.*** As required by Chapter 33, Family Code, the application and all other court documents and information pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. But documents and information may be disclosed when expressly authorized by these rules, and an order, ruling, opinion, or clerk's certificate may be released to:

(1) the minor;

(2) the minor's guardian ad litem;

(3) the minor's attorney;

(4) a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;

(5) a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or

(6) another court, judge, or clerk in the same or related proceedings.

1.6 Disqualification, Recusal, or Objection to a Judge.

(a) ***Time for filing and ruling.*** An objection to a trial judge, or a motion to recuse or disqualify a trial judge, must be filed before 10:00 a.m. of the first business day after an application is filed or promptly after the assignment of a judge to hear the case is made known to the minor or her attorney, whichever is later. An objection to an appellate judge, or a motion to recuse or disqualify an appellate judge must be filed before 10 a.m. of the first business day after a notice of appeal is filed. A judge who chooses to recuse voluntarily must do so instanter. An objection to a judge or a motion to disqualify or recuse does not extend the deadline for ruling on the minor's application.

1.9 Fees and Costs.

(a) ***No fees or costs charged to minor.*** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.

(b) ***State ordered to pay fees and costs.***

(1) Fees and costs that may be paid. The State may be ordered to pay the reasonable and necessary fees and expenses of the attorney ad litem, the reasonable and necessary fees and expenses of the guardian ad litem, the court reporter's fee as certified by the court reporter, and trial court filing fees and costs as certified by the clerk. Court costs include the expenses of an interpreter (Form 2H) but do not include the fees or expenses of a witness. Court costs do not include fees which must be remitted to the state treasury.

(2) To whom order directed and sent. The order must be directed to the Comptroller of Public Accounts but should be sent by the clerk to the Director, Fiscal Division, of the Texas Department of Health.

(3) Form and contents of the order. The order must state the amounts to be awarded the attorney ad litem and the guardian ad litem. The order must be separate from any other order in the proceeding and must not address any subject other than the assessment of costs. A trial court may use Forms 2F and 2G, but it is not required to do so.

(4) Time for signing and sending order. To be valid, the order must be signed by the judge and sent by the clerk to the Department of Health not later than the ninetieth day after the date of the final ruling in a proceeding, whether the application is granted, deemed granted, or denied, or the proceeding is dismissed or nonsuited.

(c) ***Motion to reconsider; time for filing.*** Within thirty days of actual receipt of the order, the Comptroller or any other person adversely affected by the order may file a motion in the trial court to reconsider the assessment of costs. The trial court retains jurisdiction of the case to hear and determine any timely filed motion to reconsider.

(d) ***Appeal.*** The Comptroller or any other person adversely affected by the order may

appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.

(e) ***Report to the Office of Court Administration.*** The Department of Health must transmit to the Office of Court Administration a copy of every order assessing costs in a proceeding under Chapter 33, Family Code. Such orders are not subject to the Amended Order of the Supreme Court of Texas, dated September 21, 1994, in Misc. Docket No. 94-9143, regarding mandatory reports of judicial appointments and fees.

(f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentially. The confidentiality of an order awarding costs — as prescribed by Chapter 33, Family Code — is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, Texas Department of Health, and the Office of Court Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

1.10 **Amicus Briefs.** Amicus briefs may be submitted and received by a court – but not filed – under either of the following procedures.

(a) ***Confidential, Case-Specific Briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. The person must submit the original brief and the same number of copies required for other submissions to the court, and must serve a copy of the brief on the minor's attorney. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) ***Public or General Briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. Such a brief must not contain any information in violation of Rules 1.3 and 1.4. The person must submit the original brief and the same number of copies required for other submissions to the court. If the brief is submitted to a court of appeals, the original and eleven

copies of the brief, plus a computer disk containing the brief, must also be submitted to the Supreme Court of Texas. When an appeal of a proceeding is filed, the clerk of the court of appeals or the Supreme Court must notify the parties to the appeal of the existence of any brief filed under this subsection and must make the brief available for inspection and copying. Upon submission, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary Internet site and make it available to the public for inspection and copying.

Notes and Comments

3. Any judge involved in a proceeding, whether as the judge assigned to hear and decide the application, the judge assigned to hear and decide any disqualification, recusal or objection, a judge authorized to transfer the application or assign another judge to it, or an appellate judge, may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. Similarly, a minor's attorney and guardian ad litem must, of course, have access to the case file to the extent necessary to perform their respective duties.

8. Because orders awarding costs contain information made confidential by Chapter 33, Family Code, that confidentiality should not be affected by the transmission to the Texas Department of Health and the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, or average amount per proceeding, or other such statistical summaries or analyses which do not impair the confidentiality of the proceedings.

9. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of parental notification cases.

RULE 2. PROCEEDINGS IN THE TRIAL COURT

Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in "any county court at law, court having probate jurisdiction, or district court, including a family district court, in this state." The initial assignment of an application to a specific court in a county is made by the clerk with whom the application is filed (not by the minor). Given the diversity of needs and

circumstances among Texas courts, these rules allow the courts in each county to tailor the procedures for filing, handling, and assigning applications prescribed by these rules to best meet those needs and circumstances. Chapter 74, Subchapter C, Government Code, affords the presiding judge of an administrative judicial region broad discretion to assign active judges within the region, as well as visiting judges, to hear matters pending in courts within the region. *See* Tex. Govt. Code §§ 74.054, 74.056; *see also id.*, § 74.056(b) (presiding judges may request judges from other judicial regions for assignment); § 74.057 (Chief Justice may assign judges from one judicial region to another). Section 25.0022, Government Code, provides for assignment of probate judges. Furthermore, Chapter 74, Subchapter D, Government Code, authorizes district and statutory county court judges within a county to hear matters pending in any district or statutory county court in the county. *Id.*, § 74.094(a). Finally, Section 74.121, Government Code, permits courts within a county to transfer cases among courts having jurisdiction over the case. If no local rule governs assignments, then Rule 2.1(b)(4) controls.

3.3 Proceedings in the Court of Appeals.

(b) ***Ruling.*** The court of appeals — sitting in a three-judge panel — must issue a judgment affirming or reversing the trial court's order denying the application. The court may use Form 3C but is not required to do so.

INSTRUCTIONS FOR APPLYING TO THE COURT FOR A WAIVER OF PARENTAL NOTIFICATION

(Form 1A)

Your situation and the law

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parent(s), managing conservator, or guardian. (A "managing conservator" is a parent, other adult, or agency appointed by a court to have custody or control of you.)

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

• your doctor first informs your parent(s), managing conservator, or guardian at least 48 hours before you can have an abortion,

or unless

• a judge issues an order that "waives," or removes, the requirement that you must let your parent(s), managing conservator, or guardian know about your planned abortion.

How to get a waiver of parental notification

• Fill out the application

To get a court order waiving the requirement that you tell your parent(s), managing conservator, or guardian about your planned abortion, you or someone acting on your behalf must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the "Cover Page' for the Application; it requests basic information about why you are seeking the order. Form 2B is the "Verification Page," which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone, pager, beeper, or fax number, or other way that you can be contacted. You can but need not give your own number — instead, you can ask the court to contact you through someone who is helping you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court-at-law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the

application is confidential. You do not have to pay a fee to file this application.

• Your hearing

The court will tell you when to come to the courthouse for your "hearing." In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within two days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a "guardian ad litem." In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free. The person appointed to be your lawyer might also be appointed to be your guardian ad litem.

• Keeping it confidential

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

• The court's decision

The court must "rule" — issue a decision on your application — before 5:00 p.m. on the second day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, it counts as an "OK" to you — it is an automatic waiver of the requirement that you inform your parent(s), managing conservator, or guardian about your planned abortion. If this happens, you can get a certificate from the court clerk that says that your request is "deemed granted," which means that your application was approved.

If the court *does* rule within the required time, the court issues an order that does one of the following four things:

(1) Approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

(2) Approves your request because it is in your best interests to *not* notify your parent(s), managing conservator, or guardian

before getting the abortion;

(3) Approves your request because notifying your parent(s), managing conservator, or guardian before getting the abortion may lead to physical, sexual, or emotional abuse of you; or

(4) Denies your request because the court does not find (1), (2) or (3).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

• Appealing the court's decision

If the court denies your request, you may ask another court to hear your case. This request is called an "appeal," and the new court will be the Court of Appeals.

To appeal the first court's decision, have your own lawyer or your court-appointed lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding.*** The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the Court of Appeals. Instead, the Court of Appeals will review the written record and will issue a written ruling on your appeal no later than 5:00 p.m. on the second day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The Court of Appeals will provide its ruling to you, the lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

• Getting the forms you need

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding,* should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court-at-law, county, or probate court or Court of Appeals. These forms are also available on the Texas Judiciary Internet website at www.courts.state.tx.us.

JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW ON APPLICATION IN PARENTAL NOTIFICATION PROCEEDING (Form 2D)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

This matter was heard on this _____ day of _____, _____. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.

2. The applicant is unmarried and under 18 years of age.

3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.

4. The applicant wishes to have an abortion without her doctor notifying either of her parents, her managing conservator or guardian.

5. A preponderance of the evidence supports the following [State "yes" beside any issue for which the court finds in favor of the applicant by a preponderance of the evidence. If any one issue is decided in favor of the applicant, the court need not consider other issues]:

_____ The applicant is mature and sufficiently well informed to make the decision to

have an abortion performed without notification to either of her parents, her managing conservator or guardian.

Findings of Fact/Conclusions of Law: _____

_____

_____

_____

_____

_____

_____ Notifying either of the applicant's parents, managing conservator or guardian would not be in her best interest.

Findings of Fact/Conclusions of Law: _____

_____

_____

_____

_____

_____

_____ Notifying either of the applicant's parents, managing conservator or guardian may lead to physical, sexual, or emotional abuse of the applicant.

Findings of Fact/Conclusions of Law: _____

_____

_____

THEREFORE, IT IS ORDERED

_____ The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying either of her parents or a managing conservator or guardian.

_____ The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Texas Parental Notification Rules and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

_____

Judge Presiding

ORDER THAT COSTS IN PARENTAL NOTIFICATION PROCEEDING BE PAID BY STATE PURSUANT TO TEXAS FAMILY CODE §33.007 (Form 2F)

Notice: To guarantee reimbursement, this Order must be served on the Director, Fiscal Division, Texas Department of Health, within the deadlines imposed by Tex. Paren. Notif. R 1.9(b).

CAUSE NO. _____

IN RE JANE DOE

IN THE _____
_____
_____COUNTY, TEXAS

ORDER

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the _____ day of _____, _____, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of $_____ to:

   Name: State Bar No.

   Address:

   Telephone: Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of $_____ to:

   Name:

   Address:

   Telephone: Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

   Name:

   Address:

   Telephone: Federal Tax ID:

4. All court costs certified by the clerk.

_____

Judge Presiding

CLERK'S CERTIFICATION OF COURT COSTS AND FEES AND TRANSMISSION OF ORDER FOR PAYMENT IN PARENTAL NOTIFICATION PROCEEDING
(Form 2G)

Director, Fiscal Division
Texas Department of Health
1100 West 49th Street
Austin TX 78756

Re: *In re Jane Doe*

Cause No. _____

Court: _____

County: _____

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on _____, 20____, in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment as follows:

Amount: $_____

Name of the Clerk: _____

Address : _____

Tax Identification No.: _____

Thank you.

Sincerely,

_____

[seal]

Name: _____

Encl: Certified copy of Order

Position: _____

ORDER APPOINTING INTERPRETER FOR CHAPTER 33, FAMILY CODE PROCEEDINGS (Form 2H)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____

_____COUNTY, TEXAS

ORDER

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: _____ State Bar No. _____

Address: _____

Telephone: _____ Federal Tax ID: _____

Signed: this _____ day of _____, 20____.

_____

Judge

OATH FOR INTERPRETER

I, _____, do swear or affirm that I am competent and well versed in the _____ language and shall: (1) make a true interpretation of all the proceedings to the applicant; (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding, to applicant, counsel, the court, and others in the English language and in the _____ language, using my best skill and judgment.

I shall not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding, or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

_____

Print Name: _____

Address: _____

_____

Telephone: _____

SWORN TO AND SUBSCRIBED before me on _____, 20___

[seal] _____

Exhibit O

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 07-9035

FINAL APPROVAL OF AMENDMENTS TO TEXAS PARENTAL NOTIFICATION RULES AND FORMS FOR USE IN PROCEEDINGS UNDER CHAPTER 33 OF THE FAMILY CODE

ORDERED that:

1. The Texas Parental Notification Rules, adopted by Order of Misc. Docket No. 99-9247 (Dec. 22, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by amending the Explanatory Statement that prefaces the Rules, and Rules 1.1, 1.3(c), 1.10, 2.2(f), 2.3(a), and 2.4(d), as follows.

2. The Texas Parental Notification Forms, adopted by Order of Misc. Docket No. 99-9243 (Dec. 15, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by adding Forms 2I and 2J as follows.

3. As ordered in Misc. Docket No. 06-9143, these changes take effect March 1, 2007.

4. The Clerk is directed to:

a. post a copy of this Order on the Court's Internet website at www.courts.state.tx.us

b. file a copy of this Order with the Secretary of State;

c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

d. send a copy of this Order to each member of the Legislature; and

e. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 27th day of February, 2007.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

EXPLANATORY STATEMENT

Chapter 33 of the Texas Family Code, adopted by Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30), provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to her parents, managing conservator, or guardian. Section 2 of the Act states: "The Supreme Court of Texas shall issue promptly such rules as may be necessary in order that the process established by Sections 33.003 and 33.004, Family Code, as added by this Act, may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition." *See also* Tex. Fam. Code §§ 33.003(l), 33.004(c). Section 6 of the Act adds: "The clerk of the Supreme Court of Texas shall adopt the application form and notice of appeal form to be used under Sections 33.003 and 33.004, Family Code, as added by this Act, not later than December 15, 1999." *See also* Tex. Fam. Code §§ 33.003(m), 33.004(d).

The following rules and forms are promulgated as directed by the Act without any determination that the Act or any part of it comports with the United States Constitution or the Texas Constitution. During the public hearings and debates on the rules and forms, questions were raised concerning the constitutionality of Chapter 33, among which were whether the statute can make court rulings secret, and whether the statute can require courts to act within the specified, short deadlines it imposes. Because such issues should not be resolved outside an adversarial proceeding with full briefing and argument, the rules and forms merely track statutory requirements of the Legislature. Adoption of these rules does not, of course, imply that abortion is or is not permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); Tex. Rev. Civ. Stat. Ann. art. 4495b, § 4.011 (restrictions on third trimester abortions of viable fetuses).

In 2005, the Legislature amended the Texas Occupations Code to prohibit a physician from performing an abortion on an unemancipated minor

> without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian.

Act of May 27, 2005, 79th Leg., R.S., ch. 269, §1.42, 2005 Tex. Gen. Laws 734 (S.B. 419) (codified at Tex. Occ. Code §164.052(a)(19)). The parental consent law does not direct the Supreme Court to provide procedural rules implementing its provisions but instead expressly references the judicial bypass provisions in the parental notification law as providing an exception to the parental consent requirement. The procedures governing application for a judicial bypass to the parental notification requirement are set forth in the existing Parental Notification Rules. In addition, the parental consent law requires the Texas Medical Board to adopt the forms necessary for physicians to obtain the consent required by law to perform an abortion upon an unemancipated minor. *See id.* (codified at Tex. Occ. Code §164.052(c)). Those forms are published at 22 Tex. Admin. Code §165.6(f) and are available on the Texas Medical Board's website, at www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20%201-4-07.doc.

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

1.1 Applicability of These Rules. These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to either of her parents or a managing conservator or guardian under Chapter 33, Family Code (or as amended). All references in these rules to "minor" refer to the minor applicant. Other Texas court rules — including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court — also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

1.3 Anonymity of Minor Protected.

(c) ***Notice ~~Required to Minor's Attorney~~.*** With the exception of orders and rulings released under Rule 1.4(b), all service and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. A minor's attorney must serve on the guardian ad litem instanter a copy of any document filed with the court. A guardian ad litem must serve on a minor's attorney instanter a copy of any document filed with the court. ~~This~~ These requirements takes effect when an attorney appears for the minor, or when the clerk has notified the minor of the appointment of an attorney or guardian ad litem.

1.10 Amicus Briefs. Amicus briefs may be submitted and received by a court – but not filed – under either of the following procedures.

(a) ***Confidential, Case-Specific Briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. The person must submit the original brief and the same number of copies required for other submissions to the court, and must serve a copy of the brief on the minor's attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) ***Public or General Briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. Such a brief must not contain any information in violation of Rules 1.3 and 1.4. The person must submit the original brief and the same number of copies required for other submissions to the court. If the brief is submitted to a court of appeals, the original and eleven copies of the brief, plus a computer disk containing an electronic copy of the brief, must also be submitted to the Supreme Court of Texas. When an appeal of a proceeding is filed, the clerk of the court of appeals or the Supreme Court must notify the ~~parties to the appeal~~ minor's attorney and guardian ad litem of the existence of any brief ~~filed~~ submitted under this subsection and must make the brief available for inspection and copying. Upon ~~submission~~ receipt of an electronic copy of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary Internet site and make it available to the public for inspection and copying.

2.2 Clerk's Duties.

(f) ***Orders.*** The clerk must provide the minor's ~~and the~~ attorney and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.

2.3 Court's Duties. Upon receipt of an application from the clerk, the court must promptly:

(a) appoint a qualified person to serve as guardian ad litem for the minor applicant;

2.4 Hearing.

(d) ***Record.*** ~~If the minor appeals, or if there is evidence of past or potential abuse of the minor, the hearing must be transcribed instanter.~~ The court, the minor's attorney, or the guardian ad litem may request that the record — the clerk's record and reporter's record — be prepared. A request by the minor's attorney or guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor's attorney and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available instanter if it has been requested for appeal or if a belief that there is evidence of past or potential abuse of the minor is stated on the record or submitted to the court in writing. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).

Form 2I: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO._____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe requests the court reporter and appropriate clerk to prepare instanter a record of the trial proceedings and make it available to:

_____	_____
_____	_____
_____	_____
(Name and address of guardian ad litem)	**(Name and address of minor's attorney)**

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

_____	_____
(Telephone number for guardian ad litem)	**(Telephone number for minor's attorney)**

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

_____
ATTORNEY

_____
GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Form 2J: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO._____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment and **no appeal will be taken.** Jane Doe's attorney/guardian ad litem requests the court reporter and appropriate clerk to prepare a record of the trial proceedings and make it available to:

_____	_____
_____	_____
_____	_____
(Name and address of guardian ad litem)	**(Name and address of minor's attorney)**

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

_____	_____
(Telephone number for guardian ad litem)	**(Telephone number for minor's attorney)**

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

_____
ATTORNEY

_____
GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Exhibit P

shall enter its order with respect to such bond and sufficiency of the sureties.

RULE 592b. FORM OF ATTACHMENT BOND

The following form of bond may be used:

"The State of Texas,
County of _____,

"We, the undersigned, as principal, and and as sureties, acknowledge ourselves bound to pay to C.D. the sum of dollars, conditioned that the above bound plaintiff in attachment against the said C.D., defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs to the extent of penal amount of this bond as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this _____ day of _____, 20___ ."

RULE 593. REQUISITES FOR WRIT

A writ of attachment shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further order of the court, so much of the property of the defendant, of a reasonable value in approximately the amount fixed by the court, as shall be found within his county.

RULE 594. FORM OF WRIT

The following form of writ may be issued:

"The State of Texas.

"To the Sheriff or any Constable of any County of the State of Texas, greeting:

"We command you that you attach forthwith so much of the property of C.D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of _____dollars, and the probable costs of suit, to satisfy the demand of A.B., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in _____, County of_____. You will true return make of this writ on or before 10 a.m. of Monday, the _____day of _____, 20___ , showing how you have executed the same."

RULE 595. SEVERAL WRITS

Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in

Exhibit Q

TEXAS RULES OF CIVIL PROCEDURE

PART VII - RULES RELATING TO SPECIAL PROCEEDINGS

SECTION 1. PROCEDURES RELATED TO HOME EQUITY LOAN FORECLOSURE

RULE 735. PROCEDURES

A party seeking to foreclose a lien created under Tex. Const. art. XVI, § 50(a)(6), for home equity loan, or Tex. Const. art. XVI, § 50(a)(7), for a reverse mortgage, that is to be foreclosed on grounds other than Tex. Const. art. XVI, § § 50(k)(6)(A) or (B), may file: (1) a suit seeking judicial foreclosure; (2) a suit or counterclaim seeking a final judgment which includes an order allowing foreclosure under the security instrument and Texas Property Code § 51.002; or (3) an application under Rule 736 for an order allowing foreclosure.

RULE 736. EXPEDITED FORECLOSURE PROCEEDING

(1) **Application.** A party filing an application under Rule 736 seeking a court order allowing the foreclosure of a lien under Tex. Const. art. XVI, § 50(a)(6)(D), for a home equity loan, or § 50(k)(11), for a reverse mortgage, shall initiate such in rem proceeding by filing a verified application in the district court in any county where all or any part of the real property encumbered by the lien sought to be foreclosed (the "property") is located. The application shall:

(A) be styled: "In re: Order for Foreclosure Concerning *(Name of person to receive notice of foreclosure)* and *(Property Mailing Address)* ";

(B) identify by name the party who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property;

(C) identify the property by mailing address and legal description;

(D) identify the security instrument encumbering the property by reference to volume and page, clerk's file number or other identifying recording information found in the official real property records of the county where all or any part of the property is located or attach a legible copy of the security instrument;

(E) allege that:

(1) a debt exists;

(2) the debt is secured by a lien created under Tex. Const. art. XVI, § 50(a)(6), for a home equity loan, or § 50(a)(7), for a reverse mortgage;

(3) a default under the security instrument exists;

(4) the applicant has given the requisite notices to cure the default and accelerate the maturity of the debt under the security instrument, Tex. Prop. Code § 51.002, Tex. Const. art. XVI, § 50(k)(10), for a reverse mortgage, and applicable law;

(F) describe facts which establish the existence of a default under the security instrument; and

(G) state that the applicant seeks a court order required by Tex. Const. art. XVI, § 50(a)(6)(D), for a home equity loan, or § 50(k)(11), for a reverse mortgage, to sell the property under the security instrument and Tex. Prop. Code § 51.002.

A notice required by Tex. Const. art. XVI, § 50(k)(10), for a reverse mortgage, may be combined or incorporated in any other notice referenced in Rule 736(1)(E)(4). The verified application and any supporting affidavit shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

(2). **Notice.**

(A) **Service.** Every application filed with the clerk of the court shall be served by the party filing the application. Service of the application and notice shall be by delivery of a copy to the party to be served by certified and first class mail addressed to each party who, according to the records of the holder of the debt is obligated to pay the debt. Service shall be complete upon the deposit of the application and notice, enclosed in a postage prepaid and properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If the respondent is represented by an attorney and the applicant's attorney has knowledge of the name and address of the attorney, an additional copy of the application and notice shall be sent to respondent's attorney.

(B) **Certificate of Service.** The applicant or applicant's attorney shall certify to the court compliance with the service requirements of Rule 736. The applicant shall file a copy of the notice and the certificate of service with the clerk of the court. The certificate of service shall be prima facie evidence of the fact of service.

(C) **Form of Notice.** The notice shall be sufficient if it is in substantially the following form in at least ten point type:

Cause No. _____

In re: Order for Foreclosure In the District Court

Concerning Cause No. *(1) Of _____ County
and

*(2) _____ Judicial District

NOTICE TO *(3)

An application has been filed by , as Applicant, on *(4) , in a proceeding described as:

"In re: Order for Foreclosure Concerning *(1) and *(2) .

The attached application alleges that you, the Respondent, are in default under a security instrument creating a lien on your homestead under Tex. Const. art. XVI, § 50(a)(6), for a home equity loan, or § 50(a)(7), for a reverse mortgage. This application is now pending in this court.

Applicant seeks a court order, as required by Tex. Const. art. XVI, § 50(a)(6)(D) or § 50(k)(11), to allow it to sell at public auction the property described in the attached application under the security instrument and Tex. Prop. Code § 51.002.

You may employ an attorney. If you or your attorney do not file a written response with the clerk of the court at *(5) on or before 10:00 a.m. on *(6) an order authorizing a foreclosure sale may be signed. If the court grants the application, the foreclosure sale will be conducted under the security instrument and Tex. Prop. Code § 51-002.

You may file a response setting out as many matters, whether of law or fact, as you consider may be necessary and pertinent to contest the application. If a response is filed, the court will hold a hearing at the request of the applicant or respondent.

In your response to this application, you must provide your mailing address. In addition, you must send a copy of your response to *(7) .

ISSUED
By

_____
(Applicant or Attorney for Applicant)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this notice with a copy of the application was sent certified and regular mail to *(3) on the _____ day of _____, 20___ .

(signature)

(Applicant or Attorney for Applicant)

*(1) name of respondent
*(2) mailing address of property
*(3) name and address of respondent
*(4) date application filed
*(5) address of clerk of court
*(6) response due date
*(7) name and address of applicant or applicant's or applicant's attorney

(D) The applicant shall state in the notice the date the response is due in accordance with Rule 736(3).

(E) The application and notice may be accompanied by any other notice required by state or federal law.

(3) **Response Due Date.** A response is due on or before 10:00 a.m. on the first Monday after the expiration of thirty-eight (38) days after the date of mailing of the application and notice to respondent, exclusive of the date of mailing, as set forth in the certificate of service.

(4) **Response.**

(A) The respondent may file a response setting out as many matters, whether of law or fact, as respondent deems necessary or pertinent to contest the application. Such response and any supporting affidavit shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

(B) The response shall state the respondent's mailing address.

(C) The response shall be filed with the clerk of the court. The respondent shall also send a copy of the response to the applicant or the applicant's attorney at the address set out in the notice.

(5) **Default.** At any time after a response is due, the court shall grant the application without further notice or hearing if:

(A) the application complies with Rule 736(1);

(B) the respondent has not previously filed a response; and

(C) a copy of the notice and the certificate of service shall have been on file with the clerk of the court for at least ten days exclusive of the date of filing.

Exhibit R

tenant/appellant shall pay the rent into the county court registry within five days of the due date under the terms of the rental agreement.

(3) If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of restitution.

(4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing.

(5) All hearings and motions under this rule shall be entitled to precedence in the county court.

RULE 749c. APPEAL PERFECTED

When an appeal bond has been timely filed in conformity with Rule 749 or a pauper's affidavit approved in conformity with Rule 749a, the appeal shall be perfected.

RULE 750. FORM OF APPEAL BOND

The appeal bond authorized in the preceding article may be substantially as follows:

"The State of Texas,

"County of _____

"Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A.B., and against C.D., tried before , a justice of the peace of county, a judgment was rendered in favor of the said A.B. on the _____ day of _____, A.D. _____, and against the said C.D., from which the said C.D. has appealed to the county court; now, therefore, the said C.D. and his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him, provided the sureties shall not be liable in an amount greater than $_____, said amount being the amount of the bond herein.

"Given under our hands this _____ day of _____, A.D. _____."

RULE 751. TRANSCRIPT

When an appeal has been perfected, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had

Exhibit S

RULE 115. FORM OF PUBLISHED CITATION IN ACTIONS INVOLVING LAND

In citations by publication involving land, it shall be sufficient in making the brief statement of the claim in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit.

RULE 116. SERVICE OF CITATION BY PUBLICATION

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

RULE 117. RETURN OF CITATION BY PUBLICATION

The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

RULE 117a. CITATION IN SUITS FOR DELINQUENT AD VALOREM TAXES

In all suits for collection of delinquent ad valorem taxes, the rules of civil procedure governing issuance and service of citation shall control the issuance and service of citation therein, except as herein otherwise specially provided.

1. **Personal Service: Owner and Residence Known, Within State.** Where any defendant in a tax suit is a resident of the State of Texas and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rules 99 to 107, inclusive.

2. **Personal Service: Owner and Residence Known, Out of State.** Where any such defendant is absent from the State or is a nonresident of the State and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially

to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rule 108.

3. **Service by Publication: Nonresident, Absent From State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.** Where any defendant in a tax suit is a nonresident of the State, or is absent from the State, or is a transient person, or the name or the residence of any owner of any interest in any property upon which a tax lien is sought to be foreclosed, is unknown to the attorney requesting the issuance of process or filing the suit for the taxing unit, and such attorney shall make affidavit that such defendant is a nonresident of the State, or is absent from the State, or is a transient person, or that the name or residence of such owner is unknown and cannot be ascertained after diligent inquiry, each such person in every such class above mentioned, together with any and all other persons, including adverse claimants, owning or claiming or having any legal or equitable interest in or lien upon such property, may be cited by publication. All unknown owners of any interest in any property upon which any taxing unit seeks to foreclose a lien for taxes, including stockholders of corporations - defunct or otherwise - their successors, heirs, and assigns, may be joined in such suit under the designation of "unknown owners" and citation be had upon them as such; provided, however, that record owners of such property or of any apparent interest therein, including, without limitation, record lien holders, shall not be included in the designation of "unknown owners"; and provided further that where any record owner has rendered the property involved within five years before the tax suit is filed, citation on such record owner may not be had by publication or posting unless citation for personal service has been issued as to such record owner, with a notation thereon setting forth the same address as is contained on the rendition sheet made within such five years, and the sheriff or other person to whom citation has been delivered makes his return thereon that he is unable to locate the defendant. Where any attorney filing a tax suit for a taxing unit, or requesting the issance of process in such suit, shall make affidavit that a corporation is the record owner of any interest in any property upon which a tax lien is sought to be foreclosed, and that he does not know, and after diligent inquiry has been unable to ascertain, the location of the place of business, if any, of such corporation, or the name or place of residence of any officer of such corporation upon whom personal service may be had, such corporation may be cited by publication as herein provided. All defendants of the classes enumerated above may be joined in the same citation by publication.

An affidavit which complies with the foregoing requirements therefor shall be sufficient basis for the citation above mentioned in connection with it but shall be held to be made upon the criminal responsibility of affiant.

Such citation by publication shall be directed to the defendants by names or by designation as hereinabove provided, and shall be issued and signed by the clerk of the court in which such tax suit is pending. It shall be sufficient if it states the file number and style of the case, the date of the filing of the petition, the names of all parties by name or by designation as hereinabove provided, and the court in which the suit is pending; shall command such parties to appear and defend such suit at or before 10 o'clock a.m. of the first Monday after the

expiration of forty-two days from the date of the issuance thereof, specifying such date when such parties are required to answer; shall state the place of holding the court, the nature of the suit, and the date of the issuance of the citation; and shall be signed and sealed by the clerk.

The citation shall be published in the English language one time a week for two weeks in some newspaper published in the county in which the property is located, which newspaper must have been in general circulation for at least one year immediately prior to the first publication and shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose, the first publication to be not less than twenty-eight days prior to the return day fixed in the citation; and the affidavit of the editor or publisher of the newspaper giving the date of publication, together with a printed copy of the citation as published, shall constitute sufficient proof of due publication when returned and filed in court. If there is no newspaper published in the county, then the publication may be made in a newspaper in an adjoining county, which newspaper shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose. The maximum fee for publishing the citation shall be the lowest published word or line rate of that newspaper for classified advertising. If the publication of the citation cannot be had for this fee, chargeable as costs and payable upon sale of the property, as provided by law, and this fact is supported by the affidavit of the attorney for the plaintiff or the attorney requesting the issuance of the process, then service of the citation may be made by posting a copy at the courthouse door of the county in which the suit is pending, the citation to be posted at least twenty-eight days prior to the return day fixed in the citation. Proof of the posting of the citation shall be made by affidavit of the attorney for the plaintiff, or of the person posting it. When citation is served as here provided it shall be sufficient, and no other form of citation or notice to the named defendants therein shall be necessary.

4. **Citation in Tax Suits: General Provisions.** Any process authorized by this rule may issue jointly in behalf of all taxing units who are plaintiffs or intervenors in any tax suit. The statement of the nature of the suit, to be set out in the citation, shall be sufficient if it contains a brief general description of the property upon which the taxes are due and the amount of such taxes, exclusive of interest, penalties, and costs, and shall state, in substance, that in such suit the plaintiff and all other taxing units who may set up their claims therein seek recovery of the delinquent ad valorem taxes due on said property, and the (establishment and foreclosure) of liens, if any, securing the payment of same, as provided by law; that in addition to the taxes all interest, penalties, and costs allowed by law up to and including the day of judgment are included in the suit; and that all parties to the suit, including plaintiff, defendants, and intervenors, shall take notice that claims for any taxes on said property becoming delinquent subsequent to the filing of the suit and up to the day of judgment, together with all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered therein without further citation or notice to any parties thereto. Such citation need not be accompanied by a copy of plaintiff's petition and no such copy need be served. Such citation shall also show the names of all taxing units which assess and collect taxes on said property not made parties to such suit, and shall contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties

therein, or who may intervene therein and set up their respective tax claims against said property. After citation or notice has been given on behalf of any plaintiff or intervenor taxing unit, the court shall have jurisdiction to hear and determine the tax claims of all taxing units whoare parties plaintiff, intervenor or defendant at the time such process is issued and of all taxing units intervening after such process is issued, not only for the taxes, interest, penalties, and costs which may be due on said property at the time the suit is filed, but those becoming delinquent thereon at any time thereafter up to and including the day of judgment, without the necessity of further citation or notice to any party to said suit; and any taxing unit having a tax claim against said property may, by answer or intervention, set up and have determined its tax claim without the necessity of further citation or notice to any parties to such suit.

5. **Form of Citation by Publication or Posting.** The form of citation by publication or posting shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS)
COUNTY OF _____)

In the name and by the authority of the State of Texas

Notice is hereby given as follows:

To _____
_____

and any and all other persons, including adverse claimants, owning or having or claiming any legal or equitable interest in or lien upon the following described property delinquent to Plaintiff herein, for taxes, to-wit:

_____

_____

Which said property is delinquent to Plaintiff for taxes in the following amounts:

$ _____, exclusive of interest, penalties, and costs, and there is included in this suit in addition to the taxes all said interest, penalties, and costs thereon, allowed by law up to and including the day of judgment herein.

You are hereby notified that suit has been brought by _____ as Plaintiffs, against _____ as Defendants, by petition filed on the _____ day of _____, 19_____, in a certain suit styled _____ v. _____ for collection of the taxes on said property and that said suit is now pending

in the District Court of _____ County, Texas, _____ Judicial District, and the file number of said suit is _____, that the names of all taxing units which assess and collect taxes on the property hereinabove described, not made parties to this suit, are _____.

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens, if any, securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in said cause by all other parties herein, and all of those taxing units above named who may intervene herein and set up their respective tax claims against said property.

You are hereby commanded to appear and defend such suit on the first Monday after the expiration of forty-two (42) days from and after the date of issuance hereof, the same being the _____ day of _____, A.D., 19_____ (which is the return day of such citation), before the honorable District Court of _____ County, Texas, to be held at the courthouse thereof, then and there to show cause why judgment shall not be rendered for such taxes, penalties, interest, and costs, and condemning said property and ordering foreclosure of the constitutional and statutory tax liens thereon for taxes due the plaintiff and the taxing units parties hereto, and those who may intervene herein, together with all interest, penalties, and costs allowed by law up to and including the day of judgment herein, and all costs of this suit.

Issued and given under my hand and seal of said court in the City of _____, _____ County, Texas, this _____ day of _____, A.D., 19_____.

_____
Clerk of the District Court.
_____ County, Texas,
_____ Judicial District.

6. **Form of Citation by Personal Service in or out of State.** The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS

To _____, Defendant,

GREETING:

YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Plaintiff, filed in said Court on the _____ day of _____, A.D., 19_____, against_____, Defendant, said suit being number _____ on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter described.

The amount of taxes due Plaintiff, exclusive of interest, penalties, and costs, is the sum of $ _____, said property being described as follows, to-wit: _____
_____

The names of all taxing units which assess and collect taxes on said property, not made parties to this suit, are: _____

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens securing the payment of same, as provided by law.

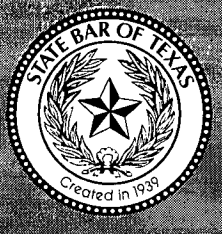
All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in this cause by all other parties hereto, and by all of those taxing units above named, who may intervene herein and set up their respective tax claims against said property.

If this citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

The officer executing this return shall promptly serve the same according to the requirements of law and the mandates hereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, A.D., 19_____.

_____
Clerk of the District Court of
_____ County, Texas.
By _____, Deputy.
_____



STATE BAR *of* TEXAS

SOLUTIONS 2012

REPORT TO THE STATE BAR BOARD OF DIRECTORS
APRIL 13, 2012

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April 2, 2012

Bob Black, President
State Bar of Texas

Dear President Black.

At your instance, SOLUTIONS 2012 has studied the efficacy of creating and mandating the use of forms to assist indigent Texans to navigate our courts and to offer alternative solutions that might better serve that constituency. It has been my pleasure to co-chair this task force with Tim Belton, a public member of the Bar Board from Bellaire, Texas.

The strength of the SOLUTIONS 2012 task force is that its members come from a variety of backgrounds. Most have spent significant time *actually* helping poor people in the courts and *actually* dealing with the challenges they face—for most of us it was not a theoretical exercise. Our number includes past and present members of the Access to Justice Commission (ATJ), a District Clerk, family lawyers, former Chair of REPTL, current and former members of the judiciary, current and former SBOT Board members, a director of a Domestic Relations Office, the Executive Director of Lone Star Legal Aid, as well as public, non-lawyer members. They are listed in the report. While there was not unanimity on every issue, the report that follows represents a consensus of that group after hours of study, debate, questioning, and robust discussion of the issues. The first section of the report outlines effective alternatives for addressing the pro se litigant issue that the task force believes are viable. The diversity of our state dictates that there can be no "one size fits all" to the problems of assisting the poor. So a variety of alternatives is presented for your consideration. It was also beyond the scope of our work to suggest the funding or the manpower for these alternatives. The second section details serious and specific concerns about the implementation and use of the proposed forms for the indigent. It was not the task of the group to consider the legal sufficiency of the forms.

Neither the ATJ nor the Office of Court Administration (OCA) could provide any statistical justification that these forms are needed other than anecdotal evidence from a handful of courts. Likewise there is anecdotal evidence that this is not a viable solution and from practitioners that these forms, with the Supreme Court imprimatur, could even be harmful.

However, the most troubling aspect arising from this study is that the promulgation of these first few forms is in fact the beginning of a larger plan to

fundamentally change the practice of law in Texas. While the ATJ was created to work on the issues of assisting the poor, it has now seemingly been co-opted by the OCA to transform the practice in many areas of the law into a forms driven practice. The CourtTex Blog, written by Carl Reynolds endorses the following concept: "Courts and administrative agencies should reform their rules and processes and provide information and assistance in order to reduce, wherever possible, the need for full-service attorneys."

Mr. Reynolds embraces the concept of encouraging and creating a culture of self-represented litigants. He does not distinguish between low income Texans and any other litigant who wishes to represent himself in our courts. Frankly his vision is outside the scope the ATJ was created and funded to address. The forms being discussed today are the first step in this process—a process that has neither been discussed nor endorsed by the 90,000 members of the State Bar of Texas, the leadership of the Bar, or the Court. It represents the most fundamental change in the history of Texas jurisprudence.

If the practice of law in Texas is to be reduced to set of check the box forms, and our judiciary is to become a network of do-it-yourself help centers, then it seems that the lawyers of this state ought to have input in that decision.

Our most disadvantaged citizens, the people that ATJ has a mandate to serve, are entitled to competent and thoughtful representation and should not be handed a batch of forms and told to follow the instructions in the hope that justice might somehow find them.

This is not really about divorce and it is not about family lawyers. It is about taking the first steps to changing the way we practice law. I appreciate your leadership on this issue and your defense of our profession and our judicial system.

Very truly yours,

G. Thomas Vick, Jr.

GTV:jc

TIMOTHY D. BELTON

March 31, 2012

The Honorable Robert Black
President
State Bar of Texas
1414 Colorado Street
Austin, Texas 78701

Dear President Black:

I have been honored to represent the public of Texas as Co-Chair of Solutions 2012. I also want to thank Chairman Beverly Godbey for appointing me to chair the Affordable Legal Services subcommittee of the State Bar of Texas Board of Directors. Serving as a public member of the Board, in addition to the Solutions 2012 task force and the Affordable Legal Services subcommittee, has been a great privilege, a sobering responsibility and truly humbling.

This opportunity to serve prepared me well to voice an informed point of view, from the perspective of a member of the public, on the legal profession's commitment, and especially the commitment of the State Bar, to serving the public's interest and extending justice to those least able to afford legal counsel. While our report speaks for itself, I want to use this opportunity to offer that perspective regarding the issues surrounding pro se litigation and the Texas Supreme Court's initiative to develop uniform forms for divorces.

What I heard during the debate over the forms was a tug of war between lawyers who stressed the importance of achieving justice in each individual's case and those who see a system so overwhelmed it must be changed to process cases administratively in the name of "efficiency." Little regard has been given to the public's concern that "efficient processing" often fails to provide justice in a number of cases that appear eligible for the proposed forms, but for which the forms turn out to be insufficient and even harmful.

Here is where I come down on that issue: Our democratic society is based on individual civil liberties and individual justice. The direction the Court is taking moves us away from individual justice to a collective justice system in which the system's need for efficiency trumps the interests of individuals whose most intimate interests may be forever damaged in the processing. Orwell would be proud. The fact that other states have gone down that road does nothing to relieve my concern because I value the emphasis our Texas heritage puts on families and individuals. Seldom if ever has Texas failed to lead, much less followed bad precedence.

I arrived at these concerns as a citizen and as a business person. Marriage, divorce and the role of the family in the common good of our society are of critical public policy concern and not a merely a matter of judicial efficiency. At a time when the family, the fundamental building block of our society, is under so much threat, and with divorce forms and instructions already available from the Family Law Section and numerous website and software vendors, I do not understand why the Justices of our Supreme Court take upon themselves a sense of urgency to make divorce faster and cheaper as the starting point for the program of judicial efficiency. Certainly, some other area of the law much less contentious would be a more appropriate starting point. Should these Justices feel compelled to use their authority as related to marriage and divorce, this member of the public would rather see the Court increase access to justice under the advice of counsel, not to increase cheap and efficient divorces. At what time could the need for sage counsel be greater than on the precipice of dissolving a marriage, especially when not just the emotional issues, but the legal issues, are complex? The data is clear that reconciliation is far more likely when counsel is involved.

Further, the macro data suggests that divorce cases are not clogging the courts. Texas' population increased over the last decade by roughly 20%. The Office of Court Administration told us that court capacity at the least kept pace with that growth. Divorce cases, thankfully, have increased only about 6%, so the *rate* of divorce has declined substantially while court capacity has increased faster. If demand for divorce is down relative to the population, where is the need to put the State's limited resources behind making the supply of divorces cheaper and more efficient?

I'm not happy with the number of divorces in our culture, but I submit that the public's good and the soundness of our culture would be enhanced by helping the poor access the advice of counsel, rather than a downloadable form that in most cases would take a law license to complete accurately. With counsel, couples may reconcile or they may end their marriages, but the outcomes in either event will better protect the interests of the families and individuals involved than handing them some blank forms, processing the forms like a passport application and getting them through the system with reduced concern for their most personal interests.

While limited to criminal cases, the Sixth Amendment to our US Constitution anticipates that the accused is entitled to a speedy trial "AND to have the assistance of counsel for his defense." Such counsel was considered essential to the process of criminal justice where the accused may not be able to afford counsel. I submit it is as true for disputing civil parties – they are better off with counsel, not a form. I'm NOT suggesting that the state provide disputing civil parties with counsel at the tax payers' expense, but would suggest that the Court and the State Bar of Texas invest its collective efforts to support access to justice for the poor with new solutions to provide counsel, not just another form, of which we already have plenty.

I conclude my service on the Solutions 2012 task force with a better developed understanding of why lawyers call themselves "Counselor" and not "Judicial Administrator." It is because they do

counsel. No form can do that. On matters where so much is at stake if an error is made, counsel should be involved. Access to the courtroom floor and access to justice are not the same things. Access to justice begins and ends with expert legal counsel.

I pray the Court will consider the solutions presented herein and cooperate with the State Bar of Texas to develop solutions to provide affordable access to justice and not sacrifice justice on the altar of judicial efficiency.

Thanks again for the opportunity to serve Texas.

Sincerely,

Timothy D. Belton
Co-Chair, Solutions 2012
President and CEO
TDECU Holdings, LLC

SOLUTIONS 2012 TASK FORCE

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Tim Belton - Co-Chair
Bellaire
(Public SBOT Board Member)

Pablo Almaguer
Private Attorney Involvement Group Coordinator
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Edinburg
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Roy Brantley
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Judge Theresa Chang
Harris County Civil Court at Law No. 2
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(Former SBOT Board Member; Former Harris County District Clerk)

Thelma Clardy
Law Office of Thelma Clardy
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(Former SBOT Board Member; Former Chair, General Practice, Solo, and Small Firm Section; Family and Probate Law Practitioner)

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Ouisa Davis
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(Former SBOT Board Member; Vice Chair, Family Law Section Council; Board of Disciplinary Appeals member; Family Law Practitioner)

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KoonsFuller, PC
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(SBOT Board Member; Texas Access to Justice Commission Commissioner; Family Law Practitioner)

SOLUTIONS 2012 TASK FORCE

Memorandum

TO: **State Bar Board of Directors**

FROM: **SOLUTIONS 2012**
Tom Vick-Co-Chair, Tim Belton-Co-Chair, Pablo Almaguer, Hon. Georgina Benavides, Roy Brantley, Theresa Chang, Thelma Clardy, Janna Clarke, Ouisa Davis, Becky Baskin Ferguson, Jerry Frank Jones, Natalie Cobb Koehler, Kyle Lewis, Marilea Lewis, Hon. Donna Kay McKinney, JoAl Cannon Sheridan, Ike Vanden Eykel

DATE: **April 13, 2012**

SOLUTIONS 2012 is a task force appointed by State Bar President Bob Black in response to an invitation by Chief Justice Wallace Jefferson to the State Bar to look at access to justice for all Texans and ensure that all methods of improving access are considered, including possible Supreme Court-endorsed forms for indigent pro se litigants. SOLUTIONS 2012 is only one of the groups looking at issues of import to the Court as it seeks to improve indigent access to our Courts and allow trial courts to more efficiently and effectively rule on matters brought before them by pro se litigants.

The Task Force members would like to express their gratitude to State Bar President Bob Black for his confidence in them and humbly offer this report to the State Bar Board of Directors, the Supreme Court Rules Advisory Committee, and ultimately the Supreme Court of Texas. The highest priority of SOLUTIONS 2012, in all its considerations, has been ensuring that our judicial system works equally for all citizens regardless of ability to pay, coupled with ensuring that our court system be effective and efficient for all those who are part of the system, as well as all those who look to that system for resolution of personal and societal disputes.

Any discussion regarding challenges facing the judicial system and potential changes to processes that ensure all citizens have access to that system deserves full and open consideration by all those involved in the system – judges, lawyers, court personnel, legal aid and pro bono programs, local bar associations, and the citizens that use our courts. SOLUTIONS 2012 is pleased that the process of open and frank discussions has begun as attempts are made to identify the core challenges facing court efficiency balanced with open access to our courts. SOLUTIONS 2012 began the process of identifying who pro se litigants are, which courts are facing backlogs, and whether it is possible to identify whether pro se litigants are primarily indigent or have resources but choose self-representation.

SOLUTIONS 2012 recognizes the importance of Courts ensuring access to justice is a reality balanced with ensuring that Courts operate effectively and efficiently. SOLUTIONS 2012 suggests that any systemic changes to our system of laws should be made with the utmost care to ensure that ability to pay does not differentiate the level of justice a citizen can expect. Working together it is clear that Texans can identify core challenges and solutions to those issues.

SOLUTIONS 2012 was tasked with exploring any and all methods that might ensure that indigent Texans have access to legal assistance. While some of the concerns and some of the challenges expand beyond the indigent community, SOLUTIONS 2012 worked to remain within the confines of its charge.

There are numerous challenges to ensuring that every person appearing in court has access to a lawyer. All those who have been involved in these discussions agree having a lawyer is highly preferable to using a form. The priority is to find creative ways to meet that challenge in a large state where there is often great disparity between where the large populations of indigent are located and where the largest number of lawyers practice. In addition to geographic differences, other challenges include the lack of lawyers who practice in particular areas of law most faced by indigent litigants; and the increasing number of indigent litigants who do not seek assistance from a lawyer.

In addition, SOLUTIONS 2012 was asked to consider the advisability of forms promulgated by the Supreme Court of Texas without regard to any particular forms that might be in existence or under consideration. That task is complicated because there are numerous forms already in existence and used in courts throughout Texas. Discussion regarding forms included the potential for creating a two-tiered system of justice based on ability to pay; the danger of coercion in the use of forms; and that many forms might be used in partnership with some of the potential solutions that are offered. For instance, pro se clinics and community justice programs provide lawyers to assist pro se litigants in ensuring that their documents are correct, that they understand the process, and that questions regarding property and custody are better understood by a litigant. These partnerships between legal aid lawyers, pro bono lawyers, Courts, and pro se litigants are viable solutions and are working well in some areas of the state.

SOLUTIONS 2012 held its initial meeting February 10, 2012, and heard reports from Trish McAllister, executive director of the Texas Access to Justice Commission; Carl Reynolds, executive director of the Office of Court Administration; and Steve Bresnen, lawyer and lobbyist for the Texas Family Law Foundation. SOLUTIONS 2012 then spent four hours exploring and discussing the background of forms as well as the current issue that led up to the appointment of SOLUTIONS 2012. Two workgroups came out of the first meeting to ensure that a full discussion of the charge to SOLUTIONS 2012 could be completed according to a very short timeline. Both workgroups met three times and then returned to a meeting of the entire group. After studying the reports for each workgroup, the following information was approved for presentation to the State Bar of Texas Board of Directors.

SOLUTIONS 2012 divided into two workgroups with broad topic areas to consider:
Indigent Pro Se Litigants — To look at the issue of poor citizens seeking access to a judicial system that many believe is underfunded at the same time that programs that provide free lawyers are also facing severe budget cuts.

Indigent Pro Se Forms — To look at the development of standardized forms for use by indigent pro se litigants and issues surrounding that proposal.

SOLUTIONS 2012 did not explore the financial or implementation challenges that might be associated with any of its potential solutions, recognizing that even those challenges will vary across the state. Additionally, there are geographic considerations that may make each of these proposals more workable in some areas of the state than others. All of these issues should be examined carefully to determine which ones are feasible with existing resources and which ones may require additional funding sources. It is clear that with a state as varied as Texas, resolving challenges that face the judicial system will require cooperation by courts, legal aid and pro bono programs, bar associations, State Bar sections and committees, and individual lawyers. As with all programs, one size generally does not fit all and creating awareness of issues facing Courts with potential solutions allows those most involved to identify solutions most likely to work within their context.

Indigent Pro Se Litigants (See Appendix 1)
An extensive menu of potential solutions was compiled that might be used to ensure indigent Texans receive the legal assistance needed for adequate representation in our court system as well as to assist indigent pro se litigants. The possible solutions: A) incentivize volunteers; B) expand current programs or projects; or C) are based on ideas that are different from current programs or projects. The chart is further broken down into statewide and regional solutions.

Some of the proposed solutions already exist in some form in Texas. For example, online chat or video programs take advantage of technology to connect resource heavy areas with areas that have less access, rural areas with urban areas, and clients with attorneys. Some of these programs could be easily replicated or expanded throughout the state depending on the needs of an area. Community Justice Projects could easily be replicated throughout the state as could partnering self-help centers with volunteer attorney groups.

Some of the proposed solutions are already in use by law firms, especially larger firms, and could easily be expanded. For instance, there are firms that dedicate one or two associates to a legal services organization which helps indigent Texans receive representation, helps underfunded and understaffed legal services agencies provide lawyers, and provides lawyers who might not otherwise get courtroom experience a vast array of experience. Other ideas that have worked for private firms include lend-a-lawyer programs and adopt a legal aid office programs. There are numerous creative ways to partner firms and legal services organizations where education and outreach to firms can be extremely effective.

There are proposed solutions that involve the Supreme Court of Texas, as well as the entire judiciary. There is a concern that the Unauthorized Practice of Law Committee efforts ought to be strengthened and that the public be better educated about those who are not lawyers but prey on those in need of legal assistance. Also, expanding the judicial education component might have merit. Judges have been discussing the issue of pro se indigent litigants for many years and continue to look for ways to ensure that courts effectively manage the judicial process, especially as they work through ethical considerations. Many judges are aware of a national movement to relax the rules of evidence to assist pro se litigants but that movement is not popular with the judiciary because it moves the judge into the role of an advocate.

When putting together a comprehensive list of proposed solutions, mandatory pro bono or mandatory pro bono reporting must be included. This proposed solution produces strong negative reactions by most Texas lawyers, is opposed by bar leadership of the State Bar of Texas, and is not a feasible consideration at this point.

Indigent Pro Se Forms (See Appendix 2)
SOLUTIONS 2012 was not tasked with reviewing particular forms that are in existence or those under development. Instead, SOLUTIONS 2012 looked at the policy issue of whether forms are a viable solution in assisting indigent pro se litigants with access to our Courts, including considerations in the development, implementation, and updating of such forms. While there are numerous forms in existence, and the reality is that once forms are available there is little hope of controlling who might access and use the form, this subcommittee sought to remain true to its charge of considering forms used by indigent pro se litigants.

SOLUTIONS 2012 believes that before solutions regarding forms can be proposed, questions must be asked and answered before moving forward. SOLUTIONS 2012 hopes that by posing these questions it assists the work of the Supreme Court Rules Advisory Committee and possibly begins the process of developing parameters and questions for any potential solution or draft form created to assist indigent pro se litigants.

Issues of importance include whether forms (without the assistance of counsel) can actually be created; whether the public and our system of justice well-served through the development of forms; whether there are costs of production and updating of forms that might require a fiscal commitment; whether there is a way to ensure that only those who qualify or meet the criteria use potential Supreme Court of Texas-sanctioned forms; whether there is a real need for these forms in the face of no statistics that differentiate between indigent and other pro se litigants; and whether forms might create a two-tiered justice system. All of these questions are important in looking at any form as well as any program that might impact how our justice system works as well as public's confidence in that system.

For example, the State Bar Family Law Section publishes the Family Law Practice Manual every biennium, which includes standard forms for family law cases such as divorces. A committee (appointed by the section) made up of 12-15 people meets to update the Family Law Practice manual based on case law, rules, and legislative changes. The committee meets approximately five to six times each publication cycle to update the manual. This equates to about 460 hours of meeting time for all the committee members that attended. This time estimate only includes meeting hours and does not include the hours spent by committee members outside of meetings. Additionally, State Bar staff worked 3,439 hours on implementing the language developed by the committee for the practice manual.

It is clear that self-represented litigants come from all spectrums of society and are not just indigent people. If a form is created for indigent self represented litigants, who will screen for eligibility? The District Clerks do not want to get involved in the screening, and there already is a movement to generally contest every pauper's oath. A solution to this problem might be to come up with a letter or checklist of things an indigent self-represented litigant could show if unable to pay. If the purpose of creating forms is to help indigent pro se litigants, there must be a method to limit usage to those who meet that threshold. There is a concern that judges will be required to accept the forms even if the people who use them are ineligible or the forms are

incorrect. Another concern is that these forms will put victims in the position of being re-victimized. Discussions included the need to be able to alter the "mandating order" to make sure judges can ensure a decree is complete before signing off on or accepting it.

Conclusion

SOLUTIONS 2012 presents this report and its considerations in hopes that the Court and Rules Advisory Committee have another resource to meet the challenges faced in ensuring access to the justice system and assisting with court efficiency.

SOLUTIONS 2012 reviewed materials on the Office of Court Administration website, including Carl Reynolds' blog posts; the Court Order creating the Texas Access to Justice Commission and the Self Represented Litigants Task Force; materials from the Family Law Foundation; and data from the Office of Court Administration and National Center for State Courts. It discussed statistics, philosophy, and the potential evolution of the legal system toward an administrative system. There are numerous statistics and reports regarding the development and usage of forms in courts throughout the country. Some of the documents indicate that forms provide relief to those using them and to court efficiency. In Texas, forms are used by pro se litigants and there are some courts that have already by necessity begun the process of standardizing what is used in their courtrooms. The Family Law Section Forms Manual is available in law libraries throughout the state as are other sets of forms.

SOLUTIONS 2012 has had a very short time to look at the issue, consider some of the alternatives, and offer some "cautionary concerns" as well as potential answers to those concerns in meeting the very real challenges of access to justice by indigent Texans and effective court processes. SOLUTIONS 2012 hopes that future discussions and new ideas continue to be frank and open and that the collective wisdom of all those involved ultimately ensures that our justice system remains strong. This report is its best effort to produce proposals to ensure that our legal system is effective and open to all those in need and to assist the Court and the Bar in the effective administration of justice.

Appendix 1

Indigent Pro Se Litigant
Workgroup Report
Received and Approved by SOLUTIONS 2012, March 9, 2012

The possible solutions identified below by the Indigent Pro Se Litigant Subcommittee are solutions that either A) Incentivize volunteers; B) expand current programs or projects; or C) are based on ideas that are different from current programs or projects. No fiscal note or feasibility study has been done regarding any of these programs but are offered as options that might be acceptable or built upon throughout the state to address issues of particular courts.

Premise: These solutions are to address the needs of people who are indigent under TAJF/LSC standards. They are not listed in any particular order.

STATEWIDE Potential Solutions

Possible Solutions	Description	Comments
A) Offer CLE based incentives	Provide free or reduced price incentives to attorneys that handle pro bono cases. Use of TXBAR scholarships to provide to lawyers for CLE's.	Is there a way to incentivize non Texas Bar CLE organizations to participate as well? What is the impact on the TXBAR CLE bottom line?
C) Pro-Bono Smart Phone Application	Use an app to help connect lawyers with indigent citizens in need of representation.	An attorney in Arkansas has developed the first interactive pro bono mobile app to create "iProBono" available to Arkansas pro bono attorneys free of charge through iTunes. Would need technical assistance to build the application. The state of Illinois is also using such an app.
C) Pro Bono Matching Website	Use a website to post pro bono cases to be handled by volunteer attorneys.	Some case matching websites currently exist (such as Legal Match) where the public can post their case and a lawyer will respond to it if they want to handle the case. Consider developing such websites for pro bono cases.

C) Online Chat/Video Programs	Use online chat or video programs through websites to provide one to one assistance to individuals in need of assistance.	Encourage legal aid, volunteer groups and local bars to develop an online chat feature on websites. Use remote access terminals in rural counties with video conferencing and online chat capabilities.
B) Expand clinics throughout the state	Set up clinics (or develop a model clinic for bars to use) where volunteer attorneys provide assistance directly to low income persons in specified cases. Example: Community Justice Programs.	The Dallas Volunteer Attorneys Program (DVAP and Legal Aid of NW Texas) sponsors four Assisted Divorce Clinics per month. They use volunteer attorneys to help low-income clients with uncontested family law cases. Staff and volunteers help low-income clients prepare their uncontested family law cases. Malpractice insurance for volunteers is provided by Legal Aid of Northwest Texas. Give bar leaders a project like this with training at the Local Bar Leaders Conference.
A) Reduce liability for attorneys who handle decrees	Offer or reduce liability for attorneys who handle decrees for uncontested cases.	Might require legislative or other disciplinary rule amendments or petitioners can be screened by a local legal services provider. Provided by SBOT liability coverage?
A) Extend liability coverage to attorneys who handle pro bono cases	For attorneys that handle pro bono cases through a legal aid service, they would be covered under the liability insurance coverage provided through the SBOT.	Provided by SBOT liability coverage.
C) Use technology to provide CLE training	Utilize resources such as webinars, phone seminars, or tools such as Skype, to provide free CLE training to attorneys on how to handle pro bono cases.	No commentary.
C) Judicial Education Component	Develop rule to say that it is not a violation to help an indigent pro-se litigant through the court system. Have judges/court clerks hand-out a one page information sheet about the court process to those individuals who are indigent and	Providing information vs. providing legal advice, including their staff. Coordination between Supreme Court, State Bar, and Texas Center for the Judiciary (TCJ). The TCJ receives grants from the Court of Criminal Appeals.

	who are not represented by a lawyer.	
B) Pre-Paid Legal Insurance Programs	Explore the use of Pre-Paid insurance programs to determine options in assisting indigent citizens. Encourage the public to use Pre-Paid Legal programs for reduced cost legal services.	There are currently Pre-Paid legal insurance programs in the state.

Regional Potential Solutions

A) Offer incentives to attorneys who provide training (such as clinics) to other attorneys on how to handle pro-bono cases	Identify incentives for attorneys who provide training to other attorneys on how to handle pro bono cases. Such incentives include CLE credit, free or reduced price CLE's, reduced price section memberships, etc.	Conduct annual seminars to recruit and train lawyers to take family law cases through Volunteer Legal services. May not benefit small firms or solo practitioner, or in rural areas.
C) Education of indigent pro se litigants	Require indigent pro se litigants to attend mandatory training (such as a clinic) on how to file pro se.	It will be difficult to enforce the mandatory requirement of attending training sessions in order to proceed with a case. In Colorado, legal clinics are staffed by legal aid providers. Development of resources to assist pro se litigants; not necessarily as a prerequisite to self-representation. Remove the mandatory requirement and look for resources to offer.
A) or B) Encourage local bar associations to create lawyer referral services	Educate local bar's on the benefits of implementing a certified referral service.	Currently, the State Bar, and most of the local bar referral services throughout the state require members to have Professional Liability Insurance as a condition of membership. Largely this is done because the American Bar Association requires it as a condition of its certification. Additionally, referral services generate revenue, and do not refer indigent callers to private attorneys. Rather referral services refer such callers to legal aid providers and resources. For example, in 2011, the State Bar of Texas Lawyer Referral Service referred 26% of its calls to legal aid

		resources (including legal aid services, other community services, agencies, websites, etc.) Two referral services in the state offer modest means panels that provide services to individuals above the poverty line, but that have limited means (as defined by the referral service). May need to inquire with the ABA about dropping the requirement (for ABA Certification) that lawyer referral services must require professional liability insurance from its members.
B) Establish More Domestic Relations Offices (DRO) Using Public/Private Partnerships	Using existing DROs as a model, find ways to use public and private partnerships to create additional DROs throughout the state.	Need technical assistance in establishing a DRO in other communities.
B) Use of Self Help Centers	Establish self help centers available to indigent pro se litigants throughout the state. Such help can be kiosks, volunteer/staff attorneys, reference materials, etc. Ideally a lawyer is available to assist in the self help center.	Currently, there are self help centers in Angelina County, Bexar County, Collin County Law Library, Fort Bend County, Grayson County, Harris County Courthouse, Hidalgo County, Lubbock County, Montgomery County, Nacogdoches County, Smith County, Tarrant County, Travis County, and the Lutheran Ministries and Social Services of Waco. Bringing together stakeholders is critical.
C) Local Volunteer Attorney Group	Create volunteer board/group to be contacted by listserv or monthly email alerting lawyers/local bar associations to needs in their communities.	Waco has a monthly volunteer attorney gathering where bar associations get together at churches with printers, etc., lawyers do the screening and pass on to the next table where someone prepares forms; perhaps local bar assns. Should form local ATJ committees to explore these types of activities. SBOT can provide technical assistance.
B) Mentoring Programs for Attorneys	Offer CLE credit for attorneys to serve as mentors.	State Bar of Texas Pro Bono Mentor Program offers five hours of CLE credit for taking a case referred by a pro bono program or legal aid program. The Dallas Volunteer Attorneys Program (DVAP) and other volunteer attorney programs offer mentoring for pro bono attorneys. Houston Volunteer Lawyers Mentoring program provides mentoring to an attorney who handles an HVLP case. HVLP mentors are available to answer any procedural or substantive law questions that may arise in pro bono cases.
B) Legal Hotline	Develop a model legal hotline for	Similar to the Legal Line hotline run by bar associations

	local bars to use to provide assistance to indigents in need of legal assistance.	throughout the state.
B) Lend a Lawyer Program	Encourage law firms to place lawyers in fellowships with Legal Services or other pro bono programs for several months or for particular projects/cases.	Many law firms work with legal aid organizations to work on pro bono cases. Law firms are a great resource for offering volunteer attorneys to serve poor citizens. An organized effort to pair law firm volunteers with legal aid organizations will better help to maximize available resources.
B) Adopt a Legal Aid Office	Urban lawyers and law firms to "adopt" legal aid offices to handle cases in rural areas and metropolitan areas.	Rural areas could benefit with additional assistance from attorneys in metropolitan areas. Using technology (as described in this document) can help provide assistance to poor citizens in rural areas.
B) Lawyer for the Day (on site at courts)	Using limited scope representation, lawyers volunteer to perform a discreet task for a low income client with the representation limited to one day.	Examples of cases handled could include negotiating resolution of an eviction, preparing a parenting plan, or negotiating settlement of a consumer debt.
B) Mobile Self-Help Center	Lawyers from the self-help centers at the courthouse join volunteer attorneys from the local bar to staff the mobile center on visits to communities within the county.	Mobile Self-Help Legal Access Center (Ventura County, Calif. Superior Court) was designed to reach those in outlying communities in the county who are unable to utilize the self-help centers located at the courthouse. It is equipped with computers, video stations and shelves stocked with books, pamphlets and self-help instruction manuals and packets. The center focuses its services on low and moderate income individuals, particularly the elderly, disabled, victims of domestic violence, those with language barriers and those who lack transportation. Individuals who visit the center are frequently encouraged to seek private counsel whenever possible. Referrals are made to the Lawyer Referral Service of the Ventura Bar Association and to low cost or subsidized legal services. The program also maintains a list of lawyers willing to provide legal services on a task-by-task basis.

B) Strengthen UPL Efforts	Protect the public, especially the indigent, from those who offer legal assistance but are not lawyers.	Work with UPL Committee.

Other Solutions

C) Statewide Mandatory Pro Bono or Mandatory Reporting	Require all attorneys to handle a specified amount of pro bono legal services to indigent clients every year or pay a fee to legal services. Or consider a mandatory reporting requirement of pro bono hours. The leadership of the State Bar of Texas is opposed to mandatory pro bono and mandatory pro bono reporting.	A local mandate in El Paso requires attorneys to handle two pro bono cases every year. This system has been successful in helping provide legal services to the poor. However, there is no official enforcement mechanism to ensure attorneys follow the mandate. Currently only New Jersey has implemented mandatory pro bono but counter points will have to be heard on the issue. Some of the subcommittee members expressed an adamant opposition to this option but others felt that inclusion of the topic was necessary.
C) Pro Bono Requirements for Board Certified Attorneys	Require attorneys who want to become board certified (or recertified) to handle pro bono cases every year.	Would require rule changes to the Texas Board of Legal Specialization standards for certification. How do we define "pro bono" – is it a case referred by a LSC agency? What do we do about non-LSC covered areas? Rural areas? Allow for some kind of credit for having taken a complex pro bono case for certification or recertification? Would non-family board certified attorneys want to do it or would it just involve family board certification?
C) Newly Licensed Attorneys to Handle Pro Bono Cases	Require newly licensed attorneys to handle two pro bono cases as a condition of their licensure.	Make sure they get mentoring. Consider quality of service and whether oversight is necessary.

Appendix 2

Indigent Pro Se Forms
Workgroup Report
Received and Approved by SOLUTIONS 2012, March 9, 2012

INTRODUCTION: *SOLUTIONS 2012 looked at the use of standard forms from a broader policy perspective, and identified what it came to call "cautionary concerns" pertaining to a statewide implementation system. A number of questions are included below in order to raise awareness of these issues. It is hoped that by posing these questions, the work of the Supreme Court Rules Advisory Committee can move forward more expeditiously. Because the group did not review or consider actual draft forms, the following considerations may be helpful in evaluating any proposed solutions including potential forms for indigent pro se litigants. Part VII considers some policy questions that have been raised through this process and while not directly related to forms should be considered in conjunction with other cautionary concerns.*

I. *Which Forms?*

The subcommittee has spent much of its time discussing forms in general and the concern of the forms being developed for certain conditions (indigent, no children, no property) being used outside of that context. While there are no real statistics that we can find regarding the number of litigants that fit these narrow parameters, there are stories of people indicating that they have no children or property when in actuality they have one or both. The subcommittee is fearful that the expansion of forms created for simple situations, with the Supreme Court's certification, will hurt those who come to our courts for relief more than help them.

II. *Keeping the Forms Current*

If forms are to be utilized in Texas courts, it is important that they be updated to reflect current law. In considering this issue, the following questions must be addressed.

- Who will update the forms?
- When will the forms be updated? For instance, will the forms be updated at a recurring, specific time (Ex: annually, bi-annually), and if so, will they be dated to indicate when the last update occurred?
- Who will provide the monetary resources necessary to continue updating these forms? Possible cost incurrers include the Office of Court Administration, the Supreme Court of Texas, the State Bar of Texas, particular sections of the State Bar of Texas, and the Legal Aid Community.
- **NOTE**: The State Bar Family Law Section publishes the Family Law Practice Manual every biennium, which includes standard forms for family law cases such as divorces.
    - A committee (appointed by the section) made up of 12-15 people meets to update the Family Law Practice manual based on case law, rules and legislative changes. The committee meets approximately five to six times each publication cycle to update the manual. This equates to about 460 hours of meeting time for all the committee members that attend. This time estimate only includes meeting hours and does not include the hours spent by committee members outside of meetings. Additionally, State Bar staff worked 3,439 hours on implementing the language developed by the committee for the practice manual.

III. *Form Eligibility*

Self represented litigants are individuals from all spectrums of society. In other words, the pool of self represented litigants is not solely comprised of indigent Texans. Therefore, the following questions must be answered.

- Who is eligible to use the forms?
- If form usage is permitted only by indigent litigants, what is the definition of indigent? How is this definition determined and by whom?
- How are potential SRLs screened to determine eligibility and who will perform the screenings?
- How is eligibility determined? (Ex: checklist, at point of distribution, questionnaire)
- Would potential litigants be required to confirm they are eligible to use forms?
- Would there be something on the form that says "Judge will accept if certain conditions are met and there is verification of indigency?"
- What happens if the forms are used by someone determined to be ineligible?
- If it is determined that the forms were used by someone who is ineligible, will there be some type of recourse? If so, will it be the same recourse as other litigants? Would litigants need to sign an affidavit?

IV. *Form Usage*

There are already numerous forms being used across Texas by SRLs. Is there an overriding need for a form with the Supreme Court's imprimatur for indigent pro se litigants? Some considerations:

- What will be the cost to ensure correct form usage?
- How will it be ensured that the forms are completed correctly?
- Who will ensure that the forms are completed correctly?
    - District Clerks:
        - Most District Clerks are not lawyers and can not be involved with this issue for multiple reasons, including time constraints, Unauthorized Practice of Law (UPL), etc.
        - They would not be immune from lawsuits.
        - If they are charged with helping to complete the forms, would they need insurance coverage to cover them if a lawsuit were to arise and if so, who will pay for it?
    - Law Clerks:
        - Whose law clerks?
        - Would these individuals be lawyers?
        - If law clerks are charged with helping to complete the forms, who will pay for insurance coverage to cover them if a lawsuit were to arise?
    - Court Staff:
        - Most court staff are non-lawyer personnel and by helping individuals complete the forms, they might be entering into potential UPL territory.
        - Who will pay for insurance coverage to cover court staff if a lawsuit were to arise?
    - Lawyers:
        - Would this be the responsibility of legal aid lawyers, pro bono lawyers, briefing attorneys, or others?

        - How will pro bono lawyers and clinic groups confirm that the forms are being used by the target population?
        - Would briefing attorneys have judicial immunity if they assist with completing the forms?
        - Who will pay for insurance coverage to cover these lawyers if a lawsuit were to arise?
    - Domestic Relations Office (DRO):
        - Would this be the responsibility of DRO or similar program?
            - Good resource for non-indigent litigants.
            - Could offer educational seminars.
    - Judges:
        - What will be their duty and how will it be implemented?
        - Will they be asked to help with forms? Does that interfere with their judicial duties?
        - Will judges have to discern if forms are completed correctly and contain all required information? Furthermore, if a form is incorrect, is it the judge's responsibility to make corrections?
        - Should the entity that released the form be responsible for making corrections?
        - Will rules promulgated violate the court's discretion to sign a form that may be incorrect or may not resolve all issues?
        - If the form is not completed correctly, doesn't this create a bigger problem for our courts?
- What happens if a form is filled out incorrectly?
- What type of resources will be available for making corrections?
- Whose responsibility will it be to make corrections?
- Concerns of potential UPL issues. Do these forms encourage unauthorized practice of law?
- Does using a pro se form change the current judicial framework in that pro se litigants are held to the same standards as attorneys?
- How could groups be encouraged to complete the form (Ex: local bars)?
- Could local bar groups or pro bono clinics be authorized to utilize and disperse the forms?
    - If so, what kind of protection would be available to them?
    - Should forms include some type of defining marker/stamp to show that they are court approved for the indigent to use?
    - Would training be provided for clinics, and if so, by whom?
    - Would funding be available to support legal aid clinics that distribute forms?
    - Would some type of waiver of liability be needed for pro bono attorneys?
    - Would liability insurance coverage be necessary?
- What happens if a Supreme Court form is involved in an appeal that makes it to Supreme Court?
    - Who would hear the case?
    - The waiver issue would need to be addressed.

V. *Other Resources for Distribution of Forms*

In determining how forms are to be used, it is important that all potential resources for the distribution of these forms be identified. The following information lists possible form distributors and identifies questions concerning each type.

- Law School Clinics

    - Would there be lawyer supervision?
    - Would there be a financial eligibility evaluation?
- Websites
    - Would litigants be able to live chat with an attorney?
    - Would litigants need to meet indigent status requirements?
    - Would litigants be screened for financial and substantive eligibility?
    - Where will the monetary resources come from to support a website?
    - Who will maintain the website?
- Law Libraries
    - Would this lead to a potential UPL issue?
    - Most counties don't have librarians, so what type of resources would be able to them?
- Self Service Kiosks
    - Would they be required to meet the same type of criteria/protections as websites that have a live chat attorney?
- Pro Se Clinics
    - Would these pro se pro bono clinics be approved by the State Bar of Texas?
    - Would it be possible to create a kit/clinic in a box?
    - What kinds of requirements would be implemented?
        - How would clinics ensure that forms are used for those who qualify as indigent?
        - What if one person qualifies and the other does not? (Ex: husband qualifies, wife does not)
- Legal Aid Offices
    - Will legal aid offices be able to provide these services?
    - Will funding be increased to cover the additional services?
    - If additional funding is needed, where will it come from?
- Local Bar Programs
    - How will the judge know that they met required criteria as indigent? (Ex: stamp)
    - How will they be approved?
- Attorney General Child Support Division
    - Is this something they should do?

VI. *Research*

The rationale for the utilization of approved forms in Texas courts should be supported by sound research and evidence. Unfortunately, it appears that no national data is currently available on this issue. Furthermore, the available data does not distinguish between all SRLs and indigent SRLs and appears to be more anecdotal than substantive, in that the number of indigent people who have been denied services is not clearly indicated.

- While complete data does not appear to be available, we were able to obtain the following pro bono data from El Paso to serve as a snapshot.
    - Cases referred in 2010 – 204.
    - Cases referred in 2011 – 275.
    - Attorneys participating in mandatory pro bono program – Approximately 400.
- Accurate pro se data is not readily available. Some counties have revealed that the number of pro se litigants reflected in Office of Court Administration (OCA) data does not reflect what they have seen in their county.

- Additionally, data is not available to distinguish between pro se indigent and self represented litigants.

VII. *Authority*

SOLUTIONS 2012 members determined that the following issues kept arising and should be included as part of the report.

- Efficacy of creating form outside the parameters of TAJC.
  - What is the response to those who claim the Texas Access to Justice Commission appears to have gone outside the boundaries of the order? For example, the Texas Supreme Court's Misc. Docket No. 01-9065 at paragraph 3(1) sets forth the purpose of the Texas Access to Justice Commission (TAJC):
    - The Texas Access to Justice Commission is created to develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents.
  - It might also be argued that the TAJC exceeded its authority in establishing the Self Represented Litigants Committee (SRLC) in 2010.
  - Still further, it appears that the OCA is determined to use the TAJC and the SRLC resources to buttress support for its Texas Court Help website. This is revealed by a document – Organization Capacity of Key Partners: Qualifications of Key Project Staff. At paragraph (3) this document defines (TAJC) Self Represented Litigants Committee (SRLC) and at page three, it declares:

    "Later, in 2010, the TAJC established the SRLC to coordinate implementation of strategies to expand and enhance self-represented litigation access to the Court system. TAJC will produce the companion videos to the step by step guides on Texas Court Help." Via TAJC's state-of-the-art production studio, the Commission will provide resources for pre-production through post-production, as well as encoding and duplication in the preparation for uploading to the Texas Court Help website and additional platforms. Both the Commission and the SRLC will promote the website and ultimately evaluate the success of the project.

    Question: Who will be in charge of the Texas Court Help website?

    Answer: This very document provides the answer.

    "OCA will house Texas Court Help; hire and supervise programming and usability contractors; provide translation services; write how-to-guides and scripts for the website; and facilitate promotion of the website through their contacts with the Court system.

    (Paragraph (2) Office of Court Administration) page 2 of 4.)

    Question: Why is this Self Represented Litigant Committee also not limited to assist the poor as required by Misc. Docket No. 01-9065?

    Answer: It seems to violate Misc. Docket No. 01-9065.

Question: How far reaching are these initial forms and strategies?

Answer: March 26, 2009, Texas Access to Justice Commission charged the Special Projects Committee to include various proposals. Proposal four was to request the Supreme Court of Texas to direct the Commission and the Office of Court Administration to develop standardized forms. A bullet point under this proposal four reveals the far reaching strategy -

> "Forms and instructions should be developed with priority to the following areas: family law, landlord-tenant disputes, consumer complaints, small-claims court disputes, expungements, guardianship, simple wills, restraining orders, pleadings necessary to defending against such as answers, discovery requests and trial preparation, occupational driver's licenses, and small estate probate matters." (Texas Self Represented Litigants Work Group, March 26, 2009, page 4)

IGJ

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March 30, 2012

Tom Vick—Co-Chair
Tim Belton—Co-Chair
Re: Solutions 2012

Gentlemen:

I have reviewed the Committee Memorandum. With the greatest of respect, I see the forms issue differently.

1. **The Sky is not Falling.** These forms will be a benefit to Texas law. There good should far outweigh any harm. These forms are not the beginning of a fundamental change in the practice of law.

   About the time I graduated from law school the first free standing legal aid office was opened in Austin . There was a very strong reaction by many local lawyers; they believed legal aid was going to ruin their practices and completely change the practice of law. No such thing happened. A few years later Travis County Legal Aid expanded to the surrounding counties. The lawyers in the those counties likewise had a strong reaction and dire predictions. Again, nothing dramatic happened.

2. **Court Access by the Indigent**. The Texas Supreme Court has concluded that there are many indigent Texans who do not have access to our courts. They have concluded that forms for simple divorces is the most feasible answer available. Without the infusion of substantial funds or man power commitments, they are right.

3. **Helping the Trial Judges.** A key to providing better access to the courts means making it easier for trial judges to deal with pro se litigants and the forms they bring to them. If each pro se brings the same forms, a judge can more readily determine if it is in proper order and thus more effectively and efficiently dispense justice.

4. **Impact on Law Practices: Use by the Non Indigent Pro Se.** Committee members expressed concern that people who could afford a lawyer will use these forms to their own detriment. That seems a very reasonable prediction. But that problem exists today. There are already numerous forms available and layman are using those commercial forms and the existing Texas Family Law Manual. Forms coming from the Texas Supreme Court will not acerbate this problem. But as said above, one set of uniform forms for the trial judge to review may allow her to better caution these foolish people. In the end, the Valvoline rule will decide.

5. **The Problems with Forms.**
   a. **General Rule.** Clearly forms are not as good as lawyers.
   b. **Filling Them Out.** There are always problems with people filling out forms correctly.
   c. **Forms Are Better Than Nothing.** One committee member said, with forms we are moving to an environment where the indigent have forms and everyone else has lawyers. But now we have a situation where indigents have nothing (or a hodgepodge of commercial forms).
   d. **Form Abuse.** Committee members expressed concern that a husband (it could easily be a wife) would, with forms in hand, demand that his wife sign these Texas Supreme Court endorsed forms. No doubt that will occur. However, those same husbands are now using documents prepared by lawyers (or by a computer program) to make those same improper demands. As another committee member said, "People abuse people, not forms."

      An example of a possible solution: require over the signature lines a statement such as "**YOU DO NOT HAVE TO SIGN THIS FORM. YOU ARE ENTITLED TO APPEAR IN COURT AND HAVE A JUDGE CONSIDER YOUR POSITION.**"

6. **Costs** The subcommittee on alternatives did not address the costs of their alternatives. Clearly the costs of those options in money and or lawyer time is substantial. If the necessary time and money could be devoted to those solutions, it would be vastly preferred over forms.

   The forms subcommittee thinks the costs of administering, gatekeeping and updating the forms will be expensive. The gatekeeper is a false issue. The cost of updating simple forms should not be very much. Sufficient Family Law lawyers can be recruited to review and update these forms.

   The simplest and the least expensive solution are standardized forms.

7. **Texas Supreme Court Forms for the Indigent Only.** While probably the intent of the Court, it is an impossible ambition.
    a. The committee report suggests that forms should be only for the indigent and thus a gatekeeper would be necessary.
        i. It is not realistic to think that the Texas Supreme Court would create forms in secret and that are to only be released to persons who have proved to a gatekeeper that they are indigent.
        ii. Nor is it reasonable to think that once an indigent had filed a form petition and the court had signed a form judgment that they would be filed in a secret clerk's file.
        iii. Without this, someone will find the form and put it on the internet.
        iv. Thus, any form endorsed by the Court will be available to all citizens.
        v. And even if such forms were clearly marked to only be used by indigent persons, it is very easy to foresee other pro se litigants nonetheless using these forms.
        vi. Nor is it hard to imagine a trial court judge when presented with some commercial form that is a mess, that she might suggest or require a pro se litigant to use the form with which she is very familiar.
    b. The committee report also suggests that the forms will involve the costs of a gatekeeper. A gatekeeper is not necessary, practical or realistic.

8. **Alternatives to Forms.** The subcommittee on alternatives did a very, very good job of suggesting alternatives. Many of which would be vastly superior to forms. However, they specifically did not address the costs of those alternatives. Yet it is plain to see that each of those alternatives requires substantial resources to carry out, either in money or lawyer man power or both.

9. **Anecdotal Evidence.** The committee members complained repeatedly that the need for forms was based on anecdotal evidence and not any careful study. The committee never produced any study that these forms would be harmful or damaging to Texans or the practice of law. Attached is a memo that shows the prevalence of forms in other states. There was no evidence that the forms in those other states caused problems.

10. **Form Usage Problems Are Already With Us.** The subcommittee on forms lists numerous issues about the use of forms. All of these issues are with us today because of the existing computer forms.

11. **Another Alternative.** A very economical alternative is to have the Family Law Practice Manual committee prepare and make available the basic forms needed for pro se litigants. If that does not work, there will undoubtedly be sufficient

Family Law lawyers who will serve on an advisory committee to update these forms as necessary.

12. **Probate Practice.** A few comments on the use of forms in my practice area of probate, guardianships and trusts.

    a. **Forms in the Hands of Lawyers.** No question, forms in the hands of lawyers is a boon to the practice of law.
    b. **Forms in the Hands of Laymen.** There is also no question that laymen people who use forms, write their own wills, get mixed results. But we have a strong pro se tradition in our State and that is not going to change.
    c. **Statutory Forms in Probate.** There are already numerous statutory forms used in the area of practice:
        i. Powers of attorney.
        ii. Medical powers of attorney.
        iii. Directives to physicians.
        iv. Designations of guardian in case of later need.
        v. Affidavits of heirship.
    d. **State Bar Forms.** The State Bar has produced numerous forms and form books over the years. In my area, I am personally aware of
        1. Texas Guardianship Manual
        2. Texas Probate System
    e. **Commercial Forms.** There are also commercially available forms for almost all areas of the practice, including wills, trusts, advance directives, probate, and guardianship.
    f. **Pro Se Limitations in Probate Court.** There are substantial questions about a person representing themselves in probate. For example if someone wants to serve as executor of an estate or as guardian, they are not acting on their own behalf and are probably disqualified from acting pro se. Clearly this is the position of some of the statutory probate judges.
    g. **Probate Issues.**
        i. In the probate area it would be helpful if a person asking only to be guardian of the person of an incapacitated person would be permitted to represent themselves and if forms would be available.
        ii. The statutes on affidavits of heirship should be reviewed to allow banks and financial institutions to accept them so that people can more readily collect estates that only have a small bank account.
        iii. Sometimes this can be addressed by the Collection of Small Estates by Affidavit Process. However, currently that is not available if there is a will; even if there is agreement not to probate the will. That statute should also be reviewed.

Jerry Frank Jones

Statewide Uniform Forms - All 50 states + D.C.

Executive Summary:

Total states + D.C. with standardized forms: 49

Total states requiring courts to accept forms if used by litigant or lawyer: 37

Total states with family law forms: 48

Total states with divorce forms: 37

(Of divorce forms, 31 states have divorce with children, 30 have divorce with real property, 33 have forms for custody matters, and 39 have forms for child support matters)

Total states with forms available online: 49

Total states which limit access to forms to low-income litigants only: 0

Total states with a self-help website: 39

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Totals	49	37		48	37	31	30	49	0	39
Alabama	Yes	----	State Bar created 25 forms and 20 Court approved forms: landlord/tenant, SAPCR, divorce	Yes	Yes	----	----	Yes	No	----
Alaska	Yes	----	18 different categories of forms including appeals. SRL forms issued in past 12 years	Yes	Yes	Yes	Yes	Yes	No	Yes
Arizona	Yes	Yes (protective order kit only)	12 categories of forms: divorce, small claims, appeals, eviction protective order, etc. & 16 Family Procedure Forms 01/2009	Yes	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	----	Protective order and some probate forms are approved by the Supreme Court. Other form kits for SRLs are provided by the ATJ Commission in collaboration with legal aid. While these forms are not court ordered, they are supported by the Court and widely accepted.	Yes-protective order Kit	----	----	----	Yes	No	----
California	Yes	Yes	Hundreds of forms in existence for over 30 years. Forms are accepted and required by all courts in the state.	Yes	Yes	Yes	Yes	Yes	No	Yes
Colorado	Yes	----	Adoption, family, domestic relations, appeals, probate, protective order, small claims, water, juvenile, criminal, civil, paternity, misc.	Yes	Yes	Yes	Yes	Yes	No	Yes
Connecticut	Yes	Yes	Administrative, civil, criminal, family, general, housing, juvenile, probate, small claims, appellate, protective order	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Delaware	Yes	Yes	Civil, family, criminal, traffic, appeals	Yes	Yes	Yes	Yes	Yes	No	Yes
D.C.	Yes	Yes	Family, domestic relations, protective order, civil, small claims, landlord/tenant, criminal, probate. Additional family law forms, including divorce forms, are provided on the Bar website	Yes	Yes	Yes	Yes	Yes	No	Yes
Florida	Yes	----	Family, probate, landlord/tenant, small claims, guardianship	Yes	Yes	Yes	Yes	Yes	No	Yes
Georgia	Yes	----	Juvenile, probate, protective order, criminal, domestic relations	Yes-protective order Kit	----	----	----	Yes	No	Yes
Hawaii	Yes	----	Family, civil, small claims, landlord/tenant, traffic, criminal, protective order	Yes	Yes***	Yes	Yes	Yes	No	Yes
Idaho	Yes	Yes	Family, landlord/tenant, name change, small claims, protective order, judicial consent to abortion.	Yes	Yes	Yes	Yes	Yes	No	Yes
Illinois	----	----	----	----	----	----	----	----	----	----
Indiana	Yes	Yes	Civil, criminal, and appellate matters. Started 10 years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Iowa	Yes	Yes	Civil, small claims, family, divorce, protective order, commitments.	Yes	Yes	----	Yes	Yes	No	Yes
Kansas	Yes	Yes	Civil, family, landlord/tenant, probate and juvenile. 20+ categories. 100+ forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Kentucky	Yes	Yes	Probate and protective order form appear to be available for use by non-attorneys. All other forms (wide variety) available on Court's website appear to be for lawyers only. Bar provides ongoing divorce self-help clinics.	Yes-protective order Kit	----	----	----	Yes	No	----

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Louisiana	Yes	Yes	Protective order forms available for attorneys and non-attorneys/victims of domestic violence.	Yes- protective order Kit	----	----	----	Yes	No	----
Maine	Yes	Yes	Consumer, civil, criminal, family, foreclosures, money judgment, protective order, small claims, protective custody, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Family, landlord/tenant, small claims, traffic, protective order, and more. Started 20+ years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Massachusetts	Yes	----	Family, limited scope representation, probate, small claims, landlord/tenant, municipal courts.	Yes	Yes	Yes	Yes	Yes	No	Yes
Michigan	Yes	Yes	Adoption, civil, criminal, guardianship, protective order, name change, emancipation, parental consent, juvenile, mental commitment, probate.	Yes	----	----	----	Yes	No	Yes
Minnesota	Yes	Yes	33 categories including divorce, protective order, traffic, small claims, bankruptcy, etc. Packets started being developed in mid-1990's. Court and Bar studied and concluded forms were needed.	Yes	Yes	Yes	Yes	Yes	No	Yes
Mississippi	*forms are currently in develop-ment*	----	----	----	----	----	----	----	----	----	----
Missouri	Yes	Yes	Family: divorce, modification of protective order and custody, name change and paternity. SRLs MUST USE these forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Montana	Yes	----	Over 50 categories of forms including family law, discovery, appeals, protective order, landlord/tenant, probate, taxes, small claims.	Yes	Yes	Yes	Yes	Yes	No	Yes-Bar

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Nebraska	Yes	Yes	Appeals, court records, children and family, estates, financial/medical, parental consent waiver, general trial procedure, guardianship, name change, small claims, worker's comp and protective order.	Yes	Yes	Yes	----	Yes	No	Yes
Nevada	Yes	Yes	Civil, protective order, family, guardianship, landlord/tenant, appellate, divorce.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Hampshire	Yes	Yes	Appeals, divorce, domestic relations, child welfare, juvenile, adoption, estates, guardianship, probate.	Yes	Yes	Yes	Yes	Yes	No	Yes
New Jersey	Yes	Yes	Civil, criminal, family, municipal, landlord/tenant, tax, appellate, foreclosures, small claims, juvenile, protective order.	Yes	----	----	----	Yes	No	Yes
New Mexico	Yes	Yes	Civil, criminal, municipal, landlord/tenant, guardianship, domestic relations.	Yes	Yes	Yes	Yes	Yes	No	Yes
New York	Yes	Yes	Family law, divorce, protective order, criminal, and variety of civil forms. Civil forms have been used for decades.	Yes	Yes	Yes	Yes	Yes	No	Yes
North Carolina	Yes	----	Criminal (88), civil (131), protective order, child support, paternity, juvenile. Divorce packets and self-help center provided at local district court level.	Yes	Yes	----	----	Yes	No	----
North Dakota	Yes	Yes	Appeals, child support, visitation, guardianship, probate, protective order, small claims, simple divorce.	Yes	Yes	----	----	Yes	No	Yes
Ohio	Yes	Yes	Protective order and some custody & support forms. Other domestic relations forms, including simple divorce forms, are provided by local courts.	Yes-protective order Kit	----	----	----	Yes	No	----

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Oklahoma	Yes	Yes	Protective order, child support, civil, appeals, criminal appeals.	Yes	—	—	—	Yes	No	—
Oregon	Yes	Yes	300+ family law forms, small claims, landlord/tenant, some criminal. Coalition of family law lawyers sought legislative mandate to create forms. Maintained by the Family Law Council, State Court Administrator and State Court Advisory Committee.	Yes	Yes	Yes	—	Yes	No	Yes
Pennsylvania	Yes	—	Probate, foreign adoptions, appeals, civil, landlord/tenant, expungements. Other forms including family law and divorce forms are provided at local court level.	—	—	—	—	Yes	No	—
Rhode Island	Yes	Yes	Administrative appeals, civil, family, landlord/tenant, traffic, pre-trial. Limited family law forms. Criminal and small claims forms are "coming soon."	Yes	—	—	—	Yes	No	Yes
South Carolina	Yes	Yes	Some civil and simple divorce created for SRLs. Divorce forms: uncontested, no kids, no property, But the SRL can modify the forms to include kids and property and contested matters. Also a lot of court-approved forms that are geared to attorneys.	Yes	Yes	—	—	Yes	No	Yes
South Dakota	Yes	—	Protective order, divorce, name change, parenting time, civil	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Tennessee	Yes	Yes	Divorce no kids, no property were approved by the Supreme Court in 2011. They are the only Court approved forms. Tennessee's OCA has developed other forms available to lawyers and non-lawyers, but they have not been approved by the Court. These OCA forms include: protective order, child support, criminal, probate, small claims, traffic.	Yes	Yes	----	----	Yes	No	Yes
Texas	Yes	Yes	Protective Order Kit in 2005	Yes- protective order Kit	----	----	----	Yes	No	----
Utah	Yes	Yes	Divorce, child support, enforcement, protective order, landlord/tenant, guardianship, parentage, probate, small claims, expungement.	Yes	Yes	Yes	Yes	Yes	No	Yes
Vermont	Yes	Yes	Civil, small claims, family, protective order, criminal, probate, name change, guardianship, partner adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
Virginia	Yes	Yes	Protective order, traffic, paternity, child support, juvenile, mental health, civil.	Yes	----	----	----	Yes	No	----
Washington	Yes	Yes	Divorce, custody, child support, protective order, juvenile, title, financial, criminal, adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
West Virginia	Yes	Yes	Divorce, family, appeals, child support, custody, protective order, guardianship,	Yes	Yes	Yes	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Divorce, family law, small claims, name change, juvenile, probate, protective order, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Divorce, child support, child custody.	Yes	Yes	Yes	Yes	Yes	No	Yes

State Bar of Texas Blog Posts
(Feb. 7 – March 30, 2012)

Input sought by SOLUTIONS 2012 task force regarding indigent pro se litigants

The Supreme Court of Texas last year created the Supreme Court Task Force on Uniform Forms to develop forms to assist indigent self represented litigants. Its findings have been referred to the Supreme Court Advisory Committee. The Court has accepted the State Bar of Texas' offer to assist with how best to provide our poorest citizens access to the courts.

State Bar President Bob Black has appointed SOLUTIONS 2012, a task force to collect data, information, and recommend potential solutions regarding issues faced by indigent pro se litigants. The task force is co-chaired by Tim Belton of Bellaire, a public member of the State Bar Board of Directors, and Tom Vick of Weatherford, a former board member. The task force will provide a report to the State Bar Board of Directors at its April 13 meeting and to the Supreme Court Advisory Committee at its April 13-14 meeting.

The State Bar invites all who have an interest to join in the discussion to propose the best possible solutions to ensure the administration of justice and public protection under the law.

For more information visit www.texasbar.com/solutions.

To provide input, please leave a comment below.

Comments (53) Read through and enter the discussion with the form at the end

grady mitchell - ***March 30, 2012 7:20 PM***
it my belief, that ever person has the right to be a pro see plantiff ,i called serveral subosed free leagle an they know nothing , the one filing the forms knows best

Steve Bresnen - ***March 30, 2012 2:57 PM***
The whole notion of uniform forms has been opposed by the local Bar organizations representing the vast majority of lawyers in Texas, including: the Family Law Section of the State Bar, Texas Family Law Foundation, General Practice, Solo and Small Firm Section, Immigration Section, Panhandle, Tarrant, Dallas, Bexar, Gulf Coast, and on and on.

Remember: People are not standardized and neither are their cases.

Jimmy Vaught (Austin)
It is my understanding that most of the form documents prepared by the Uniform Force Task Force are directed at Family Law. Although the efforts to increase access to justice and reduce

the strain on the courts posed by pro se litigants are well intended, Texas families should be concerned about the unintended consequences. Family lawyers who have reviewed the draft forms discovered serious legal problems that could not be resolved by most pro se litigants. These problems not only are related to drafting considerations, but also to fundamental legal issues that average laypersons will not be able to resolve by themselves, or even recognize until serious mistakes have been made.

In my practice, it is not uncommon to see pro se litigants who have suffered significant unintended consequences which cannot be corrected. Virtually every one regrets not hiring or consulting with an attorney.

Dale A. Burrows (Denton)
As a family law attorney and member of the Denton Bar Association I wish to send you an email voicing my opinion to the Supreme Court Task Force on Uniform Forms for pro se litigants. I strongly believe this is a colossal mistake an oppose it.

Kenneth D. Fuller (Dallas)
I am Board Certified in Family Law and have practiced family law in the State of Texas since 1962 and have limited my practice to family law matters since my certification in 1976. It has a been my practice to supply pro bono representation to needy clients during that period of time and for the last ten years my entire practice has been limited to pro bono representation of needy clients through the Dallas Volunteer Attorney Program (DVAP). I work with DVAP to the extent of 800 to 1000 hours per year. The largest part of my work with them is supervising the assisted divorce applicants. This entails reviewing their applications, working with the paralegals , reviewing pleadings and problems regarding jurisdiction, service and return of process, reviewing wage withholding orders and other related documents required by our local practice and ultimately assisting with the prove up and entry of decrees and mentoring other attorneys with all these tasks and other matters dealing with family law.

From the prospective of almost fifty years of family law pro bono experience I respectfully offer the following observations:

Legal forms in the hands of lay clients attempting to utilize self help in family law matters is an invitation to a legal train wreck to the participant. It has been our experience at DVAP that even with pro bono attorneys we need to closely monitor the forms we supply before they are filed. We require that they use our forms, have staff attorneys on call for questions or volunteer mentors and require that all pleadings be reviewed by the staff attorneys prior to filing. Even with these safeguards in place it is amazing the number of mistakes that slip through. In our assisted divorce, where the applicants are pro se, we prepare the pleading, require their attendance at a 2-3 hour petition class where they are reviewed with the paralegal and given a presentation by a volunteer attorney with an opportunity to have their questions answered. This same process is repeated when the Decree and supporting documents are prepared by OUR PARALEGALS.

We handle in excess of 1,000 cases per year in this manner. We have tried over the years to conduct our program with less supervision and fewer staff and it just doesn't work. There is an ongoing need to keep documents updated to comply with legislative changes and court decisions, an example is the recent change that does away with the need of a notary. We already had any

number of cases claiming that the supposed Signatory did not sign a waiver, decree or other documents. With the new statute I expect this to increase. Another example is the new statute allowing Wardens of penal institutions to designate an agent for service of citation who then servers the prisoner. DIVORCES ARE REAL LAW SUITS THAT REQUIRE THE ADVICE AND GUIDANCE OF A KNOWLEDGABLE ATTORNEY.

Our State and Federal Constitution are the Bed Rock of our judicial system. The next most important element of our system is, in my humble opinion, our network of independent attorneys who assist the consuming public in asserting the rights guaranteed by these documents. If any system is instituted that destroys the participation of the practicing bar it will fail. By promulgating the proposed forms the attorneys who supply pro bono services are being thrown under the bus. This will be breaking faith with the attorneys who have been assured over the years that "Pro Bono Is No Threat To Your Practice " . In the face of this often repeated assurance, we now spend thousands of dollars of State Bar money promoting a practice that is a direct attack on the private attorney. I would respectively remind each of you that we have no choice in whether or not to belong to the bar and pay our dues but we do have a choice in which programs we participate in and to what extent we participate.

The proposal to provide forms for self help divorces is ill advised, divisive within the bar and a risk to those who will be lured into their use. If lawyers can't cope with these forms without mentoring how can we expect that the public will be able to properly employ them ?

The committee working on these forms are openly admitting that the ultimate goal is to enable all those who don't want to hire a lawyer to get their own divorce. They have a multitude of schemes for accomplishing this ranging from, providing standby legal advice at the courts to limited representation plans for the attorneys on specific issues, all without any consideration of economic screening of the applicants. This at best ignores the practicalities of spending more time drafting an agreement limiting your liability, to who is going to represent the client in their negotiations with the limited representation lawyer and to what extent does the lawyer have to discuss what other issues might come up that the client hasn't considered.

We cannot serve the poor people of Texas that cannot pay a lawyer. With the drastic loss of IOLTA FUNDS We are in a financial crises to finance pro bono services. Yet we seem to have unlimited Bar monies to pursue a program to supply free legal services to those who have the where with all to pay for legal services but simply don't desire to do so and we are going to enable them to do so with the expenditure of our mandatory dues.

In nearly 50 years of practice I have not felt it necessary to communicate with The Court on a matter of policy. I am now at the virtual end of my professional career as a Family Law Specialist and feel I have at least a modicum of insight into the facts and issues involved in the attempt to promulgate these forms.I do not attribute evil intent to those opposed to my views. I do however, state unequivocally, they are short sighted in what they are attempting and have not taken into account the many adverse ramifications of their contemplated plan. We should take a page from the book of our Brethren in the medical profession " First Do No Harm ".

Sherri A. Evans (Houston)
I am writing to address my sincere opposition to the Uniform Forms Task Force. I am a board certified attorney, former chair of the Gulf Coast Family Law Specialists, board member of the

Texas Academy of Family Law Specialists, and Vice-Chair of the Family Law Council for the Family Law Section of the State Bar of Texas. As a member of the Family Law Council and former chair of the Section's Pro Bono Committee, I have spent years promoting legal assistance to families who are unable to afford legal representation.

However, as a practicing family law attorney, I know that all pro se litigants are not necessarily indigent or low-income. Therefore, by making family law forms readily available to all litigants, irrespective of their ability to pay, this initiative will result in a dramatic increase in the number of pro se litigants in the court system and will diminish our ability to provide pro bono services to individuals who truly need legal aid. In addition, merely providing a set of forms with instructions will not solve the problems caused by pro se litigants in the courts; instead, it will greatly add to the problem, especially if their primary need is legal advice.

By way of example, a pro se litigant will not necessarily know that (1) a child support obligation will be reduced by 5% on the emancipation of each child; (2) child support should be ordered paid until a child reaches the age of 18, or graduation from high school, whichever is later; (3) a wage withholding order or medical support order should be filed to guarantee payment of child support and/or medical support; (4) that a QDRO is required to divide any qualified retirement plan; (5) separate property is not part of the divisible estate of the parties. These issues can and do exist in even the most amicable divorce situation.

If the true goal of this initiative is to provide assistance to Texans who are unable to afford legal representation, then there are certainly other viable alternatives available that should be explored in collaboration with the leadership of the Family Law Section. For example, the Formbook Committee of the Family Law Section prepares an extensive Family Law Practice Manual (FLPM), together with practice notes. These forms are prepared by board-certified family law attorneys for use in family law matters. The FLPM could and should be made available to all legal aid providers, to attorneys who agree to take a requisite number of pro bono cases, and to other organizations dedicated to providing legal services to the poor. With a united goal, the possibilities are endless; divided they are limited. I urge the Court to work together with the courts having family law jurisdiction and the leadership of the Family Law Section to devise a plan that will enhance legal assistance to low income litigants across the State.

For these reasons, I would respectfully request this Court to reconsider the current course of action and the creation of Court-approved "do it yourself" divorce kits. Across the state, I believe you will find that this initiative is opposed by most family law attorneys and the vast majority of the courts.

Alexander Geczi (Richardson)
I am opposed to the creation of Pro Se forms in family law cases, and I have listed FIVE persuasive reasons for my opposition, below.

1. There is a great deal of misinformation out there, and attorneys are needed to clarify these matters for clients. I often have to correct client's beliefs about what they can and can't do. Some people come up with crazy ideas regarding how to divide their property. One very common mistake is who owns property that is titled in one spouse's name. Most people believe that a house or car that was bought during the marriage but titled in one spouse's name belongs to that spouse. They don't understand that it is community property, and for that reason, many of them

would have abdicated their ownership interest in the property had they not consulted with me. Another common mistake is how people divide their property. Parties may agree to split a house or retirement account 50/50, but they omit the proper language in the decree and/or do not follow up with the proper title transfers or QDROs. The list goes on - there is misinformation about child support, visitation schedules, alimony, etc. An attorney is needed to clarify this misinformation and to guide the clients in the right direction so that they do not inadvertently give up fundamental rights.

2. In many situations, it will oppress women and cause harm to children. I don't say this to be sexist; I say this because it is a societal fact of life, and I see it frequently in my everyday practice. Women often feel powerless in divorces and believe what their dominating husbands tell them. (I understand that not all men are like this, and I've dealt with domineering wives; however, this is a common situation that I see.) As a result, the women often acquiesce to nominal, if any, child support, give up any hope for a fair division of property or alimony, and feel powerless regarding visitation and decision-making issues, even when they have been the children's primary caregivers. The child support and visitation issues are becoming even more concerning as 50/50 schedules are becoming more common and men are forcing their wives to agree to them so that they do not have to pay as much child support. Allowing such domineering men to even further control the divorce is a big mistake.

3. The courts are frustrated by the pro se litigants who gum up the courts' resources and time. The courts have to send the pro se's back to correct basic things. The pro se litigants don't know where to go, and they often end up asking the law library or filing clerks for advice. The clerks are frustrated because they can't help them with legal advice. The attorneys who stand in line behind them are frustrated because of the delay. The attorney's clients are frustrated because their attorneys are charging them for the wasted time.

4. It will damage the credibility of family law practitioners. Most attorneys think that family law is a no-brainer. And in some cases it is. However, upon closer examination, most family law situations require the expertise of a skilled family law practitioner. A skilled practitioner recognizes when a CPA is needed to advise about tax considerations, when a financial planner is needed to help a couple figure out how to budget and divide their assets, when a psychologist is needed to coach the parents on how to co-parent and minimize the effect of the divorce on the children. A skilled family law practitioner is part counselor, talking a hysterical client into seeing their situation more rationally; part litigator, ready to fight for a client who has no where else to turn; part negotiator, knowing when it is better to mediate and settle case for the best interest of the parties' relationship. Not just anyone can do these things. Creating these forms implies otherwise, and will only work to minimize and undermine our role in the legal community.

5. These forms will discourage attorneys from either entering this area of practice or from staying in it. Family law is one of the lowest paying areas of practice. Every attorney thinks they can practice family law, thereby creating more competition. The downturn in the economy has made it even harder to find and convince clients why they should hire you. These forms will further undermine our practices, force us to consider more "competitive" pricing (ie, lowering our rates), and turn away bright talent. Long-term, this will harm both clients, attorneys, and the practice of family law.

These are just five good reasons why these forms should not be created. If I had more time, I could come up with more. Unfortunately, I am an overworked, underpaid, underappreciated solo family law practioner, new mother, and wife, whose time is limited. But I love what I do, and I feel strongly about this issue. And I know that I am not the only one. We have tremendous resources, both financial and intellectual, in the family law bar - please use them!

I do what I can to help clients in need - I offer free or low-cost consultations to low-income clients, I try to minimize costs for my clients where I can, and I take pro bono cases. If it is the goal of the committee to create forms to assist the low-income population, then there are other ways to accomplish this. Put more funding into organizations like Legal Aid or Citysquare. Create more organizations that can help these people. Staff courts with attorneys who can offer basic guidance to pro se's. Encourage local bar associations and incentivize firms into involving attorneys and accepting more pro bono cases. Create "scholarships" for people so that they can hire attorneys. Rather than creating forms, which are simply a band-aid to a systemic problem, create a committee that will investigate and come up with better solutions than what I have listed here.

These forms are a bad idea. They will only make our situation worse and discourage future attorneys from entering this area of practice.

Charles Quaid (Dallas)
As a attorney with over 31 years practicing civil and family law, I have made a career commitment to providing pro bono representation to those in need, as well as financially supporting state and local bar associations that offer free or low cost legal services (as well as private sector efforts). I find that similar efforts are common place with members of the Texas Bar, especially those who practice family law. It is therefore disconcerting that there is the perception of a need to create "pro se forms" for litigants to represent themselves in family law matters and what appears to be a rush to accomplish same without the input or blessing of the Family Law Bar of this state. Having served a number of years on a Supreme Court Task Force leading to the 1999 revisions of the rules of discovery, I am aware first hand of the lack of understanding or appreciation of the practice of family law that exists within the Bar. Family Law deals with the most personal and emotional of issues, during a time when nuero-science tell us the participants are experiencing the most devastating period of life that they will ever experience. While the issues may at times be simple, they are most often not. It is irresponsible to believe there is no need to seek, and more so to encourage parties not to seek, the advice of a lawyer to help guide them through this difficult time. It is criminal to encourage them to use "self-help" through "one size fits no one forms" when they are numerous available resources for those truly in need. The marketplace has also found its own level and there are thousands of Texas lawyers who provide low cost divorce and representation in other family law matters. The AG 's office is both funded and required to provide some of these services. The perceived belief that this is an area that needs this type of remedy is ignorant, at best.
As all family law matters are unique, it is hard to envision forms that will adequately provide clarity and provide the parties with Orders that are correct and enforceable. Because of years of federal and state legislation, a divorce decree or SAPCR Order is a complex creature.The forms will be outdated ever time the Texas Legislature meets. The forms will have to be able to address local rules, practices and policies. The impact on the Courts that must deal with litigants trying to muddle through has obviously also not been thoroughly considered. Forms do not address the how, where, and when of Courthouse procedure or decorum. In some Courts, each pro se Order

has to be "pre screened " by a Judge. Inevitably, the parties are unable to even obtain entry of their" form order" because of errors, a basic lack of understanding of what the Order is to accomplish and/or basic lack of understanding applicable rules, laws or deadlines. This in turn, requires untold man hours from Judges and courthouse personnel to be taken away from other pending matters, including involving issues of domestic violence and the best interest of the thousands of Texas children under the continuing jurisdiction of our Courts.
While, at some point, and with the assistance of the Family Bar, there may be a place for such an well-intentioned endeavor, it appears that deferral of approving such forms at this time is the more prudent course.

Kathy Kinser (Dallas)
I am a practicing Family Law attorney, Board Certified since 1984, and I am simply appalled by what is happening with the Task Force and the forms that are being drafted in the name of "access to justice." Having spoken directly with one Justice, who denied the forms even existed, it is unfathomable to me that the Court does not see that what is being drafted to be "approved" by the Supreme Court of Texas does not provide the public with "access to justice" but only puts tools in their hands to further complicate their lives during the divorce process. The twenty or so forms that I have reviewed are not just for use by people who have no children and no property, which is what one of your Justices told me, and do not even correctly set forth what facts and information a person needs to make an informed decision about what form to use. By way of example, one form has boxes to check for "no child under the age of 18" and "no child born or adopted of the marriage" but entirely leaves out that there might be a child over the age of 18 entitled to support.

The use of forms that mention retirement benefits will clearly result in an irreversible division (or not) of retirement benefits because no "form" can cover the thousands of employers in this country that require very specific language, and usually a separate order, to divide retirement accounts. Where is the Task Force going to put an unsuspecting non-employee spouse on notice that they need to get a Qualified Domestic Relations Order to get what they are entitled to?

If these forms are approved by the Court and distributed to the public, it is the Court that will be ultimately responsible for the thousands of cases that are disposed of wherein spouses are cheated out of their rightful share of the community estate. It will be the Court that is ultimately responsible for spouses being cheated out of their separate property. Worst of all, it will be the Court that will be ultimately responsible for the thousands of orders that do not adequately protect children.

As a practicing attorney, I believe that if these forms are approved and distributed, within a year I will have some poor unsuspecting spouse in my office, complaining about what happened in their divorce and wanting their rightful share of the property. It will be too late. Property divisions become final and are not "fixable" after they do.

As far as the children's issues, some may be able to be modified, but not all provisions can be. Ultimately, all the family law attorneys will be able to do is to refer these folks back to the Supreme Court to answer the "whys?" about what happened to them

I do not believe the Supreme Court wants to create a travesty for an unsuspecting spouse or parent. Please reconsider the path you are on and work with the Family Law Section to develop a

workable solution to whatever problems have been identified. The one thing that I do not understand about this push for "access to justice" in the family law area ONLY is that our Section does more pro bono work than all the other Sections COMBINED. Perhaps what the Court needs to focus on is having the other Sections of the Bar focus on providing access to justice for people that need help in those other fields of law.

Thomas Liddell (Houston)
The use and promulgation of the proposed forms will be a disaster in family law.

Melissa Parker (Houston)
Judge Warne tells me that there is a lot of talk about getting family law forms standardized. I have been the coordinator in the 257th for almost 16 years. I have never seen or heard from more pro-se litigants. The legal advice that they are wanting and needing cannot be addressed with a form. There are various forms that are already available and the pro-se parties still want help filling them out. I get at least 5 phone calls a day wanting legal advice and needing to know the steps to take in their case. In my opinion, the answer to the pro-se influx does not seem to form related. Family law can be complex and having lawyer representation seems to be the only real answer.

John Graml (Houston)
I think it is absurd for the State Bar to provide "Pro Se" forms to the
public, I did a bit of work in UPL for the bar, and one would have to ask that this borders on UPL...I will review and complete the survey. I do not think the bar should be providing forms to non-lawyers, there are enough out there already in office supply , grocery stores, etc.

Carol Wilson (Dallas)
Please do not approve or publish the proposed family law forms proposed by the Access to Justice Commission. Family law is not simple. Family law deals with some of the most personal, valuable, and needy people in the lives of every Family Law litigant, our own loved ones. Family law is litigation which is more complicated than most simply because it deals with the emotions, morals, and highly personal decisions people make within their families. You as a body have made many complicated and complicating decisions in the history of Texas Family Law jurisprudence.

I am disappointed to learn that the Supreme Court of Texas, the very body which through which I am licensed, has been persuaded that the subject matter of law that I devote my life to is so simple that a few forms can be published to allow non-lawyers to do my work.

Published forms are not the way to make justice accessible to all. Forcing our legislature to deal rationally with the needs of all of its citizens, continued encouragement of lawyers to take pro bono Family Law cases as I do are far better than allowing non-lawyers to mis-use forms you publish and end up in greater legal problems than they had before. I am one of the lawyers who takes pro bono Family Law cases. Most of the ones I have taken are long, complicated, and costly in my time and that of my staff. Just because people cannot pay my hourly rate does not mean their legal issues are uncomplicated. These are better ways to provide justice for all.

Tom Ausley (Austin)
Regarding the Uniform Forms Task Force, I have expressed my opinion to the State Bar and to

the honorable Supreme Court Justices on several occasions now. One aspect of this problem that the Task Force and the Justices may not have considered is that these forms likely will not be used only by low-income litigants or litigants who have short marriages, little property, and no children. There is the very real possibility that parties who wish to "cram a deal down the other party's throat," metaphorically speaking, will use these forms to their advantage.

Unfortunately, in my family law practice, I see many cases in which the balance of power between the spouses is greatly off-kilter. We often have potential clients call our office and describe a scenario in which the opposing spouse is offering a "great deal," and is recommending that the parties just settle the matter between them without involving lawyers. These are the scenarios in which a fearful spouse can be intimidated into accepting a property division or conservatorship and child support arrangement that an impartial judge would never order. These are the cases in which a mother might accept far less in child support than she normally would be entitled to under the law; or, a party might agree to some type of conservatorship arrangement that sounds good in theory, but is unworkable in practice. This scenario also creates the kind of case in which the moneyed spouse or primary wage-earner may hide assets or fail to disclose fully the nature and value of assets, thus giving rise to a property division that is neither reasonable nor equitable.

I believe that the Task Force's intent to provide Court access to parties who cannot afford lawyers is an honorable one; however, I fear that what many family law litigants will save in legal fees in their initial causes of action will be wiped out by the costs they will incur later trying to correct the problems or be forced to live with them, that were caused by their failure to seek proper legal advice when necessary.

Karen McKay (Houston)
I personally just handled a case in which a couple used forms they "got online" to draft a decree for themselves. The court rejected their filing, and very kindly informed them which portions were defective. They were put to both expense and a lot of time wasted in order to repair the errors made through following a "do-it-yourself divorce" form. Not only did they waste their own time, they wasted the Court's. I think we can all agree that the danger of multiplying this unnecessary burden on our family law courts, as well as exposing people to entirely avoidable risk by encouraging them to view divorce as a "self-help" activity, far outweigh any nugatory "alternative option" to the public. In the end it saves nobody money or time, and the potential for both abuse and disastrous outcomes are readily apparent. Even if there were any perceivable benefit to this scheme, it should fail on the magnitude of the "Oops" factor alone.

Dale Burrows (Coppell)
As a family law attorney and member of the Denton Bar Association I wish to send you an email voicing my opinion to the Supreme Court Task Force on Uniform Forms for pro se litigants. I strongly believe this is a colossal mistake an oppose it.

Shannon Moore (Houston)
I am a practicing Family aw attorney since 2002. I reviewed the proposed "do it yourself" divorce forms and it is my understanding that neither the Family Law Section of the State Bar of Texas nor the Texas Family Law Foundation was consulted before this project began. I believe

that these forms will result in serious legal problems given that they create a "do it yourself" set of divorce forms.

With the many unintended consequences that can occur during an agreed divorce, below is the first and simplest scenario that comes to mind.

Should a pro se litigant go forward and believe that they can proceed in drafting a divorce decree where each party keeps their own property and they in fact draft a decree in that manner, and say they do not list separate property as specifically confirmed as their separate property (and identifying that property). The Decree instead states that "they keep all property in their name" (– which happens most of the time when they have come to my office for help). But later, when in fact they have separate property in their name, and a former spouse who is "not happy" files a Suit to Divide Undivided Property because the other spouse's separate property was not listed. Well, through the appellate Courts and the Texas Supreme Court, that spouse waived their claim to their own separate property, which is now presumed community because they believe that the forms covered all of the legalities. When, in fact, the Courts have stated that since the first spouse did not rebut the community property presumption at the entry of the Agreed Final Decree of Divorce, that spouse has waived their claim to prove their separate property in the subsequent suit to divided undivided property. See Pearson v. Fillingim, 332 S.W.3d 361, Tex. 2011.

I urge this Court and State Bar of Texas Board to seriously consider the unintended consequences of the "do it yourself" divorce forms and reject the use of any such form. These pro se litigants need legal advice not a form.

Daniella Lyttle (Austin)
I practice family law and primarily family-based immigration law here in Austin, TX. I have some serious concerns about the impact of these forms on the Hispanic/Latino community.

As it is right now, there is plenty of fraud in the immigration field. Notaries in Mexico are licensed lawyers, notaries in Texas are not lawyers. This has caused a lot of confusion and has allowed a lot of fraud to take place against the Latino community.

Just like 'Notarios" print forms and "help" people with their immigration cases, Notarios will print forms and "help" people with their family law cases even though they have no knowledge or training in the field of family law and are basically guessing to get these forms filled out. I'm sure I don't have to tell you that they are not asking the right questions or customizing decrees and orders for their clients.

Last week I met a bookkeeper who is not an accountant but provides those services for many constructions companies and she mentioned to me that a lot of people come to her for help in other areas besides tax ..... they ask her about immigration law, family law, etc. Although this particular bookkeeper has not done this, she mentioned to me that she knows many bookkeepers who CHARGE their clients to print off the current forms available for family law and fill them out for their clients. They don't put their name on the petition but they go as far as taking the petition to Court and doing everything else "behind the scenes."

Making these forms available not only hurts our business, but it allows others, like Notarios to make money unlawfully practicing law. We have no control of who would use these forms and I guarantee than in the Latino community, Notarios and others will be printing these documents and will make money filling out these forms. We can't allow them to practice law and these forms make it too easy for them to do it unlawfully.

I would like this to be taken into consideration. If you need me to explain this in person to anyone, please let me know. Most of my clients are Spanish-speaking, because I am, and I know what is happening in the Latino community and would be happy to share with you and others who will listen.

Fred Krasny (Sugar Land)
I was an Assistant Attorney General in the Child Support Division for 6 years and worked for Lone Star Legal Aid (formerly Gulf Coast Legal Foundation) in the family law section for 15 1/2 years. I have been in private practice, 95% family law, for three years. In addition, I am on the Board of Directors of Fort Bend Lawyers Care.

In my experience, providing forms for pro se litigants is disastrous. I have seen many instances of pro ses filing their own petitions without a basic understanding of what the form in front of them means, much less understand service, time frame for divorce, jurisdiction and venue. I have seen more than one case of a pro se getting a final order without including all their children because the husband was not the father of a child born during the marriage then come to the AG or Legal Services to try unravel that knot. And then there are the pro se cases in which the other side hires an attorney and the Petitioner is completely unprepared to answer discovery, appear at mediation and hearings and trial.

Every day in Court I watch pro se litigants try to finalize their divorces and very rarely do they succeed. In the meantime, they are frustrated because the Court's clerks wont tell them what they need to do and neither will, for the most part, the Judges. I know the clerks and Judges are frustrated because of the time that is used up dealing with pro ses.

It also is curious that forms for people being sued on debts or for forcible entry and detainer are not being provided--only family law.

Guy Gebbia (Austin)
Self-help kits will create many more problems than they are even remotely intended to solve.

John Underwood (DeSoto)
The promulgation of pro se forms by the Texas Supreme Court is not a good idea and will most likely cause a great deal of harm especially when there are children involved. When children are involved the pro se litigant, who is not an attorney, is actually representing the children because the amount of child support and the possession of and access to the children will greatly affect their lives. If a pro se litigant is abusive to their spouse and/or to the children, either emotionally or physically, they may very well coerce their spouse into agreeing to the divorce decree setting the amount of child support below the guidelines and/or by giving them "standard possession" of the children. Under those circumstances the orders would not be in the best interest of the

children. To insure that this situation does not occur, the trial judge would have to review the decree in detail and ask questions about the amount of child support and inquire into the relationship between the parents and the children. This would make the judge "a lawyer in the case". Even if the judge would be willing to do this, it would be very difficult since in the usual situation at prove ups only one spouse appears in Court and testifies with no input from the other spouse.

As for the division of property, and I understand that there would not be any restriction on who could use the forms whether a modest community property divorce or divorces with substantial property, most lay persons do not think about what property would be considered community property and what would be considered separate property and how to bring that to the attention of the judge. Take for instance the cash surrender value on life insurance policies or what part of employee benefits is community property or what portion of a personal injury recovery would be separate property and what part would be community property. Additionally most people believe, when the judge orders one spouse to pay certain debts, that the order relieves the other party of that debt. They do not realize that the decree does not bind those creditors. When the property and debt division becomes final there cannot be a modification of that portion of the decree as is the case with custody, support, and visitation of the children.

It is admirable that you want to make access to the Courts more affordable to people. However in the case of all but the most simple divorce cases, with no property and no children, the problems likely to be caused by the pro se litigant could, and probably will, create a great deal of expense to have an attorney straighten out those problems.

The Honorable Carroll Wilburn (Chambers County)
I am a court of general jurisdiction considered a suburb of Houston and spend almost 60% or more of my time on family law matters. More and more litigants are representing themselves pro se and in some instances (no children and generally no property) do an adequate job using generated forms.

The rest are hopelessly lost and only manage to create problems for themselves and their children for years to come. I have strictly adhered to our judicial canons of ethics for years and find it impossible to help anyone in this situation without violating these canons. I do understand the Supreme Court's desire to help indigent citizens get relief but have found that many folks that appear before me really do have funds to hire attorneys but choose to represent themselves. The consequence of this choice will in all probability be disastrous. I am retiring next year at the end of almost 30 years on the bench and find this to be the most distressing problem that I have encountered in 41 years of being a trial lawyer and trial judge. Thanks for keeping us informed and my praise to the Family Law Section of the State Bar for striving so diligently for excellence in family law matters.

Wendy Burgower
I hope that you will relay to the Supreme Court my concerns and opposition to the proposed forms project that is currently under review. I realize that the Access to Justice Commission's Self-Represented Litigants Committee seeks to assist those pro se litigants in what is perceived to the "simple" divorce, however, as a practitioner of over thirty years, the proposed "forms project" is misguided and will only result in more complex litigation after the divorce.

I am dismayed that no one associated with this project (that being the Supreme Court or Access to Justice) sought the support, input or approval of the Family Law Section of the State Bar of Texas before this project was initiated. The Family Law Section presents about 99% or the CLE and is the 'author' of the Texas Family Law Practice Manual. This is the most widely used "form" book in the state. If the committee even took the time to look at the Texas Family Law Practice Manual the committee would understand that the "simple" divorce still requires advice and skill from a practitioner. It is unbelievable to me that the project would not have officers and past chairs of the Family Law Section involved in a "family law" project. Three members of this committee have admitted that they were under the misguided notion that the project will only deal with "agreed divorces with no property and no children". I understand that the forms include estates with real estate involved. This means there is property—and again, I maintain that these forms if used in a divorce with children will result in more hostile and costly litigation in the future.

I have reviewed the subject matter and the proposed forms. With all due respect, this "seven-point" agenda creates substantial deviations from our statutes and will mandate further changes in our Rules of Procedure. The entire project smacks of some kind of back room hidden agenda of some attorneys who obviously are running their own agenda and leading the Supreme Court to sign off on their "hidden" agenda. Their agenda is not "helping those in need...or the public good". If this were truly the underlying purpose, then the committee would have requested the input from the attorneys and judges who practice family law every day and really understand the needs of the public.

I am privy to the April 2010 meeting in Dallas, where family law attorneys were present. Why would none of the members or those associated with the project communicate with any of these representatives? Why would ANY person associated with ANY project of the Supreme Court completely ignore the input of the largest group of family law attorneys in our state to this project? Again, what is the real agenda of those who are so eager to put these forms in the mainstream?

I also understand the records of correspondence about the forms project with the Court, the Section and the Foundation, as well as the financial information regarding the project are not easily accessible to those who seek this information. What is being "shielded" from the public? Is this really "confidential" or just something the committee is not willing to release for our scrutiny?

I realize that I am but one family law attorney. I hope that my voice, however, is not falling on deaf ears. Those members of the committee that truly look to service those individuals who really need assistance in their legal affairs are being misled if they, in fact, think that these forms are a service. They are not. But, as past chair of the Family Law Section of the State Bar of Texas, I am outraged and astounded that the committee has no interest in the input of the section. We have always attended all the Committee of Chairs meetings, we have always presented needed CLE at all State Bar conventions, and we are one the largest bodies of practicing attorneys in this state (over 5,000 members). Our membership is voluntary and consists or more solo practitioners than any other section. We are the attorneys who actually service most of the public that need legal assistance. Where is the process to include our voice?

Charles Hardy (San Antonio)
Please accept this as my firm opposition to the concept of the drafting and dissemination of standardized "Pro Se Forms" in Texas.

My specific comments and objections are as follows:

· This misguided effort will exacerbate the problems that exist with Pro Se litigants.

· These efforts are not working toward the stated goal of helping the indigent.

· It is a terrible mistake to encourage individuals to represent themselves through the promulgating of these types of forms (you might remember the adage of "he who represents himself...).

· We all regularly see pro se litigants who have irreparably put themselves into a situation that we find it impossible to reverse.

· It is patently unfair to offer certain litigants the opportunity to operate in court under a different set of rules than the rest of us.

I would urge the Court to instead direct your efforts toward encouraging the Bar to expand their efforts to assist the indigent through programs like the "Community Justice Program" in San Antonio. These programs offer the indigent an opportunity to obtain real legal advice through attorneys.

George Clifton (Tomball)
As a member of the Family Law Section of the State Bar of Texas and as a Board certified family law specialist I wish to speak in opposition to the 7-point plan offered by the Access to Justice Commission to help pro se litigants handle their own family law cases. As a practicing family law specialist for over 35 years I think I speak from experience when addressing this topic.

No one associated with the Texas Supreme Court or Access to Justice sought the opinion, much less the support, of the Family Law Section of the State Bar or the Texas Family Law Foundation before the forms project was initiated. This appears to be just group of people running their own agenda who got the Court to sign off on it under dubious circumstances. Three members of the Court have independently said they thought the project only dealt with agreed divorces where there are no children and "no property."

I am against the plan and against the method the Access to Justice Commission has used to try and advance it's agenda. It is essential the recommendations of the Family Law Section be sought and followed. I strongly request that the plan offered be rejected.

David Biles (Denton)
This morning, the 393rd District Court in Denton heard 12 divorce proveups, 10 of which were pro se appearances. All had used "forms" from the internet and from the Texas Family law Practice Manual.

The presiding judge had to deny relief to 9 of the 10 pro se appearances because the forms were incomplete, didn't incorporate sufficient provisions for children, or were – in the words of the Judge – "just something I can't do because what you've put on this document is legally impossible.

The pro se parties couldn't make forms work, even with all the instructions in the Practice Manual. The Judge rejected some because it had conservatorship rights in conflict with the possession schedule, some totally blew child support and medical support, and some didn't award property with appurtenant allocations of rights and obligations for those assets and debts. And all this with the explanatory notes and comments in the Practice Manual.

Don't invite another 20 people to the courthouse to be turned away frustrated with the judicial and legal systems – and denied justice.

PS – I've got a client who's been in three continuous years of post-divorce litigation and incurred nearly $100,000 in legal fees to "fix" his internet form divorce. Not a positive spin on providing forms to pro se parties.

Barbara Nunneley (Hurst)
As a Family Law Attorney I am requesting that you abandon your efforts to mandate Family Law pleadings and order forms.

Most of the litigants who will utilize these Supreme Court Approved forms will self-inflict legal injuries on themselves and their children. They will be ill-equipped to know how to fill out the forms without competent legal advice. I can't believe that the Supreme Court of Texas is going to tell all Texans that they have come up with forms that will accomplish a divorce or modification! What will the litigants think or do when they find that the forms were used but the relief the litigant thought he/she was getting has not, in fact occurred?

Your so-called forms are tantamount to the practice of law for these litigants and that is an inappropriate role for the Supreme Court or any court.

I suggest a better use of resources would be for the Access to Justice Commission to concentrate of providing legal services and advice to those who want to represent themselves.

Susan Oehl (Houston)
I am an attorney in Houston, and have been practicing family since I was first licensed in 2006. I, along with many of my colleagues, have reviewed the proposed "do it yourself" divorce forms and have very serious concerns about the short term and long term ramifications these forms will have on our practice, and the pro se litigants utilizing them. I was even more shocked to learn that the Family Law Section of the State Bar of Texas and the Texas Family Law Foundation were not consulted in the least before this initiative began. It cannot be reiterated enough: 90% of the 850 Family Law Section of the State Bar of Texas members polled believe that these forms will result in serious legal problems.

The dockets in the family law courts are experiencing an overwhelming docket of cases. Harris County is no exception. One can very easily observe this by spending only a few minutes in your typical family law district court on any given day. Pro se litigants delay the efficiency of the

courts by presenting unenforceable agreements and other necessary information to effectively resolve their divorce on their own. Based on my personal observations, these forms will only add to the chaos we are currently experiencing. Judges are turning pro se litigants away on a daily basis because their "forms" are wrong, or incomplete. These pro se parties often leave even more dumbfounded than when they first walked into the courthouse, because the Judge is unable to give them legal guidance. The orders that do make it through are often ambiguous and unenforceable, and the Judge is in no position to review them for potential issues that might result in more litigation months or years down the road. This is a waste of judicial resources! Other states using these types of forms have similar problems further delaying resolution of this "agreed" divorces.

Although these forms are intended for use in an "agreed divorce" with no children, adopting the use of these forms might result in their misuse when a "creative" pro se litigant uses them as a guide to handle a more complex divorce. Agreements can be easily reached, but reducing that agreement to an enforceable, properly drafted decree, and the other attendant documents necessary to resolve a case is quite another task. Further, property law, especially in the context of a divorce, can be rather complex. Pro se litigants utilizing these forms will likely never understand their property rights and whether they are actually receiving a fair and equitable division of the estate. This will result in repeat litigants who are often left with no recourse to correct these self-inflicted mistakes, once discovered (if ever). Sound legal advice and proper drafting of decrees will resolve these issues on the front end and prevent the unnecessary time and expense of further litigation in the future.

I request that this Court and State Bar of Texas Board give serious consideration to the unintended consequences of the proposed divorce forms and oppose their implementation and use. A divorce is a real lawsuit, and necessitates the advice of a knowledgeable attorney. There has to be a better way to provide those in need with competent legal aid. I sincerely hope that the overwhelming opposition to this initiative will assist the Court and State Bar of Texas Board in further exploring the inevitable chaos that will result in our practice, as well as in courthouses across the State of Texas if such forms are made available to pro se litigants.

Meg Biggart (Houston)
As a newly licensed lawyer who practices family law, I am very concerned about the new proposed "do it yourself" divorce forms. It is my understanding that the forms were created without consultation with the Family Law Section or the Texas Family Law Foundation. While the forms are intended to assist the family law courts and pro se litigants, they will only exacerbate the problems, as pro se litigants agree to terms they don't understand, are not in their best interest, and are unenforceable.

While indigent individuals need help with family law matters, they need it in the form of a pro bono attorney, not a form. Additionally, being indigent is not a prerequisite to using the forms; therefore, many individuals with children and property will use these forms as a way to avoid finding an attorney which only led to additional problems down the road when issues arise with their decree.

Drafting a divorce decree is rarely a simple task and should not be left up to a pro se litigant to decide. Additionally, litigants who have lawyers must inevitably be held to a higher standard than pro se litigants unless courts hold pro se litigants to the same standards as they hold lawyers.

Holding one party in a case to a different standard than the other party is contrary to the very premise of our court system. Litigants who hire counsel (whether paid or pro bono) will be punished for doing so.

I urge this Court to highly consider the ramifications of creating these "do it yourself" divorce forms. Litigants need free legal advice, not forms.

Nicole Voyles (Houston)
I have practicing law since 2004 and practicing family law primarily since 2006. I have reviewed the proposed "do it yourself" divorce forms and I find them extremely problematic. It is my understanding that neither the Family Law Section of the State Bar of Texas nor the Texas Family Law Foundation was consulted before this project began which is entirely inappropriate considering the attorneys that make up these groups will be the ones fixing the problems in the forms if they want to disseminate to the public. It is my understanding that 90% of the 850 Family Law Section of the State Bar of Texas members polled believe that these forms will result in serious legal problems. It is my hope that this correspondence will open the eyes of the Supreme Court and State Bar of Texas Board of the problems arising from using "do it yourself" divorce forms. These forms could be extremely detrimental because of the following reasons:

As it stands, the family law courts are slammed with an unimaginable heavy case load, especially in Harris County. Pro se litigants delay the efficiency of the courts by presenting unenforceable agreements and improperly filling out the required information. These forms will only add to the chaos of misused forms. Other states using these types of forms have seen numerous problems further delaying the divorce process. I see these forms causing issues in the courts on a day to day basis when I am in court.

Pro se litigants often agree on creative, but unenforceable, resolutions to property. It is necessary for attorneys to be involved in the drafting process to make certain the parties decree is drafted in a way that is enforceable in the future. Often times, pro se litigants do not understand the forms they are filling out therefore causes more damage than good. It is only after these parties have entered into badly drafted orders that they often show up in my office and at that point it is difficult, if not impossible to correct. The time to resolve enforceability issues is before the Decree is entered. However, the family law judge is not in a position to alter the terms of the property agreement in the Decree. These litigants need an attorney, not a form, to draft an enforceable Decree.

Pro se litigants additionally agree on resolutions to property on the surface (and possibly in the form), but an ambiguity can result in a complete misunderstanding. Again, the family law judge is in no position to review the form for potential misunderstandings. These litigants need an attorney, not a form, to ensure that they understand what they are signing and all of the ambiguities and potential interpretations.

Additionally, while the forms are intended for the so called "agreed divorce" with no children, these forms can be misused as a guide to a divorce entailing children and other complicated property matters. I can imagine that people trying to cut the cost of hiring an attorney will grab these forms and try to tweak them even if their case is much more complicated than the form intended.

Finally, pro se litigants do not understand the complexities of property and how important it is to divide all the community and separate property assets in a divorce. They also do not understand the intricacies of the required closing documents to effectuate the transfer of these assets and liabilities in a divorce. I have seen many cases where the parties do not file the proper closing documents to transfer assets so even though they may have a divorce decree that states one thing the asset is still in both names. For instance if the parties are not effectively counseled they may not know they need to file a new deed in the property records to put the asset in only one parties name. Many parties believe that they have a small estate, but do not understand there may be issues separate or mixed character property within their small estate. If not handled carefully, these parties could miss important issues like filing a qualified domestic relations order and other necessary closing documents, tax issues, and reimbursement issues. The litigants may never understand their property rights and whether they are actually receiving their intended share of the estate.

I urge this Court and State Bar of Texas Board to seriously consider the unintended consequences of the "do it yourself" divorce forms and reject the use of any such form. These pro se litigants will be misguided by the forms and this will cause them more problems in the future than if they hired an attorney and had it done correctly the first time.

Tim Daniels (San Antonio)
Please forward my objection to the Commission's Plan to the Texas Supreme Court and to other entities or persons you deem appropriate.

I object to the Commission's Plan to provide pro se litigants with standardized forms. One of my primary reasons for my objection is my representation of the ex-husband in three lawsuits spanning four years. His story follows.

Desiring to save money on attorney's fees and being induced by an internet advertiser that getting divorced using a provider's standard forms would be easy and save money, the husband and wife jointly prepared the Decree and Marital Settlement Agreement. Unfortunately, nobody explained the legal terms contained within the Decree and Marital Settlement Agreement to these litigants, one with a GED, the other with a college degree I believe. They did not consult a lawyer prior to the Decree becoming final.

Unfortunately, through misunderstandings, they failed to address division of their house and failed to appreciate wording that awarded certain assets to the party in possession. Since they continued to share the house, the standard clause awarding personal property to the party in possession was not workable in their situation.

In a subsequent five jury day trial involving the owner of the land under their home, each ex-spouse had to explain why their Decree included a statement denying that they owned their home, which they built and had been paying for. A second lawsuit between the ex-spouses was necessary to divide the jury's unjust enrichment award for their interest in their home.

A third lawsuit between the ex-spouses concerned the boat, which the husband understood was his because for years after the divorce he made the loan payments and exclusively used the boat. Unfortunately, the Decree and Marital Settlement Agreement forms awarded the boat to the party in possession when the Marital Settlement Agreement was signed--weeks before the Decree was

entered and the wife had moved out of the marital residence, taking all personal property she wanted (leaving the boat for the husband). The ex-wife did not object to the ex-husband making the loan payments and having exclusive use and control of the boat after the Marital Settlement Agreement was signed.

The several Bexar County judges who were involved in hearings or the trials resulting from this standardized form nightmare expressed frustration at the consequences of such litigants using standardized forms.

The attorney's fees for the three lawsuits, involving four attorneys exceeded $150,000. Note that the five day jury trial pitted the ex-spouses against the landowner, who of course was not a party to the pro se divorce. These clients could have easily afforded attorneys for the divorce. Now they regret using the standardized forms.

My other objection to providing standardized forms to litigants is that providing a certain form or wording constitutes legal advice that such form meets the pro se litigant's immediate needs without thoroughly questioning the litigant in order to determine the litigant's needs and misleads the pro se litigant into relying on the standardized form despite developments in the litigation that require amended pleadings. For example, how would the pro se litigant learn the intricacies of separate property versus community property characterization, much less how to correctly plead for same and award same? I recall all form books in my law library and ProDoc warnings that all forms should be adapted to the client's situation.

Norma Bazan (Fort Worth)
I am writing to express m opposition of the 7-point plan of the Access to Justice Commission to help pro se litigants handle their own family law case regardless of income level; whether children or property is involved; and whether a case is contested or agreed. I believe any such plan will only serve to harm pro se litigants who will eventually learn that their fill in the blanks form cause irreparable injury that may not be corrected in a court of law.

While I have only been licensed to practice law for just over 3 years my experience in the family law arena spans over 20 years. I began my family law career as a receptionist for Family Court Services and then rose to the level of a family law secretary with the Tarrant County Domestic Relations Office. Thereafter, I worked for a well-known family law firm in Tarrant County for over 10 years. Once I obtained my Board Certification as a paralegal in the area of family law through the State Bar of Texas, I then worked with a prominent family law attorney in Fort Worth, Texas. I then worked as the Court Coordinator for a Family Law District Judge in Fort Worth, Texas and maintained that position for 8 years while obtaining my law degree. After being licensed in 2008, I continued to work specifically in the area family law as a sole practitioner, then as an attorney for SafeHaven of Tarrant County, and now as an Associate Attorney in a law firm. My opposition of this 7-point plan is due to the following observations:

First and foremost, I do not find that anyone associated with the Texas Supreme Court or Access to Justice sought the opinion or support of my specific local family law bar association, much less the hundreds of other family law bar associations throughout Texas. As a member of the association for over 10 years (and as a Board Member for the 2011-2012 term), I did not receive a survey or a request to provide an opinion regarding "fill in the blank forms" before any project or committee was formed. In fact, I have no knowledge of how the Committee members were

assigned to this project. Are they practicing lawyers in the area of family law? Have they had a family law practice catering only to clients with a certain income level? Have they held their own family law practice and struggled with maintaining that law practice?

Secondly, I do not believe that the Access to Justice Commission's committee was developed only after input from the Family Law Section of the State Bar of Texas or the Texas Family Law Foundation. Additionally, even after notice was sent requesting information about the forms project with the Supreme Court it took some time to receive such information. Shielding the Bar of such information served only to show an air of secrecy on an issue that affects hundreds of family law attorneys in Texas.

Third, even though several members of the family law bar were present at the April 2010 Dallas forum on the issue of "self-represented litigants," no one associated with the project communicated with those leaders or with the Foundation.

Fourth, the Texas Supreme Court's endorsement of family law "fill in the blank forms" will only create problems, rather than solve them! By statute, the Texas Supreme Court has administrative control over the State Bar of Texas, an agency of the judiciary. There is no express statutory authority for the Supreme Court of Texas to become engaged in the practice of developing and approving forms for litigants. To do so, would negate our checks and balances in that there may come a time when the Supreme Court may have to consider and rule on a form developed or approved by the Supreme Court! Also, to endorse specific forms for only one specific area of the law will serve to foster belief that a litigant does not require even a consultation with an attorney to ensure a boiler plate form will be sufficient for his or her individual case.

Fifth, I am also aware that at least 90% of the Family Law Section's members responded to polling by stating that a litigant relying on a court-approved form to handle their case pro se can face serious legal problems in the future as a result of a poorly drafted judgment or a judgment that does not provide language for a specific situation.

Sixth, providing court-approved documents to litigants will have no effect on the Texas Supreme Court but it most definitely will effect a litigant who relies on such forms. And, the Texas Supreme Court will not have to deal with the aftermath of improper judgments –rather it will be the family law attorney who will have to consult with potential clients and attempt to remedy (if possible) the defective judgment.

Seventh, working in a Family Law District Court as a Court Coordinator for over eight years, I understand that pro se litigants have a tendency to ask for legal advice from not only the clerk's where their petitions are filed but from Judge's who finalize their case. However, it should not be the practice of the Supreme Court to become involved in issues relating to clerk's duties or Judge's decision to either reject or approve a final judgment.

Eight, an indigent litigant has several options and resources to assist them with their legal needs which include Legal Aid, Texas Attorney General's Office, programs for domestic violence, and programs through Law Clinics. On the other hand, a litigant who is not indigent and has property that may or may not be divisible and has the resources to retain legal representation for their specific case; may decide that a "court-approved form" is all that is necessary to petition and

finalize their divorce. It will not be until after that litigant has finalized his or her case that it is determined that the "fill in the blanks form" is defective and will cost more to rectify.

Ninth, the litigant most likely to be effected by these "fill in the blank forms" will be the female litigant. A woman who has chosen to stay home and raise children while her husband works and maintains the household may have little to no understanding of the community estate, such retirement benefits and/or the financial condition of the community estate. Providing court-approved fill in the blank forms to women who are in such a situation can be detrimental. And because that woman may not have access to the community financial accounts, she may rely on that less costly "fill in the blank form" to provide her with a just and right division of her community estate. While there are thousands of professional women in the State of Texas, there are also hundreds of thousands of women who have little to no understanding of their legal rights at time of divorce and who need to assistance of an attorney to insure their rights are protected.

In conclusion, the laws of the State of Texas are not only convoluted, they are ever changing. Attorneys provide a vital role in the preparation, interpretation, and representation of a client's legal needs, not only in the courtroom, but in matters that can be settled out of court. To simplify that role by providing "fill in the blank forms" that any person can use sends a negative message to the citizens of Texas that an attorney is just not required to handle their specific case.

For these reasons, I wholeheartedly oppose these fill in the blank forms.

Tyler Moore, Jr. (Houston)
Why didn't the Supreme Court or Access to Justice seek the opinion of the Family Law Section or the Family Law Foundation before initiating the forms project? This whole project seems to have circumvented the lawyers most concerned with family law cases and those who have to step in and clean up after the pro se litigants have "handled" their own cases. I think the project is ill-advised and should be scrapped.

Who provides the advice and counsel when these pro se litigants make the decisions which have legal consequences, some of which are unforeseen? If all there is to practicing law and litigating cases is filling out forms, then we wasted three years of our lives in school. Clerks can do that.

If the seven point agenda of the Access to Justice seeks to substantially change the procedural rules and statutes governing family law cases so judges, lawyers, clerks or others will "appropriately relate to pro se litigants, that is wrong. Two different sets of rules won't work. You will create a mess. It's interesting that the Supreme Court rarely hears family cases anyway, so respectfully, don't do this.

Keith Spencer (Bedford)
I am extremely concerned that the proposed do it yourself divorce forms presently being promulgated by the State Bar of Texas will have serious and unintended consequences for the very persons they were intended to help. Every week I interview individuals who have been duped into signing forms prepared by their estranged spouses. Some are illiterate or speak a different language. Others are abuse victims cowed into signing. Others are victims of forgery. By the time they get to my office, the deadlines for a new trial have usually expired. Frequently they have been duped out of their homes, retirement benefits, child support, and/or access to their children. A common trend is for the dominate spouse to name themselves the primary

conservator of the children whom actually live with the other parent in order to avoid child support obligations. Geographic restrictions of the residence of the children, an indispensible tool in protecting the children's relationships with parents, are routinely absent from these do it yourself forms. Further, I have yet to see a form prepared by pro se litigants which can suffice as a QDRO.

Family law is a highly specialized area of the law having evolved significantly over the last twenty five years. We deal with people's livelihood and life altering issues involving their relationships with their children. I believe that the bulk of pro bono hours spent by attorneys in Family Law dwarf other areas of practice. It is unnecessary and counterproductive to promulgate forms which have the unintended consequence of promoting and facilitating injustices similar to those described above. It is also clear that these forms are being drafted without the assistance or input from the Family Law Bar. Despite its noble goal, the result of this Equal Access to Justice Initiative may irreparably harm the very persons it was intended to help. Your experience in Family Law gives you better insight into the nature of this problem than most. Please assist the Family Law Bar in addressing and remedying this problem.

David Kulesz
I wanted to express my opposition to the Supreme Court Task Force on Uniform Forms. I have been practicing law since 1979 and have been board certified in family law since 1990. Briefly, these forms are inappropriate, misguided, and in many cases harmful and problem causing. The process by which this is set up has been deceptive and has not included the persons and organizations with the most knowledge and experience. I do not oppose help being given to pro se litigants who do not have property or children. That is clearly not what this task force is proposing or has done with their forms. Every lawyer in this state should oppose this project. I encourage you to take the necessary action to stop this process and protect Texas lawyers from this unfortunate situation. Thank you for your time and service.

Thomas Simchak (Houston)
As a long-time practitioner in family courts in Harris and other counties, I am well aware that not everyone can afford legal representation, and I am equally aware that the funds being sent to the State Bar Equal Access To Justice via IOLTA accounts has been greatly reduced in recent years due to barely-above-zero interest rates. I am also aware that there are persons who can afford legal representation but choose to go it alone without the assistance of a lawyer.

However, the current project/commission seems to be operating in near-total secrecy. The commission was initially set up to oversee the stated goal of helping low income persons acquire legal services from lawyers, but it has gone far beyond that goal. How this happened, I have no idea, but I believe that this commission needs to be reined in.

To have forms available to all, with or without detailed information on how to prepare the forms along with the potential ramifications of using the forms is short-sighted. There will be nothing to guarantee that anyone will actually read the instructions, nor will there be anything to guarantee that anyone who does in fact read the instructions will comprehend the ramifications.

I could go on for some time about the potential for abuse of such a system, and the problems such abuses would cause to either or both parties to a divorce, not to mention any minor children, but I choose not to write such a lengthy comment. Suffice to say that I am not in favor of the

commission or the project as it currently stands. More transparency, much more transparency is a necessity.

Beth Matthews (Orange)
As a small town solo practitioner, I handle many divorces. Most of the people I deal with have some property and children. These 2 areas are rife with difficulties for a lay person to understand. They don't get the terminology, much less the complex issues that children, retirement benefits, real estate, etc. entail. If these pro se forms are initiated I believe my practice will morph into primarily trying to fix divorce decrees which are messed up and produced results the parties didn't intend.

While most attorneys support an attempt to provide legal services to the poor, I believe most do not support efforts to teach lay persons how to practice law in our stead. What can you possibly be thinking to encourage this lunacy?

Andrew D Leonie - ***March 29, 2012 9:38 AM***
A number of excellent solutions have been proposed apart from the new challenge for the Commission to remain true to its purpose - access to legal services, ie lawyers. Gary Nickelson proposed an expanded pro bono avenue similar to what occured with volunteer lawyers in the Eldorado matter, where we lawyers take it upon ourselves to provide a solution. In the same spirit it has also been proposed that the family law section itself undertake to develop a set of basic pro bono forms. Some of us have also proposed that friends of the court be appointed, funded by a special addition to filing fees, to assist by reveiwing all pro se pleadings and proposed judgments. These are all good ideas, but I think we still need to compel the production of hard numbers and facts from the office of court administration to see if this is a real problem or not. Anecdotal evidence should not be the basis for providing such a drastic solution to an assumed problem. We need to see real numbers folks!

Norma A - ***March 28, 2012 10:33 AM***
I have been in the family law legal field for over 20 years. I started out as a receptionist with Family Court Services; then as a secretary for the Domestic Relations Office; then as a secretary for a family law firm; then as a legal assistant in that same family law firm; then as a Board Certified Legal Assisant in the area of family law through the State Bar of Texas for another prominent family law attorney; then as a Court Coordinator for a family law district judge for over 8 years; and now as a licensed attorney for over 3 years. Not only do I understand the family law issue from a legal standpoint, I also understand the pitfalls of family law while growing up because my mother was abused by my father for years before he divorced her and left her to raise 4 children on a 6th grade education. My mother did not need a "fill in the blank" form as she would have been unable to understand the ramifications of checking a "box". Also, if my father had known of a "fill in the blank form," he would have made my mother sign it without the benefit of assistance. What my mother needed back then was an organization geared toward assisting her personally in order to solve her legal issues. Nothing has changed today -- we still have litigants with little education; we still have battered women/men; we still have husbands (sometimes wifes) who are the primary breadwinners of the home while wife (or husband) stays home to raise the children; and we still have people believing that one spouse is entitled to his/her retirement accounts because he/she earned it while working. Providing "any" litigant with a fill in the blank form does nothing to help the truly indigent who need our assistance. I have taken several pro bono cases during my short time as an attorney and that is

because I and my managing attorney (Gary L. Nickelson) believe it is important to give back to the community. I had one case where my client was only married 11 months and wished to obtain a "simple no children, no property divorce". I advised her that there were forms she could use and she stated that she had been provided with "forms" but she did not understand how to fill them out. The forms she showed me are almost identical to the ones proposed by ATJ; however, because of her limited understanding of the meaning of some words, she was too afraid to fill them out. These are the people the ATJ should target! I also took a case where the parties used a "fill in the blanks" form because they were getting along and didn't believe they needed an attorney. They had children and a home. After the divorce, they began having issues and one party sought modification. Unfortunately, modification was not available as it related to the residence and the provisions in the "fill in the blanks" Decree were prepared incorrectly. I am a big proponent of helping the low income litigant because I remember what is was like to live without food on a daily basis (during my childhood), but throwing "fill in the blank" forms to litigants so they can be "checked off" as having been helped (and making someone's numbers look good) is not the answer.

Cynthia Diggs - ***March 23, 2012 7:02 PM***
I fully recognize the need for providing solutions and services to those who cannot afford them, especially in the area of Family Law, which is my specialty. I nevertheless see in my practice the problems that arise from do-it-yourself divorces. The fact is, people can already get forms for family law cases, since they are all over the internet. More forms, with the imprimatur of the Supreme Court, is not the answer. The problems stem from how litigants use and mis-use the forms. Divorce and paternity decrees in Texas often have to be very complex documents of 40 pages or more. The emotionally or financially weaker spouse is often harmed by the use of these forms and the absence of legal counsel to level the playing field. Worse yet, sometimes these do-it-yourself-divorces impact the children of these marriages in a manner that is truly nightmarish. It is sad to have to say to a client: I wish you had come to me before.

I am also disturbed more generally by the notion that everyone can and should practice law. I am disappointed by the suggestion that a bunch of forms is as good as an undergraduate and law school degree, as good as years of legal experience, as good as annual CLE, as good as board certification, and I am disturbed by the implication that you really don't need a lawyers-- just a few forms.

And the snobbery that pervades this effort should embarrass its proponents. I am sure the notion is that areas in which individual clients are most often served: family law, criminal law, estate planning, probate, collection, immigration, personal injury, and the like, are "simple" areas of practice and "anyone" can do it. Aside from the blatant inaccuracy (and extreme legal snobbery) of this sort of thinking, it ignores another reality. The average individual client is the client who is most in need of representation by a lawyer. The average individual client simply does not have the knowledge to represent himself in the average case. And the average individual without representation is far more likely to be run over by an opponent with counsel.

On the other hand, I am willing to bet that no one will propose antitrust forms, or patent litigation forms for those who want to represent themselves in such matters. Ironically, the typical institutional clients seeking these types of services would be far more likely to be able to bring themselves up to speed, and to fend for themselves, if they did have to proceed pro se. But

naturally, Mr. Reasoner and others involved in this effort aren't proposing forms for use with large and capable corporate clients who really don't need lawyers, are they?

Chris Peterson - ***March 20, 2012 1:34 PM***
I don't believe that the Texas Supreme Court has the power under the Texas Constitution to take this action.

Texas Constitution, Article V, Sec. 31. COURT ADMINISTRATION; RULE-MAKING AUTHORITY; ACTION ON MOTION FOR REHEARING. (a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.(d) Notwithstanding Section 1, Article II, of this constitution and any other provision of this constitution, if the supreme court does not act on a motion for rehearing before the 180th day after the date on which the motion is filed, the motion is denied.

Can someone point out to me under what authority the Texas Supreme Court is acting?

Chris Peterson - ***March 19, 2012 4:40 PM***
I don't think that the forms will solve the issues involved in pro se representation. Quite frankly, it won't give access to justice because they will still be filled out incorrectly, follow along work (like deeds and QDROs) won't get done, and Judges will still be asked to give legal advice from the bench. In fact, I think that if the Supreme Court adopts standard forms for pro se litigants the amount of pro se litigants will actually increase because the forms had the "seal of approval" of the Supreme Court of Texas.

The time and money spent on these types of projects would be better spent on increased funding to the legal aid organizations that already exist and to providing student loan reductions for those willing to work for indigent defense organizations for certain time periods.

Ben Selman (Waco) - ***March 19, 2012 7:59 AM***
The debate over the standardization of forms emits of two very serious issues.

First, as to the promulgation of bar or court approved universal forms--

It is without question that the resolution of family law issues is not capabale of being reduced to a set of universal forms that would, in any sense, be of manageable size or of any useful durability. The best interest of Texas children produced by errors in judgment would be the most serious concern with potential misapplication of the forms promulgated. The potential for serious property errors in any judgment is over-whelming.

Augmenting the currently available "commercial" forms with a set of universally available uniform forms for Texas litigants, including indigent litigants, is a good step forward to prevent

abuses and errors generated by commercial vendors and the inconsistencies in forms available through web-sites and some of our counties.

Second, as to the use of the universal bar or court generated forms--

Generally speaking, forms are only as useful in settling complex or difficult law questions as the sophistication (by training and/or experience) of the user. Most laymen do not have the sophistication to successfully use any set of forms to correctly answer complicated issues by judgment.

Failing, therefore, to couple the promulgation of universal pro se practice forms with significant reconsideration of pro bono service rules and requirements does not seem to resolve the core problems of patently wrong, or inconsistent, results in family law cases related directly to "form" usage by laymen.

Issues of whether there should be mandatory pro bono reporting and compliance, coupled with consideration of the very serious liability and insurance coverage for attorneys fulfilling pro bono requirements appear critical to use of forms considerations.

Concurrent with the consideration of adoption of universal forms for use by pro se or indigent litigants should be an equally intense study leading to adoption of requirements for pro bono services by licensed attorneys.

Susan D. Sheppard - ***March 18, 2012 7:51 AM***
What I have seen in my 24 1/2 years as an Associate Judge (recently retired) is an enormous rise in the number of family law litigants representing themselves. Many, probably most, are representing themselves because they simply cannot afford lawyers, but a significant number represent themselves for reasons separate and apart from money. There has been a shift toward administrative proceedings that have ill-defined boundaries with judicial proceedings as a result of the federal Title IV-D laws, and of course we live in a different do-it-yourself culture in which we prepare our own electronic tax returns, sell our own houses, consult medical websites and order pharmaceuticals online--and get our CLE over the internet!

The courts are open to all. I think the trend is toward an ever-growing judicial docket of cases filed and defended by folks representing themselves. It would be wonderful for all who need and want legal advice to have it, but that has been a difficult challenge to provide. I believe that promulgating clear forms--especially form orders for judges to sign--is an increasingly important piece of providing justice to families.

Assigning the promulgation task to a statewide task force has offered a process for experts, professionals, advocates, and interested stakeholders to produce some good results. If there are no uniform statewide forms, I think the courts will continue to see--and spend extraordinary amounts of time addressing--problems arising from the use and misuse of forms generated from reputable and disreputable websites, forms promulgated by other states, forms adapted from forms used by individual Texas judges, and forms suggested by state and national advocacy groups. This mishmash and enormous variety of good and bad, up-to-date and out-dated, enforceable and unenforceable, legally sufficient and insufficient paperwork--used carefully by

some and haphazardly by others--is what is happening now. What makes anyone think people will stop representing themselves if there are never any uniform forms in Texas?

I would like to see the Family Law Section of the State Bar work in support of this project rather than in opposition.

Jennifer A. Broussard - ***March 17, 2012 7:22 PM***
All of the posts on both sides seem to be heart-felt and well-reasoned. I will say here what others have said repeatedly and what I have posted on several other sites dealing with these forms. I have made a very fine living cleaning up after pro se litigants who have screwed themselves and their children using forms. When I read the forms, they seem quite clear but the responses of the pro se litigant to the questions (or fill in the blank) are simply bizzar. Lay people read things into questions which simply have nothing to do with the matter before them. Think about how they respond to questions on the stand or their responses to discovery OR what they read into the standard mutual injunctions! So, whether the forms they acquire are from the Family Practice Manual or from some online family law site OR carry the almighty seal of approval from the Supreme Court of Texas and its task force, they ARE going to screw them up....and I will make more money. IF the Supreme Court forces these forms on the public, I think the law licenses of the Supreme Court Justices and those who served on the task force should be on the line just as my license is on the line when I screw up someone's case. If the Supreme Court is going to tell uninformed pro se litigations that all they have to do to protect their rights and their children's rights is fill out a form, then the Supreme Court of Texas Justices and the task force members need to be accountable to these people.

I should think the Judiciary who actually deals directly with the poor, the uneducated, the unsophisticated pro se litigants (as opposed to reading case law and listening to the rarified arguments of appellate specialists) would send up a hew and cry against these forms. I often sit through the uncontested docket in the 9 Harris County Courts and see the large number of pro se litigants who approach the Bench thinking they have done all the necessary work only to be told that they are no where near the goal. Most of the Judges are as kind as they can be to these people but the pro se wants the Judge to tell them what to do. Of course, unless the Judge is going to practice law from the Bench s/he cannot. But, by the time the Judge finishes dipolomatically dismissing the frustrated and confused pro se, the Judge has wasted not only his/her limited, precious time but kept other pro se parties and practicing attorneys and their clients waiting. The waste of judicial time is notable. I cannot speak about this matter in the small rural counties but in the larger counties in this state, the courts are backlogged. There simply are not enough courts but we cannot afford more. (I should think that in the smaller counties the fact that the courts sit as general jurisdiction courts would their dockets equally as burdened and their time no less precious.)

I would agree that if the parties LITERALLY have nothing - no children, no real estate, no retirement plans -- then a form is fine. Whether or not they can figure out how to properly have a waiver signed (I see this problem all the time) and file it or properly effect service, these folks can effectively use forms. BUT, if there is a child, if they own real estate, if one of them has any kind of retirement plan or deferred compensation plan, forms are absolutely inappropriate without at least consultation with an attorney. I could actually see that as a practice for someone who wanted to slow down and get out of the courtroom -- just reviewing documents for pro se litigatants before they go to court.

I really have to put this effort of our all-knowing Supreme Court in the same category of wisdom in which we have placed their edict that ALL family law matters in ALL counties MUST be concluded within 6 months of suit having been filed. Yeah! That worked well, didn't it??!!! If this mandate is put into force, the result will be even more dismal, but the impact will be far more grave.

Jeanice - ***March 16, 2012 6:42 PM***
I am a new attorney who has been practicing family law for about four years now. However, based on my experience, I believe that I can offer some insight into this issue.

I worked in the legal aid environment during law school and opened my own practice immediately afterwards. I work with my clients depending on their financial situation. For clients that cannot afford a $5,000 retainer fee, I usually ask them to put down a smaller retainer and make payments based on a payment plan. The majority of the time, I receive my money but in business you have some clients that just will not pay no matter the arrangement.
However, I believe the solution is not developing pro-se forms but a better model regarding providing legal assistance to low-income litigants. My doctor, who has been practicing for 30 years, had most of his loans substantially reduced because he maintains in a medical practice office in a low-income area of Houston. His medical school debt was almost completely covered because the government offered him loan repayment to practice medicine in a low-income area, where there is no other access to medical care within a 15-20 mile radius. I believe we need to offer the same type of assistance to lawyers. I know plenty of lawyers, who would not mind going into to practice in low-income areas, to handle not just family law cases but all areas of practice for low-income litigants if there was a loan repayment plan that would completely eliminate some or if not all of their law school debt. We need more attorneys who practice law in these areas. Litigants need access to attorneys that charge $75-$100/per hour in fees not $250-$400. They also need access to experienced lawyers that can handle the complex family law issues. Law school debt has reached a point that people are paying off $100-$200K in loans. For a lawyer in solo practice, who often deal with low-income litigants, it becomes a choice as to whether to forgo a fee or forgo your loan payments. I think if some form of a loan repayment program, similar to the model used in the medical profession, is developed that more attorneys would join the ranks of those who serve low- income clients. This benefit should be given the lawyers that are not just practicing in a governmental, legal aid or other non-profit environment but those that have a private practice as well.

The forms are not the issues. Family law is complex. Most of the times, the family dynamic is so fractured that you need a legal degree just to untangle all the twists and turns. With low income clients, you often deal with men and women that are married to other people, have children by other people and have complex issues regarding children more than the standard divorce-no children and no property divorce. The forms should not be used for enforcements, modifications or complex custody battles that need a guiding hand.

Fran - ***March 16, 2012 2:21 PM***
I have only done family law mediations for the past 5 years.

I worked at Houston Volunteer Lawyers during law school and after I graduated from law school for several years. I am very committed to pro bono service. In private practice, I have reduced my fees and/or not charged for my services when a client could not pay.

Some people at mediation do not understand Texas family law. They have read incorrect information on the internet or received inaccurate information from their friends/family. I often discuss with them life after divorce and what it will be like co-parenting with their ex-spouse.

Sometimes the parties are very emotional and have been unable to talk to one another in a civil, calm manner. They have been unable to discuss how to divide their property and how to set up visitation of their minor children.

Many couples would not be divorcing if they were not having money troubles. But they have lived way beyond their means (shopping, eating out, taking trips) and the credit cards are all max'd out. They are in houses and vehicles they cannot afford. There is no money left to hire an attorney.

I agree that something needs to be done. The family law system needs help. The Harris County courts are overwhelmed. But if the forms are not filled in properly then a bigger problem could occur in the future.

I certainly don't want to see a child harmed (or even killed) if it could have been prevented. Abusers often intimidate the weaker party into signing a document in order to escape abuse.

Leta Parks and Norma Trusch's comments are appreciated.

The Texas Attorney General's office cannot handle any more cases. All the non-profit agencies in Harris county are overwhelmed. The Houston Volunteer Lawyer Booth in the Harris County Family Court building where they answer questions is helpful, but it's not enough. Sending people to the Harris County Law Library is not working. The people show up with the forms copied and want someone to help them fill it out. They have no idea what they are doing. There needs to be more money spent on low-income programs.

Hopefully you have been talking to people that routinely help low-income people. They have more needs that just being handed forms - some cannot read, some cannot read English and some have physical and mental disabilities.

Legal Zoom is horrible. Their forms are not appropriate for Texas. So far I've not seen a good set of forms for the State of Texas.

Several years ago I tried selling customized "Do It Yourself kits" that I prepared for each couple in Harris County. It was not successful.
Why?
(1) People said they had an agreement but when we met and talked they were not in agreement and I refused to proceed.
(2) People had complex assets and debts & I was not comfortable moving forward - I told them they did not have a simple divorce & they needed to consult attorneys.
(3) People met with me and I prepared the divorce petition & I told them how to file it at the courthouse. I never heard from them again.
(4) People thought I charged too much for my kits.
(I charged $175 for a kit with no kids, no assets - except vehicles)
(5) People had purchased a kit on-line and wanted me to "fix" it for free.

(6) People showed up and talked -- but did not bring any money to pay.
(7) People made appointments -- but never showed up.

Jim Keene - ***March 16, 2012 10:28 AM***
Adequately fund legal aid so that truly indigent folks can get help. To folks that aren't indigent, let them either figure it out themselves or hire an attorney.

The Texas Family Law Practice Manual is already available at the law library for anyone who wants to take the time to look at it.

Frankly, I'm tired of the Legislature and the Texas Supreme Court trying to put lawyers out of business. Unless a lawyer wants to either work in or for corporate America, that is exactly what is happening. It is time for the State Bar of Texas to start standing up for lawyers.

Jim Locke - ***March 15, 2012 3:32 PM***
The comments listing the innumerable difficulties of pro se divorce are all correct. However, as a judge with general jurisdiction I can tell you with certainty that many people are filing, and completing, pro se divorces with forms of varying quality. There may or may not be children, but dividing retirement accounts is seldom a problem; there is no property. The only way to avoid having these poor people file pro se is to provide much broader access to attorneys at little or no expense. That is not an easy problem, but the absence of good forms is in no way preferable to outdated or poorly written commercial forms.

Ron Hendricks - ***March 15, 2012 2:09 PM***
I am a thirty-six year experienced attorney who has been practicing Family Law since 1986. All of my clients, whether men or women, come to me with varying degrees of emotional or psychological stress. While I am not a counsellor or psychiatrist, I have 66 plus years of common sense as well as life experience from which to draw to aid the client as they deal with these issues, if nothing more than to strongly urge them to seek counselling. That you cannot get from a fill-in-the-box form. As one has said, we Family Lawyers are more than attorneys; we are, in some sense, life coaches. Again, what box do you check off on a Pro Se Divorce form for that?

To suggest that I oppose these Pro Se forms because it will hurt my bottom line is an insult to me and most of my collegues. We have all had fee cases turn into pro bono cases because our clients could not continue to pay for our legal services. We continued to provde the best legal service that we could to them BECAUSE THEY NEEDED THEM. If money were truly the issue, I would be more like the Arizona lawyer who made a living just fixing these Pro Se form divorces in his state. Tell me, is that justice? "Do it right the first time" is not a concept that fits well with these scenarios.

Being a retired Naval Officer, I remember from my days in the Fleet the doctrine of the Five Ps ... Proper Planning Prevents Poor Performance. In the military, missions and battles are planned very carefully and in advance because lives are at stake. The planning is usually done by experts in the required fields. Once the Battle Plan is formulated and thoroughly discussed and even tested, it is then implemented. Since the devil is in the details, to push a plan without proper thought wastes time, assets, and lives.

In our case, where is the necessity for the rush to promulgate forms for a constituancy whose size and make-up we are unsure. Proceeding without any really good data to support this radical path cannot be justified by "California does it" or "37 other states do it." If any of you have had to deal with these types of forms, you know just how unenforceable they can be.

Therefore, let me say that we are rushing to provide forms that will do far more harm than good. We are, in effect, violating the Doctrine of the Five Ps. There are many ways to assist the truly poor; this is not one of them.

Aaron Jonas - ***March 15, 2012 1:01 PM***
I agree with those who oppose the forms for all the reasons stated. I would like to add the following: There are a variety of resources and means to accomplish a divorce. In my 21 years as an attorney, money issues usually boil done to choice and priority. When I see a pro bono client come through the door with an IPhone and a car newer than mine, it is clear what their choice and priorities are.

Fred Krasny - ***March 15, 2012 12:50 PM***
I was an Assistant Attorney General, Child Support Division, for 6 years, family law attorney at Lone Star Legal Aid for 15 1/2 years, have been in private practice for 3+ years and am involved with Fort Bend Lawyers Care, which provides free legal services to indigent community. Maybe my perspective will add something to the discussion.

I'm certainly not against helping those in need, but is providing forms going to do the job?

Family law is difficult enough for experienced attorneys. None of us have avoided making mistakes/misreading/misunderstanding the law. Family law attorneys have to know--at least--besides family law, something about business, bankruptcy, real estate, criminal, immigration, government entitlements law, rules of evidence and rules of civil procedure.

We explain things to our clients, but even with one on one review of the law to their case, is anyone really sure their client gets it all? How many clients really understand possession orders and child support until it is explained at least once and often more times? So what happens when a pro se tries to get the same knowledge from a form book?

Providing forms sends a totally unprepared person into a world that they are not going to understand, no matter their educational level. Every one who practices family law has dealt with an attorney who has no family law experience. If they often don't understand, with the ability to use a document assembly program and read the law, how will a pro se person with fill-in-the-blanks forms?

Of course, its not just filling in blanks on a form. How to get service, do an inventory, do a withholding order, deed of trust, divide a retirement account? What happens when a pro se files, the other spouse/parent hires an attorney?

If pro se forms are so great, why don't we have them for debtors being sued by credit card companies, homeowners being sued by their HOA, contractors suing for work they done, auto accident cases?

It doesn't matter if a person is rich or poor, sophisticated or not, educated or not, been divorced or already been to the AG or not. In my experience dealing with the population forms are meant for, forms are not going to alleviate the problem, only make it worse. Nothing will do the job of an attorney. Where the legal assistance comes from is a different issue. We certainly have a problem, but providing pro se forms is not going to solve it.

Gary L. Nickelson - ***March 15, 2012 10:31 AM***

I am a Family lawyer from Fort Worth,Texas and my firm takes pro bono cases from Legal Aid of Northwest Texas. I do not believe that the Supreme Court of Texas Task Force on Uniform Forms is really set up to help indigent litigants. The Task force is set up to promulgate "one size fits all " forms so that all people,not just indigent litigants, can sucessfully do their own divorce without the help of lawyers. That goal is simply unatainable ,each divorce case has different facts to which you must then apply our Texas Community property law to reach a "just and right " division as called for in the Texas Family Code. Right now,without these newly Supreme Court endorsed forms we family lawyers deal with litigants who have done their own divorce using forms that are out in the marketplace. They then come to us because they cannot enforce the papers that the Court entered because ,of corse,they are flawed. In some cases we can be of absolutely no help,it is too late to fix what they have done. I am currently trying to fix a form divorce "Final Judgement of Dissolution of Marrige With Minor Child " that does not set an amount of child support or Order anyone to pay Child Support,waives the other parties'rights to the pension of the other party (of course only the Husband had a pension),there is no description of any of the assets that are purporting to be divided,no possesion and access schedule for the parents to see their child,no division of any parental rights to the child,no listing of the debts they are 'equitably splitting ".....quite literally the Judge said " You should send this paperwork to the Supreme Court,because this is the Poster Child for not letting non-lawyers use forms for getting a divorce". This post divorce ltigation is going to be lenghty,costly and only partially effective,as some things cannot be rectified 2 1/2 years later. This is why the so called Self Represented Litigant has no business doing their own divorce by a form. Secondly the Supreme Court's task force forms are just as flawed as the ones I just descibed. Only these will have the Supreme Court's SEAL OF APPROVAL! I suggest that the Supreme Court hear de novo any case where a Self Represented Litigant is unhappy with their use of the Supreme Court's Forms ! Now,let's get to the real issue at hand;how do we assit indigent litigants ? In the area of Family law I think it could be done on a State wide basis by the Lawyers of Texas.I tried to find out from the Fort Worth office of Legal Aid of Northwest Texas exactly how many family law cases involving indigents that they were unable to handle.....they would not give me a number or would they meet with me. I believe they were afraid to give me the numbers because I was percieved to be the "enemy" . They were really distrustful of my motives. First, we need real numbers of what the needs are....how many indigent litigants need services ? We have 85,000 attorneys in Texas so we have lots of capacity.You need some malpractice umbrella for the attorneys who take these cases,if they don't have insurance. If you choose not to take a case you pay a fee into a fund that can go to support this volunteer attorney effort. The fee needs to be high so people will take the cases like $500-$1,000 if you decline to take a case. This would also raise a lot of money that could be used to implement this volunteer attorney system. If Tom Vick can get 450 + family lawyers to go to Eldorado on a Thursday to represent children for free and be oversubscribed then we can do this job as well. But it takes all lawyers of this State. No one is excluded,if you have a law license you take a case or pay. This will be unpopular,but highly effective in solving the problem. Many of us did Federal Criminal indigent appointments in our youth with little

expericence only because we had a law license. All of this could be done by the State Bar of Texas who could set up Family Law Clinics to gather cases or let the Legal Aid Corporation hand them out,but they have to see us as partners not the enemy. The money raised needs to be overseen by the Bar and non-lawyers. We do not need anymore run away Access to Justice type groups who decide what the rest of us need without any experience in the field or input from those with experience. I am proud of our State Bar President,Bob Black and the State Bar Borad for standing up to our imperious Supreme Court and for the Work of Solutions 2012. Gary

Andrew D Leonie - ***March 15, 2012 10:30 AM***
I am a 35 year lawyer, long time member of the Family Law Section, and former IV-D family law Associate Judge in Dallas. I have served on the State Bar Committee on Legal Services to the Poor in Civil Matters. I have had significant experience working with pro se litigants. I understand and sympathize with the impetus to simplify and increase access to justice for litigants.

However I oppose the scope of the SCT's attempt to provide family law forms for pro se litigants for the following reasons:

1. As much as we have tried to standardize such litigation the inescapable truth is that one size does not fit all.
2. Forms beyond the very simplest acquired or provided to pro se litigants cannot be matched to the litigant's cause without exercising legal judgment, and it is an injustice to require pr se litigants who are incapable of such to make such decisions.

3. The use of most of these types of forms creates an undue burden on Judges who are called upon to navigate the fine line between impartiality and legal advice or otherwise allow these cases to clog dockets.

4. Other helpful court personnel also are routinely taken advantage of by requests that become requests for legal advice, which they cannot provide.

5. Instead of simplifying the process, pro se litigants become more frustrated with the little bit of information they have, assuming they know all that is necessary but discovering to their dismay, the contrary.

So,what is to be done? First, there should be no rush to a solution that we suspect may not fully fit the problem. Second, we need hard facts on the numbers and types of such cases to be collected by the Office of Court Administration to be solidly analyzed before selecting a solution. Third, other solutions should be considered including the possibility of the appointment of special ad litem attorneys funded by filing fees (as are DRO's)to at least ask the right questions of pro se litigants regarding the facts of their case and clear the form and substance of agreed Orders and Decrees offered to the Courts for entry.

Jennie Beth Fannin - ***March 15, 2012 10:04 AM***
In the county where I practice the clerks will give out simple divorce forms. However, I had a couple come to my office to look over the form they had attempted to fill out. It was a simple petition, no children, no property form. This couple had both children and property. I sent them back to the courthouse to get the proper form where they were told that the clerks only had the

one form to hand out. This brings up many obvious issues. Are the clerks practicing law? Are they to decide which form to had out if more than one is available? Can you only represent your self if you have no children or property? (Probably the best thing for both the client and for us attorneys, but seems discriminatory.) I understand the need for low cost representation and do a lot of pro bono or below cost work in this area. I would much rather represent someone form beginning to end, than try to fix a petition or an order that a pro se litigant has tried to take of themselves, then come to me to straighten out.

Lee Mattingly - ***March 15, 2012 9:44 AM***
I am a member of the Family Law Section of the State Bar of Texas and my primary practice of law is in the area of Family Law. I pride myself on accepting reduced fee and/or pro bono cases for individuals in the area of family law, when warranted. I have filed appeals in cases where individuals attempted to use forms to complete a divorce and due to their lack of knowledge of the compexities of family law agreed to details impacting the health and safety of their children as well as their ability to provide for themselves in the future. The most unfortunate of these situations occurred when one individual retained an attorney and the other individual was relying on forms gathered up at the courthouse. Forms are not the answer to the problem. Forms can be found at any courthouse or library or bookstore; providing more forms is a rubber stamp that the forms are reliable source of proceeding without consulting with an attorney. Consulting with an attorney should be mandatory for anyone seeking divorce, particulary when a divorce impacts children and/or property. Consulting an attorney should be done in all circumstances, for example: I have had an elderly woman come to me right before signing the final order asking if she was doing the right thing. The woman had been married over twenty years, no property or minor children and this scenario would seem to fit the description of simple divorce...fill out the form. Reality check. The woman had been married over twenty years, she had a terminal illness that prevented her from working, the husband's income was over $150,000 annually. This woman needed maintenance, which I obtained for her for so long as her illness continued (lifetime). This individual would have become a victim of forms had she not been encourged to seek the advice of counsel before signing the final agreement. Another set of forms is a disservice to individuals; there is already a remedy for people seeking forms.
There is an increasing number of individuals who can afford attorneys seeking out "do it yourself divorce kits" and making a mess out of their divorce. Family law attorneys understand that divorce is an emotional process, people making decisions when they are vulnerable and not equipped to be thinking about anyone's best interest. The very reason people consult with attorneys is to be sure they are informed and making correct decisions. I do not want my occupation to be turned into "an explanation of forms"....and I do not want individuals to suffer due to their lack of information due to their faiure to consult with an attorney.

Sarah Springer - ***March 15, 2012 9:13 AM***
I have practiced primarily family law for thirty two years and twelve of those I served as a Chancellor in Mississippi which is the family law bench. I became active with pro bono work when I was in law school, and I have always participated in free legal services to the poor throughout my career. I had numerous pro se litigants when I was on the bench, and their pleadings were improperly done and they did not comply with the requirements of the law. There are numerous complex issues in family law and the orders which are entered impact families for many, many years. Rather than provide forms and hope that the pro se litigant can figure it out on his or her own, I see the solution as pro bono services. Not every lawyer participates in pro bono to any great degree (unless they take a case and don't get paid); the Bar needs to give

incentives and recognition to those who render free legal services to the poor through pro bono projects. The public will be better served by lawyers volunteering their time rather than being given a set of forms which will result in a shoddy divorce decree which will haunt them for years.

Charla H. Bradshaw - ***March 15, 2012 8:58 AM***
I have practiced family law for 20 years. I have rarely seen a pro se litigant be successful in a case and I have never seen a pro se order that was in the correct form. When I have seen prove-ups at the courthouse the pro se litigant is often sent away because of a lack of skill to even get through the prove-up. It is an injustice to allow citizens to think they can do their lawsuit on their own and without counsel.

The forms issue raises multiple concerns some of which are: 1) Who will man these forms at the courthouse and the ethical obligations of those attorney(s) would be of concern in that the attorney cannot get around giving advice; 2) who will update the forms and pay for same; 3) each section has their own form books which the law libraries carry, or should, and so why are we creating more forms when these are available in the law libraries if one wanted to do their own documents; 4) clients will not be apprised of their separate and community property rights; 5) there are multiple issues with children that they will not be advised of; 6) even after mediations, there are often motions to enter the orders, giving credence to the fact that orders are not easy and have life long ramifications for the parties.

There are other ways to help those who cannot afford attorneys (e.g. pro bono; legal aid etc.) but sending them to their own demise with a form is not the answer.

Todd W. White - ***March 15, 2012 7:57 AM***
I have practiced family law for over 20 years. I have seen less than five divorces during that time that I would classify as truly "agreed" or that I think would have been appropriate for a pro se litigant to resolve using their own form. Most often, attempts to resolve divorces in such a fashion, especially when children are involved, are disasterous. I urge great caution in this area, especially in cases involving children or even a hint of abuse (either physical or mental).

Peter Bargmann - ***March 15, 2012 3:02 AM***
I guess the Texas Supreme Court wants to deliver "access to justice" to pro se litigants (whether or not they are "too poor to pay an attorney") in divorce cases because the services of members of the Bar are simply too unaffordable or unavailable? In how many forms-driven pro se divorce cases will the petitioning pro se litigant also file an affidavit on indigency because he or she is unable to afford to pay the official fees due? Will the Texas Supreme Court also propose a "one size fits all" affidavit on indigency? Remind members of the Bar again why pro bono services in family law matters, as well as other legal matters, are necessary.

Wendi Lester-Boyd - ***March 14, 2012 8:43 PM***
Providing forms to pro-se litigants without regard to actual financial need is only going to crowd the court's dockets with individuals who, while they have the means to pay for an attorney, are looking to "save a buck". As attorneys we act as facilitators, negotiators, mediators and advisors to our clients, and prevent cases from needlessly going to court. While some parties may be able to make agreements, and try to use the forms, others may end up starting cases on their own which end up contested. The individuals who think they can "do it themselves" will also continue

to crowd the courts when they end up hiring an attorney for enforcements, modifications and other "post divorce issues" which will arise due to improperly drafted order. I think that trying to find a system to assist individuals with true financial need is worthwhile endeavor, but trying to publish forms for use by any Texas resident is only going to created chaos in our courts.

David Loving - ***March 14, 2012 6:04 PM***
The sponsoring of pro-se forms by the Supreme Court of Texas is not a good course of action. It puts the Supreme Court of Texas in the position of assuring that the forms will work to grant appropriate relief, which is impossible. It over burdens Courts and court personnel. It trivializes the pro-se litigant's cause by implying that there are no real legal issues to worry about over and above what are in the forms. It ignores problems the pro-se has with procedure. The decrees might be unenforceable in a pro-se's hands. It gets attorneys off the hook that should be volunteering their time as pro-bono attorneys through their local bar associations and legal aid offices.

Licensed in 1970, I have had experience in family law all my career, and poverty law for about the past 20 years as an attorney with Legal Aid of Northwest Texas. I retired this year.

I am familiar the pro-se family law phenomenon. I assisted the District Judge in my county with his pro-se docket a couple of times each month. I provided no legal advice; made sure the documents were in order and handled the prove-ups at the bench. Name changes, modifications, divorces - and in almost all the cases the pro-se had virtually no idea what he or she was doing.

The forms I saw ran the gamut from internet free forms to paid forms from California. With maybe few exceptions all were inadequate, even, and especially, the check-the-boxes forms issued out of Austin by TEAJ. One size does not fit all. These "forms of action" cannot be matched to the litigant's cause without exercising legal judgment. The pro-se litigants I saw could not do that.

The promotion of these forms unduly burdens courts. They are forced to navigate the fine line between impartiality and legal advice. Dockets are clogged; court coordinators, clerks, bailiffs and court reporters are taken advantage of in many ways. Often they are asked for legal advice which they cannot, by law, give. Litigants are frustrated. They do not know how to present the case at the bench. Some cannot read. Many did not know a decree was necessary.

Promotion of these forms trivializes the pro-se litigant's cause. There is no analysis of issues, some of which the litigant usually knows nothing about. The form is not matched to the litigant's cause, which requires legal skill. The litigant just picks a form.

It is condescending to tell a poor person who needs legal remedies that he can do it himself, when a licensed attorney knows he cannot. The attorneys preparing these forms know that.

For example, many of the child support, conservatorship and possession form orders I have seen are, in my opinion, unenforceable. If a litigant owns interests in real property I have never seen an adequate form to protect the interests. The issue of family violence is prevalent and must be considered when fashioning an appropriate final order in any family law case. None of the forms do. The forms in use now usually award retirement to each party - shorting the homemaker and

unjustly enriching the other working spouse. There may be spousal maintenance issues - and on and on.

Many times the litigants have been through the Attorney General's child support division and already have conservatorship and support orders. They often do not know the relationship to their divorce with kids, that the AG should be a party, that the parent-child issues can be revisited.

The AG's child support division is a good example of providing equal access to the courts. So are the programs that supply lawyers to get protective orders in many district attorneys' offices and legal aid programs.

The forms project gives the appearance of helping the poor pro-se, but it really does not help. Critics could claim that it is just a public relations gambit to convince the public that maybe lawyers are not so bad after all. It is not realistic. Proponents seem to have little exposure to the reality of the pro-se issues as they work through the courts.

The forms do not give pro-se litigants equal access to the courts. It gives them equal access to the District Clerk's office. Almost all pro-ses have no clue what to do next - even if they have written instructions.

What the pro-se litigant needs is an attorney. If the pro-se can afford an attorney but just does not want to pay a fee, then we have an idiot on our hands. If she or he really cannot afford an attorney (a fairly elastic and subjective standard) and the local legal aid office cannot take the case, there should be a well-staffed pool of pro-bono attorneys who step in and do their duty to unsure equal justice in their community. That is equal access.

Providing pro-se litigants forms approved by the Supreme Court of Texas is a good idea on paper, but is not realistic in the real world. Are there forms promulgated by the Supreme Court of Texas for pro-se appeals, including briefs and oral argument and motions for rehearing? I bet not!

Leta Parks - ***March 14, 2012 5:43 PM***
I think these forms are absolutely necessary. I recently retired after spending 18 years as an associate judge in a family law court. There already is a flood of pro se litigants and has been for many years. As it currently stands, these people buy inapropriate forms off the internet that are totally useless. They waste their money and the court's time. Many times I wished there had been an approved form that pro se litigants could easily obtain when they want to do their own divorce. The trend toward unrepresented people is here to stay. It is all over the country and it isn't going to increase or decrease because we don't have the correct forms for them. I think it's time Texas lawyers stopped trying to fight the inevitable and help make it easier on the judges who have to hear these cases. Attorneys in Texas claim to be worried about pro se litigants harming themselves by not being represented by counsel. If that is what people want to do they have a right to do it. I think the real motivation is fear of loss of business but even in the best light, is a paternalistic attitude.

Donald Dickson (The Parker Law Firm, Austin) - ***March 14, 2012 5:20 PM***
I do not object to the development of these forms.

1. Many people are going to continue to represent themselves whether we develop these forms or not. We may as well give them a uniform set of tools which will be instantly recognizable to the judges, who will know what questions to ask to screen for problems.

2. It seems to me that the development of these forms is a greater threat to paralegals engaged in the unlicensed practice of law than to the practicing Bar. We should relish the opportunity to squelch this form of UPL.

3. I fail to understand all the indignation expressed here about "check-mark justice." Here in Travis County at least, the District Courts themselves offer a set of carbonless forms with dozens of pages of temporary orders that the litigants AND LAWYERS fill out by filling in blanks and checking boxes. We already dispense fill-in-the-blank and check-mark justice, even to those who are represented by counsel.

4. For a brief time, until cooler heads prevailed, I was actually ejected from a Facebook discussion group of Texas family law practitioners, for suggesting - apparently to everyone else's shock, horror and indignation - that the practicing Bar itself bore some responsibility for the increasing demand for non-lawyer alternatives in family law. I have seen lawyers gin up controversy and conflict where they did not previously exist. I have seen lawyers who insisted on dumpster-diving through five year old check registers at $300 per hour on behalf of clients who just wanted to get their divorce and go hence sine die to begin a new chapter in their lives and the lives of their children. It has been my own experience that family law has become the most uncivil form of civil practice. I've been yelled at, lied to, finger-poked, and hung up on, all by divorce and custody litigators. Small wonder the public seeks alternatives. For the most part they just want to get through their emotionally draining ordeal as rapidly as possible, with their dignity and their finances intact, and preferably without everybody hating everybody else - which is, as often as not, precisely what is in their best interests.

Should we caution the public about the risks of pro se litigation? Of course we should. But we are deluding ourselves and the public if we deny that there are or can be significant benefits to be derived from do-it-yourself conflict resolution between husbands and wives and moms and dads. We ought to do almost anything we can to encourage that and to facilitate that.

Katherine Chapman - ***March 14, 2012 3:24 PM***
I have practiced for 35 years and am concerned with individuals acting pro se. My experience is that people say: "Oh, it is a simple divorce. We agree to everything." or "We don't have any property." only to find out six months or six years later that that is not the case. People are desperate to get a divorce or some other matter settled and will ignore issues. I honestly don't see how the State Bar can support non-lawyers doing legal work. At least in my rural area, I have not seen a single person pro se who really protected themselves legally and did any justice for the other party, even though our District Judges are compassionte and try to help the person within the Judge's ability to do so.

Aaron Robb, M.Ed., NCC, LPC-S - ***February 29, 2012 11:34 PM***
I provide custody evaluations and parenting facilitation services in the Dallas & Fort Worth area, and in the last 18 months I've had experience with two families who have ended up in significant unnecessary litigation after having used such forms. The issues with both families have been substantially similar, with the mothers agreeing to abandon claims to any marital assets and the

fathers agreeing to allow the mother to determine arrangements for the fathers' parenting time. In both of these cases each parent had a substantially different understanding of what a "reasonable" amount of contact would be with neither being aware of the long-term implications of their agreed property split.

Needless to say, in each case these arrangements broke down. In one, when one parent moved to enforce the terms of their decree they found it was unenforceable and the family had to endure significant distress (both emotional and financial) to craft a new decree. In the other, the father filed to modify in order to obtain clearer parenting time arrangements, and the mother, with the view the father had reneged on their agreement, attempted to reopen the property division as well. Again the family fared badly, as in the end both of them spent significant sums of money in what became a pyrrhic victory for the winner - the amount of money spent on attorneys fees likely eclipsed the amount in question, and the damage to their co-parenting relationship was profound.

These are cases where better forms would not have had a significant impact - these parents needed the advice of skilled family lawyers so that they could be counseled on the full implications of their choices, and so that their wishes could have been executed in appropriate, specific language rather than the boilerplate of a form. These families would have still endured strife, as their conflicts were significant, but they would have at least not had to endure the additional hardship of believing their issues were simple and resolvable through do it yourself forms. The false impressions and inappropriate expectations that such forms crated for them raised the bar on their conflict, and their children were the ultimate victims of these bad situations made worse by simple "solutions" to complex problems.

Bill Harris - ***February 29, 2012 3:20 PM***
I have been following the controversy surrounding the activities of the Supreme Court Advisory Committee in the development of uniform pleading and order forms for use in family law cases. With all due respect to the Chief Justice and Associate Justices of the Supreme Court, and in recognition of the difficult task assigned to this committee, I make the observations and comments that follow.

In a letter to Mr. Bob Black, Chief Justice Jefferson sets out a rationale for the development of these forms as a means to "provide our poorest citizens access to the rule of law." The United States Constitution and the Constitution of the State of Texas guarantees all of the citizens of our state access to the rule of law.

The very essence of the rule of law is to ensure that court proceedings are conducted pursuant to accepted and published rules of procedure and evidence that apply to all parties. The history of this country and our State places so much importance to this basic concept that we require those who represent individuals and make decisions as to the application of rules of procedure and evidence to be highly educated and require them to meet rigorous standards of competence and moral character. We recognize, as a society, that lesser standards for those who represent our citizens will result in a denial of fairness in the adversary civil process and a circumvention of the rule of law. The practice of any area of law involves complexities that are unique to the particular area of practice and are best handled by competent professionals. Contrary to the image that some members of our bar seem to attribute to family law, this area of practice is every bit as complex as the areas of taxation, commercial litigation, personal injury, estate planning

and probate, or any of the other specialized areas of our profession. Recognizing these basic principles, it seems that providing pleading and order forms to persons not educated and trained in these complexities is not only contrary to the goal of promoting justice, it is an invitation to the perpetuation of injustice, as the devil is truly in the details.

While I recognize that the prose of the Chief Justice was well intentioned, words have meaning, and this stated aspiration of providing our poorest citizens "access to the rule of law" appears to have become a catch phrase to justify a program that is fraught with pitfalls and unintended consequences. As a result, I fear this program will disproportionately victimize the abused, intimidated, or less sophisticated party to the litigation, particularly in divorce and family law cases.

Divorce cases are much more personally complex to the litigants than other adversary civil matters, largely because of the intimacy of the litigants and the inescapable emotional factors that exist to a greater or lesser extent in all of these cases. In any divorce proceeding, one of the parties is almost always more dominant than the other. This emotional and psychological dominance, even in the absence of abuse, is a learned and accepted dynamic in the marital relationship that is often reinforced by years of love, trust, dependence, intimidation, self-image, and a myriad of other psychological factors. In a proceeding where the financial future and parent-child relationships of the parties will often be changed drastically, our profession cannot promote or allow the adoption of a "check the box" process as a substitute for advice and counsel in the name of providing our poorest citizens "access to the rule of law." The rule of law is based on fairness as a concept as well as a result. When we, as a profession, fail to recognize the potential for abuse and injustice that is so intrinsic to the divorce process in the absence of competent counseling and advice, we perpetuate and promote the circumvention of the rule of law in the name of simplicity.

Chief Justice Jefferson asserts the proposition that "tens of thousands of Texans are compelled to seek justice in our courts without legal representation." This assertion casts an incredibly broad net over the reality of my experience dealing with pro se litigants. My experience over almost 17 years as a trial judge in a family law preference court is that the majority of pro se litigants act as a choice rather than a "compulsion." More specifically, most of the cases where the person is compelled to seek relief from the court are adequately handled by the protective order unit of the district attorney, legal aid agencies, or voluntary pro bono efforts of local attorneys. Many of the pro se litigants I deal with have the monetary assets and financial ability to hire professional counsel, but choose to look for a "bargain in a process that has been represented to them as being simple. In the great majority of these cases, the parties probably get the "bargain" sought. In a small number of these cases, the result is catastrophic.

As any experienced trial lawyer or trial judge will probably agree, the Texas Rules of Civil Procedure are a complicated, yet remarkably forgiving collection of procedural rules for trained professionals skilled in the application and interpretation of those rules. To the untrained or unskilled person, our rules of civil procedure are an incredibly complex and frustrating maze with many pitfalls. As much as some of the proponents of simplistic pleading and order forms seem to try to avoid, downplay and/or deny it, divorce and other family law matters are controlled by the rules of civil procedure. Experienced lawyers can almost always correct procedural mistakes with careful research and the timely filing of the necessary motions. Additionally, most trial judges are receptive to the correction of procedural mistakes in the

attempt to achieve a just result. Self-represented litigants rarely possess the knowledge and intuitive ability to correct procedural mistakes, and trial judges, in an adversary proceeding, are severely limited as to the sui sponte correction of one party's mistakes, as such activism could prejudice the interests of the other party.

Catastrophic errors in the divorce decree or other final judgment are often not discovered until the affected party attempts to receive a benefit from or enforce a provision of the divorce decree or judgment. Unfortunately, this discovery is often made after the expiration of the court's plenary jurisdiction over the matter. What I consider even more troubling is the fact that forms that are being provided to self-represented litigants by the Texas Partnership for Legal Access, the Travis County Law Library, and possibly other entities that appear to be sanctioned by our courts seem completely oblivious to procedural rules and extensive case law and legal precedent relating to the finality of judgments in civil cases.

A troubling example of this simplistic approach can be found in the forms promulgated by the Travis County Law Library that is linked on the website of Tarrant County and probably other places. One of these forms is titled "Motion for Judgment to Correct Clerical Mistake (Nunc Pro Tunc)." The correction of clerical error by judgment nunc pro tunc is a procedural device that is only appropriate when the written judgment contains errors that contradict the court's rendition. A nunc pro tunc judgment cannot be used to correct judicial error. Since the vast majority of the divorce decrees are signed simultaneously with the rendition of the judgment, errors in the judgment will almost always be judicial error that cannot be corrected outside of the court's plenary jurisdiction by a judgment nunc pro tunc. Indeed, there is a long history of Texas case law and precedent that hold that such an attempt will result in a judgment that is void ab initio. Given this well settled concept, a divorce decree that results in an unfair result in the division of community or separate property assets simply cannot be corrected after the expiration of the court's plenary jurisdiction. Anecdotally, I have been personally required to explain this reality to more self-represented litigants than I really wish to recall. On a personal level, I have found this to be one of the most difficult rulings I have made as a trial judge in family law cases and I am certain that my brethren of the judiciary would concur with my personal distress. What is even more haunting is the knowledge that I have rendered and signed judgments that were unjust and contrary to the rule of law that will never be known to me, but will cause great harm to those who trusted the justice system and relied on the simplistic pleading and order forms approach that is apparently seen as a viable alternative to the more difficult problem of providing competent legal representation to the poor, to the demonstrable injury to the naive, uneducated, abused, intimidated, dominated or otherwise vulnerable citizens of our State.

I could probably bore you with real life examples of grave injustice that I have personal knowledge of, and many more that have been related to me by the skilled, professional and compassionate lawyers that practice family law in my court and throughout the State. That reality is the purpose of the foregoing thoughts. Recent newspaper editorial accounts of the current controversy have keyed on the financial self-interest of family law practitioners in the outcome of this project and the potential for loss of business that might result from the promulgation of these pleading and order forms. I cannot know the complete motivation of either side of the current controversy since it appears that both sides of the issue desire for the same result, but greatly disagree as to what methods will best provide the poorest of our citizens the most effective access to justice in divorce and related cases. I have no financial interest in this matter but a great interest in the promotion of justice and the protection of the integrity of our

courts and the legal profession. I submit to you that anyone involved in the promulgation of "one size fits all" pleading and order forms must accept responsibility for the reality that will result from their use.

This is not a question of providing legal services to the poor, it is a question of level and extent of unintended but known consequences we are willing to accept. It is a question that must be answered by a careful examination of our collective ethics, professional integrity and personal morality.

Thank you for your kind and patient consideration of my thoughts.

Shannon - ***February 28, 2012 4:21 PM***
While I believe that the thought behind the forms was a sincere belief that help would be made available to all needing relief, in reality, these same "forms" will (and are) causing un-repairable damage to thousands of men, women and children of Texas. Yes, a "simple" divorce, where there are NO children, NO property of any kind, and no other issues could be handled in the check the box type of form.

However, when you get to issue with children, property, retirement, debts, spousal support, ABUSE, etc., forms should simply NOT BE ALLOWED, without legal aid of some type.

Example, Mary wants a divorce from her abusive husband. They have kids, whom he has also abused. She has never filed a complaint with the police. She has no money so she goes on the internet and gets the standard "forms", fills them out, gives up support, so he won't be mad, gives him all the property, so he won't be mad, and doesnt check the box giving her the right to determine the primary residence of the children, just so he will sign it and her and the kids can get away from him. Sixty days later he picks up the kids and refuses to return them....she's had no support, she has no money, because he took it, she has nothing and the paper work so nicely provided by the State helped her do so. Are there fill in the blank forms for getting her kids back? For protesting that she was intimidated into giving up everything? What does the Court system do for her now.

While this may be an extreme example, I guarantee you it has happened. Every day these forms are being used to the detriment of the persons using them. At the very least, forms should be limited to those cases where there are no children, no property and no other issues. When the litigant gets to a question that they answer YES to in those areas, it should say STOP, YOU CANNOT USE THIS FORM. Even a limited consultation with an attorney to determine that the forms are filled out completely, correctly and the party has been advised of their legal rights, should be a minimum requirement.

How about providing CLE hours to attorney's who volunteer for Pro Bono work? Has that ever been attempted?

VERA C. BENNETT - ***February 25, 2012 3:00 PM***
So, we hand a pro se litigant a form and lead them to believe they can do it on their own. Maybe they will be successful, maybe they will stumble their way into getting the for filled out without creating any damage to themselves, their spouse and or their children. But, what if they don't? Here is what they are missing:

Legal Advice: A lawyer can explain their options, explain the law to them and guide them substantive and procedural legal process. A clerk, kiosk, Judge or set of forms cannot replace good legal representation.

Legal Counsel: or should I say, Life Skills training. Family lawyer probably spend more time counseling their clients about how to handle themselves, how to be better parents and how to overall be a better person than explaining the law.

This is so important and replacing legal counsel with a set of forms is equivalent to denying equal justice. A lawyer can explain co-parenting, taking the high road, not making disparaging remarks about the other parent, not doing drugs, encouraging better morals to benefit their children, encouraging a meaningful relationship with the other family, and the list goes on and on when considering the best interest of the children. In respect to property, much time is spent explaining the economic outcome, how their life will change, the financial benefit of working together, finding a better job, working toward debt resolution, money management and many other asset affected issues.

If the Pro Se Litigant is considered indigent, the set of forms will not counsel the client about why they are indigent. Some are indigent because of mental or physical disability and other reasons beyond that persons control. And the others who are indigent, need a lawyer who can advise them and counsel them about education, employment, behavioral issues, and other reasons that make the person continue to be indigent.

Believe it or not, we do encourage our clients (indigent and not) to clean up their houses, get off drugs, be more involved with their children, take parenting classes, get counseling, have their paramour stay out of the litigation, get jobs, obtain education, go to church, be nicer to others and a host of other character building advice that forms do not provide.

Other lawyers on this blog have described some of the horrific outcomes from the use of forms. I will not repeat those or add my own stories at this time.

We cannot ignore the big elephant (lack of legal representation for many reasons) in the room just because we want to provide a piece of paper where these people can gain access to the Courts. If more legal aid programs were available, you would see far less self represented litigation. Forms are not Access to Justice and I will not call it that, it is merely Access to the Courts.

The Supreme Court needs a task force to compile a report of what are the effects of a pro se family law case AFTER they leave the Court House.

Zoe Meigs - ***February 24, 2012 7:46 AM***
I am a family law attorney in Fort Worth, Texas. There are several fallacies being perpetuated by the creators and supporters of the Divorce Forms Project of the Supreme Court of Texas and the Texas Access to justice Commission. The first and threshold fallacy is as follows:

Fallacy No. 1.
Difficulty in obtaining a divorce is a denial of Justice.
The Commission that decided Texas needs official divorce forms is called Access to Justice. In

publicizing the need for the forms the Access to Justice Commission has stated that the legal system's failure to make it easy for non-lawyers to represent themselves in family law courts is tantamount to a denial of Justice.

While I support the right to effective assistance of counsel in capital criminal cases, and think that to deny the accused effective assistance of counsel results in a denial of justice, I cannot agree that difficulty ending a marriage quickly and cheaply amounts to a denial of Justice. At most denying an efficient divorce amounts to an inconvenience. Not being able to get a quick, free divorce does not deny a person any fundamental human right. No lives are at stake. It is not an emergency. It is not a crisis.

ATJ and SCOT paint a picture of the awful injustices people suffer in family law courts because they do not know how to use the court system. One example ATJ gives is that a victim of domestic violence may have no way to get out of an abusive relationship if that victim does not have funds to pay an attorney.
That problem, though not completely solved, has been addressed. There are many existing no-cost programs to help domestic violence victims through the court system. District Attorneys take some of the cases and get Protective Orders established. Domestic violence shelters and law clinics provide representation for those in abusive relationships.

Another serious problem in family law cases occurs when parents separate and the parent who does not live in the home with the children does not financially support the children. That problem has already been addressed by existing programs as well. The State provides free legal services to establish a child support order -- that's what the Attorney General of the State of Texas does for thousands of low income parents every day. Free. In my county there is also the Domestic Relations Office -- another free service-- to help enforce child support orders.
So what remains in Family Court business now that access to courts for domestic violence and child support matters has already been addressed? Divorce. Plain and simple. ATJ and SCOT have spent precious resources to develop forms to help people split up their families--to get out of marriages.

Is efficiently and cheaply splitting up a married couple such a fundamental right that we need to spend the limited resources available for legal aid to ensure that standardized divorce forms are widely available at no cost? Please, SCOT and ATJ, just tell it like it is: The forms do not provide Justice. The forms provide divorce.

I hope that the Texas Supreme Court Justices and other judges who are promoting the SCOT forms will hold their heads up high, and proudly tell voters and reporters in the next election, "Vote for me. I worked hard to ensure every Texan a free and fast divorce."

Lucinda A. Vickers - ***February 20, 2012 12:48 AM***
I have been an attorney since 1985 and have practiced family law (among other areas of the law) almost the entire time I have been licensed. Most of that time has been in a small town in South Texas. I certainly understand the need that poor litigants have for legal services. I do not think, however, that providing legal forms necessarily is the same thing as providing legal services for the poor. I have sometimes represented poor people as part of my practice, and my experience has been that most of them wouldn't have the vaguest notion how to obtain legal forms in a law library or on the internet. And anyone who uses legal forms, whether rich or poor, has to have

some basic knowledge of the legal system and a certain level of intelligence to fill them out properly, and that's just for the simplest legal issues. I have seen many self-written wills in my practice, and even persons with a high level of education and sophistication can screw those up. I understand that we, as lawyers, are going to have to be part of the solution, but as an attorney with a family, I am entitled to make enough money to pay my bills and support my family. As an attorney is a small community, until recently I was "forced" to take criminal appointments that I did not necessarily want, and I had to accept whatever payment I was given by the county whether I liked it or not. The same was true of juvenile appointments, appointments in Child Protective Services cases, and appointments in mental health commitment cases. I do not know any other profession in which the practitioners of that profession are forced to perform services for persons not of their choosing at a rate of pay not of their choosing. I have provided legal services to as many pro bono clients as I could afford over the years. I just don't see how providing forms helps poor persons get access to legal services. In my experience, legal forms provide people who do not want to pay for lawyers a chance to make their legal problems worse. Giving people legal "information" is not the same as giving people access to legal services. There is a reason that lawyers have to go to school for three years, and even then it takes experience to be a good lawyer. Why does anyone think that there is any way to "skip" the lawyer in the process and come out with a good result? I don't have the answer, but to me the only answer involves finding a way to pay lawyers a decent wage for providing essential legal services to poor people. Texas has done a decent job of providing some legal services in the area of child support through the Attorney General's Office. While it is not a perfect system, it is certainly better than throwing forms at people and patting ourselves on the back for providing legal services to the poor.

Karen Langsley - ***February 17, 2012 3:29 PM***
I am embarassed by the Family bar's reaction to the proposed forms. Lawyers, as a profession, work against the stereotype that we are merely "sharks" or that we're only out to take peoples' money.

These comments and this concerted effort to defeat pro se litigants' access to the court system - WHEN THEY HAVE NO CHILDREN AND NO PROPERTY AND MERELY WANT TO END THE STATUS OF THEIR MARRIAGE - is completely embarrassing. It feeds into the negative stereotypes that we are combating.

"Indentured servitude?" "The few clients left?" Are you not doing the homework and reading that these forms are only for very limited purposes? Do you not know that forms already exist at TexasLawHelp.org?

Come on, people. We are in a service profession, not an entitlement profession.

I remain embarrassed.

Maben May - ***February 17, 2012 1:55 PM***
I am a father that represented myself in two separate family law issues involving my children. In the past I have testified in Federal Courts for a living and have some level of familiarity with the Rules of Evidence and the Rules of Procedure. Nevertheless, with my knowledge and education I could not successfully navigate the Family Courts until I hired a competent attorney.

When I read that the Texas Supreme Court was promulgating forms to be used by poor litigants in Family Law matters so they could represent themselves I was appalled. If a person of my education and experience needed the assistance of competent legal counsel to navigate the system, I can not imagine the poor, uneducated litigant attempting to navigate this system armed only with forms.

In Family Court my children and my property and all that I hold dear were at risk. When I read someone acknowledge that sending the poor and uneducated into the court with nothing more than forms is like "putting someone to sea in a lifeboat without oars, sail or compass" and proceed to recommend such a course of action it angers me. It leads me to believe that they are looking for a quick and easy fix to cast the poor aside in matters that are as important and dear to them as their homes, their children and all their worldly assets.

It is my understanding that the State Bar of Texas simply asked the Supreme Court of Texas to suspend work on these forms while they looked for better ways to help the poor. It seems to me that the Texas Supreme Court should leave the poor safely on the shore while the State Bar of Texas finds better ways to navigate them through the rough waters of the Family Courts.

Janis Alexander Cross - ***February 16, 2012 10:32 AM***
I practice in the area of family law & I am a member of the Family Law Section. Family law is hard. It is complex. It affects people in very profound ways. When you are practicing family law, you often are dealing with people who are hurt, angry, scared, and uncertain about their futures. The decisions that you are required to make when getting a couple divorced, for instance, may affect their mental and economic health for the remainder of their lives. For these reasons, a legal professional is essential to protect the most vulnerable in our society.

There are some divorces that MIGHT be able to be done with a "fill-in-the-blank" forms, but those would only be if there is no real property, no kids, no retirement, and no debt. Do you know many people who are in this situation? Really?? And, if the forms are readily available to everyone, you're going to get people who DO have property, kids, debt, & retirement trying to do their own divorces. That will result in unfair results and chaos in the system.

As an example, I received a call last fall from a young woman who did her own divorce a year ago. She gave a deed to her husband for her one-half interest in the house and then she moved to Seattle. Her ex quit paying the mortgage last fall and, since she is on the mortgage, the lender began to hound her for payment. His non-payment also adversely affected her credit rating, just as she was attempting to purchase a new home. She caught up the payments, to save her credit rating. Her ex now knows that he doesn't have to pay the mortgage, because she will do it. This man is living free in a house that his ex-wife has no way to sell or evict him from. There's 25 years left on the mortgage. Would you want to be in her shoes? A lawyer would never have allowed this situation to arise. Unfortunately, having used forms from the local law library without receiving any legal advice, this young woman is now in a box with no real way out.

I weekly get calls from people who have done their own pro se divorces and want to undo the damage. - I have seen cases where the party who has possession of the kids is ordered to pay child support to the other parent; cases where the custody is given to the "wrong" parent; cases where step-children are included along with biological children; cases where children are omitted entirely; and the list goes on and on. All of this is going on when there no "official", "sanctioned"

forms available to the public. I can't even imagine what kind of chaos we're going to have once the Supreme Court-approved forms are made available! Justice is NOT being served and it is unconscionable to go forward with a "one form fits all" mentality.

Michelle - ***February 15, 2012 1:47 AM***
This game isn't going to help anyone except take away the few clients that we, as attorneys, have left. Why not close all the law schools down and give the public all the forms so that they can do it all themselves?

Indigent people aren't stopped by the Court or the legal process in getting help on forms or orders, etc. They are stopped by the filing fees and/or service fees that are required.

Instead, why doesn't the Supreme Court set up a fund to place part of our bar dues into an account to help the indigent with filing fees, or how about hiring an attorney, instaed of creating forms that will be provided to the public as a whole.

Peter Bargmann - ***February 14, 2012 10:46 PM***
I usually handle one or two pro bono family law matters each year through the Dallas Bar's volunteer lawyer program. OK, indigent pro se litigants can have their forms. But if they foul up on the forms and don't get the relief they intended, I will elect not to represent, pro bono, those who tried doing it themselves but failed.

Cheryl Osterberg - ***February 14, 2012 12:47 PM***
Answering the pleas of the State Bar, lawyers who willingly gave money to Access to Justice now find themselves on the wrong end of Bait and Switch. Things are not as represented. I, for one, thought the money was going to lawyers and clinics who could assist these people. That was certainly implied.

Pity the judges and their staffs who will have to deal with the upcoming floodtide of clueless pro se litigants.

I understand the problems of pro se litigants and assist many with their family law issues. However, turning these people loose with an armload of forms they can't understand or use properly is not the answer.

George Conner - ***February 13, 2012 12:07 PM***
I remember something called the "best interest of children" was important.

When did that take second place to checklist divorce decrees? When two people divorce, checklists and an agreed divorce decree will be entered without a hearing, and no one will look at the children, ever? The Supreme Court offers checklists, so pro se folks can divorce, and no one sees about children? No Judge, no lawyer, no one.

How thoughtful.

George Conner - ***February 13, 2012 11:58 AM***
Some of the poor, who come through my office, are poor because they got pregnant before they finished their education, some are addicted or alcoholics by inherited genes, some will never find

employment because as a young person they got arrested, some are mentally handicapped.

What will a form do for a mentally handicapped person seeking a divorce?

Mark - ***February 11, 2012 12:53 AM***
In Texas, Pro Se litigants still face a significant amount of hurdles as we have one of the most complicated state legal codes. On top of that, there are systemic barriers Pro Se litigants face on a variety of levels.

One of them includes restrictions on even the most basic legal information from the courts. Many court personal have a hard time understanding the difference between "legal information" versus "legal advice" and err on the side of caution - transferring any "pro se" litigant on to another clerk, while saying as little as possible.

Another are key differences in how "pro se" litigants are handled in Texas Rules of Civil Procedure and Texas Rules of Disciplinary Conduct. We have institutional safeguards built into our legal process that works to keep a "pro se" litigant from ever being afforded a level playing field when it comes to litigation against an attorney.

A fundamental prerequisite of affording equal access to justice must also include equal access to [legal] information. Rather that is in the format of a form or other media, that is really immaterial.

I don't think it is any great secret that practicing attorneys have extensive collections of electronic forms covering a wide range of legal needs. Yet some of them are fearful of legal forms being made available to the public?

I have a hard time believing that any indigent "pro se" litigant armed with a legal form is going to consider themselves on par with a practicing attorney. Nor is any legal form going to provide an indigent "pro se" litigant the same level of competent legal representation.

But what it will do is help streamline some of the administration processes for the courts, alleviate some of the court staff burden and provide some very basic tools to the public that affords indigents a modest ability to handle a simple legal task.

Attorneys like to draw on an analogy about how you would not dare attempt to perform brain surgery on yourself and so you turn to a specialist, a neurosurgeon – that is the same reason you need to hire an attorney. But not all legal needs falls into the same spectrum as "brain surgery". In some cases, there are band-aid level legal needs that don't require a neurosurgeon to open the box, pull off the stickies and apply.

The "pro se" indigent should be afforded the basic tools to apply their own legal band-aid. Here is a basic domestic support declaration attachment form from California: http://www.courts.ca.gov/documents/fl157.pdf. I have a hard time believing that Texas could not provide a similar public offering.

Interesting article authored by John L. Kane, US Senior District Judge titled "Access to Justice is Restricted: A Call for Revolution". He tries hard to encourage reform, but is still hesitant to truly

empower indigent litigants with statements like – "My personal opinion is that unbundling legal services is the moral equivalent of putting someone to sea in a lifeboat without oars, sail or compass."

So, he seems to prescribe against even providing a "lifeboat" and let the indigents drown as it will not put them on par with a practicing attorney. That is not an appropriate solution either.

The fact of the matter is that there are simply not enough free legal resources in Texas and we have a significant amount of indigents who have no legal voice, little or no resources and are drowning in a legal sea that refuses to acknowledge anyone who cannot afford an attorney for representation.

Our indigent waivers under TRCP 145, TRAP 20.1 are invasive and humiliating to those who have any level of dignity left. Whenever affordability of legal services is raised as a public concern, the solution proffered requires the indigent to give up that last bit of humanity in order to have a chance at qualifying for mediocre legal services.

In conclusion, all a form is, in its most basic components, is packaged legal information. If we have already ruled out making legal forms publicly available then it seems that advocating for equitable access to automated dockets, e-filing systems, court websites, automated court forms and instructions is going to be futile.

Given all of these obstacles indigent "pro se" litigants are facing, certainly we can loosen the strangle-hold on legal information.

We should be finding ways to facilitate public access to legal information and not be seeking ways to reinforce policies that continue restricting equitable access.

And I have not even began to address the outrageous court filing and court document fees that burden practicing attorneys and indigent "pro se" alike....

Patricia Baca - ***February 10, 2012 3:06 PM***
There is a real need to help the poor throughout Texas on a number of issues and on a number of different levels. In tough economic times, it is important to analyze where the greatest needs lie and the best way to accommodate those needs.

The forms promulgated by the Texas Supreme Court are for the use of pro se litigants in divorce cases where there are no children and no real property do not help those in greatest need. With so many families desperately hurting, to expend so much effort to help the poor get out of unhappy marriages seems to be the lowest priority. There are people hurt by unemployment, wrongful foreclosures of their home, child custody and a host of other legal problems that far exceed the needs of the poor to get out of an unhappy marriage.

There is no real need for the Supreme Court to promulgate another set of forms. The poor have access to forms from the internet, office supply stores, libraries and a whole host of other options. There are low cost attorneys that prepare divorce papers for litigants. Despite the efforts to make user friendly fill in the blank forms, people are still having trouble with these forms.

Forms Sanctioned by the Texas Supreme Court will give these forms and air of creditability and lull the unwary litigant into believing that the provide the necessary legal protections. When these forms harm people, the integrity of the Texas Supreme and the entire legal system will be compromised. At the meeting before the Board of the State Bar of Texas earlier this month, judges, attorneys and legal aid people from throughout the state spoke about this issue. While a few voices supported making these forms easily available, the vast majority disagreed with this practice. Judges from Tarrant, Parker, Harris and other counties stood spoke against the forms, either in person or by letter. There was a split in opinion among legal aid attorneys on the efficacy of these forms. There were heart breaking examples given by battered women's advocates of women being harmed by the use of the forms already in existence.

I see little difference between the forms already in existence and the forms promulgated by the Texas Supreme Court.

It should be noted that while the forms promulgated by the Texas Supreme Court do not deal with children or property, the instructions clearly link to a cite that does provide forms for children an property. While these forms state they do not divide retirement, they clearly allocate retirement to the party who earned the retirement. This practice is in clear contrast to what would happen in court and practically ensures that the spouse with the better job receives a more favorable outcome than the spouse that stayed at home or the lower wage earner spouse.

Here are a few real life examples that my colleagues and I have experienced with the pro se forms promulgated by funds from Texas Equal Access to Justice:

Example 1: Wife leaves abusive husband. Wife has not worked. Husband works and has a retirement worth a substantial amount of money. Forms have each party keeping his or her own retirement from his or her respective earnings. Husband receives 100% of his retirement worth tens of thousands of dollars, wife receives nothing.

Example 2: Mother fills in child support but does not put a start date, place of payment or forgets to fill in a number of blanks. Mother may be able to obtain a judgment, but she will not be able to enforce by jail time. Often low income obligors do not have jobs that can be easily wage withheld, such as cash jobs and/or day jobs. Without the threat of jail time, some obligors will never pay.

Example 3: Parties prepare Decree of Divorce but do not check the box about domicile restriction. Mother moves to another state with children to another state. Poor father who does not have the money to hire an attorney in another state can not see his children and has no legal recourse.

I have found dozens of examples in Tarrant cases of people who have trouble because they did not fill out the forms properly. In some instances, they did avail themselves of hotlines and other services. When the other party contests the case, refuses to sign or hires an attorney, the pro se litigant is lost. The pro se party is left to fight without knowledge of the Texas Family Code, Texas Rules of Civil Procedure and Texas Rules of Evidence.

Texas needs to focus on innovative ways to help the poor with mobile legal aid for the poor in outlying counties. Utilizing young attorneys to provide lower cost alternatives is another way

poor litigants can have actual legal representation. The time and efforts need to be focused on cases where children are involved and not focus on the low priority cases with no children.

All the forms in the world do not give an individual "access to justice." Texas Family Law is a complex area of the law that requires knowledge of a wide area of federal and state laws. Sending the poor into court rooms armed only with forms is a simply an invitation for them to fail in the system. Attorneys obtain years of legal training for the specific purpose of providing access to justice.

Norma Trusch - *February 10, 2012 2:45 PM*
Some states have public defenders in criminal cases. Why not have a system of public attorneys for indigent clients who need divorces? That is certainly preferable to requiring pro bono work for all attorneys, which would be a form of indentured servitude.

Patrick - *February 9, 2012 9:50 PM*
Other than divorce litigants with no children & no property, the addition of new forms is no solution. For anything more complex, forms are useless without legal advice. In fact, forms with the official imprimatur of the Supreme Court are likely to do more harm than good by lulling people into thinking they can do it themselves.

Katrina Dannhaus Packard - *February 7, 2012 12:30 PM*
I wanted you to consider if you are going to 'forms' whether they would actually be used by the indigent and needy? I practiced in Houston, Harris County for about 15 years and the last 12 years in a very large rural area serving Fayette, Colorado, Gonzales and Lavaca Counties. The truly indigent and poor haven't a clue how to find forms and usually don't have access to a computer or the knowledge to use it. Many of us (both city and rural) cut our billing rates in half or do work for free for the truly poor and needy. I do have clients come to my office with a 'form' they have obtained on line and they have made a mess of their case. It costs MORE money and more time to 'fix' their screw ups. My experience has been the folks that 'use' or 'want to use' the forms are the wannabe lawyers or the scammers that don't want an attorney involved for fraudulent reasons or because they just don't want to pay someone.

I had the same issue with my family estate. Some nut out of Dallas badmouth's attorneys all the time and convinced my Mother to let him do her Trust, her Will, etc. It's a mess. He charged her about $3,000.00. I reported him, but don't believe the bar did anything to him.

If you make 'forms' available, I sincerely believe you are playing to those scammers who just don't want to pay an attorney and those that 'think' they can 'help' someone fill out the form and scam them for money.

Why not look at what WE, as attorneys can do in required hours to help the poor or something that requires a licensed attorney to actually 'do the work'. Stick some requirements on us, or find someway to reward those that DO contribute alot of pro bono hours (and not the baby attys in big law firms that get it dumped on them for prestige to the firm). The truly faithful attorneys out there that actually 'care' about what they do and truly try to help families in need. I know a bunch of those kind of attorneys - both in the city and the rural areas.

Just my 2 cents worth.

Norma Gonzales Baker - ***February 7, 2012 6:31 AM***
I will admit, two years ago, I would have thought that legal forms should only be used by lawyers on behalf of their clients. Often I'd say to a client, "Do it yourself? That's just like the dentist telling you, 'here's the tool, pull out your tooth.'"

About the pro se divorce forms, there is no doubt that potential clients (PCs) are very likely to prepare the forms incorrectly and not achieve the result they desire. They should, however, be given the opportunity to try; PCs have the right to act as their own lawyer, even if we as lawyers may feel that we have been trained for years to "fill out the forms correctly" and to negotiate a favorable settlement for a client. If they don't achieve the desired result, we can fix it later. How many times have we had to fix the work of other lawyers?

The reality is that some PCs simply cannot afford us. I was forced to close my practice in 2011 because I was hearing, "Please withdraw from my case; I can no longer afford you," too often. Even if I was licensed the same day as our beloved friend Jack Marr, and I was charging what I considered to be a reasonable fee, my clients simply could not afford me. They chose to buy groceries and medications for their children instead.

Well perhaps I should have marketed my practice to a more affluent clientele. That would have benefited me, but what about the clients who cannot afford me (or you)? Will you (and me) consider lowering your hourly rate so that you can prepare for PCs those perfect documents you know how to prepare and which PCs deserve? Are you willing to pay for their mediations and their jury trials? If you are like me, you are saying, "I'd love to do that, but I can't afford to do so. I have to pay my office rent and my legal assistant. Oh yes, I have to feed my family too."

So where does that leave PCs? Are they not entitled to a divorce as is your wealthy client? Should they live in an unhealthy or abusive marriage just because they cannot afford you (or me)? The answer is clearly no, that's absurd!

Our entire legal system is based on EQUAL ACCESS to justice for all, not justice that only a lawyer can deliver. Some people simply don't have the luxury of competent counsel and we as lawyers have to accept that, unless we as family law practitioners are willing to do something about it. We can't just say no without offering a solution. If you (me) aren't willing to provide the legal services PCs deserve simply because they can't afford our hourly rates, we're looking foolish in the public eye when we're screaming and hollering that PCs shouldn't have access to the justice system. The public already sees us as being greedy money hungry shysters, please let us not confirm their belief.

Please understand that standardized forms promulgated by the State Bar and approved by the Texas Supreme Court will at least give us the ability to help those who genuinely need our help. That wouldn't cost us a penny!

Rev. 4.9.12

Family Law Section, State Bar of Texas and the Texas Family Law Foundation

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Family Law Section of the State Bar of Texas
Texas Family Law Foundation
Texas Chapter of the American Academy of Matrimonial Lawyers
and
Texas Academy of Family Law Specialists

Response to the Report of the Uniform Forms Task Force Submitted to the Texas Supreme Court as of January 11, 2012

Provided to the Supreme Court Advisory Committee by:

Tom Ausley
Chairman, Family Law Section,
State Bar of Texas

Brian Webb
President,
Texas Family Law Foundation

Jimmy Vaught
President, Texas Chapter
American Academy of
Matrimonial Lawyers

Diana S. Friedman
President, Texas Academy
of Family Law Specialists

The Honorable Judy Warne
Judge, 257th District Court (Houston)

The Honorable David Farr
Judge, 312th District Court (Houston)

The Honorable Marilea Lewis
District Judge (Ret.) (Dallas)

Board Certified Family Law Specialists

Mr. Steve Naylor (Fort Worth)
Ms. Joan Jenkins (Houston)
Mr. Chris Wrampelmeier (Amarillo)
Ms. Katherine Kinser (Dallas)
Ms. JoAl Cannon Sheridan (Austin)
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Mr. Charles Hardy (San Antonio)
Mr. Warren Cole (Houston)
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Ms. Heather King (Fort Worth)
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Executive Summary

Texas' low-income litigants need legal advice, not another set of inadequate forms that will harm their most important interests. As State Bar President Bob Black recently stated, "...I'd like to point out forms already exist, and if forms alone would solve the problem, we would not have the problem."[1] This paper identifies--in very specific detail--the numerous defects in the 'No Minor Children, No Real Property Divorce Kit' (kit) submitted by the Uniform Forms Task Force of the Supreme Court of Texas on January 12, 2012, demonstrating that this ad hoc check-the-box approach to litigation should be abandoned.

The identified defects run the gamut from the most fundamental constitutional issues to misdirecting the logistics of litigation. Some of the errors and omissions would amount to malpractice if a lawyer committed them while representing a client, even in a simple divorce. Other defects may actually induce an unwary litigant to engage in conduct that will result in his or her arrest and incarceration. Still other shortcomings of the kit may be less extreme, but no less threatening, to the well-being of those who attempt to handle their own cases.

In its Order Creating Uniform Forms Task Force, the Supreme Court of Texas stated that "developing pleading and order forms approved by the Court for statewide use would increase access to justice and reduce the strain on courts posed by pro se litigants."[2] It is our contention that the errors and omissions in the proposed divorce kit will actually *decrease* access to justice and do little to reduce the strain on the courts.

This response first discusses what the Court requested from the Task Force and what it received. Then, we address some fundamentals regarding the Supreme Court's powers in order to focus consideration on the many unanswered policy and practical questions raised about the legal nature of the kit and how various actors in the judicial system will be expected to respond to the forms and the instructions that comprise the kit.

The response concludes with a seven-page catalogue of the errors, omissions and problems within each form that are not addressed in the response.

We respectfully request that, after evaluating the concerns stated in this paper, the Supreme Court Advisory Committee recommend that the Texas Supreme Court reject the proposed forms and allow the State Bar of Texas to propose and manage effective solutions to these issues.

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[1] *Bar Task Force to Study Issues Related to Indigent Pro Se Litigants*. Texas Lawyer, February 6, 2012

[2] *Order Creating Uniform Forms Task Force, Miscellaneous Docket No. 11-9046, In the Supreme Court of Texas*

Policy Objections to the Court's Endorsement of the Divorce Kit

None of the organizations joining in this response relishes conflict with the Texas Supreme Court. To the contrary, we seek to maintain respect for the Court and to protect the public by clearly and definitively demonstrating that the work product of its Uniform Forms Task Force's falls well short of the standards that are expected of Texas' highest court.

The full explanation below of the extraordinary number of critical defects in the Uniform Forms Task Force's first product was prepared to demonstrate some of the reasons why the organizations object to a do-it-yourself lawsuit approach—especially if the Court's name is to be endorsed on the forms. The sheer volume of serious flaws described below compels the conclusion that the ad hoc approach to this undertaking has not worked and will not work.

Stated generally, our policy objections are:

- The Court's endorsement of forms under these circumstances will lull pro se litigants into a false sense of security as they attempt their own litigation and, as will be seen, raises a host of unaddressed issues for the litigants, the courts and the officials who provide judicial support functions.
- The defects in the proposed forms would cause many pro se litigants who rely on them to suffer *actual harm* in terms of lost rights and depleted assets, even though the entire purpose of the effort is intended to provide *access to justice.*
- The proposed forms may lead people to believe "something has been done about the pro se problem," but, in reality, they will neither increase access to justice nor improve judicial efficiency. In fact, the forms may cause an increase in the number of self-represented litigants who experience problems they do not appreciate or, in many cases, even recognize—before it is too late.

The Supreme Court Has Not Received The Forms It Expected From the Uniform Forms Task Force

From mid-March 2011 to mid-January, 2012, the Supreme Court's Task Force on Uniform Forms labored to produce a simple set of litigation forms, with the intention of affixing the Court's good name as a certification of their sufficiency for use in all Texas courts with family law jurisdiction. Nine months of work and numerous revisions later, the Task Force sent its product to the Court.

The Task Force's report conveying the forms included this sentence:

"The Task Force has now completed *a kit* for an *uncontested divorce* with *no children* and *no real property*."[3] [*emphasis added*]

The Court then asked its Advisory Committee to comment on the forms via Justice Hecht's conveyance letter, which stated:

"The Task Force reported to the Court on January 11, 2012, that it had completed forms for use in an *uncontested divorce* involving *no minor children or real property*. The Supreme Court requests the Advisory Committee to review the report and make recommendations regarding the forms and their use."[4] [*emphasis added*]

It is clear from the quotes above and the course of dealing between them over many months, that forms for an uncontested divorce with no children and no real property were what the Court expected from the Task Force.

The Task Force clearly did not send the Court a petition for use only in uncontested cases. As will be seen below, since the petition form presented to the Court may apply to both contested and uncontested cases, the forms and the rest of the kit may also not be limited to cases without children, real property, pensions and other assets and can, and will be, used beyond the intended purpose.

The failure of the Task Force to comply with the Court's request is exacerbated by its failure to attend to many crucial details, from those necessary to comply with constitutional and statutory laws, to those necessary to handle even the basic logistics of litigation. The errors and omissions that characterize the Task Force's product present conflicts within the kit itself and even within individual forms within the kit.

The Adoption of Uniform Pleading Forms Raises Questions of Power and Causes Confusion

The Court's foray into uniform forms raises questions about the proper exercise of its powers. The core powers of the Texas Supreme Court are established in Article 5 of the Texas Constitution. In addition to the first section's broad grant of the "judicial power," Article 5, Sections 31(a) through (c), provide:

"(a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

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[3] *Letter from Supreme Court of Texas Uniform Forms Task Force dated January 11, 2102*
[4] *Letter from Justice Nathan Hecht to the Supreme Court Advisory Committee dated January 25, 2012*

(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law."

Within these subsections, a form of executive power (the power of administration) and a form of legislative power (the power of rulemaking) are given to the Court, the attempted exercise of which, in this instance, is subject to valid criticism.

Subsections (a) and (b) contain three common elements:

1. The power granted must be exercised as "...*necessary* for the efficient and uniform administration of justice;"
2. The Court's exercise of these powers is limited in that it must act *consistent with the laws of this state*; and
3. R*ulemaking* is the method prescribed to carry out those powers.

The Court has broad authority in determining what constitutes the "judicial power" under Article 5, Section 1; an important feature of the separation of powers. Through this power, the Court is authorized to decide legal cases, interpret the law, develop the common law and supervise the legal profession.

The Court may also have considerable leeway under Section 31(a) and (b) to determine what is "efficient and uniform,"[5] but it seems clear that any exercise grounded in either subsection that is contrary to a statute would be "inconsistent with the laws of this state." [*See the discussion on Page 16 regarding the kit's conflicts with the Family Code*] It also seems clear that exercises of power under these two provisions have the effect of rules because rulemaking is the only expressed mechanism by which the Court is authorized to act regarding administration and civil procedure.

To date, the Court has not clearly articulated whether it is acting pursuant to one or another provision of Article 5 in support of its work with check-the-box divorce forms. In his letter to State Bar President, Bob Black, the Chief Justice stated "[t]he Constitution requires the Court to administer justice"[6] which could be invoking the language of either Section 31(a) or (b) or perhaps both subsections.

The proponents have given various justifications for the forms approach, including:

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[5] *Letter from Chief Justice Jefferson to State Bar President Bob Black dated January 25, 2012*
[6] *Letter from Chief Justice Jefferson to State Bar President Bob Black dated January 25, 2012*

- The forms will improve the administration of justice by injecting uniformity to help pro se litigants know what to do, judges to efficiently process cases and clerks and others to assist litigants through the process.
- The forms will improve access to justice by making it possible for a pro se litigant to understand and apply the proper procedures and handle their own cases accurately and at less expense but with a proper result.

The first justification seems to invoke the Court's powers of administration under Article 5, Section 31(a). But, inspection of the Court's rules classified as "rules of administration" demonstrates that the proposed forms are not of the same character as the rules typically found in that category.[7]

Because the forms are intended to be used to initiate and conclude a case, and complete all the substantive and procedural elements of a case, they seem to be more in the nature of rules of civil procedure, which would be adopted pursuant to Article 5, Section 31(b). And, the forms bear far greater resemblance to the Court's exercise of authority in the category of civil procedure.[8] Yet, we note that the Texas Legislature has codified the procedural and substantive elements of a divorce in its enactment of the Texas Family Code.

Neither the Court nor the forms' proponents have invoked the provisions of Section 22.004(c), Government Code, the procedure specified by the Legislature that must necessarily be complied with in adopting the forms to the extent they conflict with statutes, and in this specific instance, the Texas Family Code. Although the instructions and forms in the referenced kit conflict with various procedural rules established by statute, the Court has not indicated that it will employ the powers granted to it by the Legislature to revise statutes involving civil procedure. That power is governed by Section 22.004(c), Government Code, which reads:

> "(c) So that the supreme court has full rulemaking power in civil actions, a rule adopted by the supreme court repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed. At the time the supreme court files a rule, the court shall file with the secretary of state a list of each article or section of general law or each part of an article or section of general law that is repealed or modified in any way. The list has the same weight and effect as a decision of the court."

Whether the forms constitute an exercise of administrative power or civil procedure, if the forms and their use have the status of rules, it is critical to know how the instructions or the forms in the referenced kit relate to other rules of administration or civil procedure, whether Court-made or statutory. If there is a conflict between the instructions, the forms and statutory or court-made rules of procedure, which will govern?

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[7] *See Rules of Judicial Administration,* http://www.supreme.courts.state.tx.us/rules/rja-home.asp

[8] *See Texas Rules of Civil Procedure,* http://www.supreme.courts.state.tx.us/rules/trcphome.asp

The answers to these questions are especially important since the proposed forms under consideration are referred to—within the instructions and forms themselves—as a kit, implying that the pieces fit together in some coherent manner, although it will be seen below that the package itself fails to achieve this coherence for many reasons.

The Court's prior foray into the uniform forms business—its Protective Order Kit--does little or nothing to shed any light on the legal nature of the kit. If the Court uses the approach to the proposed divorce forms that it used with the Protective Order forms, the confusion regarding these important issues will be exacerbated and have a greater negative impact.

The entire order establishing the Protective Order forms reads as follows:

> **"ORDERED** that:
>
> "The following protective order forms are *approved for use* in obtaining a protective order under Title IV of the Texas Family Code. *Use of the approved forms is not required.* However, if the approved forms are used, the *court should attempt to rule on the application without regard to technical defects* in the application. A *trial court must not refuse to accept the approved forms simply because the applicant is not represented by counsel.*" [*emphasis added*][9]

First, it is hard see how "efficiency"—a primary purported rationale of the current effort—is to be achieved by uniformity unless use of the proposed forms is required. However, the order says use of the protective order form is not required, only that it is "approved" for use.

The Texas Access to Justice Commission (ATJ) has complained about courts not accepting self-represented litigants' filings and imposing other barriers that are unfair to pro se litigants. In that light, the last sentence of the order seems to bind courts to accept the protective order forms from an unrepresented litigant who proffers them.

More importantly, a February 6, 2012, ATJ report to the Court states that its Self-Represented Litigants Committee and subcommittees have determined that no rules are required "at this time" in relation to the divorce kit proposed for the Court's adoption.[10] Then again, Ms. McAllister has stated publicly that the proposed forms would be required to be accepted by courts.[11]

Second, there is no definition of the term "technical defects" in the order by which the Protective Order forms were adopted. There is no guidance that Court had a *legal* standard in mind when it used that language. Nor is there any standard of review promulgated by the Court to apply to a denial of a protective order that might shed light on what constitutes a technical defect. Surely, provisions inserted into an order that are contrary to constitutional and statutory provisions could

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[9] *Order Approving Protective Order Forms, Misc. Docket No. 05-9059, In the Supreme Court of Texas*
[10] *Letter from Trish McAllister to the Court conveying her Supplemental Report to the Court on the Activities of the Self-Represented Litigants Committee of the Texas Access to Justice Commission dated February 6, 2012*
[11] *Testimony of Trish McAllister to Solutions 2012 on February 10, 2012*

hardly be considered to be technical defects that trial courts are urged by the Court to overlook. Since protective orders provide the basis for violators' arrest and incarceration, the term "technical defects" seems extraordinarily important.

The language of the Order Approving Protective Order Forms could be just a "guideline," perhaps an indication that the Court wants judges to liberally construe protective order petitions. But how are judges, applicants and respondents to know that from the language chosen and what standard would the Court apply to review a denial? The point is that the order deploying the Protective Order forms is insufficient to make certain the *legal* nature of the forms in that kit or the newly proposed kit. Therefore, at this time, the extent to which the language of that order constitutes a rule is not at all clear; the forms are authorized but not required for users, but the order may be binding on courts if the user is not represented, irrespective of whether the forms, as completed by the user, comply with constitutional and statutory law and technical rules of civil procedure.

At this time, it is not known whether the Court would use the same "technical defect" language in adopting the newly proposed forms, but, doing so would be problematic for reasons beyond those raised regarding the protective order forms.

The Legislature has already adopted Family Code standards for what constitutes liberal pleading in divorce cases. Sections 6.402(a) and (b), Family Code, provide:

> "Sec. 6.402. PLEADINGS. (a) A petition in a suit for dissolution of a marriage is sufficient without the necessity of specifying the underlying evidentiary facts if the petition alleges the grounds relied on substantially in the language of the statute.
>
> (b) Allegations of grounds for relief, matters of defense, or facts relied on for a temporary order that are stated in short and plain terms are not subject to special exceptions because of form or sufficiency."

In addition, long-established precedent clearly authorizes judges to liberally construe pro se pleadings and briefs. *Cooper v. Circle Ten Boy Scouts of America*, 254 S.W.3d 689, 693 (Tex. App—Dallas 2008, no pet.) (citing *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978)).

The presence of these Family Code pleading provisions and established case law raises several questions:

- If the Court uses the same "technical defect" language in an order adopting the proposed divorce forms as was used in adopting the Protective Order forms, would that be in replacement or revision of, in addition to or in conflict with the standards of Section 6.402, Family Code?

- If the Supreme Court approves a form, does that mean it cannot be "technically defective" and that it satisfies Section 6.402 *per se*?
- Would the Court's admonition for courts to overlook "technical defects" constitute a revision of the long-established case law regarding the liberal construction of pro se pleadings?
- Would the Court be deciding by rule or order that *all* pleadings in Court-approved forms satisfy the pleading rules in *all* cases initiated using the forms?
- Would the forms effectively cancel out technical pleading and practice requirements promulgated by statutes or existing rules?

The same precedents that authorize judges to liberally construe pro se litigants' pleadings, state that pro se litigants are to be held to the same standards as attorneys regarding applicable laws and rules of procedure because otherwise a pro se litigant would have an advantage over a litigant who is represented by counsel. *Cooper* at 693 (citing *Mansfield State Bank v. Cohn* at 184-85).

Despite the long-established rule that pro se litigants are held to the same standards as an attorney with regard to the substantive law and procedural rules, a recent family law case calls into question whether the Court intends to adhere strictly to that principle. In *Wheeler v. Green*, 157 S.W.3d 439 (Tex. 2005), after forgiving a pro se litigant's multiple missed deadlines and failure to properly move to withdraw admissions, the Court stated: "[b]y contrast, if the same elementary mistakes had been made by a lawyer, such conclusion might not be warranted." [*Id. at Footnote 1*]

A more recent case raises concerns about the Court's consistency regarding pro se litigants. In *Pena v. McDowell*, 201 S.W.3d 665 (Tex. 2006), the Court determined that a court clerk told a pro se inmate his appeal was defective but cited the wrong rule. Although the Court determined that the inmate's filing was actually defective under another rule and "...recognize[d] that courts of appeal have routinely dismissed similar cases on the basis of [the cited rule] even though a dismissal under [the other rule] would have been more appropriate...," the Court stated:

> "While an experienced attorney might have been able to discern from the court's citation to rule 25.1(e) that there was a problem with the certificate of service, our decision today does not amount to a special accommodation to a pro se litigant. To the contrary, it has long been our position that pro se litigants are not exempt from the rules of procedure..." [*Id. at Footnote 3*]

However, in support of this statement the Court cited *Wheeler v. Green*, the case discussed above in which the Court implied that pro se litigants not be subject to the same rules of procedure.

The Kit Conflicts with Established Constitutional Principles of Due Process

Proponents of check-the-box divorces contend they are necessary to assist those who cannot afford a lawyer. But, they also say that persons of all income levels have a right to represent themselves so they have a need for forms, too, and besides, there is no way they can keep higher income people from using the forms.

While opponents of the forms disagree with those propositions, the proponents must admit that their position necessarily means the forms they are espousing must be usable for all couples who have no children and none of the types of property that the kit expressly excludes.

However, the petition omits fundamental necessities of constitutional due process applicable to a large class of such persons. Self-represented litigants will be lulled into using forms that will, in fact, not be properly utilized in many cases for which, on the surface, the forms purport to apply. We cite the following examples:

- The petition does not require the petitioner to state facts that authorize the court to exercise personal jurisdiction over many respondents, despite the fact that the plaintiff bears the initial burden of pleading sufficient allegations to bring a defendant within the provisions of the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code, Sections 17.041-.045. *See BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002); *also see Schwartz,* A Practitioner's Guide to the Exercise of Personal Jurisdiction by Federal and State Courts in Texas, *2005 Page Keeton Civil Litigation Conference, University School of Law.*

In light of the presence of Sections 6.305 and 6.308, Family Code, most Texas judges require petitioners to plead the basis for jurisdiction over the respondent in the beginning.

However, in the Jurisdiction portion of the Original Petition [*Section 3, Page 2*] there are nine boxes divided into two segments, one targeted at the six-month Texas residency requirement of the Family Code and the other at the 90-day county residency requirement of the Code. In each segment is an instruction to the petitioner to "Check all boxes that apply."

Assume that the potential respondent is not a Texas resident and has never had any contacts whatsoever with Texas so that he or she is not constitutionally subject to personal jurisdiction in this state. Further, he or she does not receive service or, having received it, files no answer and does not personally appear.

The petitioner can "check all boxes that apply," as directed, showing that he or she has resided in the county for the last 90 days and in Texas for last six months so that the court has jurisdiction over the petitioner. Yet, there is no requirement that the petitioner must state sufficient jurisdictional facts to allow the court to exercise jurisdiction over the respondent. All blanks related to the respondent can be left blank without deviating from the instructions.

In this situation, a court could enter a decree dissolving the marriage but could not exercise jurisdiction over any marital property. *See Section 6.308, Family Code.* So, a form that purports to be useful for dividing personal property cannot be used for that purpose in this situation, despite the fact that the petitioner has followed the instructions accurately and completely.

This would not be a rare problem. In fact, the problem is so well known that it is directly addressed in separate provisions of the Family Code. *See Sections 6.305 and 6.308, Family Code*] Further, the Texas economy is global and home to many persons from other states, Mexico and other foreign countries. But, the spouses of many of those immigrants do not have constitutionally-required minimum contacts with Texas. Experienced family lawyers, including those who handle cases for indigent petitioners, frequently see cases in which a respondent spouse is not subject to personal jurisdiction.

- The Instructions do not resolve the problem of personal jurisdiction described above. The very first segment of the Instructions (Page 1, top left hand column) states:

  > "You can use these forms when:...On the day you *file* the divorce, you or your spouse must have **lived in Texas for at least six months and** in the **county where you are filing for divorce for at least 90 days**..." [underlining of the word "or" was added; the italicizing and bolding are in the original]

  This language clearly says the form may be used if one "or" the other spouse meets the length of presence requirements, hence the use of the disjunctive.

  The Instructions on Page 1, top right hand column, also say:

  > "Do not use these forms if:...You and your spouse are **not residents of Texas**." [*underlining added*]

  This double-negative probably means that the form should not be used if *both spouses* are not residents, hence the use of the conjunctive "and." It could mean the form should not be used if *one* of the spouses is not a resident, but that would conflict with the affirmative statement that the form may be used if one or the other spouse is a resident.

  The foregoing attempt to make sense of the instructions as they relate to the issue of jurisdiction ignores the fact that the affirmative instruction regarding who can use the form is very *specific* and never uses the word "resident," while the "do not use" segment uses the *general* term "resident" but never defines that term, even though it may have various definitions depending on the legal context at issue.

  The Instructions and the Answer compound the jurisdiction error by misstating the law, once again by omission. The Instructions [*Page 2, left column, Section B and Page 3, Step 4*]

indicate that there are only two options *a respondent* may exercise when receiving a copy of the petition: (1) file an Answer or (2) sign the Waiver. The petitioner is given the option of having the respondent served with the petition formally, but the respondent's options are still described as answering or waiving his or her rights.

The errors in these forms are that neither the Instructions nor the Answer tell the respondent or the petitioner that there are two other options available to the respondent who may not be subject to personal jurisdiction: (1) file a special appearance, or (2) do nothing. Neither the Answer nor the Instructions warn the respondent that, by filing the Answer, he or she voluntarily submits himself or herself to the jurisdiction of the court, in effect waiving any defense to the jurisdiction that the party may have had. To be legally correct, there would have to be such a warning and provision for a special appearance, which is allowed to be filed simultaneously with an answer, or separately, without submitting to the jurisdiction of the court. *See Rule 120a, Texas Rules of Civil Procedure.*

Most important, these errors would effectively work in favor the petitioner and against a respondent who relied on the Answer and Instruction. That is, the forms taken as proposed would work against the interest of the respondent by failing to advise him or her of important rights, effectively putting the Texas Supreme Court on the side of the petitioner. Thus, the danger of the Court writing the pleadings for litigants is apparent.

This misstatement of law is compounded by the fact that the petitioner is instructed to give the answer to the other party. (See Pro Se Litigants Placed into Conflicting Roles on Page 24). It is a substantial re-engineering of the legal process to have one party responsible for providing the other party's pleadings, even more so since the Instructions tell the petitioner what advice to give to the other spouse. Were a lawyer to do so, there would be grounds for a malpractice claim and the violation would be subject to a grievance proceeding.

By directing a self-represented petitioner to do what a lawyer would be penalized for doing, the proposed forms, backed by an order of the Supreme Court, would establish different rules for self-represented litigants than those by which represented litigants are to be governed. This is contrary to the established law of this state.

We submit that the forms discussed do not increase access to justice.

In his letter to State Bar President Black, Chief Justice Jefferson stated that the Court "will approve forms only if they are substantively correct..." Further, the entire rationale for the forms project is to produce forms that are legally sufficient and to signify their legal sufficiency to the trial courts by having the forms carry the phrase "Approved by the Supreme Court." [12]

[12] *See Footnote 5*

The jurisdictional defect is fundamental and with that defect, the petition, and the resulting decree of divorce, will not be substantively correct or legally sufficient for use in many cases, despite the representation, intended by affixing the statement that the Court approved them, that they are correct and sufficient.

The Chief Justice also stated that the forms must be "...reasonably calculated to accomplish the goal of greater access to the courts..." To gain access to the courts, a non-indigent divorce petitioner who files in this situation—doing everything the kit instructs or requests of him or her—pays a filing fee between $260 and $300. This raises three possibilities:

1. If the petitioner pays the fee to obtain a clerk-stamped filed copy, and later discovers that the petition is defective because it fails to state jurisdictional facts, the petitioner's fee will be lost when the case must be dismissed. The judge will be ethically barred from coaching the petitioner regarding the facts needed to sustain jurisdiction, since a plea to the jurisdiction by the non-resident spouse would be part of that spouse's defense to any action by the court affecting that spouse's interests. This will leave the trial court facing an angry constituent who says: "I followed the instructions to the letter and the Texas Supreme Court said these pleadings are legally sufficient."

2. If the clerk to whom the petition is presented for filing sees that there are no boxes checked regarding the respondent's residency and rejects the form before it is filed, the petitioner would not lose his fee. But, the clerk would be performing a function only a judge can perform, which is effectively ruling that the petition is legally insufficient in that it does not state facts that would give the court jurisdiction over the respondent. This is a function that cannot be delegated to a court clerk and would leave the clerk facing an angry constituent who could rightly say: "But, I did exactly what the Texas Supreme Court told me to do." Alternatively, the clerk could say: "I'll accept it, but unless you check one of these other boxes, your case is going to be dismissed and you'll lose your filing fee." In that instance, the clerk would be giving legal advice and, in most instances, without a law license. The clerk will once again face an angry constituent who followed the instructions only to be rejected.

3. When court clerks receive a petition filed by a lawyer, they do not and will not review the pleadings prior to or after accepting it for filing to determine whether the petition contains sufficient information to satisfy the Texas long-arm statute. Nor is a judge going to tell a lawyer how to cure a deficient pleading. Texas lawyers and their clients must live with the lawyers' errors and omissions. Requiring clerks to review check-the-box petitions, or have judges coach the litigant, would constitute a separate and different rule for self-represented litigants, who should also be required to live with their mistakes. Furthermore, it is highly doubtful that the Court could or would delegate that function to the clerks, even by exercise of its rulemaking authority.

4. The indigent petitioner who pays no filing fee will also be harmed by the jurisdictional defect in the forms. That petitioner will show up after the 60-day waiting period only to be told by the judge the petition is defective. That will mean that his or her interest in the community property cannot be divided. Any plans the petitioner may have made in reliance on access to his or her interest in the property will have been defeated or delayed. In addition, the respondent would gain at least 60 days extra to cash in the community's bank account, sell the car and take any number of other actions that dissipate or destroy property with no consequence, until a later, correct divorce is refiled.

- Even though a Texas court may not exercise jurisdiction over a non-resident's property (or children) in this situation, the court could dissolve the marriage. *See Section 6.308, Family Code.*

  This raises a number of additional problems:

  1. Assuming there is community property present in the case, access to a partial, divorce-only remedy does not appear to meet the Chief Justice's goal of increased "access to justice" when issues of marital property remain unresolved

  2. If the spouses have community property or children, and the court dissolves the marriage, another lawsuit(s) would have to be filed in order to address the property and children that were not addressed in the divorce.

     This result is also contrary to the state's long-established policy of avoiding a proliferation of lawsuits.[13] It would also at least double the non-indigent petitioner's costs of litigation because each new suit would require an additional filing fee and costs for service of process. Regarding an indigent person's filing, the uncompensated costs borne by the taxpayers will double for the class of cases with this jurisdictional defect.

  3. The Jurisdiction portion of the Final Decree of Divorce [*Section 3 on Page 2*] contains boilerplate language stating that the Court "heard evidence and finds" that it has jurisdiction over the parties and that the Original Petition meets all legal requirements.

     Presumably, it is at this point in the process that a conscientious trial court brings home to the petitioner, who followed all instructions, that his pleadings with respect to jurisdiction are flawed. But, how is a petitioner's evidence of jurisdiction to be admitted if there is nothing to direct him to plead it properly? In addition, how will the respondent know to challenge any jurisdictional allegations of which he or she has no notice because they were not plead?

[13] [*See, Section 7.01 et seq., Family Code; see also Rules 39, 40 and 51, Texas Rules of Civil Procedure*

4. If a court does not closely review the pleadings and fails to hold the petitioner to established legal requirements for pleading and proof of the court's jurisdiction over the other spouse, an order regarding marital property would be void.

   Third parties in possession of the community property purportedly divided by an order that is void due to lack of jurisdiction will have no basis for withholding that property from the petitioner if the petitioner presents the order to claim it. As a practical matter, the other spouse will have been deprived of his or her property with little chance to recover it. It cannot be said that the order was procured by fraud because the petitioner did exactly what he or she was told to do by the Texas Supreme Court. Surely the absent spouse's loss of his or her property interest would not correspond with the Supreme Court's determination regarding whether access to justice has been increased.

The Kit Conflicts with the Texas Family Code

On its face, the kit is not for use in a divorce where the couple has real estate. In testimony before the first meeting of the State Bar's *Solutions 2012* task force, ATJ Executive Director Trish McAllister stated that if a case initiated by use of the kit turned out to actually involve real property, for example, the real property would have to be divided in a future lawsuit.[14]

Consistent with that explanation, neither the proposed Original Petition nor the proposed Final Decree of Divorce contain any provision for real estate. It is only by the absence of any provision for division of real estate that the issue remains open for question, there being no written policy clearly expressing Ms. McAllister's position. Then again, if that is the result, there is no reason why the same analysis would not apply to other types of property, such as retirement funds, for which the proposed forms are supposedly not to be used and for which there are no provisions in the petition or decree. (This sets aside the fact that there also is no prohibition against modifying the forms.)

One problem with Ms. McAllister's analysis is that a number of sections of the Family Code require that certain claims be addressed by the court in a suit for dissolution of a marriage:

- Section 7.001. Requires the court *in a decree of divorce* to order a division *of the estate* of the parties (i.e., the entire estate).
- Section 7.002(a) and (b). Requires the court *in a decree of divorce* to order the division of specified real and personal property wherever located.
- Section 7.002(c). Requires the court *in a decree of divorce* to confirm as separate property income and earnings from certain property.
- Section 7.003. Requires the court *in a decree of divorce* to determine the rights of the parties in pensions, investments and the like.

[14] *See Footnote 11.*

- Section 7.004. Requires the court *in a decree of divorce* to specifically divide certain rights under insurance policies.
- Section 7.007. Requires the court *in a decree of divorce* to determine rights to reimbursement of the parties.
- Section 6.406(b), Family Code: If the parties are parents of a child, as defined by Section 101.003, and the child is not under the continuing jurisdiction of another court as provided by Chapter 155, it requires that the *suit for dissolution of a marriage must include a suit affecting the parent-child relationship* under Title 5. [emphasis added]

While the Instructions and the forms tell a petitioner not to use them for cases involving certain types of property and children covered by the statutes cited above, there will inevitably be cases filed using the kit in which the couple actually has children, pensions or real property. It is reported by judges that litigants are adapting forms to uses and situations for which existing forms were not intended. Among the many questions presented if the forms in issue are adopted are:

- What if the respondent finds out she is pregnant during the 60-day waiting period or after?
- What if she is pregnant by someone other than the spouse and has concealed it as of the time the petition is filed?
- What if one party does have an interest in a retirement account that the other party does not know about, that has been concealed or the other party simply does not understand that he or she has an interest in it?
- What if there is real property involved?
- Since use of the kit is stated to be for cases without kids, real property or pensions, in light of the cited Family Code provisions, what is a court to do when it becomes apparent that kids, real property or pensions are actually involved?
- Will a court be required or authorized to give effect to the limitations on use of the kits stated in the Instructions or the forms themselves?
- Since the Supreme Court has stated no intention to exercise its rulemaking procedures under Section 22.004(c), Government Code, can the Court's adoption of the kit be said to amend or overrule the cited Family Code provisions?
- Will the Supreme Court be required by the mandatory language in those statutes to address the items for which the kit is supposed to be inapplicable?
- How would the trial court be able to proceed since the pleadings would presumably not address those issues, there being no boxes to check or spaces to fill in regarding those items?
- Is the trial court to advise the petitioner regarding the defects in the petition and advise him or her on how to comply with the Family Code?
- Is the court authorized to dismiss the petitioner's case for using the kit improperly?

- If the omission of children or one of the types of property cited above was intentional, may the petitioner be prosecuted for perjury or falsifying a government document?
- If the omission of children or one of the types of property cited above was intentional, will the petition be considered a judicial admission so that any excluded rights or property should simply be awarded to the respondent?
- Will a petitioner who uses the kit but makes false entries regarding the existence of children be subject to sanctions to the same extent as an attorney would?
- Because there is no place in the forms to list real property if it were present, would a petitioner who uses the form anyway be subject to sanctions when the property was omitted because there was no place for it on the form?

Each of these factual situations is known to happen with regularity. Without legal advice, these issues will be ignored or improperly addressed. The easily anticipated problem of actual facts not corresponding to the intended uses of the kit is entirely ignored within the kit itself. Further, as documented above, Ms. McAllister told the Court that ATJ's Self-Represented Litigants Committee sees no need for rules "at this time." Who then will give the trial courts controlling advice on this issue, if the proposed kit is put to use? The Texas Supreme Court has not given any guidance regarding how it will factor the presence of these very real problems into its calculation of whether access to justice will be increased by using these forms.

The Kit Incorrectly States the Law Governing Separate Property

On Page 2, Section 6 [*3rd paragraph in box)*], the Final Decree of Divorce states the following:

"*About separate property*: If either party receives...money from a lawsuit that is not lost wages, it is separate property..." [italics in the original; underlining added]

Section 3.001(3), Family Code, only characterizes a recovery for personal injuries sustained by a spouse during marriage. It does not require that the damages have been recovered in a lawsuit, as the form suggests, and it does not properly limit the application of separate property to recovery for other damages. Contract damages or tort damages based on harm to property, for example, are not within the separate property characterization of the Family Code.

The items in the decree for Husband's Separate Property *(Page 3, Section 2)* and Wife's Separate Property [*Page 5, Section 2*] are also defective for the same reason, which will greatly compound the loss one or both parties will suffer by using the kit because these are the operative provisions in the decree by which their interest in some property will be permanently lost. Who will be held accountable when these defects cause a litigant to lose his or her important assets because the form was wrong—even though it carried the Supreme Court's endorsement? Again, we suggest that access to justice is not being served.

Inconsistencies Between the Instructions and the Forms and Within the Forms Themselves

Neither the Instructions nor the forms themselves state that the Instructions govern the use of the forms. If there is a conflict between the Instructions and the form as promulgated—or as the form is actually used—how is a petitioner or judge to know whether the petition or the Instructions governs the form's use?

For a judge to even observe that there is a conflict between the Instructions and the form as actually used, the judge would have to:

1. know about the Instructions in sufficient detail to become aware of the conflict; and

2. know whether the form's actual use is all that matters or be certain of the legal effect of using the form in violation of the Instructions.

It is critical to remember that trial court judges will not see the Instructions. Only the Original Petition will be filed; there is no direction for the petitioner to include the Instructions with the petition and it is likely that a clerk who receives the petition would not accept the Instructions for filing. Nor is there any language in the Instructions or the forms that alerts the petitioner or the judge to any rule that would resolve the conflict and, again, ATJ's Self-Represented Litigants Committee says it sees no need for rules "at this time."[15]

There are direct conflicts between the Instructions, which are part of the kit, and the forms within the kit. For example:

- The Instructions tell a petitioner: "Do not use these forms if: You and your spouse do not agree about everything in your divorce." [*First page, right column at top*] However, there is no language *in the Original Petition* that limits its use to uncontested divorces.

  Moreover, the Original Petition at Section 7 (Page 4) states:

  > "My spouse and I will try to make an agreement about how to divide the personal property and debts we acquired during our marriage. *If we cannot agree, I ask the Court to divide our personal property and debts according to Texas law.*" [*Emphasis added*]

  This portion of the Original Petition therefor allows for a contested case, but the Instructions tell the Petitioner "do not use this form" if the case is contested. It may be that the Uniform Forms Task Force recognized these forms would be used for contested cases as Section 1 of the Original Petition requires the petitioner to tell the court what level of discovery will apply. The levels of discovery from which a petitioner may choose [*Original Petition, Page*

[15] *See Footnote 10*

1, Section 1] describe in Level 1 petitioners having "less than $50,000 and in Level 2 "All other couples," which presumably anticipates estates in excess of $50,000.

The following questions then arise:

- Which controls, the Instructions or the Original Petition?
- What is the effect of using this form even if the petitioner knows full well the other spouse is not in agreement or has not been consulted?
- If the form is for an uncontested case that becomes contested, will the case be dismissed?
- If the form can be used for a contested divorce anyway, what purpose is served by the language in the Instructions saying "do not use" this form?

There are critical inconsistencies within the forms themselves. For example:

- The Original Petition *does* tell the petitioner not to use the form if children, real property, retirement that will be split or "alimony" are actually present in the case. [*Page 1, highlighted in box*] Further, the Original Petition states:

  > "You may be able to ask the judge to order a sale of your home and divide the proceeds of the sale. You may be entitled to part of your spouse's retirement. You may be entitled to spousal support. *Using this divorce kit will not allow you to do any of these things.* You will need to consult an attorney." [*Page 1, bottom paragraph highlighted in box; emphasis added*]

The italicized language quoted above from the Original Petition may indicate it is intended to be binding in that "using the kit will not allow" certain enumerated things to be done. However, it begs the following questions:

- Does this language bind the judge, the petitioner, the respondent or all of them?
- Would using the form for a case involving the items in the quoted language be subject to dismissal upon motion of the respondent or by the Court sua sponte?
- After the court has learned that there are elements present in the case for which the forms are not supposed to be used, would the court allow the petitioner to amend the petition so that it conforms to the purported limitations stated in the forms and the instructions, even if amending the petition does not raise issues required to be joined in a suit for dissolution of marriage?
- Alternatively, would the court conclude that the form had been falsified and seek to determine whether the falsification had been intentional, perhaps justifying sanctions or criminal prosecution?

The Kit Will Cause an Unnecessary and Unwarranted Increase in the Harms of Pro Se Litigation Without Increasing Access to Justice

The "kit" has been characterized as a necessity to meet the needs of the poor for access to justice.[16]

The kit contains an Affidavit of Indigency by which it can be determined whether the filer will be required to pay certain court costs. However, by advising them that the filing fees range up to $300, the Instructions [*Page 1, second paragraph from the* bottom] make it clear that people who are not indigent may use the forms within the kit.

The Instructions go on to say that *if* the person is poor, receives public benefits or "believe[s] [the person] can't afford the court filing fee," the person may not have to pay the court fees. Neither the Instructions nor the forms advise against the use of the kit if the person is not indigent or can afford an attorney.

The Court's stated purpose is to increase access to justice by use of the forms. But, that goal will not be advanced by assisting those who already have access to justice, i.e., those who *can* afford an attorney. Instead, given all of the significant problems with the proposed forms, the availability of forms--endorsed by the Texas Supreme Court--for use by anyone will dramatically expand the potential universe of those who will be made vulnerable by those defects. This result will be a decrease in justice.

It is also reasonable to conclude that pro se litigation will increase as a result of the availability of Court-endorsed forms. A survey of state chapter presidents of the American Academy of Matrimonial Lawyers showed that pro se litigation had increased substantially in almost every state. While a cause and effect relationship is impossible to prove, it is clear that the presence of do-it-yourself forms did nothing to reduce pro se litigation in other states.

Conclusion

No one can seriously dispute the enormous quantity of very serious defects that are clearly present in the forms proposed by the Uniform Forms Task Force for adoption by the Texas Supreme Court. Although this group of highly motivated people spent nine months of hard work on them, the effort produced a "kit" that, if used as proposed, would cause demonstrable harm to the very pro se litigants the Task Force sought to assist.

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[16] *See Order Creating Uniform Forms Task Force, Miscellaneous Docket No. 11-9046 in the Supreme Court of Texas ("The Court is concerned about the accessibility of the court system to Texans who are unable to afford legal representation."; see also Footnote 3;;see also Footnote 5 see also Supplemental Report to the Supreme Court from ATJ Executive Director Trish McAllister dated February 6, 2012.*

This product is simply unacceptable and entirely unworthy of carrying the endorsement of the Texas Supreme Court.

A few of these defects can be readily addressed, while others go to the core of the roles of the many actors responsible for the actual day-to-day administration of justice. The fault is simple: Using an ad hoc task force comprised of those who are so committed to a concept that obvious critical issues are overlooked is anathema to sound public policy development.

An ad hoc approach can never be expected to sustain even this level of effort over the prolonged period of time that would be needed to perform constant updating and perfecting of the forms proposed. A gargantuan capability would be needed just to address Family Law, much less a host of legal practice areas that the proponents have clearly stated their intention to address. That capability is nowhere on the horizon. The good intentions of the proponents will never provide it.

In short, the development of uniform forms for use in Family Law litigation is beyond the institutional capacity of the Texas Supreme Court and should be abandoned, rather than accept a result that will inevitably fall short of the standards on which a high court must insist.

APPENDIX:

A Catalogue of Additional Defects in the Proposed Forms

The Instructions and Original Petition place a petitioner in conflicting roles and potentially in a position to be arrested and confined. For example:

- The kit relies on one party to supply the other party with forms and instructions on their use, which is entirely inconsistent with the adversarial nature of litigation and invites petitioners into a conflict of interest situation that the kit does not address.

  The Instructions [*Page 3, left column, Step 4*] direct the petitioner to:

  > "Give your spouse a copy of the petition that has been stamped by the court clerk and a blank answer form. Your spouse will need to file...the Answer with the Court..."

  As was demonstrated above, the kit is not limited to uncontested cases. Even if the parties believe at the outset that they will agree on all matters, until the final decree is entered, under the system of laws in Texas and every other state, the litigation system is *adversarial.*

  There are no instructions addressed to the respondent, either in a separate document or within the Answer form itself. The kit leaves it to the solely to the petitioner to supply the Answer form and any instructions to the respondent.

- While the Original Petition requests information from the petitioner regarding the existence of a Protective Order against either party, the Instructions direct the petitioner to:

  1. "...give your spouse a copy of the petition...;" OR
  2. give the spouse a waiver of service and rights and have it signed in front of a notary; OR
  3. use a process server; OR
  4. send legal notice by mail; OR
  5. by cross-reference to the posting and publication-by-service kits on the TexasLawHelp.org website.

  Once again, the petitioner is told to "give" the other spouse documents and there are no instructions for the respondent other than those received from the petitioner.

  In this situation, a petitioner might well believe that the Supreme Court of Texas has allowed him to give the other spouse documents by hand delivering them. It would be common for a Protective Order to require a *petitioner* who was the subject of it to stay more than a certain distance away from the respondent. Or, a Protective Order may require a *respondent* who is subject to it to stay away from the petitioner.

There is no warning to the petitioner not to personally convey the documents to the respondent when one or the other is subject to a Protective Order. If the Instructions and forms are adopted by a Texas Supreme Court Order, will the Court's order or the Protective Order govern personal delivery? Will all petitioners be expected to understand that the kit does not authorize conduct that the Protective Order prohibits, when one is stamped "Approved by the Texas Supreme Court" and the other is signed by a mere district judge?

Prosecution of a violation of a Protective Order does not require proof of intent or any other mens rea; violations of Protective Order are subject to strict liability. Thus, the petitioner who follows the clearly-stated directives of the divorce kit will have no defense to arrest and prosecution for making personal delivery of the divorce documents as directed. In addition, when the petitioner approaches the other spouse, who is subject to a Protective Order, the petitioner places the other spouse in the position of violating the order.

Additional defects common to two or more forms

1. Neither the Instructions nor any of the forms warns a pro se litigant that he or she will be held to the same standards as an attorney when it comes to procedural and substantive legal matters.

2. Neither the Instructions nor the forms indicate whether the forms may be modified by an individual user. If so, a litigant who makes changes in the proposed forms would defeat the entire effort to provide *uniform* forms, as well as the purported limitations of the forms to uncontested, no-child, no-real property, no pension-splitting, no spousal maintenance cases.

3. The warnings on the Original Petition and the Final Decree of Divorce [*Page 1, highlighted box*] state that a person should not use the form if he or she wants to ask the judge "for spousal support, sometimes referred to as 'alimony.'" This statement is factually incorrect.

   "Spousal support" usually refers to temporary spousal support. [*e.g., Section 201.104, Family Code*] Spousal support is payable *only* during the pendency of the divorce. How does a pro se litigant know that they can, in fact, request the court to order assistance so that expenses may be paid during the pendency of the case? The instructions certainly would lead them to believe that they do not have this option.

   "Alimony" in Texas is purely contractual and is based upon the Internal Revenue Code which has very specific requirements. [*See separate references to alimony and spousal maintenance in the following Family Code provisions: 3.409, 8.055(a-1)(1)(E), 154.062(b)(5) and 203.005(b)*] "Maintenance" is court-ordered support as provided in the Family Code and can be payable following the date of divorce. [*See Chapter 8, Family Code*]

Attorneys often misunderstand each of these terms. Is a pro se litigant in a position to understand and use these terms?

4. The top of each of the following proposed forms contains a warning that includes references to children, although the kit is supposed to be for divorces *without* children:

   A. Original Petition
   B. Final Decree of Divorce
   C. Respondent's Answer to Divorce
   D. Waiver of Service-Divorce (No Minor Children, No Real Property)
   E. Military Status Affidavit
   F. Affidavit of Indigency

   The presence of the reference to children is confusing at best, may be misleading and may make the forms subject to abuse, at worst. Will the reference be used to argue that the forms really are authorized for use with cases involving children (with a little modification here and there that must be okay, too)?

5. On each form, next to a blank for a cause number at the top of their first pages, the form has check-boxes for the type of court in which the case is being filed. One of those boxes is beside "County Court:" [*Page 1, upright corner*] County courts do not have jurisdiction over divorce cases. County courts *at law* in some counties do have family law jurisdiction, but not all counties.

6. While there is the mention of children in the warnings on each form, the reference to property is only to *personal* property. The forms are not for use with children, but children are listed; the forms are not for use with real property, but real property is not mentioned.

7. The directives on Page 1 of the Affidavit of Indigency [*boxed language, 3rd paragraph*] and on Page 2 of the Military Affidavit [*just above the signature line*] says the affidavit must be signed "in front of a notary." However, Section 132.001, Civil Practice and Remedies Code, provides that, in lieu of having the party seek out a notary when these forms are signed, the party has the option of signing the document by declaration under penalty of perjury.

Additional defects: the Original Petition

1. On Page 4, Section 7, the Original Petition asks the court to divide the couple's personal property "according to Texas law." Nowhere do the Instructions or the form itself advise the party regarding Texas law and the division of property, that a fair and equitable division is required, that it is the *net* estate that is to be divided and that who assumes the debts is a

factor in determining what is fair and equitable. (Of course, this reality is contrary to the commonly held belief that community property is divided 50:50.)

2. The "money damage" provision [*Page 5, Section 7*] is wrong. Not all money damages are separate property. Contractual damages are not separate property. Damages associated with many tort actions are not separate property. A *portion* of the total award for a personal injury suit can be considered separate property, in addition to lost wages. For example, that would be true of the recovery of medical expenses paid by the community estate. [*See Section 3.001(3), Family Code*]

3. While the Instructions say "do not use the form unless each of you wants to keep your own retirement," the Original Petition goes on to indicate that separate property is an asset owned prior to marriage. With respect to a retirement account, that is only true as to benefits existing at the time of marriage. Even though an employee may have owned a retirement account as of the date of marriage, any increase in that account is considered part of the community estate and should be divided upon divorce. Without understanding that part of the other spouse's retirement account may be separate property and part may be community property, a litigant could be unintentionally waiving what is often the most significant asset for low income families.

4. The Instructions say the form is for an uncontested divorce, but, as shown above, the Original Petition anticipates a contested case. If a case becomes contested—e.g., a spouse decides he or she does want to divide the retirement account(s)—and is not dismissed summarily based on an invalid use of the form, how would a pro se litigant amend the petition? (The same would be true of children who come to the spouses' attention when a pregnancy is discovered, or disclosed, after the petition is filed.)

5. Texas Rules of Civil Procedure Section 190.1 specifically requires that a petition must allege whether discovery is to be conducted under level 1, 2, or 3. The form only allows for Levels 1 and 2. Is this effectively an amendment to TRCP 190.1?

   Will a person completing the form know what discovery is? Will they know that they have a right to request information relative to their estate from the other side? Unrepresented litigants may simply request that each party be awarded the assets in their own name because they do not have access to the information relative to assets held in the name of the other side. The right to significant retirement or other employment benefits may be waived if not divided at the time of the divorce.

Additional defects: the Final Decree

1. While the Original Petition opens the door to use of the kit in contested cases, the Final Decree of Divorce would not be usable in a case tried to a jury. Texas Family Law is virtually unique in the extent to which contested issues are subject to trial by jury.

2. The debt portions of the decree do not include any indemnification language. Although the debts may be apportioned to one party, without that language, the division of the debts is meaningless. [*See Page 4, "Husband's Debts" and Page 6, "Wife's Debts"*] With this form, there are no consequences if a party fails to discharge the debts assigned to that party. In a proper decree, the party not paying the debt would at least have to indemnify the other party.

3. There is no provision that would allow the respondent to prove up the decree without the petitioner present. [*See Page 1, Section 1, at bottom*]

4. On Page 2, Section 4, the possibilities regarding children do not include the scenario in which the wife has had a child during the marriage but the paternity of that child was addressed by an acknowledgement of paternity signed by the husband or by a court order. The form would exclude parties who have a disabled child whose disability arose <u>after</u> the child became an adult. There is no reason why that disability should affect the parties.

5. The decree contains no provision for stating the grounds upon which the divorce was granted. (Texas has both no-fault and fault-based grounds for divorce.)

6. There is no provision for showing that a respondent was represented by counsel. [*See Page 7, Section 10*]

7. The instructions omit any mention of tracing of separate property to current assets. This omission is then reflected in the form's checkboxes for the confirmation of separate property. While the form encourages the pro se to see an attorney, it gives enough seemingly accurate (after all, it is done under the authority of the Supreme Court) information that a pro se will believe he or she has enough information to proceed.

8. Neither the Instructions nor the decree require the attachment of the documents either party may need to sign to transfer the personal property that is divided. In the absence of such provisions, an order requiring a party to sign such documents is not enforceable by contempt. There is no warning to the pro se litigant of this problem.

9. There is no warning that the form should not be used if, on the date of divorce, one party still has property the other one wants or expects to be awarded. The form does not have a place to list this type of property or any provisions ordering one party to deliver property to the other within specified dates, times, and locations.

10. The form does not clearly cover securities, bonds, annuities, brokerage funds, mutual funds, union benefits, business interests (including sole proprietorships, partnership interests, and membership interests in limited liability companies) held solely in one party's name. (Remember, there is no limit on the value of an estate that may be dissolved using the proposed forms and even the boxes for selecting the discovery level to be applied refer to estates up to $50,000 and "all other couples.")

11. The form does not have a place for one party to pay the other a sum of cash as of the date of divorce or within a specified period after that date, not as alimony, but as needed to carry out the terms of dissolution of the community estate.

12. There are no provisions for addressing the filing of income tax returns or the sharing of information necessary to prepare income tax returns.

13. There are no provisions for the continuation of health insurance, such as COBRA. Without these, a pro se litigant probably will not know health insurance benefits can be continued after divorce. Being able to retain health insurance under COBRA for an extended period of time after marriage may be the single most valuable "asset" to a low-income person.

14. There are no provisions for permanent injunctions.

15. There is no provision discussing whether there were temporary orders and, if there were, whether any of their provisions survive.

16. The name change check boxes [*Page 7, Section 8*] are misleading at best and incorrect at worst. The form refers to "a name used before marriage." Section 6.706(a) of the Family Code states that the name can be one "previously used by the party." The Family Code appears broader than the language of the form because the Code allows any name used prior to the marriage and not the name used immediately prior to the marriage, which the form may imply.

17. Because one of the parties may be represented by counsel, on Page 7 in Section 9 there should be a reference regarding which party is responsible for the attorney's fees.

18. Although the Original Petition [*Page 1, Section 1*] provides for discovery, the Final Decree makes no provision for whether and when the parties are discharged from retaining documents obtained in discovery.

19. The decree does not state that it is a final judgment, contain the common language of such judgments ("for which let execution and all writs and processes necessary to enforce the judgment issue") and fails to clearly state that the order is appealable.

20. On Page 2, Section 2, there are references to whether a court reporter was used. However, neither the Instructions nor the form ever educate the petitioner (or respondent) regarding whether a court reporter *should* be used and why.

Additional defects: the Respondent's Answer to Divorce

1. There is no instruction informing the pro se respondent what "real property" is or what "minor children" are. This form may be inappropriate if there is a child over 18 years of age but for whom the parents may still be obligated to pay child support. For example, the adult child could still be enrolled in and attending high school or the adult child could be disabled with the disability arising before the child's 18th birthday. It may also be inappropriate if the wife is pregnant. Remember: The Respondent does not possess the Instructions and the Instructions are not directed to the Respondent.

2. On Page 1, Section 1, there are conflicting statements. One says "I request notice of all hearings in this case." The other forces the respondent who signs the decree to waive the right to be notified and appear at a final prove up hearing. This waiver conflicts with the earlier statement that the respondent requests notice of <u>all</u> hearings in the case.

3. The form incorrectly states [*Page 1, last paragraph*] that the respondent has to give a copy of any papers the respondent files to both the spouse <u>and</u> the spouse's attorney. The certificate of service follows this incorrect statement. If the spouse has an attorney, the respondent does not have to also give a copy to the spouse.

4. The name change check boxes [*Page 2, Section 3*] are misleading at best and incorrect at worst. The form refers to "a name used before marriage." Section 6.706(a) of the Family Code states that the name can be one "previously used by the party." The Family Code is broader than the language of the form appears to permit because the Code allows any name used prior to the marriage and not the name used immediately prior to the marriage.

Additional defects: the Affidavit of Inability to Pay

1. Will a person completing the form know what "proof" is for purposes of attaching "proof of public benefits"? [*Page 1, instruction between the public benefits check boxes and the spaces for "income sources."*]

2. What if there is more than one source of other public benefits or other income? The form encourages the applicant to list only one "other" source by providing limited space.

Additional defects: Certificate of last known Mailing Address

1. There are no instructions in the form for how and when this form is to be used. The reference at the bottom of Page 2, Basic Information, is insufficient to address this defect. The idea may be to always file it in case of a default judgment, although if the certificate is filed when the suit is filed, it may not be accurate at the time of the default judgment.

2. There is no date for the party's signature. A date would be very useful as the party may complete this form months before a default judgment and months before filing it with the court. The court should be able to see how current this certificate is.

Additional defects: the Military Status Affidavit

- On Page 2 is a box at top followed by the sentence "I do not know if the Respondent is in the military now." This sentence satisfies the statute. Everything after that is not in the statute. As written, it asks what the Petitioner can afford to post as a bond. That is irrelevant as the statute says the bond is to protect the service member from loss or damage. Also it is for the court to determine if there will be harm or not, not the Petitioner.

Additional defects: the Instructions

1. The definition of an "uncontested" divorce in the kit fails to include a default final hearing when the respondent files an answer but does not appear at the final hearing. That raises the question: What does a pro se do with these forms if the respondent does not file an answer but does show up for the final hearing?

2. **"Do not use these forms if"** instruction box [*Page 1, right column, 5th item in box*]. There is no reason not to use the forms if the disabled child is an adult and the disability occurred after the child became an adult.

3. **"For Military Families"** instruction box [*Page 1, left column in box*]: The instructions do not address the issue that Texas may not have personal jurisdiction over the respondent even if Texas is the home state of the petitioner. Without that personal jurisdiction, the trial court may only grant an *in rem* divorce and may not divide the personal property.

4. The instructions about where to turn in the *forms* [*Page 1, 3rd paragraph from bottom*] may cause a petitioner to believe he or she may file in the spouse's county and still have the suit be pending in the petitioner's county. The instructions for service members fails to state that the service member may also file in the county of the spouse's county of residence if the spouse has resided there at least 90 days.

5. **"Will there be a fee?"** The instructions [*Page 1, 2nd paragraph from bottom*] state that you may have to pay to have an official serve the spouse, but they do not explain what you cannot do if the person is not formally served.

6. **"Basic Information."** The instructions [*Page 2, Section B*] are not very clear about the receipt of "legal notice." If the receipt is in the form of being served with citation by a process server, the respondent would not file a waiver of service. If the receipt is informal through the petitioner just handing the respondent the petition, there is no period of time within which the respondent must file a waiver of service or an answer.

7. **"What if I can't find my spouse?"** [*Page 2, last paragraph*] To answer any questions, the instructions direct the pro se litigant to www.TexasLawHelp.org. The forms there have some of the same problems as the Supreme Court forms. This also raises the questions: If TexasLawHelp.org has satisfactory forms, why do we need Court-approved forms? Will the Court's order have the effect of adopting the TexasLawHelp forms by reference? Is the Supreme Court Advisory Committee to review those forms, too?

8. **"Divorce in Texas – Take These Steps"** [*Page 3, Step 4 (2) Waiver of Service*] The instruction is wrong. Section 6.4035, Family Code, does not require a waiver to be signed one day after the suit is filed. The waiver needs only to be signed after the suit is filed.

9. **"Divorce in Texas – Take These Steps"** [*Page 3, Step 4 (2) Official Service in Person or by Mail*] There is no statement about how personal service is more likely to hold up than service by mail or service by publication. As a result, the pro se litigant may believe that the easiest method of service is the best method since they all appear to be equal.

10. **"Divorce in Texas – Take These Steps"** [*Page 4, Step 7*] Contrary to the instructions, the divorce is final (but not for purposes of appeal) even if the litigant does not turn in the Information on Suit Affecting the Family Relationship (BVS form). The instructions fail to mention that a party may file a motion for new trial or an appeal after the decree is signed by the judge.
11. **"Are you ready for court?"** [*Page 5, sample testimony*]:

a. Domicile does not require residence, which is particularly important for a pro se military serviceman.
b. Jurisdiction is also proper if the spouse's state of domicile was Texas.
c. Venue is also proper if the spouse resided in the county.
d. There is no reason why the sample testimony cannot and should not track the insupportability language from the statute—unless there is another ground for the divorce. Tracking that language ensures the testimony clearly meets the statutory requirement to get a divorce.
e. If the parties have an adult disabled child whose disability arose after the child was emancipated, there is no reason why the parties should not get a divorce without discussing that child.
f. The instructions fail to state that you must have a hearing if it is a default divorce under Section 6.701 of the Family Code.
g. There is no mention in the sample testimony that the spouse signed the decree in agreement with its terms or that the spouse waived his or her right to sign the decree. That testimony is needed.
h. These sample questions *will not suffice* if it is a default divorce. There would be no evidence of the assets and liabilities of the marriage, including their values, so the judge would have no evidence on which to divide those assets and liabilities. Case law is clear on this point. A good judge will not allow a default divorce without any evidence.

12. **"Common Questions—Where do I get divorced?"** [*Page 6*]:
    a. Only here do the instructions state that you can get divorced in Texas if your spouse has resided in Texas for the last six months. The statutory requirement is that Texas must be the state of domicile for the six months preceding the filing of the suit for divorce, which is not exactly what the instructions state. Particularly for military service members, domicile is different than residence.
    b. Only here do the instructions state that you can be divorced in a county in which your spouse has resided. The instructions should state that the residence must be for the 90 days preceding the filing for divorce not "for the last 90 days."

13. **"Common Questions—Do I need a lawyer?"** [*Page 6, left column*] The instructions should include the proper term, "maintenance," for post-divorce spousal support.

14. **"Common Questions—Terms to know"** [*Page 6, right column in box*] A divorce can be contested on other grounds too, such as a fight over possession or access to the children, child support, maintenance, and temporary orders.

15. **"Common Questions—How long will it take to get divorced?"** [*Page 7, 2nd paragraph*] The 60-day waiting period does not apply if the court finds that the respondent has been

convicted or received deferred adjudication for an offense involving family violence or the petitioner has an active protective order under Title 4 of the Family Code or an active magistrate's order for emergency protection. [*Section 6.702(c), Family Code*]

16. **"Common Questions—What if I started my divorce in a different county?"** [*Page 7, 3rd paragraph from bottom*] Again, there is difference between satisfying a domicile requirement and being a resident. The instructions imply that you must be a resident of Texas, not simply that Texas is your state of domicile.

17. There are no warnings that a division of the debts does not mean the party not awarded a debt is free of responsibility for that debt. If the party was liable for the debt, the party stays liable for the debt even if the ex-spouse was awarded that debt.

18. There are no instructions on what type of documents are needed to transfer title to motor vehicles, boats, manufactured homes, etc.

19. There is no help for the person who changes his or her name in a decree instructing them to get a certified copy of the decree and taking it to the Social Security Administration and a Texas driver license office.

Conclusion

No one can seriously dispute the enormous quantity of very serious defects that are clearly present in the forms proposed by the Uniform Forms Task Force for adoption by the Texas Supreme Court. Although this group of highly motivated people spent nine months of hard work on them, the effort produced a "kit" that, if used as proposed, would cause demonstrable harm to the very pro se litigants the Task Force sought to assist.

This product is simply unacceptable and entirely unworthy of carrying the endorsement of the Texas Supreme Court.

A few of these defects can be readily addressed, while others go to the core of the roles of the many actors responsible for the actual day-to-day administration of justice. The fault is simple: Using an ad hoc task force comprised of those who are so committed to a concept that obvious critical issues are overlooked is anathema to sound public policy development.

An ad hoc approach can never be expected to sustain even this level of effort over the prolonged period of time that would be needed to perform constant updating and perfecting of the forms proposed. A gargantuan capability would be needed just to address Family Law, much less a host of legal practice areas that the proponents have clearly stated their intention to address. That capability is nowhere on the horizon. The good intentions of the proponents will never provide it.

In short, the development of uniform forms for use in Family Law litigation is beyond the institutional capacity of the Texas Supreme Court and should be abandoned, rather than accept a result that will inevitably fall short of the standards on which a high court must insist.

STATE BAR OF TEXAS

BOB BLACK
PRESIDENT

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January 5, 2012

Chief Justice Wallace Jefferson
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711-2488

Dear Chief Justice Jefferson:

The Executive Committee of the State Bar of Texas met today and after much respectful discussion and consideration voted to request that the Supreme Court of Texas "suspend the work of its Uniform Forms Task Force and direct the State Bar of Texas to review the issue of indigent self-represented litigants in the State's courts, including collecting data demonstrating the numbers of these litigants, gathering information about how these cases are handled by Courts throughout the state, and reviewing possible solutions."

The State Bar of Texas is fully committed to access to justice for all Texans and applauds the efforts of all those who have worked on this issue over the past few months to do what is best. Unfortunately, at this point there is no consensus and, equally distressing, we are unaware of any available data on indigent self-represented litigants. A lack of data coupled with anecdotal reports has created a stalemate in the rhetoric being used to support what may be legitimate perspectives from all interested parties.

We believe we are at a critical juncture on this issue. Along with numerous individuals and groups – all with the best interest of access to justice and administration of justice as a motivating force —the State Bar of Texas Executive Committee believes that immediate action is required so that critical information can be gathered and considered in the development of any possible recommendations. It is imperative that all those who have expressed an opinion on this issue know the facts, be heard, and be part of any recommendation considered by the Court.

Thank you for your consideration. We are anxious to hear from the Court on this issue and look forward to working with all interested parties to best serve our Courts, the public, and the profession.

Sincerely yours,

Bob Black

Senneff, Angie

Subject: FW: SCAC

From: lkinard01@msn.com [mailto:lkinard01@msn.com] **On Behalf Of** Lewis Kinard
Sent: Tuesday, April 03, 2012 5:19 PM
To: Babcock, Chip
Subject: SCAC

Mr. Babcock,

As a lawyer in Houston who has decades of experience working with low-income clients as well as commercial clients, I wanted to convey my thoughts on the outrage some have expressed over the Supreme Court's efforts to alleviate the crush of self-represented litigants in our state's family courts. I can only imagine that you have or will receive a flood of emails and phone calls instigated by Tom Ausley and his cohorts. There is no organized effort to rally support for the Forms Task Force, so it seems that the loudest voices all are against the effort.

If that opposition had already significantly reduced the 60-120,000 unrepresented parties that presently--before the much-feared simple divorce forms ever get out of the Task Force--appear in our courts, maybe they would have an argument. But simple, court-approved "mandatory acceptance" pleadings and orders for uncontested, no kids, no property divorces will be far more beneficial than harmful in Texas. The family bar simply will not take on 100,000 pro bono cases every year, nor will they donate enough money to pay for free legal aid for them. And every day that we have this debate, more people go online or to libraries and get self-help forms that may or may not be appropriate for Texas.

The U.S. Supreme Court has already cleared up the question of whether the Bar can stifle publication of self-help legal materials. The Family Law Foundation would serve its members better by teaching them how to make money serving these do-it-yourselfers than by fanning the embers of a dying fire. They could also operate a referral service for Limited Scope Representation law firms and even lobby for reduced malpractice insurance requirements for those who participate in such a service and accept modest-means clients (up to 300% of the federal poverty level).

I have been helping people represent themselves since the 1990s. It can be done and lawyers can make money doing it. I interviewed lawyers around the country who are doing it for my book. In short, there is plenty of opportunity inside the perceived threat and this vocal minority does not represent the rest of us.

Thank you for your time and your service.

M. Lewis Kinard
Houston

Senneff, Angie

Subject: FW:

On Apr 11, 2012, at 5:04 PM, "Patricia Baca" <pbacalaw@gmail.com> wrote:

> Re: Order in Misc. Docket No. 11-9046; Supreme Court Uniform Forms
>
> To the Honorable Members of the Supreme Court Advisory Committee
>
> I object to the forms for many reasons, but will attempt to keep
> from repeating the objections of my learned colleagues and the learned
> judges that have written to you. The purposes of this letter to
> express only those concerns that I have not seen addressed. I stand
> in support of stances taken by the Honorable Judge Harris, The
> Honorable Judge Quisenberry, The Honorable Judge Warne, G. Thomas
> Vick, Timothy Belton, Tom Ausley, Bob Black and the many others that
> stand in opposition to these forms.
>
> I believe that the Justices of the Texas Supreme Court are acting
> outside their judicial immunity by promulgating these forms and
> subjecting themselves to malpractice claims. In Mireles v. Waco 502
> U.S. 9 at 11, the United States Supreme Court held that judicial
> immunity can only be overcome when (1) the judge engages in
> non-judicial actions and (2) when a judge acts in complete absence of
> jurisdiction. I have attached an article by Mr. David A. Harris
> entitled "The Judge Beyond Immunity: Countrywide and Statewide
> Perspective" that was presented at the 2010 Annual Judicial Education
> Conference for a more detailed discussion on what does and does not
> constitute judicial immunity.
>
> The promulgation of forms is neither judicial nor adjudicative.
> Forms can and are promulgated by private individuals and private
> agencies. As such they are not a necessary condition of the
> adjudicative system. There is no distinction of the act of the Texas
> Supreme Court promulgating forms than the act of Texas Law Help, Nolo
> Press or any individual attorney promulgating forms. As such it is
> not an adjudicative act and is not protected under judicial immunity.
> See Forrester v. White 484 U.S. 219 (1988). At best, the promulgation
> of forms is an administrative act which is clearly not protected by
> judicial immunity. At best, they Court could argue the forms are
> administrative in nature and, as such, may fall under qualified
> immunity.
>
> I would argue that the Texas Supreme Court is without jurisdiction
> to promulgate forms, as such no immunity applies. I have read the
> Constitution of the State of Texas that sets for the duties of the
> Texas Supreme Court. I find no reference that would even remotely
> support The Honorable Justice Wallace Jefferson's assertion that the
> Constitution requires the court to establish "a judicial climate in
> which people who lack money to hire a lawyer have a reasonable change
> to vindicate their rights in a court of law." Such a reading of the
> Texas Constitution would give rise to "Civil Gideon."
>
> It should be noted that many of the ABA leaders that support the
> movement towards promulgating forms have advocated the right of court
> appointed attorneys be expanded to child custody cases.
> http://www.pabar.org/public/committees/lspublic/resolutions/GrecoState
> ment.pdf Despite years of having uniform forms in California, or one
> may argue because of hears of having uniform forms in California,

> California is overrun with pro se litigants. California has recently
> signed into law the Sergeant Shriver Bill that provides for Court
> appointed attorneys in some custody cases and other civil cases.
> http://lawprofessors.typepad.com/files/ab590.pdf . Despite having
> forms, Wisconsin also has set aside funds for court appointed
> attorneys in divorces. http://civilrighttocounsel.org/pdfs/judges.pdf
> Wisconsin has had forms for six years, but the self-represented
> litigant problem is not getting better it is getting worse.
> http://www.wicourts.gov/publications/reports/docs/prosereport.pdf
>
> We can take one of two stances. The first is that such an act is
> outside the constitution and thus not protected by judicial immunity.
> If however, the administration of justice requires the court to
> provide assistance to those that cannot afford an attorney in divorces
> and custody, then the only logical step would be the right to court
> appointed counsel. Many of the poor do not have the capacity to read
> or write complex legal documents. If equal access to justice is
> required to all in civil cases, including divorces, we are on a
> slippery slope to civil Gideon. Please note, I am NOT advocating
> Civil Gideon. I am stating the stance that the Texas Constitution
> requires the Texas Supreme Court to provide Access to Justice for all
> Texans in civil cases will lead us there.
>
> I believe a careful reading of the Constitution of the State of
> Texas and the case law interpreting makes it clear that the courts are
> not required to provide legal assistance in civil cases such as divorces.
> I believe the Constitution is clear that the Texas Supreme Court has
> no mandate to create such forms. I do not believe there is even
> authority to create such forms. As such, I do not believe that the
> Justices of the Texas Supreme Court are not protected by either
> Judicial or Qualified Immunity in promulgating uniform forms.
>
> The forms do give detailed and incorrect legal advice. As I understand
> it, the Family Law Foundation has pointed out seventy deficiencies in
> the forms, so I will not go into each any every deficiency that I see
> with these forms, but I will hit the highlights that may cause
> problems in a malpractice suit against the justice of this court. The
> forms give more detailed legal advice on the Petition than they do on
> the Waiver and Answer. As such, the forms favor the Petitioner. This
> also calls into question judicial impartiality.
>
> Also the instruction sheet refers people to the Texas Law Help website
> that contains forms on a number of matters. None of these forms have
> been vetted by any committee and some of them are wrong. These forms
> deal with very complex legal issues that far exceed the no children,
> no property issues. The divorce forms purport not to divide
> retirements, when the form does, in fact, allocate retirements. There
> are actual cases where people have accidentally and forever divested
> themselves of valuable retirements by using these forms, which purport
> not to divide retirement. By referring people to the Texas Law Help
> webpage for further forms, is the Texas Supreme Court liable? I would
> argue "yes."
>
> If the Texas Supreme Court is mandated to help the "poor" (a term not
> defined under the Texas Constitution) in divorces, is the Texas
> Supreme Court mandated to help victims of auto accidents, medical
> malpractice, legal mal practice, tenants, land lords and people in
> contract disputes? This is clearly not a mandate of the Texas Supreme
> Court.
>
> There are two more brief issues I would like to address outside of the
> issue of judicial immunity.
>
> All of the forms direct people to seek an attorney from the State Bar

> of Texas Lawyer Referral Service. I question the authority of a
> State Governmental Agency, such as the Texas Supreme Court, referring
> potential clients to any one group. While any attorney may join the
> Texas Bar Lawyer Referral Service, he or she must agree to give that
> service a 10% referral fee. Attorneys that handle simple, lower
> priced divorces simply would not join the referral service. Again, to
> have a governmental body make such a referral is questionable at best.
>
> The concept that Family Law attorneys have a financial incentive to
> fight the do-it-yourself divorces is ludicrous at best. I can charge
> a client $1,000.00 to $1,500.00 for an uncontested divorce and ensure
> that all the paperwork is correct. I have charged clients who did
> their own divorce and pay me from $3,500.00 to $7,500.00 to correct
> the mess they made. In the first instance, I have happy clients that
> have paid me and obtained the desired result. In the second instance,
> I often have an unhappy client that pays me a good deal of money with
> no guarantee of a good result. In fact, the odds are often against a
> party attempting to set aside an agreed divorce. The only person who
> wins when a client uses a do-it-yourself divorce kit, is the attorney
> hired to clean up the mess.
>
> Consider this; over $500,000 was diverted from legal aid to create the
> Texas Law Help forms. If they were acceptable, why would the Supreme
> Court of Texas have appointed a commission to create a new set of
> forms? Why has it taken this commission a year to create forms the
> State Bar of Texas by does not find acceptable? I would suggest
> because divorces are never one size fits all. The forms manual the
> State Bar of Texas sells to Family Law attorneys is 5,186 pages for a
> reason. Even with these forms at my disposal, I still must draft
> custom language on a daily basis.
>
> Thank you for taking time to consider my positions.
>
> Sincerely,
>
> Patricia Baca
> Attorney at Law
>
> 5208 Airport Freeway
> Suite 214
> Fort Worth TX 76117
> (682)647-1904
> <Judicial Immunity Packet.pdf>

RANDALL L. SAROSDY
Executive Director

MARLON DRAKES
Associate Director

2010 Annual Judicial Education Conference

September 21-24, 2010
Corpus Christi, Texas

The Judge Beyond Immunity: Countywide and Statewide Perspective

FACULTY: Mr. David A. Harris

COURSE DESCRIPTION

Decisions made when judges act in an administrative capacity instead of a judicial capacity continue to plague the judiciary. This session explores case law, explains the differences between "chosen" participation and "mandatory" participation, and provides practical hints and tips to determine whether an act is judicial for purposes of absolute judicial immunity.

[0.75 Ethics]

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ACTIONS BY JUDGES
IMMUNITY – LIABILITY – INDEMNITY

By: David A. Harris
Assistant Attorney General
Office of the Attorney General
for the State of Texas

DISCLAIMER

The purpose of this disclaimer is to clarify that although I am employed as an Assistant Attorney General, the opinions and arguments stated in this paper do not represent an opinion or official position taken by the Attorney General of the State of Texas. I am neither part of the Administration nor am I a member of the Opinions Committee. General Abbott has authorized me to give presentations and write this paper sharing with the judiciary my personal experience handling cases involving judicial liability as well as my research attempting to predict trends in that area.

ACTIONS BY JUDGES
IMMUNITY – LIABILITY – INDEMNITY

INTRODUCTION.

The term judge conjures up an image of an individual wearing a black robe sitting on a raised bench presiding over a trial. If this was the only function that a judge performed there would be little need for this paper. In addition to presiding over trials, your election to the bench will necessarily thrust you into various other roles. It is important for you to understand that not every action taken by a judge is a judicial action. The fact that the duty is mandated by the Legislature does not control whether or not the action is "judicial".

Recently, attorneys have been probing the limits of judicial immunity by bringing suits seeking to hold judges responsible for perceived wrongs. It would behoove you to have a functioning understanding of what constitutes a judicial act since only judicial acts are protected by judicial immunity. Other actions that you take may be protected by other immunities. You should understand the nature of those immunities as well as their limitations. Finally, you should understand that in the event you are found to have engaged in improper conduct which is not protected by any immunities, your indemnification is limited.

Judges, like any other defendant, can be sued in either state or federal court. The doctrine of judicial immunity is well established in state and federal law. The majority of suits against judges have been filed in federal court. For this reason, the main focus of this paper is judicial liability in federal rather than state court. As with every other area of the law, this subject matter is evolving. You should maintain an awareness of legislation and cases which impact judicial immunity during the time that you are on the bench.

TYPES OF IMMUNITIES.

It has long been recognized that public officials are often called upon to make difficult decisions. The doctrine of immunity has developed to facilitate the functioning of good government by providing government officials charged with making difficult discretionary decisions with protection from suit. The primary scope of this paper is judicial immunity. Judicial immunity is but one absolute immunity.

Absolute immunities are immunities from the judicial process as well as damages. The most commonly recognized absolute immunities are: (a) Eleventh Amendment immunity – the immunity from suit that states enjoy in federal court; (b) sovereign immunity – the immunity from suit that states enjoy in both federal and state court; (c) legislative immunity – the immunity enjoyed by federal and state legislators when enacting law; and (d) judicial immunity – the immunity enjoyed by judges when acting in a judicial capacity.

Absolute immunity is immunity from suit and damages. The defendant is entitled to have his immunity determined at the earliest possible time since this immunity is an immunity from the process itself (including discovery). If it is determined that the defendant has absolute immunity, the suit should be dismissed. Generally speaking, the defendant will have the right to take an interlocutory appeal in the event the absolute immunity issue is found against the defendant. Absolute immunities are limited to states, state agencies, state employees acting in their official capacity, persons performing legislative functions, and persons performing judicial functions.

Government officials are not entitled to assert absolute immunity if they are sued in an individual capacity. Rather, most state officials must rely upon official immunity when sued in state court or qualified immunity when sued in federal court. As noted in the preceding paragraphs, an official sued in their official capacity is entitled to raise the absolute immunities of sovereign immunity and Eleventh Amendment immunity. The Eleventh Amendment is an absolute bar to a suit for constitutional violation pursuant to 42 U.S.C. §1983 brought against a state actor. For this reason, civil rights suits will almost always be brought against the state actor in their individual capacity. Similarly, a suit brought against an actor in their official capacity could be barred by sovereign immunity. Recall that to establish a waiver of sovereign immunity it is incumbent upon the plaintiff to establish that their injury was caused by a government employee's use of motor driven equipment or tangible property. If the alleged negligence did not involve property or motor-driven equipment, the only avenue open to an aggrieved plaintiff is to bring suit against the employee in their individual capacity. It is not uncommon for a defendant to assert that they were acting in their official capacity at the time the complained of action arose. Both state and federal law have developed precedent that establishes the fact that the plaintiff is entitled to bring the suit against the defendant in their individual capacity. This theory of law has evolved to allow aggrieved plaintiffs to avoid the harsh result of sovereign and Eleventh Amendment immunity. Qualified and official immunities are immunities from damages, not suit.

If a defendant can establish their entitlement to qualified or official immunity as a matter of law, they may be successful in getting a suit dismissed prior to any discovery. However, it is not uncommon for courts to order limited discovery on the subject of immunity. It is important to remember that qualified and official immunity are immunities from damages rather than the judicial process.

JUDICIAL IMMUNITY.

It is hornbook law, settled in our jurisprudence for over a century, that a judge enjoys absolute immunity from liability for damages for judicial acts performed within his jurisdiction.[1] The doctrine of absolute judicial immunity protects judges from liability for all actions taken in their judicial capacities, so long as they do not act in a clear absence of all jurisdiction.[2] It is well settled that the

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[1] *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986).

[2] See *Mireles v. Waco*, 502 U.S. 9, 1 1-12, 1 12 S.Ct. 286, 288, 116 L.Ed.2d 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356-358, 98 S.Ct. 1099, 1104-1105, 55 L.Ed.2d 331 (1978).

doctrine of absolute judicial immunity protects a judicial officer not only from liability, but also from suit.[3]

In *Mireles v. Waco,*[4] the United States Supreme Court reiterated the long standing rule that absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in a complete absence of all jurisdiction.[5] Examination of the cases cited by the Supreme Court in its opinion in *Mireles* to illustrate each such exception to the general rule is illuminating. As an example of the first exception (non-judicial actions), the Supreme Court cited to its opinion in *Forrester v. White,*[6] in which it held that a judge was not immune for liability for allegedly having engaged in illegal discrimination when firing a court employee. As an example of the second exception (actions taken in a complete absence of all jurisdiction), the Supreme Court cited to its prior opinion in *Bradley v. Fischer,*"[7] in which it discussed a hypothetical situation in which a judge in a Probate Court with limited statutory jurisdiction attempted to try parties for public criminal offenses.

Judges are absolutely immune against an action for damages for acts performed in their judicial capacity, even when such acts are alleged to have been done maliciously or corruptly.[8] Judicial immunity is not overcome by allegations of bad faith or malice.[9] A judge is absolutely immune for all judicial acts "not performed in a clear absence of all jurisdiction however erroneous the act and however evil the motive.[10] Absolute immunity is justified and defined by the governmental functions it protects and serves, not by the motives with which a particular officer performs those

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[3] See *Mireles v. Waco*, 502 U.S. at II, 112 S.Ct. at 288.

[4] 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991).

[5] See *Mireles v. Waco*, 502 U.S. at 11-12, 112 S.Ct. at 288.

[6] 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988).

[7] 13 Wall.335, 20 L.Ed. 646 (1972).

[8] See *Mireles v. Waco*, 502 U.S. I I, 112 S.Ct. at 288; *Stump v. Sparkman*, 435 U.S. at 356-358, 98 S.Ct. at 1104-1105.

[9] See *Mitchell v. McBryde*, 944 F.2d at 230 *Young v. Biggers,* 938 F.2d. at 569 (n.5); *Dayse v. Schuldt*, 894 F.2d at 172.

[10] See *Mitchell v. McBryde*, 944 F.2d at 230 *Brandley v. Keeshan*, 64 F.3d at 200-201; *Brummett v. Camble*, 946 F.2d 1178-1181

functions."[11] The alleged magnitude of the error or the mendacity of the acts is irrelevant."[12] The fact that it is alleged that the judge acted pursuant to a conspiracy and committed grave procedural errors is not sufficient to avoid absolute judicial immunity.[13] Grave procedural errors do not deprive a judge of all jurisdiction."[14]

In determining whether a judge's actions were "judicial in nature" the Federal Court is to consider whether (1) the precise act complained of is a normal judicial function; (2) the acts occurred in the courtroom or appropriate adjacent spaces such as the judge's chambers; (3) the controversy centered around a case pending before the court; and (4) the acts arose directly out of a visit to the judge in his official capacity.[15] A judge's acts are judicial in nature if they are normally performed by a judge and the parties affected "dealt with the judge in his judicial capacity.[16] These four factors are broadly construed in favor of immunity, and the absence of one or more factors does not prevent a determination that judicial immunity applies in a particular ease.[17] Where a court has some subject matter jurisdiction. there is sufficient jurisdiction for immunity purposes.[18] These factors should he construed broadly in favor of immunity, and should be construed generously to the holder of the immunity and in light of the policies underlying judicial immunity.[19]

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[11] *Young v. Biggers*, 938 F.2d. at 569.

[12] *Holloway v. Walker*, 765 F,2d 517, 522-523 (5th Cir. 1985), cert. denied, 474 U.S. 1037 (1985).

[13] See *Mitchell v. McBryde,* 944 F.2d at 230; *Stump v. Sparkman,* 435 U.S. at 359, 98 S.Ct. at 1106.

[14] See *Malina v. Gonzales*, 994 F.2d at 1125 and *Holloway v. Walker*, 765 F.2d at 522 (holding that mere allegations that a judge performed judicial acts pursuant to a bribe or conspiracy will not suffice to avoid absolute immunity).

[15] See *Malina v. Gonzales*, 994 F.2d at 1124 and *McAlester v. Brown*, 469 F.2d 1280, 1282 (5" Cir. 1972).

[16] *Boyd v. Biggers*, 31 F.3d at 285 quoting *Mireles v. Waco*, 502 U.S. at 12, 112 S.Ct. at 288, which in turn quoted *Stump v. Sparkman*, 435 U.S. at 362, 98 S.Ct. at 1107.

[17] *Molina v. Gonzales*, 994 F.2d at 1124 and *Adams v. Mcllhany*, 764 F.2d 294, 297 (5'" Cir. 1985), cert. denied, 474 U.S. 1101 (1986).

[18] See *Malina v. Gonzales,* 994 F.2d at 1125 and *Adams v. Mcllhany*, 764 F.2d 298.

[19] *Adams v. Mcllhany*, 764 F.2d 294, 297 (51" Cir. 1985).

There are two tests found in the above discussion of judicial immunity. When gauging your entitlement to judicial immunity you must first determine whether or not you are engaged in a judicial function (see Four Part Test) and if so, whether or not you are acting in an absence of jurisdiction.

When gauging their own conduct, most judges have a tendency to be overly generous in determining whether or not they are entitled to judicial immunity. For this reason, it would be wise for every judge to be familiar with *Forrester v. White.*

FORRESTER v. WHITE.[20]

Forrester v. White is a United States Supreme Court case that was decided in 1988. The defendant judge had hired, promoted, then demoted, and ultimately fired a female probation officer. The defendant judge was sued for sexual discrimination. Unfortunately, judicial immunity was not raised as a defense to this cause of action until after a jury had returned an adverse verdict at the conclusion of trial. Judicial immunity was raised for the first time on appeal.

The United States Supreme Court ultimately determined that the defendant judge was not entitled to judicial immunity. The Court noted that judges engage in judicial acts as well as acts that just happen to be done by judges. They noted that judges act in administrative, legislative, and executive functions. All of these functions could be legislatively assigned. They went on to discuss the various capacities that judges act in other than the judicial capacity. In discussing what constitutes an administrative decision, they noted that judicial immunity was not available to a county judge who had been charged in a criminal indictment for racial discrimination in the selection of trial jurors for the county courts. They noted the character of the act, not the agent, determines if the immunity applies. They specifically noted that the duty of selecting jurors could have been committed to a private person. In discussing legislative actions, they noted that even though Virginia law delegated adoption of the has code to the Virginia Court, the adoption of such a code was an act of "rule making" rather than "adjudication". They went on to say that in the event the Courts acted to enforce the bar code, such actions would not be judicial. They would be prosecutorial.

The Court then analyzed the facts before them. It opined that while the actions of supervising the Court ". . . may be important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative." They noted that there was no reasonable distinction between the actions of this type taken by judges and any other governmental office. Finally, they determined that qualified immunity would he sufficient to provide the judge with sufficient safeguards to make a judge feel comfortable in discharging an incompetent employee.

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[20] 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988).

A strict reading of *Forrester* suggests that only actions taken in the narrow confines of the courtroom are protected by judicial immunity. This is the position pressed by plaintiff's attorneys seeking to subject judges to liability. They will always try to paint the "complained-of conduct" as an administrative act since it is undisputed that such actions are no longer protected by any type of judicial immunity. As a judge you will be required to participate in functions other than presiding over your court. The status or nature of most of these functions have yet to be determined by any court. In the time that I have represented judges, I have learned that these additional duties are commonly referred to as "administrative duties". I have encouraged judges to stop referring to these additional tasks in this manner since it strengthens the plaintiff's case that they are administrative, and therefore not protected by judicial immunity. A better way to characterize these actions is to refer to them as extra judicial actions.

Similarly, judges will commonly refer to themselves as a board or other type of identifiable body when discharging their legislatively-mandated duties in areas of adult probation supervision, etc. Again, the establishment of a board suggests something other than a judicial act.

The better practice would be to study the statute that creates the duty. If the statute recognizes that a board has been created, there is no harm to referring to yourself by that title. If the statute is silent, I recommend that you refer to yourselves as a collection of judges rather than a board which has administrative connotations.

JUDICIAL IMMUNITY LIMITATIONS.

Since 2000, there has been an increase in the number of suits filed against judges by attorneys in Texas. Fortunately, most of these cases have been disposed of at the trial court level, and no appeal has been taken. This section is included so that you are aware of the types of challenges that are being made to judicial immunity.

Alexander v. Tarrant County. A probationer being housed at a shock incarceration facility died from a rare staph infection. The parents of the deceased brought a civil rights suit against the Tarrant County Criminal judges asserting that they had breached their administrative duties to the deceased probationer by allowing a private sector contractor to operate the facility. The Texas Code of Criminal Procedure mandates that sole responsibility for the supervision of probationers rests with the judiciary. Moreover, Chapter 76 of the Texas Government Code mandates the establishment of Adult Probation Departments. The federal judge determined that the defendant judges were not entitled to judicial immunity. His rationale was that the statute entitled rather than mandated judicial participation in the Adult Probation Departments. This test was never reviewed by the Fifth Circuit. The case was subsequently dismissed due to Plaintiff's failure to state a claim against the judges sufficient to overcome an assertion of qualified immunity. Qualified immunity will be discussed below. Plaintiff agreed to forego the appeal of this dismissal as a part of a settlement of an ancillary case.

Davis v. Tarrant County. Plaintiff is a criminal defense attorney practicing law in Tarrant County, Texas. He applied to be placed on the felony appointment list mandated by the Fair Defense Act. The district judges voted to exclude Plaintiff from the list, and suit was brought against the district judges asserting that the passage of the Fair Defense Act changed the character of appointment of counsel from a judicial act to an administrative act. The federal judge dismissed this case based upon judicial immunity. On April 8, 2009, the Fifth Circuit affirmed the trial court's dismissal.[21] This case contains a good discussion of the "nature of the act" analysis. Ultimately, the Fifth Circuit determined that even though the creation of a list of attorneys has been determined to be an administrative act,[22] the creation of a list under the Fair Defense Act is judicial.

On Page 226, the Court noted:

> . . . the appointment process must be viewed holistically. In this case, the selection of applicants for inclusion on the list, and the actual appointment of attorneys in specific cases occur as part of an appointment process that cannot be divided in a principled way in judicial and administrative act. In light of the fact that the defendant judges have very limited discretion in deciding which attorney to appoint in a specific case - they may only deviate from the rotation system for good cause – decisions about which attorneys should be placed on the wheel functionally determine which attorney will actually be appointed in a particular case.

Arguably, this determination puts the Fifth Circuit in conflict with the Second Circuit.

Dunn v. Kennedy. This is another Fair Defense Act case brought by an attorney who was removed from the indigent counsel list. Suit was brought against the judge that recommended that he be removed as well as a court staff member. The federal judge dismissed this case based upon judicial immunity. An appeal was taken to the Fifth Circuit. The Fifth Circuit upheld the finding of judicial immunity, but determined that the case should not be published. Pursuant to Fifth Circuit rules, this case has no precedential value.

Durrance v. Gabriel. In this Fair Defense Act case, an attorney was removed from the felony appointment list by the district judges. Plaintiff asserts that the judges are acting in an administrative capacity when developing the county-wide plans, and that they are acting in a ministerial capacity when they place or remove attorneys on the list. Judge Shell dismissed this case on the basis of judicial immunity relying upon *Davis v. Tarrant County*.

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[21] 565 F.3d 214 (5th Cir. 2009)(writ denied), 130 S.Ct. 624 (2009).

[22] *Mitchell v. Fishbein*, 377 F.3d 157 (2nd Cir. 2004).

Richard v. Keller. The surviving spouse of an executed inmate sued the presiding judge of the Court of Criminal Appeals alleging that she had interfered with the offender's attempt to file a stay of execution. The Texas Rules of Appellate Procedure specifically provide that documents can be filed in an appellate court with the clerk or any judge willing to accept the filing. Accordingly, the federal judge determined that Plaintiff's suit was barred by judicial immunity.

Stagner v. Blake. The Plaintiff is an attorney that was taken into custody by the court bailiff after he refused an order from the Court to tender a document to the bench. After a short pause, he was returned to the courtroom and asked whether or not he had been held in contempt. The Court indicated that he had not. Plaintiff alleged that without having held him in contempt, the Court lacked jurisdiction to have him taken into custody. He alleged that the Court was guilty of false arrest and improper detainment. This state court case was dismissed based upon judicial immunity.

OTHER JURISDICTIONS.

McKnight v. Middleton.[23] Plaintiff was involved in a child custody case. He alleges that the judge racially discriminated against him. He also asserted that the trial judge exceeded her authority in approving a wire tap and recording his conversations. The Court held that while these decisions were not necessarily "legally sound" the discretion to order the wire tap was within the Court's authority, and protected by immunity.

Huminski v. Corsones,[24] The plaintiff was a harsh and frequent critic of the Vermont judges. Orders were issued excluding him from the courthouse. He was held in contempt and jailed. Judicial immunity was upheld because Vermont law vested responsibility for courthouse security in the judiciary. This opinion illustrates the confusion that can arise in determining "judicial capacity." This opinion appears to be at odds with *Forrester v. White.* Recall, the Supreme Court noted that just because the task is delegated to the judiciary, it is not necessarily "judicial or adjudicative." Courthouse security could have been delegated to the Sheriff's Department or several other Executive Branch officials. I would encourage you to keep that in mind if your county asks you to become involved in decisions involving courthouse security.

Jennings v. Patton.[25] Plaintiff sued the judge alleging that the judge had falsely accused him of bribery. Plaintiff alleged that he had hired an attorney to sue the judge for wrongful imprisonment. The attorney contacted the judge, and offered to settle the claim prior to filing suit. The judge accused both the plaintiff and his attorney of extortion, and caused plaintiff to be indicted. Defendant judge alleged that he was acting in a judicial capacity. In ruling against the defendant judge, the Court determined that at the summary judgment stage it must accept the plaintiff's facts as true. Under those facts, the Defendant judge was accused of making false statements to the grand

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[23] 2010 WL 1221431 (E.D.N.Y.).

[24] 396 F.3d 53 (2nd Cir. 2005).

[25] 2010 WL 706497 (S.D.Miss.).

jury and withholding exculpatory evidence. The visit of plaintiff's attorney to the judge was not in official capacity. Rather, plaintiff's counsel was exploring the possibility of settling a claim prior to bringing suit. Under these circumstances, the alleged actions of the defendant judge were not judicial or protected by judicial immunity.

QUALIFIED IMMUNITY.[26]

You will recall that when the United States Supreme Court decided *Forrester v. White*, they determined that depriving judges of judicial immunity in the employment context should not adversely impact the operation of the court. They specifically stated that the defenses available in the doctrine of qualified immunity should be sufficient to allow for the efficient operation of the court in personnel matters.

The doctrine of qualified immunity shields governmental officials from civil liability "to the extent that their conduct is objectively reasonable in light of clearly established law."[27] The burden of negating the defense of qualified immunity lies with the plaintiff.[28] When a motion for summary judgment is before the Court on qualified immunity, the district court must make two determinations: (1) whether the conduct at issue, as a matter of law, is unreasonable in light of clearly established law; and (2) whether there exists a genuine issue of material fact that the defendant actually engaged in such conduct.[29]

Qualified immunity protects a defendant from suits arising from the performance of their discretionary duties so long as they act in good faith in the exercise of duties that are within the scope of their authority.

This immunity attaches to an official's actions when his or her job requires the exercise of personal judgment and discretion. The purpose of such immunity is to insulate government employees from personal liability and from the harassment of litigation.[30] Moreover, it is also a prerequisite to

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[26] Official immunity is the state court counterpart to qualified immunity. These two immunities are very similar, but do have some minor differences which are beyond the scope of this paper. A good discussion of official immunity can be found in *City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994).

[27] *Kinney v. Weaver*, 367 F.3d 337, 346 (5th Cir. 2004)(*en banc*)(quoting *Harlow v. Fitzgerald*, 457 US. 800, 818 (1982).

[28] *Foster v. City of Lake Jackson*, 28 F.3d 425, 428 (5th Cir. 1994).

[29] *Kinney*, 367 F.3d at 346; *see also Conroe Creosothing Co. v. Montgomery County*, 249 F.3d 337, 350 (5th Cir. 2001).

[30] *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d. 396 (1982). See also *Saucier v. Katz*, 533 U.S. 194, 202, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).

liability that the law that the defendant allegedly violated was "clearly recognized" at the time of the violation.[31] The Supreme Court has encouraged trial courts to make the qualified immunity determination as early as possible. If the defendant can establish his entitlement to qualified immunity as a matter of law, it functionally can be as effective as judicial immunity.

Texas is in the Fifth Circuit. The Fifth Circuit has mandated that once a defendant raises qualified immunity in their answer, the plaintiff must overcome the assertion of qualified immunity with specific (non-conclusory) allegations sufficient to overcome the assertion of qualified immunity.[32]In the Alexander case, the defendant judges took the position that the plaintiffs had failed to allege that each of them had engaged in individual acts which both violated clearly established law and that were unreasonable. Judge Means agreed that the allegations against the defendant judges were conclusory in nature, and were not factually specific. He dismissed Plaintiffs' cause of action for failure to slate a claim.

The Fifth Circuit does not allow any discovery until the plaintiff has met this pleading threshold. Other circuits are not as rigid in their interpretation of qualified immunity. Many courts allow limited discovery on the subject of qualified immunity. In most instances, a denial of qualified immunity is immediately appealable. However, the plaintiff can successfully defeat an interlocutory appeal if they can establish that the analysis of qualified immunity rests in any part on a factual determination.

As a general rule, a defendant can only be held liable for a violation of 42 U.S.C. § 1983 if they were actually personally involved in the action that allegedly brought about a harm. The Fifth Circuit has held that lawsuits against supervisory personnel based on their positions of authority are claims of liability under the doctrine of respondent superior which generally does not apply in § 1983 cases.[33] A supervisor may be held liable if there is personal involvement in a constitutional deprivation, a causal connection between the supervisor's wrongful conduct and a constitutional deprivation, or if supervisory officials implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force behind a constitutional deprivation.[34]

It should be noted at this juncture that qualified immunity does not attach to anything other than discretionary actions. If an action is ministerial (mandated by law or a rule), qualified immunity does not attach. An important distinction should be drawn between duties which are legislatively mandated, and those which allow the discretion in how the duty is to be performed to be left up to the actor.

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[31] *Will v. Hallock*, 129 S.Ct. 952, 163 L.Ed.2d 836 (2006).

[32] *Wicks v. Mississippi State Employment Servs.*, 41 F.3d 991 (5t Cir. 1995).

[33] *Williams v. Luna*, 909 F.2d 121 (5th Cir. 1990).

[34] *Thompkins v. Belt*, 828 F.2d 298 (5th Cir. 1987).

The clearest example of this type of distinction can be found in a suit against a law enforcement official for abuse of force. The rule or law may mandate that the official has an obligation to maintain order and discipline while leaving the means and methods of maintaining order to the discretion of the official.

REPRESENTATION.

Hopefully, you will make it through your entire judicial career without ever needing to be familiar with this section. However, recent trends indicate that it is less likely now than at any time in the past. When a judge is sued, he/she should immediately determine the appropriate contact person/agency. Generally speaking, state judges are entitled to representation from the Attorney General's office. As a general rule, county judges may be defended by the county attorney, district attorney, or a private insurance company.[35]

Obviously, being a defendant in a lawsuit can be a stressful situation. For this reason, I would recommend that you make the appropriate inquiries to determine the proper procedure for transmitting suit papers prior to being sued in a particular case. I recommend that state judges fax a letter requesting representation to the attention of the First Assistant in the Office of the Attorney General. The fax should include the citation and suit papers. The original of these documents should then be put in the mail so that the attorney that is ultimately assigned the case will have everything that was served. The judge should retain a copy of all documents for their own file, and to be used in the event the faxed and mailed documents are lost or mis-delivered. County judges should check with the appropriate county officials to determine who would represent them in the event that a lawsuit is filed. The county judge should become familiar with the process that is to be followed when the judge is sued. If the county provides an insurance policy,[36] it would be wise for the judge to stay familiar with the company providing coverage.

INDEMNIFICATION.

Most judges are surprised to learn that there are limits on the indemnification available to them. The state indemnification statute is found in §104.001 *et seq.* of the TEX. CIV. PRAC. & REM. CODE. State indemnification for state judges is limited to $100,000 per person and $300,000 per occurrence. Unfortunately, county judges do not have a statute analogous to §104.001 *et seq.* of the TEX. CIV. PRAC. & REM. CODE which clearly sets out their indemnification. This information is best obtained from the local officials in your county since there is apt to be variations from county to county. I would recommend county judges check with the appropriate county authorities to determine any limitations on their indemnification.

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[35] In 2005, Ch.76 of the TEX. GOV'T CODE was amended to give county judges the option of being represented by the Attorney General's office when the suit against them arises from actions they were taking pursuant to Ch.76 of the TEX. GOV'T CODE.

[36] Policies can also include district judges.

In the *Alexander v. Tarrant County* case discussed above, the plaintiffs had obtained a verdict against the private sector defendant in the amount of $40,000 (inclusive of punitive damages). Nineteen judges were defendants in the companion civil rights case. The $40 million verdict was an indication of the potential exposure facing the nineteen judges in the civil rights case. Understandably, few of the nineteen judges felt a great deal of comfort when they learned that the available indemnification was limited to $300,000. Judges should identify, and become familiar with, any statutes which provide for indemnification as well as any exceptions or limitations placed on the indemnification provided.

INSURANCE.

As referenced above, many counties purchase insurance policies for their judges. You should remember that an insurance policy is nothing more than a contract. If you are the beneficiary of such a contract, take care that it does not provide you with a false sense of security. The better practice would be to obtain a complete copy of the policy. Time should be spent determining what acts and/or omissions are actually covered by the policy. Equal time should be spent in the "exceptions" section to determine any limitations on the coverage discussed in the policy. Some policies cover liability arising from "judicial actions". Obviously, this type of policy is worthless since a judge has absolute immunity when performing these types of functions. If you are going to obtain an insurance policy, care should be taken to insure that the policy will coverage administrative and/or extra judicial capacity claims.

INJUNCTIVE/DECLARATORY RELIEF.

Be aware of the fact that judges are subject to injunctive and declaratory relief just like any other official. Such a suit on the equity side of the docket also avoids the bar of sovereign and Eleventh Amendment immunity. While there is no risk that a judge will be required to pay monetary damages, a prevailing plaintiff is entitled to recover court costs and attorney's fees.

RECUSAL AND COMPELLED TESTIMONY.

Normally, the Office of the Attorney General does not become involved in recusals. A recusal is not a suit against a judge, and generally, a judge should not be a participant in the recusal process once the matter has been referred to the presiding judge.

In the recent months, parties and attorneys have attempted to depose and/or subpoena judges to testify in the recusal process. Subpoenas have been served on the judge sought to be recused, judges that have decided previous recusal cases involving the judge to be recused, and the presiding judge of the judicial region who assigns judges to hear recusal matters. Judges have also been subpoenaed to testify in a criminal case where the defendant's attorney was attempting to disqualify the district attorney's office from handling the appeal.[37] In another instance, a state district judge was

[37] The trial judge had previously recused himself from handling any post-judgment motions.

subpoenaed to testify in federal court because he had signed a search warrant. The attorney for the criminal defendant advanced theory that the judge's campaign literature promising to "get tough on crime" evidenced a bias which predisposed the judge to favor law enforcement, and grant warrants even if probable cause was lacking.

This is actually one circumstance where it is better to be in federal court. The federal system has adopted the "Mental Processes Rule." The decision of judges are afforded strong protection by the Mental Processes Rule.[38] Federal courts have acknowledged that if judges were constantly subjected to the threat of being subpoenaed to explain their reasoning behind their decisions and acts it would adversely impact the integrity of the courts. Courts have refused to issue to subpoena for testimony of judges in all but the "most extreme and extraordinary circumstances."[39] Unfortunately, Texas courts have not actually embraced the Mental Processes Rule. This rule was discussed by the First District Houston Court of Appeals in *Tate v. State*, 834 S.W.2d 566, 570 (Tex.App.--Houston [1st Dist.] 1992). In discussing the Mental Processes Rule, the Court stated:

> Texas law has not established circumstances or conditions under which a judicial officer might properly be compelled to articulate his reasons for a decision in a particular case, and we do not propose to state such a rule here. However, we conclude that if such a rule were to established, the better rule would be to require, at the very least, a threshold showing of improper conduct on the part of the judge that would justify compelling him to testify. *(Emphasis added.)*

However, more recent opinions suggest that the Mental Processes Rule has been informally adopted. It was cited as the reason for quashing a judge's subpoena in *Thomas v. Walker*, 860 S.W.2d 579, 582 (Tex.App. Waco 1993). In *Sims v. Fitzpatrick*, 288 S.W.3d 93, 102 (Tex.Civ.App.--Houston [1st Dist.] 2009), the Court suggests in a footnote that the rule recommended in *Tate v. State* actually applies.

> . . . Had appellants preserved their general complaint that the assigned judges erred in quashing the subpoenas issued to the trial judge, appellants still were required to show extraordinary circumstances to justify compelling the trial judge to testify regarding her mental processes in arriving at her decisions. *Tate v. State*, 834 S.W.2d 566, 569-70 (Tex.App. Houston [1st Dist.] 1992, pet. ref'd); *Thomas v. Walker*, 860 S.W.2d 579, 582 (Tex.App. Waco 1993, no writ). Here appellants presented no evidence at the recusal hearings. In their "bill of exceptions," appellants referred to statements made

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[38] *United States v. Morgan*, 61 S.Ct. 999, 104 (1940).

[39] *Gary v. State of Louisiana Dept. of Health and Human Resources*, 861 F.2d 1366, 1368 (5th Cir. 1988)(quoting *U.S. v. Dowdy*, 440 F.Supp. 894, 896 (W.D.Va. 1977)).

> by the trial judge during various hearings. Thus, appellants failed to make a threshold showing of improper conduct on the part of the trial judge that would have justified compelling her to testify. *Tate*, 834 S.W.2d at 569-70.

The *Tate v. State* rule was also cited as authority in the unpublished opinion of *White v. State*, 202 WL 440795 (Tex.App. Amarillo).

The Mental Processes Rule is not the only restriction on judicial testimony. In *Joachim v. Chambers*, 815 S.W.2d 234 (Tex. 1991), the Texas Supreme Court engaged in an extensive discussion of the propriety of judicial testimony. In this original mandamus proceeding, the Court held that a retired district judge who continues to serve as a judicial officer by assignment could not testify as an expert witness. Obviously, this case was a little different than those discussed above. In this case, the judge was a willing participant in the judicial process. On at least two occasions, I have utilized this case to keep former judges from testifying.

Cannon Two of the Code of Judicial Conduct specifically restricts judges from testifying as a character witness. On Page 238, the Court also noted:

> There is yet another reason for restricting judges from testifying as witnesses. The appearance of a judge as a witness threatens, rather than promotes, "public confidence in the integrity and impartiality of the judiciary." A judge who testifies that one party to a case does or does not have good character seems, at least, to be taking sides in the litigation. This is inconsistent with the role of a judge. The risk of confusion of the roles of witness and judge when the same person acts as both can create an appearance of impropriety.

However, this same opinion makes it very clear that there are circumstances where it is appropriate for a judge to testify. The standards set out in Cannon Ten provide guidance when judicial testimony is appropriate. "Although these standards are invoked whenever a judge testifies, we do not hold that they prohibit judges from ever testifying in Court." Certainly, a judge must, like anyone else, testify to relevant facts when it is within his knowledge when summoned to do so.[40] Obviously, these concerns are diminished or dispensed with if a jury is not involved. Moreover, judicial testimony is allowed when a judicial witness is unavailable.

Texas Rule of Civil Evidence 605 provides another limitation on judicial testimony. See *Bradley v. State*, 990 S.W.2d 245, 248 (Tex. 1999) and the unpublished opinion of *Arafiles v. State*, 202 WL 27311 (Tex.App.–Corpus Christi).

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[40] *Joachim* at 239.

***Caperton v. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009).**

I have included this opinion in the paper because it could represent a new area of potential liability. In a majority decision, the United States Supreme Court determined that a West Virginia Supreme Court Judge's failure to recuse himself constituted a violation of a party's right to due process.

The facts set in the opinion are fairly egregious. Plaintiffs had obtained a judgment against Massey Coal in the amount of $50 million. The West Virginia Supreme Court reversed this judgment. One of the Supreme Court judges who had been part of the majority had denied a recusal motion. The basis for the recusal motion was the fact that the CEO of Massey Coal had contributed $3 million to his election campaign. Justice Kennedy wrote the majority opinion. His reasoning is both persuasive and curious. The West Virginia judge determined that there was not actual bias and that he had acted impartially. On Page 2263, the Court states: "We do not question his subjective findings of impartiality and impropriety. Nor do we determine there was actual bias." On Page 2265, the Opinion states:

> . . . due process "may sometimes bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *Murchison*, 349 U.S. at 136, 75 S.Ct. 623. The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process. We find that Blankenship's significant and disproportionate influence coupled with temporal relationship between the election and the pending case – " ' "offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." ' " *Lavoie*, 475 U.S., at 825, 106 S.Ct. 1580 (quoting *Monroeville,* 409 U.S., at 60, 93 S.Ct. 80, in turn quoting *Tumey*, 273 U.S., at 532, 47 S.Ct. 437). On these extreme facts the probability of actual bias rises to an unconstitutional level.

We have all heard the maxim, "hard facts make bad law." Assuming the facts set forth in the majority opinion are complete and accurate, it is difficult to argue that the West Virginia judge should not have recused himself. Unfortunately, this opinion was not written by a trial court or a lower appellate court. The problems with the effect this opinion is set forth in the dissent written by Chief Justice Roberts. On Page 2267, he begins by noting:

> Until today, we have recognized exactly two situations in which the Federal Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is trying a defendant for certain criminal contempts. Vaguer notions of bias or appearance of bias were never a bias for disqualification, either at common law or under our constitutional precedence. Those issues were instead addressed by legislation or court rules.

The majority opinion recognizes a "probability of bias" basis for recusal which can amount to a due process violation. On Page 2268, Justice Roberts notes:

> In any given case there are a number of facts that could give rise to a "probability" or "appearance" of bias: friendship with a party or lawyer, prior employment experience, membership in club or associations, prior speeches and writings, religious affiliation, and countless other considerations. We have never held that the Due Process Clause requires recusal for any of these reasons, even though they could be viewed as presenting a "probability of bias." Many state *statutes* require recusals based upon a probability or appearance of bias, but "that alone would not be a sufficient basis for imposing a *constitutional* requirement under the Due Process Clause." *Lavoie, supra* at 820, 106 S.Ct. 1580 (*emphasis added*).

On Pages 2269-2272, Justice Roberts lists 40 theoretical circumstances which could now require recusal based upon the constitutional due process violation of "probability of bias."

The opinion does not contain any discussion of any liability on the part of the judge that failed to recuse himself. Arguably, recusal is still a "judicial" action which should mean the judge would be insulated from paying a party monetary damages for the alleged constitutional violation. However, as discussed above, there is a possibility of finding that a litigant is entitled to equitable relief. In such circumstances, the judge could be responsible for paying the prevailing parties costs and attorney's fees. So long as the *Caperton* rules stays confined to these facts it should not create much of a problem for the judiciary. However, the judges should keep an eye on this area of the law to be aware if the due process violation is expanded into other areas.

CONCLUSION.

We have seen that all actions taken by judges are not judicial in nature. The character of the action determines whether or not an act taken by a judge will be protected by judicial immunity. Judges and other governmental officials can act in either an official or individual capacity. If a judge is engaged in a non-judicial function, he may be protected by legislative or prosecutorial immunity. If the action is administrative in nature, the judge is only protected by the defense of official immunity.

If a judge is found to be liable for an improper action for which no immunity attaches, he is personally responsible for any damages assessed against him in excess of any potential available indemnification limits afforded by state statute.

WHAT YOU CAN DO.

I would encourage every judge to become proactive in understanding the potential scope of their liability as well as the indemnification potentially available to protect them in the event of an adverse verdict. In addition to becoming acutely familiar with the test to be utilized in determining when actions are judicial, the judge should familiarize themselves with the interpretation of qualified immunity.

I would encourage judges to determine the appropriateness of their involvement in potentially dangerous situations by applying the same test that they would apply in determining whether or not they would allow expert testimony in their court. Specifically, if the judge, by education, training. or experience does not possess any greater expertise than a layperson in a particular subject area, they should he loathe to impose their judgment or opinion in any situation.

If employment decisions are being made in a department or agency over which the judge has supervisory control, the judge should be reluctant to interfere with such decisions unless the judge possesses professional knowledge or expertise which equips them to do so. Put another way, the judge's personal preferences and personality should not create, or be the basis of conflicts.

I would recommend that you create a notebook containing the statutes which impose any duties and/or obligations on you. Be familiar with the wording of the statute, and at the time you are performing the duties mandated by the statute be sensitive to the fact that you may be engaged in an administrative acts.

Keep in mind that if you are acting in an administrative capacity your only immunity may be qualified immunity. Qualified immunity only attaches to discretionary tasks. Put another way, if the statute mandates that you take a particular action, and you do not do so, you are <u>not</u> performing a discretionary task, and qualified immunity will <u>not</u> be available.

Finally, I would encourage you to start thinking and acting like judges. Obviously, each of you had to select a political party to reach the bench that you now hold. Political infighting in the judiciary will only inure to the benefit of those seeking to expand judicial exposure. As noted above, the litmus test in qualified immunity is a "reasonableness" standard. Put another way, consistency among the judiciary will inure to the benefit of all judges. Similarly, open communication on the proper way to handle challenges facing judges should lead to more consistency thereby strengthening the potential defense of qualified immunity.

You should also be aware of the fact that a matter has been handled in a particular way in the past is not a guarantee that there will not be future liability. Talk to more experienced judges, and benefit from their experience. You should also take the time to examine their recommendations in the new light of potential judicial immunity, and determine whether or not improvements can be made to existing systems.

HBAA
Hispanic Bar Association of Austin

April 5, 2012

Charles L. Babcock
Chair, Texas Supreme Court Advisory Committee
Jackson Walker, LLP
1401 McKinney Street, Suite 1900
Houston, TX 77010

Re: Supreme Court Uniform Forms

Dear Mr. Babcock:

We are writing to extend our most enthusiastic support for the creation and approval of standardized, Texas Supreme Court-approved forms for use in simple, uncontested family law cases. We are an organization of Hispanic lawyers who volunteer our time and energy towards improving the lives of those in the Hispanic community in central Texas. Our membership includes attorneys, judges, legislators, lobbyists, government officials, law professors, and law students, and our attorney members practice in all areas of the law, including family law. Further, many of our members who are not family law practitioners by trade have experience in this area, including through taking pro bono divorce cases from sources such as Volunteer Legal Services of Central Texas.

Our membership, particularly our members who are family law practitioners and judges, witnesses first-hand and on an almost daily basis the difficulties that arise every day at the courthouse when someone cannot afford to hire an attorney. We have seen low-income pro se litigants file forms that they found on the internet and are not based on Texas law. We have seen individuals having to make extensive use of precious judicial resources (court clerks and others) because they do not have a simple, straightforward place from which to even start seeking relief within our court system. We have heard the horror stories of low-income pro se litigants—those most in need of our assistance—being turned away by court personnel or judges because they lack the ability to navigate our professionalized court system without some kind of guidance. This is a denial of access to our judicial system; it is nothing more than denial of justice itself.

Perhaps worst of all, we have seen and heard what happens when people do nothing. Without a place from which to start, many will put the matter to the side. Then, years later, we see them when they have far more serious legal problems simply because they were unable to take care of their legal situation at the very beginning, when it could have been handled simply, directly, and without the use of significant legal aid and judicial resources. What began as an uncontested, simple matter that could have been dealt with by the use of simple forms such as those proposed ends up becoming a much more complex situation with the passage of time. We firmly believe that the forms that are being proposed can solve some of these problems.

This is an issue that disproportionately affects the Hispanic community as it continues its explosive growth throughout Texas, and for that reason we feel compelled to support the creation and approval of standardized forms to help those that cannot afford to hire an attorney. We

would be living in an ideal world if we could provide a lawyer to every poor person who needs one. Unfortunately, and despite the efforts of organizations like ours around the state, that is unrealistic. Standardized forms would be a wonderful first step to fill this need in the basic types of family law cases that the forms seek to address, because you simply cannot file for a divorce or for any other basic form of family law-related legal relief.

We owe our citizens the opportunity to access and use our judicial system to solve their problems. We owe our citizens the opportunity to seek justice. And that is what we believe these forms will begin to provide to those most in need.

We also would like to add our voice to those making some of the points that you no doubt have heard numerous times as this issue has been debated, and to those rebutting some of the arguments that have been made against the promulgation and approval of these forms:

There is a tremendous need for standardized forms. The Texas Access to Justice Commission has estimated that legal aid and pro bono programs can serve only about 20% of those seeking legal assistance and who would qualify for assistance based on their income. The Texas Access to Justice Commission also has learned that over 20% of family law cases were filed pro se, and has estimated that approximately 40% of all filed divorce cases are filed pro se. We will never be able to provide assistance to all of those in need. But standardized forms can help us to leverage our limited resources to extend our help to more of those who need it most.

Concerns regarding the impact of standardized on the family bar have not materialized. There are only two states that do not make some kind of standardized family law forms available. Thirty-seven states have standardized and approved forms for divorce, and each of those states requires their courts to accept those forms when a litigant chooses to use them. We are not aware of any evidence from any of these states indicating that the family bar suffered after such forms were introduced. We believe that those who would use preapproved forms would never have sought the assistance of an attorney at all—again, in Texas as much as 40% of all divorce filings may be pro se. We also believe that if such forms are introduced, legal aid organizations will be able to better focus their resources on complex cases, where their expertise can best be put to use.

Concerns regarding the misuse of forms are unfounded. To put it simply, if someone wants to attempt to misuse the judicial system to harass or harm someone, they will try to figure out how to do so regardless of whether there is a form available for them to use. Arguments regarding the potential misuse of forms also seem to assume that our judges take no part whatsoever in the divorce process, and simply will approve anything that crosses their desk without ever making any kind of inquiry whatsoever. Further, and to repeat, these forms are for cases that are not complex, and are for cases that are uncontested. That alone should address any concerns that the forms might be misused.

Standardized forms would improve the legal system. When pro se litigants use forms that they find in random corners of the internet that end up being entirely insufficient for use, one of two things happens. Either they are sent home, meaning that we have denied someone access to our judicial system, or the court and its staff must try to figure out some way to help. This leads to an incredible strain on our already limited judicial resources, as staff has to correct basic

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errors and walk pro se litigants through parts of the process—both of which would be entirely unnecessary if pro se litigants had a standardized form from which to start.

Standardized forms could increase pro bono participation. When attorneys are asked to do pro bono divorces, something that we often hear is "But I am not a family law attorney. I do not even know how to get started." Organizations like Volunteer Legal Services of Central Texas have attempted to address this kind of concern by developing comprehensive sets of forms and guides for pro bono attorneys to use. We believe that having a set of standardized and approved forms will further address these concerns. The Texas Access to Justice Commission already has found that pro bono lawyers use court-approved forms in other states. We believe that the same thing would happen here. If there is an approved set of forms to use, we think that an attorney would be slightly more likely to take on that first pro se divorce case than they would without them. We welcome any tools that make it easier for pro bono attorneys to provide assistance—and more importantly, to get started. Once an attorney starts doing pro bono work, we believe they are much more likely to continue doing it throughout the rest of their careers.

The Hispanic Bar Association of Austin urges the Texas Supreme Court Advisory Committee and the Texas Supreme Court to adopt the Divorce Kit proposed by the Supreme Court Uniform Forms Task Force. We believe that initiatives like the Divorce Kit are critical to improving access to the legal system to our most vulnerable citizens, and will form the cornerstone in all of our efforts to ensure that there truly can be justice for all.

Sincerely,

The Hispanic Bar Association of Austin

Jesse Butler, President

Renee Castillo-de la Cruz, Secretary

Manuel Escobar, President-Elect

Jesus Garza, Treasurer

cc: The Honorable Wallace Jefferson, Chief Justice, Supreme Court of Texas

Supreme Court Advisory Committee

Harry Reasoner, Chair, Texas Access to Justice Commission

Trish McAllister, Executive Director, Texas Access to Justice Commission

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April 16, 2012

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Austin, Texas 78701

Gentlemen:

I am writing to you because you are on the Supreme Court Advisory Committee (SCAC). I am a member of the Family Law Section, the ADR Section, and the General Practice, Solo and Small Firm Section of the State Bar, and I am on the Council of the GP Solo Section. I want to be clear that I am writing as an individual.

I traveled from College Station to attend the April 13 and April 14 meetings of the SCAC. I signed in both days. On Friday Mr. Babcock announced the public would be able to speak about 4 p.m. on Friday or possibly Saturday morning. I could not wait until 4 p.m. and left early Friday to get some work done in my office. I came back Saturday with hopes of being able to speak but was told the public had spoken Friday afternoon and there would be no opportunity to speak Saturday. Counting driving time, I had nearly the time in your meeting your committee did those two days. Here is what I had to say:

The impetus that put me up to speaking was a situation presented to me. I have done legal services for three generations of a family. One family member came to me. He had gotten a divorce. No kids, but property. A self-done divorce. Both spouses college graduates. The decree was a real mess on property. Totally inadequate. They had forms and instructions for those forms.

I have two licenses. Lawyer and Professional Engineer. I do not think the engineers would ever give somebody some forms and instructions and tell them to go do their own engineering. It disappoints me that the Supremes are encouraging this in the legal arena.

The Arizona Supremes did this years ago. Their system was quite sophisticated. Apparently one can go to a kiosk in any major mall, answer some questions on a touch screen, and out comes all the papers for a divorce. I have talked to a former chair of the Arizona General Practice Section. He wrote a letter to every licensed attorney in Arizona asking their experience with the system. He was not prepared for the volume of responses, truckloads of mail – 80 to 90 percent negative with lots of tales about injustices to the citizens. According to him, the judges love the system – standardized forms they do not have to read and, therefore, mistakes or incomplete documents did not matter; the judge was just a rubber stamp in the system. Not what I would hope Texas would become. Why have a judge? Why not let the computer grant the decree?

Some questions I have about your project which may be beyond the scope of your directions from the court:

1. The access to justice persons I have talked to say the system under discussion is for 'no children and no property.' No children may be the easy part of the test but I would observe the law according to my belief that if a party has a shirt on their back they have property. When I asked the access to justice folks about this, they did not have the definition of "no property." So, who does qualify to use the forms?

2. Who checks those qualifications?

3. What rules apply to those who represent themselves? Surely none of them will know the Family Code or any Rules of Civil Procedure or evidence. Do different rules apply if one party gets smart and gets an attorney?

4. If there are mistakes in the documents, who corrects those mistakes? How does the judiciary stay impartial if they or their office helps complete or correct the forms? Is the judiciary practicing law? I think we can be assured that John Citizen will not be able to understand or complete the forms fully, even with instructions.

5. What penalties apply if disqualified persons use the forms? Almost assuredly this will happen.

6. Who is responsible for and keeps the forms and instructions current? Who pays for those costs? Surely the law and rules might change over time. They generally do.

7. How many more questions will others be able to think about?

I am afraid lawyers are building themselves more negative impressions and lawyer jokes. In the future there is no doubt that problems will be blamed on our profession because we dreamed up the forms and no doubt did not see all the things that can be involved in peoples lives at the time they need a divorce, and we cannot educate the uneducated. When I started this I said the impetus for me going to your meeting was some educated people making a mess of their divorce.

My observations of discussions by the SCAC members are that some or many:

1. Do not believe the proposed forms and/or instructions meet the law;

2. Do not believe the proposed forms and/or instructions meet the rules;

3. The proposed forms will likely be misused; and/or

4. The citizenry does not have the necessary knowledge to properly utilize the forms, no matter what the instructions might say.

I recognize there are thousands of citizens who cannot afford a divorce. What we as attorneys need to realize is that this is a societal problem to be resolved by the elected representatives of those people (the Legislature) and not the judiciary on the backs of the lawyers of this state.

If I were on the SCAC, I would be inclined to tell the Supremes this idea is ill-conceived and the SCAC is going home.

Very truly yours,

HUGH W. LINDSAY
Attorney

April 12, 2011

Supreme Court Advisory Committee
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711-2248

RE: Report of the Uniform Forms Task Force dated January 11, 2012

Members of the Advisory Committee:

As judges with many years of experience in family law cases, both as attorneys and as judges, we write to provide additional information for the Supreme Court Advisory Committee as it considers its recommendations to the Supreme Court of Texas regarding the forms promulgated by the Uniform Forms Task Force. Pursuant to the Code of Judicial Conduct, we are authorized to speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, and the administration of justice. Our purpose is to inform the Committee of the practical problems faced by our trial courts with forms already in existence and our opinion that the forms before the Advisory Committee will surely not change the status quo and may actually cause more problems for the judicial system and the public's perception of the fair and efficient administration of justice.

In his letter to State Bar President Bob Black of January 25, 2012, Chief Justice Jefferson framed the issue as "how best to provide our poorest citizens access to the rule of law." We acknowledge that legal services organizations are unable to meet the demand of those Texans who are unable to afford an attorney and qualify for legal aid. Producing forms is one response to the problem, however it falls far short of providing "our poorest citizens access to the rule of law." What is most needed is access to competent and qualified legal advice, and it is incumbent upon the bench and bar to engage in innovative thinking and comprehensive discussions which will expand the delivery of legal services to the poor. Forms alone cannot and will not accomplish that goal.

The numbers of self-represented litigants coming into our courts has grown exponentially over the years. In addition to decreased funding of legal aid services, the proliferation of forms on the Internet and the level of comfort people have gained in using computers have created a false sense of confidence and security in the use of such forms.

A belief that "one size fits all" forms will provide a solution for the poorest of our citizens is illusory and much too simplistic. The Supreme Court's forms initiative is **not** limited to low-income persons and in fact, the forms will be made available to every litigant who wishes to represent himself or herself. Forms will not decrease the number of self-represented persons coming before our trial courts. Few if any self-represented persons are appearing in court without forms. There are volumes of self-represented litigants because there are so many forms available. Self-represented litigants do not need more forms, especially forms which misstate Texas law—they need access to legal advice.

Irrespective of their ability to afford an attorney, self-represented litigants appear before the courts with complex social problems which differ from individual to individual, and despite their complexity, they are are using forms that do not address their unique problems. It is become increasingly common for our courts to encounter spouses who have had children with one or more persons other than their spouses during marriage, and those who already have child-related orders because of the involvement of the Attorney General's Office or the Department of Family and Protective Services. While a petitioner may qualify as indigent, that party's spouse may have assets that could be divided, but they have no knowledge of the nature and extent of the marital estate and have no idea how to obtain information about it.

Self-represented litigants are completing forms that claim there is no property when there is. They are claiming the children born to anyone other than their husband are not children of the marriage. They are swearing under oath that their husband is not pregnant [because they have no idea what the terms *petitioner* and *respondent* mean], and they are waiving and/or failing to divide their ownership interest in cars, houses, and retirement plans. Litigants often believe that a marriage ends at separation, and they will only list property acquired prior to separation as property of the marriage. They do not consider anything acquired after separation to be part of the marital estate because they do not understand

Texas family law. They tell us they have no retirement because "they are still working", because they do not understand that unvested benefits, or vested benefits not yet in pay status, or in some cases, the right to a potential employment benefit, such as deferred compensation, can be an asset. They have no comprehension that there may be claims that are property, such as a spouse's claim for damages form an automobile accident, or spouse's claim from a refinery explosion or ship channel accident. The orders for child support frequently fail to have a step down provision or a start date, so someone is going to have to tell them years down the road that they do not have an enforceable child support order. A spouse may have committed family violence, yet how is a party to know the legal effect that a pattern or history of family violence may have on whether the parents are appointed as joint managing conservators or whether a spouse should have possession of a child under a standard possession order?

In some cases, litigants are admitting to the commission of an offense or committing perjury in very significant instances, such as admitting they have never filed a tax return; acknowledging that they lied to a mortgage company about their income; admitting that they lied on bankruptcy schedules; or admitting that they have committed a criminal offense, such as injury to a child or assault. They are making judicial admissions by filing pleadings that say they have no property, no children, and no debts. We have people seeking name changes who are swearing that they are not required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure, and they have no idea what the law requires or the ramifications of their failure to follow it. Simply stated, nobody is providing them with needed legal advice about the ramifications of these confessions and judicial admissions.

Litigants without legal training are not likely to be aware that there is no confession of pleadings in family law cases. Therefore, they are usually unaware that even in a default hearing, they must prove separate property claims by clear and convincing evidence to overcome the statutory presumption that all property on hand at the time of the divorce is community property. They may be unaware that they must produce proof by a preponderance of evidence to overcome a presumption that parents should be appointed as managing conservators.

Family law involves many legal issues. It includes basic property law, probate law, bankruptcy, real estate, securities, tax and estate planning. The practice of family law is difficult enough for attorneys who possess only a passing knowledge of family law practice and procedure, yet we are expecting persons who have no legal training or understanding of the law to handle the most important of their personal affairs without access to competent legal advice.

Given the unique and often complicated issues involved in family law cases, it is not surprising that many self-represented litigants become overwhelmed to the extent that they do not carefully read the instructions for completing the forms, and come to court with forms partially completed or not completed at all. They will check boxes regarding circumstances that are inapplicable to their case while failing to check other boxes for elements that are essential to the case. The trial judges are not permitted to give these persons legal advice. We are required by law to hold them to the same standards as attorneys. Yet, we know they are not and the nature and breadth of family law is much too involved for a layperson to go it alone. They need legal advice.

By giving its stamp of approval to family law forms, the Supreme Court of Texas will be representing to the general public that:

1. A family law case is not a significant lawsuit.
2. Anyone can represent himself/herself in a family law case.
3. If you check the boxes on the form, you can protect your rights and those of your children.
4. If you check the boxes on the form, you will have an enforceable order.

Any sense of satisfaction that a self-represented litigant may feel in completing forms promulgated with the imprimatur of the Supreme Court of Texas and obtaining a divorce by using them will develop into indignation and anger when that party comes to realize the role those forms may have played in that party's loss of important personal, parental and property rights at the hands of the Supreme Court and the trial courts that allowed that party to checklist his/her way into losing them. Triumph will become tragedy.

Family law cases are not always ripe for expedition. We know that there are many judges who will accept any paperwork which may be given them by self-represented litigants just so they can efficiently and expeditiously handle the volume of self-represented litigants who are currently showing up in their courts. Yet, we also know that there are many judges like ourselves who care about the rule of law and the long-term implications of decisions made by parties in family law cases. We believe in informed decision making, and forms cannot ever be a substitute for competent legal advice. Efficiency and expedition do not always equate to fairness and access to justice.

There is a real need for a discussion about how best to provide a comprehensive remedy to access to justice by those who cannot afford an attorney. As much as each of us believes that judicial leadership is necessary to effect a solution, we believe that the State Bar of Texas is better suited as the forum tasked with such an undertaking. Therefore, we respectfully request that the Supreme Court Advisory Committee recommend that the Supreme Court of Texas abate the work of the Task Force and the adoption of family law forms and refer this matter to the State Bar of Texas.

Thank you for allowing us the opportunity to provide this information.

Yours very truly,

Hon. Sheri Y. Dean
309th Family District Court

Hon. Don R. Emerson
320th District Court

Hon. David Farr
312th Family District Court

Hon. Victor H. Negrón, Jr.
438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
318th Family District Court

Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

Hon. Jim York
246th District Court

Hon. Doug Warne
Senior District Judge

Yours very truly,

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309th Family District Court

Hon. Don R. Emerson
320th District Court

Hon. David Farr
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438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
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Hon. Dean Rucker
318th Family District Court

Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

Yours very truly,

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318th Family District Court

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257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

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Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

Hon. Aleta D. Hacker
326th District Court

Hon. Bonnie Crane Hellums
247th Family District Court

Judge William W. Harris
233rd District Court

Hon. Trey E. Loftin
43rd District Court

Hon. Jerry Buckner
Parker County Court at Law No. 1

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JOHN A. DANIELS, INC. (RETIRED)

April 9, 2012

SCAC Chair
Charles L. (Chip) Babcock, IV
Jackson Walker, L.L.P.
1401 McKinney Street, Ste. 1900
Houston, TX 77010

VIA FAX: 713-752-4221

SCAC Subcommittee Chair
Richard Orsinger
McCurley Orsinger McCurley
Nelson & Downing, L.L.P.
310 S. St. Mary's, Suite 1717
San Antonio, TX 78205

VIA FAX: 210-267-7777

RE: Uniform Forms: Divorce Forms

Gentlemen,

I would like to express my opposition to providing forms for Pro Se litigants. The consequences suffered by pro se litigants can far out-weigh any advantages they may believe they are gaining. There are so many different deadlines that can be missed and errors that can occur. Most pro se litigants are not even aware of a serious omission or error until it is too late, or the deadline they were not even aware of has expired. I have represented clients who have returned to court due to certain critical omissions and/or errors that were made during their initial case that they handled pro se.

Can simple forms be used to cover every possible scenario that can arise in the course of a divorce? It has been my experience that most clients approach their case believing that it will be a "simple divorce" when, in fact, that is not the case.

Litigants will likely assume that the forms provided are perfect, do not need to be amended or supplemented and will absolutely protect the litigant--even if the opposing party obtains counsel.

Will the Committee bear responsibility for litigants' failure to amend or supplement or timely supplement?

Cordially,

Timothy J. Daniels

TJD/dab

Cc: Thomas L. Ausley, Chair
Family Law Section
State Bar of Texas

VIA EMAIL: info@sbotfam.org

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FACSIMILE TRANSMISSION

TO:	Charles L. (Chip) Babcock	**FAX NO.:**	(713) 752-4221
	Richard Orsinger		(210) 267-7777
FROM:	Timothy J. Daniels	**OPERATOR:**	Diane
RE:	Uniform Forms: Divorce Forms		3 including cover page
DATE:	April 9, 2012	**CC:**	Thomas L. Ausley
			☐FAX ☒E-MAIL ☐MAIL ☐ HAND DELIVERY

☐ **Urgent** x **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **For Signature**

Comments: Attached please find a copy of our correspondence dated April 9, 2012.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

CHILD SUPPORT DIVISION

To: Members of the Supreme Court Advisory Committee

From: Alicia Key, Deputy Attorney General for Child Support AK

Date: April 12, 2012

Subject: Pro se Litigants

During the past few months, representatives of both the Texas Access to Justice Commission and the Family Law Foundation have asked for statistics regarding the number of pro se litigants in cases handled by the Child Support Division of the Office of the Attorney General (OAG).

While it is difficult to report the exact number of cases in which the parties were unrepresented, I can report that, in state fiscal year 2011, the Child Support Division filed a total of 199,903 legal actions across the state, all in Suits Affecting the Parent-Child Relationship. These actions included almost 92,000 original petitions to establish child support orders, over 56,000 motions to enforce child support orders and almost 52,000 motions to modify child support orders (filed at the request of either the child support obligors or the obligees). In the majority of those cases, the mothers and fathers appeared pro se.

I would like to take the opportunity to clarify a significant point, however. In each of those actions, the OAG was the petitioner and both of the parents were respondents. In every case, the petitions, motions and standardized orders were prepared by our office. In cases where contempt is sought against delinquent obligors, those respondents are given the opportunity to request court-appointed attorneys. In would be an extremely rare occurrence that a party other than the OAG would need to file any legal pleadings.

Thank you for the opportunity to provide this information. Please let me know if I could be of further assistance.

Bennett & Baca
Attorneys and Counselors at Law

Richard Bennett, Attorney ***Patricia Baca, Attorney***

Revised April 13, 2012

Supreme Court Advisory Committee
P.O. Box 12248
201 W. 14th Street, Room 104
Austin, Texas 78701

Re: Order in Misc. Docket No. 11-9046; Supreme Court Uniform Forms

To the Honorable Members of the Supreme Court Advisory Committee:

I believe that the Justices of the Texas Supreme Court are acting outside their judicial authority by promulgating these forms and subjecting themselves to malpractice claims. In Mireles v. Waco 502 U.S. 9 at 11, the United States Supreme Court held that judicial immunity can only be overcome when (1) the judge engages in non-judicial actions and (2) when a judge acts in complete absence of jurisdiction. [Tab A: Mr. David A. Harris "The Judge Beyond Immunity: Countrywide and Statewide Perspective"].

By preparing pleadings for non-family members, the Justices are acting outside the Code of Judicial Conduct. Said rules clearly state: "**G. Practice of Law.** A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family." Of course, cases in which people use these forms may be before them and, as such, the Justices may also be violating the Code of Judicial Conduct.

The promulgation of forms is neither judicial nor adjudicative. Forms can and are promulgated by private individuals and private agencies. As such they are not a necessary condition of the adjudicative system. There is no distinction between the act of the Texas Supreme Court promulgating forms and the act of Texas Law Help, Nolo Press or any individual attorney promulgating forms. As such, it is not an adjudicative act and is not protected under judicial immunity. *See* Tab B Forrester v. White 484 U.S. 219 (1988). At best, the promulgation of forms is an administrative act which is clearly not protected by judicial immunity. At best, the Court could argue the forms are administrative in nature and, as such, may fall under qualified immunity.

However, these forms are being promulgated by the Texas Supreme Court with no constitutional or other authority, as such, the acts are outside of the official role of the Justices and immunity cannot attach. I have read the Constitution of the State of Texas that sets forth the duties of the Texas Supreme Court. I find no reference that would even remotely support The Honorable Justice Wallace Jefferson's assertion that the Texas Constitution requires the court to establish "a judicial climate in which people who lack money to hire a lawyer have a reasonable

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Fort Worth TX 76117 Fax (682)647-1907

chance to vindicate their rights in a court of law." Such a reading of the Texas Constitution would give rise to the right to court appointed representation in Civil Cases hereinafter, "Civil Gideon."

It should be noted that many of the ABA leaders that support the movement towards promulgating forms have advocated the right of court appointed attorneys be expanded to child custody cases. Tab C "Civil Right to Counsel" by Michael Greco. Despite years of having uniform forms in California, or one may argue because of years of having uniform forms in California, California is overrun with pro se litigants. California has recently signed into law the Sergeant Shriver Bill that provides for Court appointed attorneys in some custody cases and other civil cases. Tab D California Bill Setting forth Civil Gideon in California. Despite having forms in Wisconsin since 2000, the self-represented litigant problem is not getting better it is getting worse. All of the items suggested here by the Texas Access to Justice were implemented in Wisconsin in 2000 and the courts are still having the same problems that we are identifying in Texas today. Tab E. Meeting the Challenge of Self-Represented Litigants in Wisconsin (December 2000). Wisconsin has since set aside funds for court appointed attorneys in divorces, but the Wisconsin budget cannot accommodate the need. Tab F: Judges' Views of Pro Se Litigants Effects on the Courts.

California and Wisconsin and a number of other states have all tried all the concepts proposed by the Texas Access to Justice and none of these "solutions" solved the problem so they are now moving to Civil Gideon. A process that is taking millions in tax payers' dollars to fund an entitlement to government assistances in Civil Cases created by simple forms a dozen of years ago. The Texas Access to Justice Commission is already fully aware the forms will not be enough. The Texas Access to Justice Commission set up a Civil Gideon Commission in May of 2009 as part of a five year plan. We are now in year three of that plan. Tab G. Miscellaneous Texas Equal Access to Justice Documents Discussing Civil Gideon.

The Court can take one of two stances. The first is that the act of creating forms is outside the Texas Constitution and thus not protected by judicial immunity or any other form of governmental immunity. If however, the administration of justice requires the court to provide assistance to those that cannot afford an attorney in divorces with no children and no property, then the only logical step would be the right to court appointed counsel. Many of the poor do not have the capacity to read or write complex legal documents. If equal access to justice is required in all civil cases, including divorces, we are on a slippery slope to civil Gideon. Please note, I am NOT advocating Civil Gideon. I am stating that the stance that the Texas Constitution requires the Texas Supreme Court to provide Access to Justice for all Texans will lead us there.

I believe a careful reading of the Constitution of the State of Texas and the case law interpreting it makes it clear that the courts are not required to provide legal assistance in civil cases such as divorces. I believe the Constitution is clear that the Texas Supreme Court has no mandate to create such forms. I do not believe there is even authority to create such forms. As such, the Justices are not acting in their capacities as Justices nor are they agents of the State of Texas in creating these forms.

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The forms do give detailed and incorrect legal advice. As I understand it, the Family Law Foundation has pointed out more than seventy deficiencies in the forms, so I will not go into each and every deficiency that I see with these forms. The forms give more detailed legal advice on the Petition than they do on the Waiver and Answer. As such, the forms favor the Petitioner.

Also, the instruction sheet refers people to the Texas Law Help website that contains forms on a number of matters. None of these forms have been vetted by any committee and some of them are wrong. These forms deal with very complex legal issues that far exceed the no children, no property issues. The divorce forms purport not to divide retirements, when the Texas Law Help Divorce Decree forms do, in fact, allocate retirements. Retirements are allocated in a manner that deviates from Texas Community Property Law. There are actual cases where people have accidentally and forever divested themselves of valuable retirements by using these forms, which purport not to divide retirement. By referring people to the Texas Law Help webpage for further forms, is the Texas Supreme Court liable? I would argue that the individual Justices that vote to promulgate the forms would be liable for any damage the forms may cause.

If the Texas Supreme Court is mandated to help the "poor" (a term not defined under the Texas Constitution) in divorces, is the Texas Supreme Court mandated to help victims of auto accidents, medical malpractice, legal malpractice, tenants, landlords and people in contract disputes? This is clearly not a mandate of the Texas Supreme Court.

All of the forms direct people to seek an attorney from the State Bar of Texas Lawyer Referral Service. I question the authority of a State Governmental Agency, such as the Texas Supreme Court, referring potential clients to any one group. While any attorney may join the Texas Bar Lawyer Referral Service, he or she must agree to give that service a 10% referral fee. Attorneys that handle simple, lower priced divorces simply would not join the referral service. Again, to have a governmental body make such a referral is questionable at best.

The concept that Family Law attorneys have a financial incentive to fight the do-it-yourself divorces is ludicrous at best. I can charge a client $1,000.00 to $1,500.00 for an uncontested divorce and ensure that all the paperwork is correct. I can have someone do their own divorce and pay me much more to attempt correct the mess they made. In the first instance, I have happy clients that have paid me and obtained the desired result. In the second instance, I often have an unhappy client that pays me a good deal of money with no guarantee of a good result. In fact, the odds are often against a party attempting to set aside an agreed divorce. The only person who wins when a client uses a do-it-yourself divorce kit, is the attorney hired to clean up the mess.

Consider this: over $500,000.00 was diverted from legal aid to create the Texas Law Help forms. If they were acceptable, why would the Supreme Court of Texas have appointed a commission to create a new set of forms? Why has it taken this commission a year to create forms the State Bar of Texas does not find acceptable? I would suggest because divorces are never one size fits all. The forms manual the State Bar of Texas sells to Family Law attorneys is 5,186 pages for a reason. Even with these forms at my disposal, I still must draft custom language on a daily basis.

5208 Airport Freeway Suite 214
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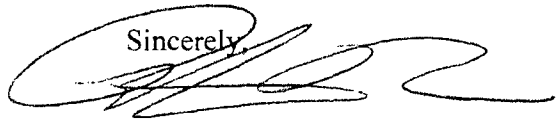
Thank you for taking time to consider my positions.

Sincerely,



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2010 Annual Judicial Education Conference

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The Judge Beyond Immunity: Countywide and Statewide Perspective

FACULTY: Mr. David A. Harris

COURSE DESCRIPTION

Decisions made when judges act in an administrative capacity instead of a judicial capacity continue to plague the judiciary. This session explores case law, explains the differences between "chosen" participation and "mandatory" participation, and provides practical hints and tips to determine whether an act is judicial for purposes of absolute judicial immunity.

[0.75 Ethics]

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ACTIONS BY JUDGES
IMMUNITY – LIABILITY – INDEMNITY

By: David A. Harris
Assistant Attorney General
Office of the Attorney General
for the State of Texas

DISCLAIMER

The purpose of this disclaimer is to clarify that although I am employed as an Assistant Attorney General, the opinions and arguments stated in this paper do not represent an opinion or official position taken by the Attorney General of the State of Texas. I am neither part of the Administration nor am I a member of the Opinions Committee. General Abbott has authorized me to give presentations and write this paper sharing with the judiciary my personal experience handling cases involving judicial liability as well as my research attempting to predict trends in that area.

ACTIONS BY JUDGES
IMMUNITY – LIABILITY – INDEMNITY

INTRODUCTION.

The term judge conjures up an image of an individual wearing a black robe sitting on a raised bench presiding over a trial. If this was the only function that a judge performed there would be little need for this paper. In addition to presiding over trials, your election to the bench will necessarily thrust you into various other roles. It is important for you to understand that not every action taken by a judge is a judicial action. The fact that the duty is mandated by the Legislature does not control whether or not the action is "judicial".

Recently, attorneys have been probing the limits of judicial immunity by bringing suits seeking to hold judges responsible for perceived wrongs. It would behoove you to have a functioning understanding of what constitutes a judicial act since only judicial acts are protected by judicial immunity. Other actions that you take may be protected by other immunities. You should understand the nature of those immunities as well as their limitations. Finally, you should understand that in the event you are found to have engaged in improper conduct which is not protected by any immunities, your indemnification is limited.

Judges, like any other defendant, can be sued in either state or federal court. The doctrine of judicial immunity is well established in state and federal law. The majority of suits against judges have been filed in federal court. For this reason, the main focus of this paper is judicial liability in federal rather than state court. As with every other area of the law, this subject matter is evolving. You should maintain an awareness of legislation and cases which impact judicial immunity during the time that you are on the bench.

TYPES OF IMMUNITIES.

It has long been recognized that public officials are often called upon to make difficult decisions. The doctrine of immunity has developed to facilitate the functioning of good government by providing government officials charged with making difficult discretionary decisions with protection from suit. The primary scope of this paper is judicial immunity. Judicial immunity is but one absolute immunity.

Absolute immunities are immunities from the judicial process as well as damages. The most commonly recognized absolute immunities are: (a) Eleventh Amendment immunity – the immunity from suit that states enjoy in federal court; (b) sovereign immunity – the immunity from suit that states enjoy in both federal and state court; (c) legislative immunity – the immunity enjoyed by federal and state legislators when enacting law; and (d) judicial immunity – the immunity enjoyed by judges when acting in a judicial capacity.

Absolute immunity is immunity from suit and damages. The defendant is entitled to have his immunity determined at the earliest possible time since this immunity is an immunity from the process itself (including discovery). If it is determined that the defendant has absolute immunity, the suit should be dismissed. Generally speaking, the defendant will have the right to take an interlocutory appeal in the event the absolute immunity issue is found against the defendant. Absolute immunities are limited to states, state agencies, state employees acting in their official capacity, persons performing legislative functions, and persons performing judicial functions.

Government officials are not entitled to assert absolute immunity if they are sued in an individual capacity. Rather, most state officials must rely upon official immunity when sued in state court or qualified immunity when sued in federal court. As noted in the preceding paragraphs, an official sued in their official capacity is entitled to raise the absolute immunities of sovereign immunity and Eleventh Amendment immunity. The Eleventh Amendment is an absolute bar to a suit for constitutional violation pursuant to 42 U.S.C. §1983 brought against a state actor. For this reason, civil rights suits will almost always be brought against the state actor in their individual capacity. Similarly, a suit brought against an actor in their official capacity could be barred by sovereign immunity. Recall that to establish a waiver of sovereign immunity it is incumbent upon the plaintiff to establish that their injury was caused by a government employee's use of motor driven equipment or tangible property. If the alleged negligence did not involve property or motor-driven equipment, the only avenue open to an aggrieved plaintiff is to bring suit against the employee in their individual capacity. It is not uncommon for a defendant to assert that they were acting in their official capacity at the time the complained of action arose. Both state and federal law have developed precedent that establishes the fact that the plaintiff is entitled to bring the suit against the defendant in their individual capacity. This theory of law has evolved to allow aggrieved plaintiffs to avoid the harsh result of sovereign and Eleventh Amendment immunity. Qualified and official immunities are immunities from damages, not suit.

If a defendant can establish their entitlement to qualified or official immunity as a matter of law, they may be successful in getting a suit dismissed prior to any discovery. However, it is not uncommon for courts to order limited discovery on the subject of immunity. It is important to remember that qualified and official immunity are immunities from damages rather than the judicial process.

JUDICIAL IMMUNITY.

It is hornbook law, settled in our jurisprudence for over a century, that a judge enjoys absolute immunity from liability for damages for judicial acts performed within his jurisdiction.[1] The doctrine of absolute judicial immunity protects judges from liability for all actions taken in their judicial capacities, so long as they do not act in a clear absence of all jurisdiction.[2] It is well settled that the

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[1] *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986).

[2] See *Mireles v. Waco*, 502 U.S. 9, 1 1-12, 1 12 S.Ct. 286, 288, 116 L.Ed.2d 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356-358, 98 S.Ct. 1099, 1104-1105, 55 L.Ed.2d 331 (1978).

doctrine of absolute judicial immunity protects a judicial officer not only from liability, but also from suit.[3]

In *Mireles v. Waco,*[4] the United States Supreme Court reiterated the long standing rule that absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in a complete absence of all jurisdiction.[5] Examination of the cases cited by the Supreme Court in its opinion in *Mireles* to illustrate each such exception to the general rule is illuminating. As an example of the first exception (non-judicial actions), the Supreme Court cited to its opinion in *Forrester v. White*,[6] in which it held that a judge was not immune for liability for allegedly having engaged in illegal discrimination when firing a court employee. As an example of the second exception (actions taken in a complete absence of all jurisdiction), the Supreme Court cited to its prior opinion in *Bradley v. Fischer,*"[7] in which it discussed a hypothetical situation in which a judge in a Probate Court with limited statutory jurisdiction attempted to try parties for public criminal offenses.

Judges are absolutely immune against an action for damages for acts performed in their judicial capacity, even when such acts are alleged to have been done maliciously or corruptly.[8] Judicial immunity is not overcome by allegations of bad faith or malice.[9] A judge is absolutely immune for all judicial acts "not performed in a clear absence of all jurisdiction however erroneous the act and however evil the motive.[10] Absolute immunity is justified and defined by the governmental functions it protects and serves, not by the motives with which a particular officer performs those

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[3] See *Mireles v. Waco*, 502 U.S. at II, 112 S.Ct. at 288.

[4] 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991).

[5] See *Mireles v. Waco*, 502 U.S. at 11-12, 112 S.Ct. at 288.

[6] 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988).

[7] 13 Wall.335, 20 L.Ed. 646 (1972).

[8] See *Mireles v. Waco*, 502 U.S. I I, 112 S.Ct. at 288; *Stump v. Sparkman*, 435 U.S. at 356-358, 98 S.Ct. at 1104-1105.

[9] See *Mitchell v. McBryde*, 944 F.2d at 230 *Young v. Biggers,* 938 F.2d. at 569 (n.5); *Dayse v. Schuldt*, 894 F.2d at 172.

[10] See *Mitchell v. McBryde*, 944 F.2d at 230 *Brandley v. Keeshan*, 64 F.3d at 200-201; *Brummett v. Camble*, 946 F.2d 1178-1181

functions."[11] The alleged magnitude of the error or the mendacity of the acts is irrelevant."[12] The fact that it is alleged that the judge acted pursuant to a conspiracy and committed grave procedural errors is not sufficient to avoid absolute judicial immunity.[13] Grave procedural errors do not deprive a judge of all jurisdiction."[14]

In determining whether a judge's actions were "judicial in nature" the Federal Court is to consider whether (1) the precise act complained of is a normal judicial function; (2) the acts occurred in the courtroom or appropriate adjacent spaces such as the judge's chambers; (3) the controversy centered around a case pending before the court; and (4) the acts arose directly out of a visit to the judge in his official capacity.[15] A judge's acts are judicial in nature if they are normally performed by a judge and the parties affected "dealt with the judge in his judicial capacity.[16] These four factors are broadly construed in favor of immunity, and the absence of one or more factors does not prevent a determination that judicial immunity applies in a particular ease.[17] Where a court has some subject matter jurisdiction. there is sufficient jurisdiction for immunity purposes.[18] These factors should he construed broadly in favor of immunity, and should be construed generously to the holder of the immunity and in light of the policies underlying judicial immunity.[19]

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[11] *Young v. Biggers*, 938 F.2d. at 569.

[12] *Holloway v. Walker*, 765 F,2d 517, 522-523 (5th Cir. 1985), cert. denied, 474 U.S. 1037 (1985).

[13] See *Mitchell v. McBryde,* 944 F.2d at 230; *Stump v. Sparkman,* 435 U.S. at 359, 98 S.Ct. at 1106.

[14] See *Malina v. Gonzales*, 994 F.2d at 1125 and *Holloway v. Walker*, 765 F.2d at 522 (holding that mere allegations that a judge performed judicial acts pursuant to a bribe or conspiracy will not suffice to avoid absolute immunity).

[15] See *Malina v. Gonzales*, 994 F.2d at 1124 and *McAlester v. Brown*, 469 F.2d 1280, 1282 (5" Cir. 1972).

[16] *Boyd v. Biggers*, 31 F.3d at 285 quoting *Mireles v. Waco*, 502 U.S. at 12, 112 S.Ct. at 288, which in turn quoted *Stump v. Sparkman*, 435 U.S. at 362, 98 S.Ct. at 1107.

[17] *Molina v. Gonzales*, 994 F.2d at 1124 and *Adams v. Mcllhany*, 764 F.2d 294, 297 (5'" Cir. 1985), cert. denied, 474 U.S. 1101 (1986).

[18] See *Malina v. Gonzales,* 994 F.2d at 1125 and *Adams v. Mcllhany*, 764 F.2d 298.

[19] *Adams v. Mcllhany*, 764 F.2d 294, 297 (51" Cir. 1985).

There are two tests found in the above discussion of judicial immunity. When gauging your entitlement to judicial immunity you must first determine whether or not you are engaged in a judicial function (see Four Part Test) and if so, whether or not you are acting in an absence of jurisdiction.

When gauging their own conduct, most judges have a tendency to be overly generous in determining whether or not they are entitled to judicial immunity. For this reason, it would be wise for every judge to be familiar with *Forrester v. White*.

FORRESTER v. WHITE.[20]

Forrester v. White is a United States Supreme Court case that was decided in 1988. The defendant judge had hired, promoted, then demoted, and ultimately fired a female probation officer. The defendant judge was sued for sexual discrimination. Unfortunately, judicial immunity was not raised as a defense to this cause of action until after a jury had returned an adverse verdict at the conclusion of trial. Judicial immunity was raised for the first time on appeal.

The United States Supreme Court ultimately determined that the defendant judge was not entitled to judicial immunity. The Court noted that judges engage in judicial acts as well as acts that just happen to be done by judges. They noted that judges act in administrative, legislative, and executive functions. All of these functions could be legislatively assigned. They went on to discuss the various capacities that judges act in other than the judicial capacity. In discussing what constitutes an administrative decision, they noted that judicial immunity was not available to a county judge who had been charged in a criminal indictment for racial discrimination in the selection of trial jurors for the county courts. They noted the character of the act, not the agent, determines if the immunity applies. They specifically noted that the duty of selecting jurors could have been committed to a private person. In discussing legislative actions, they noted that even though Virginia law delegated adoption of the has code to the Virginia Court, the adoption of such a code was an act of "rule making" rather than "adjudication". They went on to say that in the event the Courts acted to enforce the bar code, such actions would not be judicial. They would be prosecutorial.

The Court then analyzed the facts before them. It opined that while the actions of supervising the Court ". . . may be important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative." They noted that there was no reasonable distinction between the actions of this type taken by judges and any other governmental office. Finally, they determined that qualified immunity would he sufficient to provide the judge with sufficient safeguards to make a judge feel comfortable in discharging an incompetent employee.

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[20] 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988).

A strict reading of *Forrester* suggests that only actions taken in the narrow confines of the courtroom are protected by judicial immunity. This is the position pressed by plaintiff's attorneys seeking to subject judges to liability. They will always try to paint the "complained-of conduct" as an administrative act since it is undisputed that such actions are no longer protected by any type of judicial immunity. As a judge you will be required to participate in functions other than presiding over your court. The status or nature of most of these functions have yet to be determined by any court. In the time that I have represented judges, I have learned that these additional duties are commonly referred to as "administrative duties". I have encouraged judges to stop referring to these additional tasks in this manner since it strengthens the plaintiff's case that they are administrative, and therefore not protected by judicial immunity. A better way to characterize these actions is to refer to them as extra judicial actions.

Similarly, judges will commonly refer to themselves as a board or other type of identifiable body when discharging their legislatively-mandated duties in areas of adult probation supervision, etc. Again, the establishment of a board suggests something other than a judicial act.

The better practice would be to study the statute that creates the duty. If the statute recognizes that a board has been created, there is no harm to referring to yourself by that title. If the statute is silent, I recommend that you refer to yourselves as a collection of judges rather than a board which has administrative connotations.

JUDICIAL IMMUNITY LIMITATIONS.

Since 2000, there has been an increase in the number of suits filed against judges by attorneys in Texas. Fortunately, most of these cases have been disposed of at the trial court level, and no appeal has been taken. This section is included so that you are aware of the types of challenges that are being made to judicial immunity.

Alexander v. Tarrant County. A probationer being housed at a shock incarceration facility died from a rare staph infection. The parents of the deceased brought a civil rights suit against the Tarrant County Criminal judges asserting that they had breached their administrative duties to the deceased probationer by allowing a private sector contractor to operate the facility. The Texas Code of Criminal Procedure mandates that sole responsibility for the supervision of probationers rests with the judiciary. Moreover, Chapter 76 of the Texas Government Code mandates the establishment of Adult Probation Departments. The federal judge determined that the defendant judges were not entitled to judicial immunity. His rationale was that the statute entitled rather than mandated judicial participation in the Adult Probation Departments. This test was never reviewed by the Fifth Circuit. The case was subsequently dismissed due to Plaintiff's failure to state a claim against the judges sufficient to overcome an assertion of qualified immunity. Qualified immunity will be discussed below. Plaintiff agreed to forego the appeal of this dismissal as a part of a settlement of an ancillary case.

Davis v. Tarrant County. Plaintiff is a criminal defense attorney practicing law in Tarrant County, Texas. He applied to be placed on the felony appointment list mandated by the Fair Defense Act. The district judges voted to exclude Plaintiff from the list, and suit was brought against the district judges asserting that the passage of the Fair Defense Act changed the character of appointment of counsel from a judicial act to an administrative act. The federal judge dismissed this case based upon judicial immunity. On April 8, 2009, the Fifth Circuit affirmed the trial court's dismissal.[21] This case contains a good discussion of the "nature of the act" analysis. Ultimately, the Fifth Circuit determined that even though the creation of a list of attorneys has been determined to be an administrative act,[22] the creation of a list under the Fair Defense Act is judicial.

On Page 226, the Court noted:

> . . . the appointment process must be viewed holistically. In this case, the selection of applicants for inclusion on the list, and the actual appointment of attorneys in specific cases occur as part of an appointment process that cannot be divided in a principled way in judicial and administrative act. In light of the fact that the defendant judges have very limited discretion in deciding which attorney to appoint in a specific case - they may only deviate from the rotation system for good cause – decisions about which attorneys should be placed on the wheel functionally determine which attorney will actually be appointed in a particular case.

Arguably, this determination puts the Fifth Circuit in conflict with the Second Circuit.

Dunn v. Kennedy. This is another Fair Defense Act case brought by an attorney who was removed from the indigent counsel list. Suit was brought against the judge that recommended that he be removed as well as a court staff member. The federal judge dismissed this case based upon judicial immunity. An appeal was taken to the Fifth Circuit. The Fifth Circuit upheld the finding of judicial immunity, but determined that the case should not be published. Pursuant to Fifth Circuit rules, this case has no precedential value.

Durrance v. Gabriel. In this Fair Defense Act case, an attorney was removed from the felony appointment list by the district judges. Plaintiff asserts that the judges are acting in an administrative capacity when developing the county-wide plans, and that they are acting in a ministerial capacity when they place or remove attorneys on the list. Judge Shell dismissed this case on the basis of judicial immunity relying upon *Davis v. Tarrant County*.

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[21] 565 F.3d 214 (5th Cir. 2009)(writ denied), 130 S.Ct. 624 (2009).

[22] *Mitchell v. Fishbein*, 377 F.3d 157 (2nd Cir. 2004).

Richard v. Keller. The surviving spouse of an executed inmate sued the presiding judge of the Court of Criminal Appeals alleging that she had interfered with the offender's attempt to file a stay of execution. The Texas Rules of Appellate Procedure specifically provide that documents can be filed in an appellate court with the clerk or any judge willing to accept the filing. Accordingly, the federal judge determined that Plaintiff's suit was barred by judicial immunity.

Stagner v. Blake. The Plaintiff is an attorney that was taken into custody by the court bailiff after he refused an order from the Court to tender a document to the bench. After a short pause, he was returned to the courtroom and asked whether or not he had been held in contempt. The Court indicated that he had not. Plaintiff alleged that without having held him in contempt, the Court lacked jurisdiction to have him taken into custody. He alleged that the Court was guilty of false arrest and improper detainment. This state court case was dismissed based upon judicial immunity.

OTHER JURISDICTIONS.

McKnight v. Middleton.[23] Plaintiff was involved in a child custody case. He alleges that the judge racially discriminated against him. He also asserted that the trial judge exceeded her authority in approving a wire tap and recording his conversations. The Court held that while these decisions were not necessarily "legally sound" the discretion to order the wire tap was within the Court's authority, and protected by immunity.

Huminski v. Corsones,[24] The plaintiff was a harsh and frequent critic of the Vermont judges. Orders were issued excluding him from the courthouse. He was held in contempt and jailed. Judicial immunity was upheld because Vermont law vested responsibility for courthouse security in the judiciary. This opinion illustrates the confusion that can arise in determining "judicial capacity." This opinion appears to be at odds with *Forrester v. White.* Recall, the Supreme Court noted that just because the task is delegated to the judiciary, it is not necessarily "judicial or adjudicative." Courthouse security could have been delegated to the Sheriff's Department or several other Executive Branch officials. I would encourage you to keep that in mind if your county asks you to become involved in decisions involving courthouse security.

Jennings v. Patton.[25] Plaintiff sued the judge alleging that the judge had falsely accused him of bribery. Plaintiff alleged that he had hired an attorney to sue the judge for wrongful imprisonment. The attorney contacted the judge, and offered to settle the claim prior to filing suit. The judge accused both the plaintiff and his attorney of extortion, and caused plaintiff to be indicted. Defendant judge alleged that he was acting in a judicial capacity. In ruling against the defendant judge, the Court determined that at the summary judgment stage it must accept the plaintiff's facts as true. Under those facts, the Defendant judge was accused of making false statements to the grand

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[23] 2010 WL 1221431 (E.D.N.Y.).

[24] 396 F.3d 53 (2nd Cir. 2005).

[25] 2010 WL 706497 (S.D.Miss.).

jury and withholding exculpatory evidence. The visit of plaintiff's attorney to the judge was not in official capacity. Rather, plaintiff's counsel was exploring the possibility of settling a claim prior to bringing suit. Under these circumstances, the alleged actions of the defendant judge were not judicial or protected by judicial immunity.

QUALIFIED IMMUNITY.[26]

You will recall that when the United States Supreme Court decided *Forrester v. White*, they determined that depriving judges of judicial immunity in the employment context should not adversely impact the operation of the court. They specifically stated that the defenses available in the doctrine of qualified immunity should be sufficient to allow for the efficient operation of the court in personnel matters.

The doctrine of qualified immunity shields governmental officials from civil liability "to the extent that their conduct is objectively reasonable in light of clearly established law."[27] The burden of negating the defense of qualified immunity lies with the plaintiff.[28] When a motion for summary judgment is before the Court on qualified immunity, the district court must make two determinations: (1) whether the conduct at issue, as a matter of law, is unreasonable in light of clearly established law; and (2) whether there exists a genuine issue of material fact that the defendant actually engaged in such conduct.[29]

Qualified immunity protects a defendant from suits arising from the performance of their discretionary duties so long as they act in good faith in the exercise of duties that are within the scope of their authority.

This immunity attaches to an official's actions when his or her job requires the exercise of personal judgment and discretion. The purpose of such immunity is to insulate government employees from personal liability and from the harassment of litigation.[30] Moreover, it is also a prerequisite to

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[26] Official immunity is the state court counterpart to qualified immunity. These two immunities are very similar, but do have some minor differences which are beyond the scope of this paper. A good discussion of official immunity can be found in *City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994).

[27] *Kinney v. Weaver*, 367 F.3d 337, 346 (5th Cir. 2004)(*en banc*)(quoting *Harlow v. Fitzgerald*, 457 US. 800, 818 (1982).

[28] *Foster v. City of Lake Jackson*, 28 F.3d 425, 428 (5th Cir. 1994).

[29] *Kinney*, 367 F.3d at 346; *see also Conroe Creosothing Co. v. Montgomery County*, 249 F.3d 337, 350 (5th Cir. 2001).

[30] *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d. 396 (1982). See also *Saucier v. Katz*, 533 U.S. 194, 202, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).

liability that the law that the defendant allegedly violated was "clearly recognized" at the time of the violation.[31] The Supreme Court has encouraged trial courts to make the qualified immunity determination as early as possible. If the defendant can establish his entitlement to qualified immunity as a matter of law, it functionally can be as effective as judicial immunity.

Texas is in the Fifth Circuit. The Fifth Circuit has mandated that once a defendant raises qualified immunity in their answer, the plaintiff must overcome the assertion of qualified immunity with specific (non-conclusory) allegations sufficient to overcome the assertion of qualified immunity.[32]In the Alexander case, the defendant judges took the position that the plaintiffs had failed to allege that each of them had engaged in individual acts which both violated clearly established law and that were unreasonable. Judge Means agreed that the allegations against the defendant judges were conclusory in nature, and were not factually specific. He dismissed Plaintiffs' cause of action for failure to slate a claim.

The Fifth Circuit does not allow any discovery until the plaintiff has met this pleading threshold. Other circuits are not as rigid in their interpretation of qualified immunity. Many courts allow limited discovery on the subject of qualified immunity. In most instances, a denial of qualified immunity is immediately appealable. However, the plaintiff can successfully defeat an interlocutory appeal if they can establish that the analysis of qualified immunity rests in any part on a factual determination.

As a general rule, a defendant can only be held liable for a violation of 42 U.S.C. § 1983 if they were actually personally involved in the action that allegedly brought about a harm. The Fifth Circuit has held that lawsuits against supervisory personnel based on their positions of authority are claims of liability under the doctrine of respondent superior which generally does not apply in § 1983 cases.[33] A supervisor may be held liable if there is personal involvement in a constitutional deprivation, a causal connection between the supervisor's wrongful conduct and a constitutional deprivation, or if supervisory officials implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force behind a constitutional deprivation.[34]

It should be noted at this juncture that qualified immunity does not attach to anything other than discretionary actions. If an action is ministerial (mandated by law or a rule), qualified immunity does not attach. An important distinction should be drawn between duties which are legislatively mandated, and those which allow the discretion in how the duty is to be performed to be left up to the actor.

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[31] *Will v. Hallock*, 129 S.Ct. 952, 163 L.Ed.2d 836 (2006).

[32] *Wicks v. Mississippi State Employment Servs.*, 41 F.3d 991 (5t Cir. 1995).

[33] *Williams v. Luna*, 909 F.2d 121 (5th Cir. 1990).

[34] *Thompkins v. Belt*, 828 F.2d 298 (5th Cir. 1987).

The clearest example of this type of distinction can be found in a suit against a law enforcement official for abuse of force. The rule or law may mandate that the official has an obligation to maintain order and discipline while leaving the means and methods of maintaining order to the discretion of the official.

REPRESENTATION.

Hopefully, you will make it through your entire judicial career without ever needing to be familiar with this section. However, recent trends indicate that it is less likely now than at any time in the past. When a judge is sued, he/she should immediately determine the appropriate contact person/agency. Generally speaking, state judges are entitled to representation from the Attorney General's office. As a general rule, county judges may be defended by the county attorney, district attorney, or a private insurance company.[35]

Obviously, being a defendant in a lawsuit can be a stressful situation. For this reason, I would recommend that you make the appropriate inquiries to determine the proper procedure for transmitting suit papers prior to being sued in a particular case. I recommend that state judges fax a letter requesting representation to the attention of the First Assistant in the Office of the Attorney General. The fax should include the citation and suit papers. The original of these documents should then be put in the mail so that the attorney that is ultimately assigned the case will have everything that was served. The judge should retain a copy of all documents for their own file, and to be used in the event the faxed and mailed documents are lost or mis-delivered. County judges should check with the appropriate county officials to determine who would represent them in the event that a lawsuit is filed. The county judge should become familiar with the process that is to be followed when the judge is sued. If the county provides an insurance policy,[36] it would be wise for the judge to stay familiar with the company providing coverage.

INDEMNIFICATION.

Most judges are surprised to learn that there are limits on the indemnification available to them. The state indemnification statute is found in §104.001 *et seq.* of the TEX. CIV. PRAC. & REM. CODE. State indemnification for state judges is limited to $100,000 per person and $300,000 per occurrence. Unfortunately, county judges do not have a statute analogous to §104.001 *et seq.* of the TEX. CIV. PRAC. & REM. CODE which clearly sets out their indemnification. This information is best obtained from the local officials in your county since there is apt to be variations from county to county. I would recommend county judges check with the appropriate county authorities to determine any limitations on their indemnification.

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[35] In 2005, Ch.76 of the TEX. GOV'T CODE was amended to give county judges the option of being represented by the Attorney General's office when the suit against them arises from actions they were taking pursuant to Ch.76 of the TEX. GOV'T CODE.

[36] Policies can also include district judges.

In the *Alexander v. Tarrant County* case discussed above, the plaintiffs had obtained a verdict against the private sector defendant in the amount of $40,000 (inclusive of punitive damages). Nineteen judges were defendants in the companion civil rights case. The $40 million verdict was an indication of the potential exposure facing the nineteen judges in the civil rights case. Understandably, few of the nineteen judges felt a great deal of comfort when they learned that the available indemnification was limited to $300,000. Judges should identify, and become familiar with, any statutes which provide for indemnification as well as any exceptions or limitations placed on the indemnification provided.

INSURANCE.

As referenced above, many counties purchase insurance policies for their judges. You should remember that an insurance policy is nothing more than a contract. If you are the beneficiary of such a contract, take care that it does not provide you with a false sense of security. The better practice would be to obtain a complete copy of the policy. Time should be spent determining what acts and/or omissions are actually covered by the policy. Equal time should be spent in the "exceptions" section to determine any limitations on the coverage discussed in the policy. Some policies cover liability arising from "judicial actions". Obviously, this type of policy is worthless since a judge has absolute immunity when performing these types of functions. If you are going to obtain an insurance policy, care should be taken to insure that the policy will coverage administrative and/or extra judicial capacity claims.

INJUNCTIVE/DECLARATORY RELIEF.

Be aware of the fact that judges are subject to injunctive and declaratory relief just like any other official. Such a suit on the equity side of the docket also avoids the bar of sovereign and Eleventh Amendment immunity. While there is no risk that a judge will be required to pay monetary damages, a prevailing plaintiff is entitled to recover court costs and attorney's fees.

RECUSAL AND COMPELLED TESTIMONY.

Normally, the Office of the Attorney General does not become involved in recusals. A recusal is not a suit against a judge, and generally, a judge should not be a participant in the recusal process once the matter has been referred to the presiding judge.

In the recent months, parties and attorneys have attempted to depose and/or subpoena judges to testify in the recusal process. Subpoenas have been served on the judge sought to be recused, judges that have decided previous recusal cases involving the judge to be recused, and the presiding judge of the judicial region who assigns judges to hear recusal matters. Judges have also been subpoenaed to testify in a criminal case where the defendant's attorney was attempting to disqualify the district attorney's office from handling the appeal.[37] In another instance, a state district judge was

[37] The trial judge had previously recused himself from handling any post-judgment motions.

subpoenaed to testify in federal court because he had signed a search warrant. The attorney for the criminal defendant advanced theory that the judge's campaign literature promising to "get tough on crime" evidenced a bias which predisposed the judge to favor law enforcement, and grant warrants even if probable cause was lacking.

This is actually one circumstance where it is better to be in federal court. The federal system has adopted the "Mental Processes Rule." The decision of judges are afforded strong protection by the Mental Processes Rule.[38] Federal courts have acknowledged that if judges were constantly subjected to the threat of being subpoenaed to explain their reasoning behind their decisions and acts it would adversely impact the integrity of the courts. Courts have refused to issue to subpoena for testimony of judges in all but the "most extreme and extraordinary circumstances."[39] Unfortunately, Texas courts have not actually embraced the Mental Processes Rule. This rule was discussed by the First District Houston Court of Appeals in *Tate v. State*, 834 S.W.2d 566, 570 (Tex.App.--Houston [1st Dist.] 1992). In discussing the Mental Processes Rule, the Court stated:

> Texas law has not established circumstances or conditions under which a judicial officer might properly be compelled to articulate his reasons for a decision in a particular case, and we do not propose to state such a rule here. However, we conclude that if such a rule were to established, the better rule would be to require, at the very least, a threshold showing of improper conduct on the part of the judge that would justify compelling him to testify. *(Emphasis added.)*

However, more recent opinions suggest that the Mental Processes Rule has been informally adopted. It was cited as the reason for quashing a judge's subpoena in *Thomas v. Walker*, 860 S.W.2d 579, 582 (Tex.App. Waco 1993). In *Sims v. Fitzpatrick*, 288 S.W.3d 93, 102 (Tex.Civ.App.--Houston [1st Dist.] 2009), the Court suggests in a footnote that the rule recommended in *Tate v. State* actually applies.

> . . . Had appellants preserved their general complaint that the assigned judges erred in quashing the subpoenas issued to the trial judge, appellants still were required to show extraordinary circumstances to justify compelling the trial judge to testify regarding her mental processes in arriving at her decisions. *Tate v. State*, 834 S.W.2d 566, 569-70 (Tex.App. Houston [1st Dist.] 1992, pet. ref'd); *Thomas v. Walker*, 860 S.W.2d 579, 582 (Tex.App. Waco 1993, no writ). Here appellants presented no evidence at the recusal hearings. In their "bill of exceptions," appellants referred to statements made

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[38] *United States v. Morgan*, 61 S.Ct. 999, 104 (1940).

[39] *Gary v. State of Louisiana Dept. of Health and Human Resources*, 861 F.2d 1366, 1368 (5th Cir. 1988)(quoting *U.S. v. Dowdy*, 440 F.Supp. 894, 896 (W.D.Va. 1977)).

> by the trial judge during various hearings. Thus, appellants failed to make a threshold showing of improper conduct on the part of the trial judge that would have justified compelling her to testify. *Tate*, 834 S.W.2d at 569-70.

The *Tate v. State* rule was also cited as authority in the unpublished opinion of *White v. State*, 202 WL 440795 (Tex.App. Amarillo).

The Mental Processes Rule is not the only restriction on judicial testimony. In *Joachim v. Chambers*, 815 S.W.2d 234 (Tex. 1991), the Texas Supreme Court engaged in an extensive discussion of the propriety of judicial testimony. In this original mandamus proceeding, the Court held that a retired district judge who continues to serve as a judicial officer by assignment could not testify as an expert witness. Obviously, this case was a little different than those discussed above. In this case, the judge was a willing participant in the judicial process. On at least two occasions, I have utilized this case to keep former judges from testifying.

Cannon Two of the Code of Judicial Conduct specifically restricts judges from testifying as a character witness. On Page 238, the Court also noted:

> There is yet another reason for restricting judges from testifying as witnesses. The appearance of a judge as a witness threatens, rather than promotes, "public confidence in the integrity and impartiality of the judiciary." A judge who testifies that one party to a case does or does not have good character seems, at least, to be taking sides in the litigation. This is inconsistent with the role of a judge. The risk of confusion of the roles of witness and judge when the same person acts as both can create an appearance of impropriety.

However, this same opinion makes it very clear that there are circumstances where it is appropriate for a judge to testify. The standards set out in Cannon Ten provide guidance when judicial testimony is appropriate. "Although these standards are invoked whenever a judge testifies, we do not hold that they prohibit judges from ever testifying in Court." Certainly, a judge must, like anyone else, testify to relevant facts when it is within his knowledge when summoned to do so.[40] Obviously, these concerns are diminished or dispensed with if a jury is not involved. Moreover, judicial testimony is allowed when a judicial witness is unavailable.

Texas Rule of Civil Evidence 605 provides another limitation on judicial testimony. See *Bradley v. State*, 990 S.W.2d 245, 248 (Tex. 1999) and the unpublished opinion of *Arafiles v. State*, 202 WL 27311 (Tex.App.–Corpus Christi).

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[40] *Joachim* at 239.

***Caperton v. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009).**

I have included this opinion in the paper because it could represent a new area of potential liability. In a majority decision, the United States Supreme Court determined that a West Virginia Supreme Court Judge's failure to recuse himself constituted a violation of a party's right to due process.

The facts set in the opinion are fairly egregious. Plaintiffs had obtained a judgment against Massey Coal in the amount of $50 million. The West Virginia Supreme Court reversed this judgment. One of the Supreme Court judges who had been part of the majority had denied a recusal motion. The basis for the recusal motion was the fact that the CEO of Massey Coal had contributed $3 million to his election campaign. Justice Kennedy wrote the majority opinion. His reasoning is both persuasive and curious. The West Virginia judge determined that there was not actual bias and that he had acted impartially. On Page 2263, the Court states: "We do not question his subjective findings of impartiality and impropriety. Nor do we determine there was actual bias." On Page 2265, the Opinion states:

> . . . due process "may sometimes bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *Murchison*, 349 U.S. at 136, 75 S.Ct. 623. The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process. We find that Blankenship's significant and disproportionate influence coupled with temporal relationship between the election and the pending case – " ' "offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." ' " *Lavoie*, 475 U.S., at 825, 106 S.Ct. 1580 (quoting *Monroeville,* 409 U.S., at 60, 93 S.Ct. 80, in turn quoting *Tumey*, 273 U.S., at 532, 47 S.Ct. 437). On these extreme facts the probability of actual bias rises to an unconstitutional level.

We have all heard the maxim, "hard facts make bad law." Assuming the facts set forth in the majority opinion are complete and accurate, it is difficult to argue that the West Virginia judge should not have recused himself. Unfortunately, this opinion was not written by a trial court or a lower appellate court. The problems with the effect this opinion is set forth in the dissent written by Chief Justice Roberts. On Page 2267, he begins by noting:

> Until today, we have recognized exactly two situations in which the Federal Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is trying a defendant for certain criminal contempts. Vaguer notions of bias or appearance of bias were never a bias for disqualification, either at common law or under our constitutional precedence. Those issues were instead addressed by legislation or court rules.

The majority opinion recognizes a "probability of bias" basis for recusal which can amount to a due process violation. On Page 2268, Justice Roberts notes:

> In any given case there are a number of facts that could give rise to a "probability" or "appearance" of bias: friendship with a party or lawyer, prior employment experience, membership in club or associations, prior speeches and writings, religious affiliation, and countless other considerations. We have never held that the Due Process Clause requires recusal for any of these reasons, even though they could be viewed as presenting a "probability of bias." Many state *statutes* require recusals based upon a probability or appearance of bias, but "that alone would not be a sufficient basis for imposing a *constitutional* requirement under the Due Process Clause." *Lavoie, supra* at 820, 106 S.Ct. 1580 (*emphasis added*).

On Pages 2269-2272, Justice Roberts lists 40 theoretical circumstances which could now require recusal based upon the constitutional due process violation of "probability of bias."

The opinion does not contain any discussion of any liability on the part of the judge that failed to recuse himself. Arguably, recusal is still a "judicial" action which should mean the judge would be insulated from paying a party monetary damages for the alleged constitutional violation. However, as discussed above, there is a possibility of finding that a litigant is entitled to equitable relief. In such circumstances, the judge could be responsible for paying the prevailing parties costs and attorney's fees. So long as the *Caperton* rules stays confined to these facts it should not create much of a problem for the judiciary. However, the judges should keep an eye on this area of the law to be aware if the due process violation is expanded into other areas.

CONCLUSION.

We have seen that all actions taken by judges are not judicial in nature. The character of the action determines whether or not an act taken by a judge will be protected by judicial immunity. Judges and other governmental officials can act in either an official or individual capacity. If a judge is engaged in a non-judicial function, he may be protected by legislative or prosecutorial immunity. If the action is administrative in nature, the judge is only protected by the defense of official immunity.

If a judge is found to be liable for an improper action for which no immunity attaches, he is personally responsible for any damages assessed against him in excess of any potential available indemnification limits afforded by state statute.

WHAT YOU CAN DO.

I would encourage every judge to become proactive in understanding the potential scope of their liability as well as the indemnification potentially available to protect them in the event of an adverse verdict. In addition to becoming acutely familiar with the test to be utilized in determining when actions are judicial, the judge should familiarize themselves with the interpretation of qualified immunity.

I would encourage judges to determine the appropriateness of their involvement in potentially dangerous situations by applying the same test that they would apply in determining whether or not they would allow expert testimony in their court. Specifically, if the judge, by education, training. or experience does not possess any greater expertise than a layperson in a particular subject area, they should he loathe to impose their judgment or opinion in any situation.

If employment decisions are being made in a department or agency over which the judge has supervisory control, the judge should be reluctant to interfere with such decisions unless the judge possesses professional knowledge or expertise which equips them to do so. Put another way, the judge's personal preferences and personality should not create, or be the basis of conflicts.

I would recommend that you create a notebook containing the statutes which impose any duties and/or obligations on you. Be familiar with the wording of the statute, and at the time you are performing the duties mandated by the statute be sensitive to the fact that you may be engaged in an administrative acts.

Keep in mind that if you are acting in an administrative capacity your only immunity may be qualified immunity. Qualified immunity only attaches to discretionary tasks. Put another way, if the statute mandates that you take a particular action, and you do not do so, you are <u>not</u> performing a discretionary task, and qualified immunity will <u>not</u> be available.

Finally, I would encourage you to start thinking and acting like judges. Obviously, each of you had to select a political party to reach the bench that you now hold. Political infighting in the judiciary will only inure to the benefit of those seeking to expand judicial exposure. As noted above, the litmus test in qualified immunity is a "reasonableness" standard. Put another way, consistency among the judiciary will inure to the benefit of all judges. Similarly, open communication on the proper way to handle challenges facing judges should lead to more consistency thereby strengthening the potential defense of qualified immunity.

You should also be aware of the fact that a matter has been handled in a particular way in the past is not a guarantee that there will not be future liability. Talk to more experienced judges, and benefit from their experience. You should also take the time to examine their recommendations in the new light of potential judicial immunity, and determine whether or not improvements can be made to existing systems.

B

U.S. Supreme Court

Forrester v. White, 484 U.S. 219 (1988)

Forrester v. White

No. 86-761

Argued November 2, 1987

Decided January 12, 1988

484 U.S. 219

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

THE SEVENTH CIRCUIT

Syllabus

Respondent, an Illinois state court judge, had authority under state law to appoint and discharge probation officers. After hiring petitioner as a probation officer and later promoting her, respondent demoted and then discharged her. Petitioner filed a damages action in Federal District Court under 42 U.S.C. § 1983, alleging that she was demoted and discharged on account of her sex in violation of the Equal Protection Clause of the Fourteenth Amendment. Although the jury found in her favor, the court granted summary judgment to respondent on the ground that he was entitled to absolute immunity from a civil damages suit. The Court of Appeals affirmed.

Held: A state court judge does not have absolute immunity from a damages suit under § 1983 for his decisions to demote and dismiss a court employee. Pp. 484 U. S. 223-230.

(a) Because the threat of personal liability for damages can inhibit government officials in the proper performance of their duties, various forms of official immunity from suit have been created. Aware, however, that the threat of such liability may also have the salutary effect of encouraging officials to perform their duties in a lawful and appropriate manner, this Court has been cautious in recognizing absolute immunity claims other than those decided by constitutional or statutory enactment. Accordingly, the Court has applied a "functional" approach under which the nature of the functions entrusted to particular officials is examined in order to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those

functions. Even with respect to constitutional immunities granted for certain functions of Congress and the President, the Court has been careful not to extend the scope of protection further than its purposes require. Pp. 484 U. S. 223-225.

(b) Judges have long enjoyed absolute immunity from liability in damages for their judicial or adjudicatory acts, primarily in order to protect judicial independence by insulating judges from vexatious actions by disgruntled litigants. Truly judicial acts, however, must be distinguished from the administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform. It is the nature of the function performed -- adjudication -- rather than the identity of the actor

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who performed it -- a judge -- that determines whether absolute immunity attaches to the act. Pp. 484 U. S. 225-229.

(c) Respondent's decisions to demote and discharge petitioner were administrative, rather than judicial or adjudicative, in nature. Such decisions are indistinguishable from those of an executive branch official responsible for making similar personnel decisions, which, no matter how crucial to the efficient operation of public institutions, are not entitled to absolute immunity from liability in damages under § 1983. The Court of Appeals reasoned that the threat of vexatious lawsuits by disgruntled ex-employees could interfere with the quality of a judge's decisions. However true this may be, it does not serve to distinguish judges from other public officials who hire and fire subordinates. In neither case is the danger that officials will be deflected from the effective performance of their duties great enough to justify absolute immunity. This does not imply that qualified immunity, like that available to executive branch officials who make similar discretionary decisions, is unavailable to judges for their employment decisions, a question not decided here. Pp. 484 U. S. 229-230.

792 F.2d 647, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and BRENNAN, WHITE, MARSHALL, STEVENS, and SCALIA, JJ., joined, and in all but Part II of which BLACKMUN, J., joined.

JUSTICE O'CONNOR delivered the opinion of the Court. *

This case requires us to decide whether a state court judge has absolute immunity from a suit for damages under 42 U.S.C. § 1983 for his decision to dismiss a subordinate

court employee. The employee, who had been a probation officer, alleged that she was demoted and discharged on account of

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her sex, in violation of the Equal Protection Clause of the Fourteenth Amendment. We conclude that the judge's decisions were not judicial acts for which he should be held absolutely immune.

I

Respondent Howard Lee White served as Circuit Judge of the Seventh Judicial Circuit of the State of Illinois and Presiding Judge of the Circuit Court in Jersey County. Under Illinois law, Judge White had the authority to hire adult probation officers, who were removable in his discretion. Ill.Rev.Stat., ch. 38, ¶ 204-1 (1979). In addition, as designee of the Chief Judge of the Seventh Judicial Circuit, Judge White had the authority to appoint juvenile probation officers to serve at his pleasure. Ill.Rev.Stat., ch. 37, ¶ 706-5 (1979).

In April, 1977, Judge White hired petitioner Cynthia A. Forrester as an adult and juvenile probation officer. Forrester prepared presentence reports for Judge White in adult offender cases, and recommendations for disposition and placement in juvenile cases. She also supervised persons on probation and recommended revocation when necessary. In July, 1979, Judge White appointed Forrester as Project Supervisor of the Jersey County Juvenile Court Intake and Referral Services Project, a position that carried increased supervisory responsibilities. Judge White demoted Forrester to a nonsupervisory position in the summer of 1980. He discharged her on October 1, 1980.

Forrester filed this lawsuit in the United States District Court for the Southern District of Illinois in July, 1982. She alleged violations of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.*, and § 1 of the Civil Rights Act of 1871, Rev.Stat. § 1979, as amended, 42 U.S.C. § 1983. A jury found that Judge White had discriminated against Forrester on account of her sex, in violation of the Equal Protection Clause of the Fourteenth Amendment. The jury awarded her $81,818.80 in

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compensatory damages under § 1983. Forrester's other claims were dismissed in the course of the lawsuit.

After Judge White's motion for judgment notwithstanding the verdict was denied, he moved for a new trial. The District Court granted this motion, holding that the jury verdict was against the weight of the evidence. Judge White then moved for summary judgment on the ground that he was entitled to "judicial immunity" from a civil damages suit. This motion, too, was granted. Forrester appealed.

A divided panel of the Court of Appeals for the Seventh Circuit affirmed the grant of summary judgment. The majority reasoned that judges are immune for activities implicating the substance of their decisions in the cases before them, although they are not shielded "from the trials of life generally." 792 F.2d 647, 652 (1986). Some members of a judge's staff aid in the performance of adjudicative functions, and the threat of suits by such persons could make a judge reluctant to replace them even after losing confidence in their work. This could distort the judge's decisionmaking, and thereby indirectly affect the rights of litigants. Here, Forrester performed functions that were "inextricably tied to discretionary decisions that have consistently been considered judicial acts." *Id.* at 657. Unless Judge White felt free to replace Forrester, the majority thought, the quality of his own decisions might decline. The Court of Appeals therefore held that Judge White was absolutely immune from Forrester's civil damages suit. In view of this holding, the court found it unnecessary to decide whether the District Court had erred in granting Judge White's motion for a new trial.

In dissent, Judge Posner argued that judicial immunity should protect only adjudicative functions, and that employment decisions are administrative functions for which judges should not be given absolute immunity.

In *Goodwin v. Circuit Court of St. Louis County, Mo.*, 729 F.2d 541, 549, *cert. denied,*469 U.S. 828 (1984), the United

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States Court of Appeals for the Eighth Circuit held that a judge was not immune from civil damages for his decision to demote a hearing officer. We granted certiorari, 479 U.S. 1083 (1987), to resolve the conflict.

II

Suits for monetary damages are meant to compensate the victims of wrongful actions and to discourage conduct that may result in liability. Special problems arise, however, when government officials are exposed to liability for damages. To the extent that the threat of liability encourages these officials to carry out their duties in a lawful and

appropriate manner, and to pay their victims when they do not, it accomplishes exactly what it should. By its nature, however, the threat of liability can create perverse incentives that operate to *inhibit* officials in the proper performance of their duties. In many contexts, government officials are expected to make decisions that are impartial or imaginative, and that, above all, are informed by considerations other than the personal interests of the decisionmaker. Because government officials are engaged by definition in governing, their decisions will often have adverse effects on other persons. When officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct. In this way, exposing government officials to the same legal hazards faced by other citizens may detract from the rule of law instead of contributing to it.

Such considerations have led to the creation of various forms of immunity from suit for certain government officials. Aware of the salutary effects that the threat of liability can have, however, as well as the undeniable tension between official immunities and the ideal of the rule of law, this Court has been cautious in recognizing claims that government officials

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should be free of the obligation to answer for their acts in court. Running through our cases, with fair consistency, is a "functional" approach to immunity questions other than those that have been decided by express constitutional or statutory enactment. Under that approach, we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions. Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy, and the Court has recognized a category of "qualified" immunity that avoids unnecessarily extending the scope of the traditional concept of absolute immunity. *See, e.g., Scheuer v. Rhodes,* 416 U. S. 232 (1974); *Butz v. Economou,* 438 U. S. 478(1978); *Harlow v. Fitzgerald,* 457 U. S. 800 (1982).

This Court has generally been quite sparing in its recognition of claims to absolute official immunity. One species of such legal protection is beyond challenge: the legislative immunity created by the Speech or Debate Clause, U.S.Const., Art. I, § 6, cl.

1. Even here, however, the Court has been careful not to extend the scope of the protection further than its purposes require. *See, e.g., Gravel v. United States,* 408 U. S. 606, 408 U. S. 622-627 (1972); *see also Hutchinson v. Proxmire,* 443 U. S. 111, 443 U. S. 123-133 (1979); *Doe v. McMillan,* 412 U. S. 306 (1973); *United States v. Brewster,* 408 U. S. 501 (1972); *United States v. Johnson,* 383 U. S. 169 (1966); *Kilbourn v. Thompson,* 103 U. S. 168 (1881). Furthermore, on facts analogous to those in the case before us, the Court indicated that a United States Congressman would not be entitled to absolute immunity, in a sex-discrimination suit filed by a personal aide whom he had fired, unless such immunity was afforded by the Speech or Debate Clause. *Davis v. Passman,* 442 U. S. 228, 442 U. S. 246 (1979); *see also id.* at 442 U. S. 246, n. 25 (reserving question of qualified immunity).

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Among executive officials, the President of the United States is absolutely immune from damages liability arising from official acts. *Nixon v. Fitzgerald,* 457 U. S. 731 (1982). This immunity, however, is based on the President's "unique position in the constitutional scheme," *id.* at 457 U. S. 749, and it does not extend indiscriminately to the President's personal aides, *see Harlow, supra,* or to Cabinet level officers, *Mitchell v. Forsyth,* 472 U. S. 511 (1985). Nor are the highest executive officials in the States protected by absolute immunity under federal law. *See Scheuer v. Rhodes, supra.*

III

As a class, judges have long enjoyed a comparatively sweeping form of immunity, though one not perfectly well defined. Judicial immunity apparently originated, in medieval times, as a device for discouraging collateral attacks, and thereby helping to establish appellate procedures as the standard system for correcting judicial error. See Block, *Stump v. Sparkman* and the History of Judicial Immunity, 1980 Duke L.J. 879. More recently, this Court found that judicial immunity was

"the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country."

Bradley v. Fisher, 13 Wall. 335, 80 U. S. 347 (1872). Besides protecting the finality of judgments or discouraging inappropriate collateral attacks, the *Bradley* Court concluded, judicial immunity also protected judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants. *Id.* at 80 U. S. 348.

In the years since *Bradley* was decided, this Court has not been quick to find that federal legislation was meant to diminish the traditional common law protections extended to the judicial process. *See, e.g., Pierson v. Ray,* 386 U. S. 547 (1967). On the contrary, these protections have been held to extend to Executive Branch officials who perform quasi-judicial functions, *see Butz v. Economou, supra,* at 438 U. S. 513-514,

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or who perform prosecutorial functions that are "intimately associated with the judicial phase of the criminal process," *Imbler v. Pachtman,* 424 U. S. 409, 424 U. S. 430(1976). The common law's rationale for these decisions -- freeing the judicial process of harassment or intimidation -- has been thought to require absolute immunity even for advocates and witnesses. *See Briscoe v. LaHue,* 460 U. S. 325 (1983); *Butz v. Economou,* 438 U.S. at 438 U. S. 512.

One can reasonably wonder whether judges, who have been primarily responsible for developing the law of official immunities, are not inevitably more sensitive to the ill effects that vexatious lawsuits can have on the judicial function than they are to similar dangers in other contexts. *Cf. id.* at 438 U. S. 528, n. (REHNQUIST, J., concurring in part and dissenting in part). Although Congress has not undertaken to cut back the judicial immunities recognized by this Court, we should be at least as cautious in extending those immunities as we have been when dealing with officials whose peculiar problems we know less well than our own. At the same time, we cannot pretend that we are writing on a clean slate, or that we should ignore compelling reasons that may well justify broader protections for judges than for some other officials.

The purposes served by judicial immunity from liability in damages have been variously described. In *Bradley v. Fisher, supra,* at 80 U. S. 348, and again in *Pierson v. Ray, supra,* at 386 U. S. 554, the Court emphasized that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have. As Judge Posner pointed out in his dissenting opinion below, this is the principal characteristic that adjudication has in common with legislation and with criminal prosecution, which are the two other areas in which absolute immunity has most generously been provided. 792 F.2d at 660. If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious,

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would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. *Id.* at 660-661. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side effects inevitably associated with exposing judges to personal liability.

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.

This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. *See Stump v. Sparkman,* 435 U. S. 349, 435 U. S. 363, n. 12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption of motive. *Bradley v. Fisher,* 13 Wall. at 80 U. S. 354.

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As the *Bradley* Court noted:

"Against the consequences of [judges'] erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort."

Ibid.

Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. In *Ex parte Virginia,* 100 U. S. 339 (1880), for example, this Court declined to extend immunity to a county judge who had been charged in a criminal indictment with discriminating on the basis of race in selecting trial jurors for the county's courts. The Court reasoned:

"Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. . . . That the jurors are selected for a court makes no difference. So are court criers, tipstaves, sheriffs, &c. Is their election or their appointment a judicial act?"

Id. at 100 U. S. 348. Although this case involved a criminal charge against a judge, the reach of the Court's analysis was not in any obvious way confined by that circumstance.

Likewise, judicial immunity has not been extended to judges acting to promulgate a code of conduct for attorneys. *Supreme Court of Virginia v. Consumers Union of United States, Inc.,* 446 U. S. 719 (1980). In explaining why legislative, rather than judicial, immunity furnished the appropriate standard, we said:

"Although it is clear that, under Virginia law the issuance of the Bar Code was a proper function of the Virginia Court, propounding the Code was not an act of adjudication, but one of rulemaking."

Id. at 446 U. S. 731. Similarly, in the same case, we held that judges acting to enforce the Bar Code would be treated like prosecutors, and thus would

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be amenable to suit for injunctive and declaratory relief. *Id.* at 446 U. S. 734-737. *Cf. Pulliam v. Allen,* 466 U. S. 522 (1984). Once again, it was the nature of the function performed, not the identity of the actor who performed it, that informed our immunity analysis.

IV

In the case before us, we think it clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester. Those acts -- like many others involved in supervising court employees and overseeing the efficient operation of a court -- may have been quite important in providing the necessary conditions of a

sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative. As Judge Posner pointed out below, a judge who hires or fires a probation officer cannot meaningfully be distinguished from a district attorney who hires and fires assistant district attorneys, or indeed from any other Executive Branch official who is responsible for making such employment decisions. Such decisions, like personnel decisions made by judges, are often crucial to the efficient operation of public institutions (some of which are at least as important as the courts), yet no one suggests that they give rise to absolute immunity from liability in damages under § 1983.

The majority below thought that the threat of vexatious lawsuits by disgruntled ex-employees could interfere with the quality of a judge's decisions:

"The evil to be avoided is the following: a judge loses confidence in his probation officer, but hesitates to fire him because of the threat of litigation. He then retains the officer, in which case the parties appearing before the court are the victims, because the quality of the judge's decisionmaking will decline."

792 F.2d at 658. There is considerable force in this analysis, but it in no way serves to distinguish judges from other public officials who

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hire and fire subordinates. Indeed, to the extent that a judge is less free than most Executive Branch officials to delegate decisionmaking authority to subordinates, there may be somewhat less reason to cloak judges with absolute immunity from such suits than there would be to protect such other officials. This does not imply that qualified immunity, like that available to Executive Branch officials who make similar discretionary decisions, is unavailable to judges for their employment decisions. *See, e.g., Scheuer v. Rhodes,* 416 U. S. 232 (1974); *Davis v. Scherer,* 468 U. S. 183 (1984). *Cf. Harlow v. Fitzgerald,* 457 U.S. at 457 U. S. 818. Absolute immunity, however, is "strong medicine, justified only when the danger of [officials' being] deflect[ed from the effective performance of their duties] is very great." 792 F.2d at 660 (Posner, J., dissenting). The danger here is not great enough. Nor do we think it significant that, under Illinois law, only a judge can hire or fire probation officers. To conclude that, because a judge acts within the scope of his authority, such employment decisions are brought within the court's "jurisdiction," or converted into "judicial acts," would lift form above substance. Under Virginia law, only that State's judges could

promulgate and enforce a Bar Code, but we nonetheless concluded that neither function was judicial in nature.*See Supreme Court of Virginia v. Consumers Union, supra.*

We conclude that Judge White was not entitled to absolute immunity for his decisions to demote and discharge Forrester. In so holding, we do not decide whether Judge White is entitled to a new trial, or whether he may be able to claim a qualified immunity for the acts complained of in Forrester's suit. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

* JUSTICE BLACKMUN joins in all but Part II of this opinion.

Michael S. Greco
Past President, American Bar Association
"Civil Right to Counsel" Resolution
Pennsylvania Bar Association House of Delegates
November 30, 2007

I regret that I cannot be with you in person today as you, the members of the Pennsylvania Bar Association House of Delegates, deliberate and I hope approve the implementing of a defined civil right to counsel for indigent persons in Pennsylvania.

I briefly want to share some thoughts with you as you begin your deliberations.

First, I commend you for considering this historic resolution today. I commend the leadership of the Pennsylvania Bar for being at the forefront of what is now a burgeoning movement across our country – particularly the leadership of your President Andy Susko, and that of Dveera Segal, Co-Chair of the PBA's Legal Services to the Public Committee, and Sam Milkes, Executive Director of the Pennsylvania Legal Aid Network.

And I commend the Commonwealth of Pennsylvania for having already led the way in implementing, by legislation or court decision, a right to civil counsel in matters involving child dependency, paternity and guardianship.

The Resolution before you is straightforward:

RESOLVED, that the Pennsylvania Bar Association urges the Commonwealth of Pennsylvania to provide legal counsel as a matter of right to low income persons in those categories of adversarial proceedings where basic human needs are at

stake, such as those involving shelter, sustenance, safety, health, or child custody.

At its heart, the Resolution urges a commitment by all in Pennsylvania to the principle that no one should be denied his or her legal rights because of the inability to afford counsel or legal representation.

It is the responsibility of all in society -- but particularly of lawyers -- to give life to the eloquent promise of equal justice, and *equal access* to justice, *for all* in our country.

We know that today, that promise is unfulfilled – it's an empty promise for millions of people – despite all the laudable pro bono efforts of lawyers in private practice, despite the dedicated efforts of legal services lawyers and programs across the country, and despite Congressional funding of the Legal Services Corporation since its creation more than three decades ago.

You have heard the documented statistics –

- That 80% of the legal needs of poor persons in Pennsylvania and throughout the US go unaddressed year after year --
- That 50% of the poor people across Pennsylvania who make it to a legal aid office are turned away because of limited resources --
- That more than *forty million* Americans qualify for legal aid because they are at or near the poverty level --
- That the meager funding provided by Congress to the Legal Services Corporation provides help for only about *one million* of those forty million Americans.

Do you think that those forty million Americans might be justified in feeling that the justice system protects only people with money, and not them? That society does not care about them? Isn't it time that, finally, we try a new solution to this shameful situation?

For that reason, as ABA President I appointed the ABA Task Force on Access to Civil Justice to address the problem. I asked a distinguished group of judges, lawyers and others to consider an idea whose time has come in America: a right to counsel on the *civil* side funded by the state -- for poor and vulnerable fellow Americans, parallel to the right that now exists on the *criminal* side.

The US Supreme Court held in *Gideon v. Wainwright* that the Sixth Amendment guarantees a right to counsel paid by the state to an indigent who faces imprisonment.

But "imprisonment" in America can be by other than steel bars. In the US, every day, in every community, a poor person is imprisoned by devastating health problems, by homelessness, and by poverty-related problems that a lawyer could help solve.

I asked the ABA Task Force to consider whether the ABA, at long last, should endorse a civil right to counsel in adversary legal matters that threaten needs that are basic to human existence.

In a democracy all citizens – whether rich or poor – should have the assistance of counsel when custody of children is threatened; or loss of shelter is imminent; or to obtain legislatively-mandated health benefits. In those areas, every person in America should have counsel at his or her side to help secure their legal rights – whether criminal or civil.

No one in America – the most bountiful country in the world – should be without counsel when those basic needs are threatened. No one.

A civil right to counsel for poor persons may be viewed as "cutting edge" in *the US* – but such a right has been recognized in many civilized nations around the world for a century or longer – in constitutions, statutes, and court decisions.

In *Lassister v. Department of Social Services* the US Supreme Court in a 5-4 decision in 1981 held that the US Constitution does not require a *civil* right to counsel. Respectfully I say that the five justices in the majority got it wrong. I believe that in time *Lassiter* should be – and will be -- overturned.

Until then, the states are free to address the issue in a number of state-constitution and due process-based ways, ways that are very thoughtfully discussed in the final report and recommendations of the ABA Task Force on Access to Civil Justice. If you have not yet read that report, I suggest that you do so – at www.abanet.org.

The Task Force Force's report and recommendation that the ABA endorse a civil right to counsel were adopted by a *unanimous* vote of the ABA House of Delegates at our Annual Meeting in August 2006. What more powerful, historic, statement could be made by the 550 delegates to the ABA House from throughout the US to address this shameful situation?

Since then there has been growing activity in states coast to coast regarding implementation of a civil right to counsel. I have spoken about the issue to very receptive and supportive bar associations and citizen groups in numerous states – including California, Washington State, Alabama, New York, Maryland, Ohio, Montana, and my own state of Massachusetts, among others. I am pleased that the Massachusetts Bar Association House of Delegates recently adopted the resolution that is now before you by a unanimous vote.

When I was a boy my parents – perhaps like your parents – reminded us that where there is a will, there is a way. There is no doubt that the will exists among Pennsylvania lawyers to provide equal justice, and equal access to justice, for fellow human beings.

The Resolution before you simply states a basic principle, one that is worthy of your support. As I said to my colleagues in the Massachusetts Bar Association House

of Delegates before they voted on the Resolution, matters such as the scope and cost of implementing the civil right to counsel will receive the careful consideration of all, once we have endorsed the principle. But that can only happen if we have endorsed the principle.

I ask you today to lead the way for all your fellow citizens in implementing a civil right to counsel in Pennsylvania. I know that, together, we can get it done not only in Pennsylvania, but throughout the United States.

Thank you for your kind attention, and thank you for the vote you are about to take.

Assembly Bill No. 590

Passed the Assembly September 10, 2009

_____

Chief Clerk of the Assembly

Passed the Senate September 9, 2009

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ___M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, and to amend, repeal, and add Sections 68085.1 and 70626 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code, relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, Feuer. Legal aid.

(1) The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term "legal aid," or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill would subject a person or organization that violates this prohibition to specified civil liability.

This bill would, commencing July 1, 2011, and subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts for 3-year periods pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected

by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services project that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically. The bill would provide that the court partner is responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices, as specified. The bill would require a local advisory committee to be formed to facilitate the administration of the local project and to ensure that the project is fulfilling its objectives. The bill would require the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program, and to report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016.

(2) Existing law sets the fees at $25 or $30 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers' Compensation Law.

This bill would provide, from July 1, 2011, to June 30, 2017, inclusive, that $10 of each fee collected pursuant to these provisions shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program described in (1) above. Commencing July 1, 2017, the bill would reduce each of those fees by $10.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) There is an increasingly dire need for legal services for poor Californians. Due to insufficient funding from all sources, existing programs providing free services in civil matters to indigent and disadvantaged persons, especially underserved groups such as

elderly, disabled, children, and non-English-speaking persons, are not adequate to meet existing needs.

(b) The critical need for legal representation in civil cases has been documented repeatedly, and the statistics are staggering. California courts are facing an ever increasing number of parties who go to court without legal counsel. Over 4.3 million Californians are believed to be currently unrepresented in civil court proceedings, largely because they cannot afford representation. Current funding allows legal services programs to assist less than one-third of California's poor and lower income residents. As a result, many Californians are unable to meaningfully access the courts and obtain justice in a timely and effective manner. The effect is that critical legal decisions are made without the court having the necessary information, or without the parties having an adequate understanding of the orders to which they are subject.

(c) The modern movement to offer legal services for the poor was spearheaded by Sargent Shriver in 1966, aided by the American Bar Association, then headed by future Supreme Court Justice Lewis Powell, driven by the large disparity that existed between the number of lawyers available for poor Americans compared with the availability of legal services for others. While much progress has been made since then, significant disparity continues. According to federal poverty data, there was one legal aid attorney in 2006 for every 8,373 poor people in California. By contrast, the number of attorneys providing legal services to the general population is approximately one for every 240 people – nearly 35 times higher.

(d) The fair resolution of conflicts through the legal system offers financial and economic benefits by reducing the need for many state services and allowing people to help themselves. There are significant social and governmental fiscal costs of depriving unrepresented parties of vital legal rights affecting basic human needs, particularly with respect to indigent parties, including the elderly and people with disabilities, and these costs may be avoided or reduced by providing the assistance of counsel where parties have a reasonable possibility of achieving a favorable outcome.

(e) Expanding representation will not only improve access to the courts and the quality of justice obtained by these individuals, but will allow court calendars that currently include many

self-represented litigants to be handled more effectively and efficiently. Increasing the availability of legal representation for litigants who must currently represent themselves or face loss of their legal rights is a key priority of the Judicial Council and Chief Justice Ronald M. George. As the Chief Justice has noted, the large and growing number of self-represented litigants is one of the most challenging issues in the coming decade, imposing significant costs on the judicial system and the public by impairing the ability of the courts to efficiently process heavy caseloads, and eroding the public's confidence in our judicial system. While court self-help services are important, those services are insufficient alone to meet all needs. Experience has shown that those services are much less effective when, among other factors, unrepresented parties lack income, education, and other skills needed to navigate a complex and unfamiliar court process, and particularly when unrepresented parties are required to appear in court or face opposing counsel. Recognizing that not all indigent parties may be allowed representation, even when they have meritorious cases, and that self-help services cannot meet the needs of all unrepresented parties, courts presented with disputes regarding basic human needs that involve low-income litigants facing parties who are represented by counsel have a special responsibility to employ best practices designed to ensure that unrepresented parties obtain meaningful access to justice and to guard against the involuntary waiver or other loss of rights or the disposition of those cases without appropriate information and regard for potential claims and defenses, consistent with principles of judicial neutrality. The experience and data collected through a pilot program will assist the courts and the legal community in developing new strategies to provide legal representation to overcome this challenge.

(f) The doctrine of equal justice under the law is based on two principles. One is that the substantive protections and obligations of the law shall be applied equally to everyone, no matter how high or low their station in life. The second principle involves access to the legal system. Even if we have fair laws and an unbiased judiciary to apply them, true equality before the law will be thwarted if people cannot invoke the laws for their protection. For persons without access, our system provides no justice at all, a situation that may be far worse than one in which the laws expressly favor some and disfavor others.

(g) Many judicial leaders acknowledge that the disparity in outcomes is so great that indigent parties who lack representation regularly lose cases that they would win if they had counsel. A growing body of empirical research confirms the widespread perception that parties who attempt to represent themselves are likely to lose, regardless of the merits of their case, particularly when the opposing party has a lawyer, while parties represented by counsel are far more likely to prevail. Judicial leaders and scholars also believe that the presence of counsel encourages settlements. Just as importantly, court opinion surveys show that more than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others. Unfairness in court procedures and outcomes, whether real or perceived, threatens to undermine public trust and confidence in the courts. The sense that court decisions are made through a process that is fair and just, both in substance and procedure, strongly affects public approval and confidence in California courts. As many legal and judicial leaders have noted, the combined effect of widespread financial inability to afford representation coupled with the severe disadvantages of appearing in court without an attorney foster a destructive perception that money drives the judicial system. Respect for the law and the legal system is not encouraged if the public perceives, rightly or wrongly, that justice is mainly for the wealthy.

(h) Equal access to justice without regard to income is a fundamental right in a democratic society. It is essential to the enforcement of all other rights and responsibilities in any society governed by the rule of law. It also is essential to the public's confidence in the legal system and its ability to reach just decisions.

(i) The adversarial system of justice relied upon in the United States inevitably allocates to the parties the primary responsibility for discovering the relevant evidence, finding the relevant legal principles, and presenting them to a neutral judge or jury. Discharging these responsibilities generally requires the knowledge and skills of a legally trained professional. The absence of representation not only disadvantages parties, it has a negative effect on the functioning of the judicial system. When parties lack legal counsel, courts must cope with the need to provide guidance and assistance to ensure that the matter is properly administered and the parties receive a fair trial or hearing. Those efforts,

however, deplete scarce court resources and negatively affect the court's ability to function as intended, including causing erroneous and incomplete pleadings, inaccurate information, unproductive court appearances, improper defaults, unnecessary continuances, delays in proceedings for all court users, and other problems that can ultimately subvert the administration of justice.

(j) Because in many civil cases lawyers are as essential as judges and courts to the proper functioning of the justice system, the state has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the hearing of those cases.

(k) Many of those living in this state cannot afford to pay for the services of lawyers when needed for them to enjoy fair and equal access to justice. In some cases, justice is not achievable if one side is unrepresented because the parties cannot afford the cost of representation. The guarantees of due process and equal protection as well as the common law that serves as the rule of decision in California courts underscore the need to provide legal representation in critical civil matters when parties cannot afford the cost of retaining a lawyer. In order for those who are unable to afford representation to exercise this essential right of participants in a democracy, to protect their rights to liberty and property, and to the pursuit of basic human needs, the state has a responsibility to provide legal counsel without cost. In many cases decided in the state's adversarial system of civil justice the parties cannot gain fair and equal access to justice unless they are advised and represented by lawyers. In other cases, there are some forums in which it may be possible for most parties to have fair and equal access if they have the benefit of representation by qualified nonlawyer advocates, and other forums where parties can represent themselves if they receive self-help assistance.

(*l*) The state has an interest in providing publicly funded legal representation and nonlawyer advocates or self-help advice and assistance, when the latter is sufficient, and doing so in a cost-effective manner by ensuring the level and type of service provided is the lowest cost type of service consistent with providing fair and equal access to justice. Several factors can affect the determination of when representation by an attorney is needed for fair and equal access to justice and when other forms of assistance will suffice. These factors include the complexity of the substantive

law, the complexity of the forum's procedures and process, the individual's education, sophistication, and English language ability, and the presence of counsel on the opposing side of the dispute.

(m) If those advised, assisted, or represented by publicly funded lawyers are to have fair and equal access to justice, those lawyers must be as independent, ethical, and loyal to their clients as those serving clients who can afford to pay for counsel.

(n) The services provided for in Section 5 of this act are not intended to, and shall not, supplant legal services resources from any other source. This act does not entitle any person to receive services from a particular legal services provider, nor shall this act override the local or national priorities of existing legal services programs. The services provided for in Section 5 of this act are likewise not intended to undermine any existing pilot programs or other efforts to simplify court procedures or provide assistance to unrepresented litigants. Furthermore, nothing in this act shall be construed to prohibit the provision of full legal representation or other appropriate services funded by another source.

SEC. 2. In light of the large and ongoing justice gap between the legal needs of low-income Californians and the legal resources available to meet those needs, it is the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

SEC. 3. Article 9.6 (commencing with Section 6159.5) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 9.6. Legal Aid Organizations

6159.5. The Legislature hereby finds and declares all of the following:

(a) Legal aid programs provide a valuable service to the public by providing free legal services to the poor.

(b) Private, for-profit organizations that have no lawyers have been using the name "legal aid" in order to obtain business from people who believe they are obtaining services from a nonprofit legal aid organization.

(c) Public opinion research has shown that the term "legal aid" is commonly understood by the public to mean free legal assistance for the poor.

(d) Members of the public seeking free legal assistance are often referred by telephone and other directory assistance information providers to for-profit organizations that charge a fee for their services, and there are a large number of listings in many telephone directories for "legal aid" that are not nonprofit but are actually for-profit organizations.

(e) The Los Angeles Superior Court has held that there is a common law trademark on the name "legal aid," which means legal services for the poor provided by a nonprofit organization.

(f) The public will be benefited if for-profit organizations are prohibited from using the term "legal aid," in order to avoid confusion.

6159.51. For purposes of this article, "legal aid organization" means a nonprofit organization that provides civil legal services for the poor without charge.

6159.52. It is unlawful for any person or organization to use the term "legal aid," "legal aide," or any confusingly similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid organization subject to fair use principles for nominative, descriptive, or noncommercial use.

6159.53. (a) Any consumer injured by a violation of Section 6159.52 may file a complaint and seek injunctive relief, restitution, and damages in the superior court of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(b) A person who violates Section 6159.52 shall be subject to an injunction against further violation of Section 6159.52 by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(c) Reasonable attorney's fees shall be awarded to the prevailing plaintiff in any action under this section.

SEC. 4. Section 68085.1 of the Government Code is amended to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, and Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected,

each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(E) Commencing July 1, 2011, to the Trial Court Trust Fund, as described in subdivision (d) of Section 70626, to be used by the Judicial Council to implement and administer the civil representation pilot program under Section 68651.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the

receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a

provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 ½ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall be paid by the county to the Trial Court Trust Fund no later than

45 days after the end of the month in which the penalty was calculated.

(*l*) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 68085.1 is added to the Government Code, to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, and Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after

collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the

collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full

distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 ½ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall

be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(*l*) This section shall become operative on July 1, 2017.

SEC. 6. Chapter 2.1 (commencing with Section 68650) is added to Title 8 of the Government Code, to read:

CHAPTER 2.1. CIVIL LEGAL REPRESENTATION

68650. This chapter shall be known, and may be cited, as the Sargent Shriver Civil Counsel Act.

68651. (a) Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those specified courts selected by the Judicial Council as provided in this section.

(b) (1) Subject to funding specifically provided for this purpose pursuant to subdivision (d) of Section 70626, the Judicial Council shall develop one or more model pilot projects in selected courts pursuant to a competitive grant process and a request for proposals. Projects authorized under this section shall provide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child, as well as providing court procedures, personnel, training, and case management and administration methods that reflect best practices to ensure unrepresented parties in those cases have meaningful access to justice, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default. These pilot projects should be designed to address the substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision because of the nature and complexity of the law and the proceeding or disparities between the parties in education, sophistication, language proficiency, legal representation, access to self-help, and alternative dispute resolution services. In order to ensure that the scarce funds available for the program are used to serve the most critical cases and the parties least able to access the courts without

representation, eligibility for representation shall be limited to clients whose household income falls at or below 200 percent of the federal poverty level. Projects shall impose asset limitations consistent with their existing practices in order to ensure optimal use of funds.

(2) (A) In light of the significant percentage of parties who are unrepresented in family law matters, proposals to provide counsel in child custody cases should be considered among the highest priorities for funding, particularly when one side is represented and the other is not.

(B) Up to 20 percent of available funds shall be directed to projects regarding civil matters involving actions by a parent to obtain sole legal or physical custody of a child. This subparagraph shall not apply to distributions made pursuant to paragraph (3).

(3) For the 2012–13 fiscal year, and each subsequent fiscal year, any amounts collected pursuant to subdivision (d) of Section 70626 in excess of the total amount transferred to the Trial Court Trust Fund in the 2011–12 fiscal year pursuant to subparagraph (E) of paragraph (1) of subdivision (c) of Section 68085.1 and subdivision (d) of Section 70626 shall be distributed by the Judicial Council without regard to subparagraph (B) of paragraph (2). Those amounts may be distributed by the Judicial Council as set forth in this subdivision beginning July 1, 2012. If the funds are to be distributed to new projects, the Judicial Council shall distribute those amounts pursuant to the process set forth in this subdivision.

(4) Each project shall be a partnership between the court, a qualified legal services project, as defined by subdivision (a) of Section 6213 of the Business and Professions Code, that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The lead legal services agency shall be the central point of contact for receipt of referrals to the project and to make determinations of eligibility based on uniform criteria. The lead legal services agency shall be responsible for providing representation to the clients or referring the matter to one of the organization or individual providers with whom the lead legal services agency contracts to provide the service. Funds received by a qualified legal services project shall not qualify as expenditures for the purposes of the distribution of funds pursuant to Section 6216 of the Business and Professions Code. To the

extent practical, the lead legal services agency shall identify and make use of pro bono services in order to maximize available services efficiently and economically. Recognizing that not all indigent parties can be afforded representation, even when they have meritorious cases, the court partner shall, as a corollary to the services provided by the lead legal services agency, be responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices to ensure unrepresented parties meaningful access to justice and to guard against the involuntary waiver of rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality.

(5) The participating projects shall be selected by a committee appointed by the Judicial Council with representation from key stakeholder groups, including judicial officers, legal services providers, and others, as appropriate. The committee shall assess the applicants' capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that the project would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management, and the unique local unmet needs for representation in the community. Projects approved pursuant to this section shall initially be authorized for a three-year period, commencing July 1, 2011, subject to renewal for a period to be determined by the Judicial Council, in consultation with the participating project in light of the project's capacity and success. After the initial three-year period, the Judicial Council shall distribute any future funds available as the result of the termination or nonrenewal of a project pursuant to the process set forth in this subdivision. Projects shall be selected on the basis of whether in the cases proposed for service the persons to be assisted are likely to be opposed by a party who is represented by counsel. The Judicial Council shall also consider the following factors in selecting the projects:

(A) The likelihood that representation in the proposed case type tends to affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a matter in which they would otherwise frequently have judgment entered against them or suffer the deprivation of the basic human need at issue.

(B) The likelihood of reducing the risk of erroneous decision.

(C) The nature and severity of potential consequences for the unrepresented party regarding the basic human need at stake if representation is not provided.

(D) Whether the provision of legal services may eliminate or reduce the potential need for and cost of public social services regarding the basic human need at stake for the client and others in the client's household.

(E) The unmet need for legal services in the geographic area to be served.

(F) The availability and effectiveness of other types of court services, such as self-help.

(6) Each applicant shall do all of the following:

(A) Identify the nature of the partnership between the court, the lead legal services agency, and the other agencies or other providers that would work within the project.

(B) Describe the referral protocols to be used, the criteria that would be employed in case assessment, why those cases were selected, the manner to address conflicts without violating any attorney-client privilege when adverse parties are seeking representation through the project, and the means for serving potential clients who need assistance with English.

(C) Describe how the project would be administered, including how the data collection requirements would be met without causing an undue burden on the courts, clients, or the providers, the particular objectives of the project, strategies to evaluate their success in meeting those objectives, and the means by which the project would serve the particular needs of the community, such as by providing representation to limited-English-speaking clients.

(7) To ensure the most effective use of the funding available, the lead legal services agency shall serve as a hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom. Referrals shall emanate from the court, as well as from the other agencies providing services through the program, and shall be directed to the lead legal services agency for review. That agency, or another agency or attorney in the event of conflict, shall collect the information necessary to assess whether the case should be served. In performing that case assessment, the agency shall determine the relative need for representation of the litigant, including all of the following:

(A) Case complexity.

(B) Whether the other party is represented.

(C) The adversarial nature of the proceeding.

(D) The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case.

(E) Language issues.

(F) Disability access issues.

(G) Literacy issues.

(H) The merits of the case.

(I) The nature and severity of potential consequences for the potential client if representation is not provided.

(J) Whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.

(8) If both parties to a dispute are financially eligible for representation, each proposal shall ensure that representation for both sides is evaluated. In these and other cases in which conflict issues arise, the lead legal services agency shall have referral protocols with other agencies and providers, such as a private attorney panel, to address those conflicts.

(9) Each pilot project shall be responsible for keeping records on the referrals accepted and those not accepted for representation, and the reasons for each, in a manner that does not violate any privileged communications between the agency and the prospective client. Each pilot project shall be provided with standardized data collection tools, and required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this information on the effect of the representation on the clients, data shall be collected regarding the outcomes for the trial courts.

(10) A local advisory committee shall be formed for each pilot project, to include representatives of the bench and court administration, the lead legal services agency, and the other agencies or providers that are part of the local project team. The role of the advisory committee is to facilitate the administration of the local pilot project, and to ensure that the project is fulfilling its objectives. In addition, the committee shall resolve any issues that arise during the course of the pilot project, including issues concerning case eligibility, and recommend changes in project

administration in response to implementation challenges. The committee shall meet at least monthly for the first six months of the project, and no less than quarterly for the duration of the pilot period. Each authorized pilot project shall catalog changes to the program made during the three-year period based on its experiences with best practices in serving the eligible population.

(c) The Judicial Council shall conduct a study to demonstrate the effectiveness and continued need for the pilot program established pursuant to this section and shall report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016. The study shall report on the percentage of funding by case type and shall include data on the impact of counsel on equal access to justice and the effect on court administration and efficiency, and enhanced coordination between courts and other government service providers and community resources. This report shall describe the benefits of providing representation to those who were previously not represented, both for the clients and the courts, as well as strategies and recommendations for maximizing the benefit of that representation in the future. The report shall describe and include data, if available, on the impact of the pilot program on families and children. The report also shall include an assessment of the continuing unmet needs and, if available, data regarding those unmet needs.

(d) This section shall not be construed to negate, alter, or limit any right to counsel in a criminal or civil action or proceeding otherwise provided by state or federal law.

(e) The section shall become operative on July 1, 2011.

SEC. 7. Section 70626 of the Government Code is amended to read:

70626. (a) The fee for each of the following services is twenty-five dollars ($25). Subject to subdivision (d), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is thirty dollars ($30). Subject to subdivision (d), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars ($80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) From July 1, 2011, to June 30, 2017, inclusive, ten dollars ($10) of each fee collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.

(e) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 70626 is added to the Government Code, to read:

70626. (a) The fee for each of the following services is fifteen dollars ($15). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is twenty dollars ($20). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars ($80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) This section shall become operative on July 1, 2017.

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Chapter One

Services for Self-Represented Litigants

As self-represented litigants have become more numerous, jurisdictions around the country have begun to address the issue with new programs and services. These programs range from informal, ad hoc responses to systemwide programs. According to a survey by the American Judicature Society (AJS), 20 states have implemented statewide initiatives for self-represented litigants. In addition, the AJS survey received information on 152 local programs in 45 states. The services provided fall into five general areas:

- **Self-Help Centers.** These centers provide services such as distributing educational materials, brochures, and informational packets; helping users complete forms; providing access to computer terminals; and referring users to other services.
- **Family Law Facilitators.** Usually connected with the court system, family law facilitators provide assistance to litigants on a range of family court issues and expedite the processing of cases through family court.
- **Pro Bono and Lawyer Referral Programs.** Jurisdictions are collaborating with legal services programs, law school clinics, and bar associations to offer pro bono representation to litigants considering representing themselves in court. These programs range from simple referrals, to organized legal services programs, to well-structured bar and law school programs that operate offices at the local court or through clinics located outside the courthouse.
- **Pro Se Clinics.** Primarily relying on volunteer attorneys, clinics educate litigants so they can proceed with their case.

- **Technology-Based Assistance.** This type of service uses telephone hotlines, kiosks, or Web sites that provide information to litigants on how to proceed through the court system. Some technologies allow the litigants to fill out forms and initiate actions from one location.

Some Wisconsin jurisdictions have recognized the need to provide services to the self-represented litigant. These programs vary from the distribution of "pro se packets" to clinics that help individuals complete family law forms. While these programs are not widespread, interest in them continues to increase.

The following are examples of programs and services currently offered or planned in Wisconsin counties:

Milwaukee County. The Wisconsin Family Justice Clinic uses volunteer attorneys, paralegals, legal secretaries, law students, and advocates to provide one-on-one assistance to self-represented litigants. Litigants receive assistance with forms, procedures, and referrals to community resources. Spanish-speaking facilitators are also available. The volunteers do not provide legal advice. The Clinic is located in the Milwaukee County Courthouse and is open from 1:00 - 2:00 p.m., Monday through Friday.

Richland County. Non-attorney volunteers who assist self-represented litigants with simple uncontested divorces staff the Richland County Resource Center. The volunteers provide forms and instructions and basic information concerning court procedures. The Resource Center is located in the Richland County Courthouse and is open the first Wednesday of the month.

Waukesha County. In partnership with the nonprofit Wisconsin Correctional Services, Waukesha County has initiated a court self-help program. The program is in the early stages of development, but has recently received an outside grant to hire a coordinator for the project.

Dane County. The Dane County Bar Association has established a Family Law Assistance Center. The Center uses volunteer attorneys and non-attorneys to provide one-on-one assistance with forms, procedures, and referrals to community resources. The Center is located in the Dane County Courthouse and is open each Wednesday.

Chippewa County. The Chippewa County Free Legal Clinic is staffed by four volunteer attorneys and a coordinator. The coordinator provides self-represented litigants with the necessary forms and assigns them to an attorney based on the area

of law they want to discuss. Each user receives a 15-minute private consultation with the attorney. The Clinic is held the fourth Wednesday of the month at the Chippewa Falls Public Library from 6:30 to 8:00 p.m.

Systematic Approach to Self-Represented Litigants

The Pro Se Working Group has reviewed information and research from other states and the programs currently operating in Wisconsin. Based on this evaluation, the Working Group developed a systematic approach for tailoring responses to the challenge of self-represented litigants. The development of a systematic approach allows for a wide range of recommendations, rather than focusing on one part of the problem. The benefits of this approach are:

1) it considers the entire court process when identifying responses,

2) it provides a framework for jurisdictions to determine appropriate responses for their unique situations, and

3) it can be used to determine both state and local responses.

Action Areas

The model developed by the Working Group includes six opportunities within the typical litigation process for implementation of programs or services to address the issue of self-represented litigation. These six opportunities, or action areas, allow jurisdictions, both state and local, to consider a range of options for dealing with self-represented litigants. A jurisdiction may tailor programs based on specific needs or available resources.

Figure 1 illustrates the model developed by the Working Group. The six action areas are designated in the diamond-shaped boxes, and include:

Inform	Inform the self-represented litigant of the risks and responsibilities of proceeding without an attorney.
Refer	Ensure that individuals who are interested in obtaining assistance are referred to appropriate information, including legal and other community services.

Simplify	Simplify materials self-represented litigants need to process their cases.
Assist	Facilitate accurate and complete filings and productive court proceedings by providing assistance to self-represented litigants.
Manage	Ensure that the courts use effective case management techniques in self-represented cases.
Evaluate	Evaluate strengths and weaknesses of processing cases involving self-represented litigants.

This report is based on this model, with each subsequent chapter describing a particular action area. The description contains four parts, including:

1) the objective of the action area,
2) issues associated with the action area,
3) potential actions that may be appropriate for state or local initiatives, and
4) recommendations to the chief justice for statewide implementation.

The list of potential actions is included to allow local jurisdictions to identify approaches that best suit their county or region. The Working Group recommendations are designed to help the chief justice and director of state courts identify a statewide plan for responding to this issue.

Victim advocates, especially in domestic violence cases, also struggle with the level of information that is appropriate to provide a self-represented litigant. Victim advocates are allowed by Wis. Stat. § 895.73(2)[3] to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, court proceeding, or disposition. However, based on a 1994 informal opinion by the state attorney general, advocates are allowed to provide legal information but are prohibited from giving legal advice.[4] That can be a difficult distinction to make, however.

Potential Actions

- Develop a brochure outlining the risks and responsibilities of proceeding without representation.
- Conduct "orientation" sessions to court proceedings by volunteers or by video.
- Develop guidelines for court staff and advocates on the type of information that is appropriate to provide.
- Provide specialized training for court staff and victim advocates on the topic of what constitutes legal advice.
- Establish information centers within the courthouse to answer general questions.
- Hold regular information seminars for the public on specific aspects of the law.
- Increase awareness of legal hotline services available through the State Bar of Wisconsin.

[3] **Wis. Stat. § 895.73(2) Right to be present.** A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

[4] State Attorney General Informal Opinion, dated June 20, 1994.

Working Group Recommendations

Publication and Distribution of Information on the Risks and Responsibilities of Proceeding without an Attorney.

Self-represented litigants are often unfamiliar with the most basic court procedures. In addition, they may not be aware of the consequences of inadequately presenting their case. If an individual starts the litigation process with a misunderstanding of the procedures and consequences, it is more likely that the individual, and court staff and judges, will experience a higher level of frustration. It is preferable that individuals considering representing themselves make an informed decision. Since individuals consider representing themselves for different reasons, information provided at the beginning of the process may result in some people deciding that they should not proceed without the assistance of an attorney.

The Working Group recommends that a publication be developed by the court system that provides persons considering representing themselves in court with information about their responsibilities in proceeding without an attorney and the potential consequences of their actions. The information should be comprehensible to all and not overly lengthy. This information may also be presented in a video that could be shown to individuals considering representing themselves.

Guidelines on Providing Assistance to Self-Represented Litigants.

While training will help clarify what type of information is appropriate to provide to self-represented litigants, court staff may still be concerned about "stepping over the line." One way to alleviate this concern is to develop statewide guidelines that clearly define what information is, and is not, considered legal advice. By establishing statewide guidelines, court staff will feel more confident providing information. The guidelines will also institute a more uniform level of assistance to self-represented litigants around the state.

The Working Group recommends that a petition be submitted to the Wisconsin Supreme Court that establishes guidelines for providing assistance to self-represented litigants. Specifically, the rule should include:

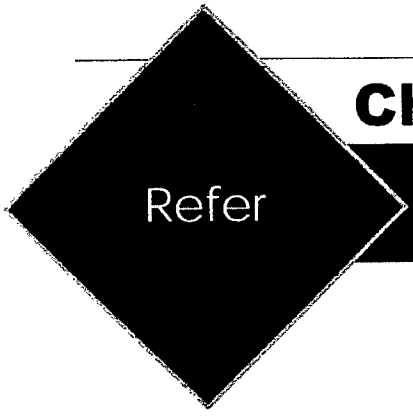
1) what information should not be provided by court staff,
2) what information is authorized for dissemination, and
3) an order to distribute and post the authorized information at county courthouses.

This recommendation is modeled after other states, specifically, New Mexico and Iowa. Iowa has drafted guidelines concerning assistance to self-represented litigants. The New Mexico Supreme Court has adopted an order that lists what information can and cannot be provided and the reasons. This information is provided to court staff as a guide and is posted in the courthouse to advise the public.[5]

Legal Advice Training.

In general, court staff and lay advocates have not been trained to respond effectively to the requests for advice and information now sought by self-represented litigants on a daily basis. The language of the legal profession makes it difficult for self-represented litigants to pose the right questions and for individuals providing assistance to know whether an answer constitutes legal advice. The Working Group recommends that a curriculum and training program be developed for court staff. This educational program should be applicable not only to court staff and judges, but also to advocates who may interact with self-represented litigants.

[5] See appendix for Iowa Court's *Guidelines for Clerks Who Assist Pro Se Litigants* (p. 45) and the New Mexico Supreme Court Order Regarding Self-Represented Litigants (p. 49).



Chapter Three

The objective of the **REFER ACTION AREA** is to ensure that individuals who are interested in obtaining assistance have information about their options, including the legal and other community services available to them. Persons considering representing themselves in court may be classified into three categories: 1) individuals who think they cannot afford an attorney; 2) individuals who truly cannot afford an attorney; and 3) those who do not want an attorney regardless of cost.

Since court cases can involve serious issues and critical decisions that affect the daily lives of litigants and their families, efforts should be made to assist litigants in obtaining representation if they want it. This action area identifies programs and services that could increase the likelihood that litigants in the first two groups obtain legal services. This includes ensuring that adequate legal services are available to individuals who would like to retain representation.

Issues

Legal Services Funding.

The four Wisconsin Legal Services Corporation affiliates have experienced a decline in federal funding. For example, the federal budget for legal services has dropped 25 percent since 1995. The reduction in funding reduces the availability of legal services to low-income individuals in Wisconsin. As a result, individuals who would like representation are forced to proceed unrepresented. This issue is fully discussed in the

1996 report by the Commission on the Delivery of Legal Services established by the State Bar of Wisconsin.[6]

Unbundled Legal Services.

The court system and parties benefit when legal representation is available to all litigants. However, many individuals are unable to afford the cost of full legal representation. One approach to this problem is to reduce the overall cost of legal assistance by "unbundling" legal services, also known as "discrete task representation." Unbundling allows a lawyer to perform only a specific portion of the entire legal matter.

While unbundling legal services provides an opportunity for individuals to decrease the cost of representation, the concept of unbundling also presents questions of ethics and liability. These issues are described in the Commission on the Delivery of Legal Services report, which states:

> A lawyer's role is not limited to the performance of discrete tasks which can be allocated between the lawyer and client. Rather, lawyers serve in an advisory or counseling capacity, providing clients with an understanding of their legal rights and responsibilities and explaining the practical implications of those rights and responsibilities. *See generally*, Preamble to SCR Ch. 20, Rules of Professional Conduct for Attorneys. If a lawyer merely accepts the client's identification of his or her legal needs without conducting an independent evaluation, there is a substantial risk that important considerations will be overlooked, thereby jeopardizing the client's interests and exposing the lawyer to a malpractice claim. Moreover, while the Rules of Professional Conduct permit lawyers to 'limit the objectives of the representation if the client consents after consultation,' Supreme Court Rule (SCR) 20:1.2(c), lawyers retain the ethical obligation to provide competent representation. Given these ethical constraints, the boundaries of permissible 'job sharing' with clients is unclear.

If unbundling legal services is to be used in Wisconsin, corresponding rules will need to be promulgated by the Supreme Court with recommendations from the State Bar of Wisconsin.

Pro Bono Representation.

Pro bono representation is another way to assist those interested in obtaining an attorney but are limited by income. While many lawyers provide pro bono representation, the demand outstrips the supply. As a result, the aggressive recruitment of pro bono attorneys

[6] The report of the Commission on the Delivery of Legal Services is available on the State Bar of Wisconsin Web site at www.wisbar.org/bar/cmleged.htm, or by calling (608) 257-3838.

is important to increasing the options available to individuals considering proceeding without an attorney.

Potential Actions

- Develop a standardized attorney roster that would be available at courthouses.
- Establish partnerships with pro bono and legal service organizations.
- Develop a local referral phone center.
- Implement courtroom procedures to facilitate pro bono representation.
- Ensure information about pro bono attorneys and legal service organizations is available at the courthouse.
- Involve judges in recruiting pro bono attorneys.
- Create a pro bono plan in each county or judicial district.
- Pursue options to provide funding for legal services for low-income persons.

Working Group Recommendations

Increase Pro Bono Representation.

With the increasing need for low- or no-cost legal services and the decreasing resources to provide that service, there is an urgent need to develop sources of pro bono representation. While the State Bar of Wisconsin continues to recruit attorneys through its pro bono program, the Working Group recommends pursuing the following additional approaches:

1) Encourage the establishment of a pro bono component in the curriculum of University of Wisconsin and Marquette University law schools.
2) Review the idea of establishing a pro bono plan for each judicial administrative district. The plan would evaluate the needs of pro bono service and determine the adequacy of the available pro bono services.

3) Encourage judges to provide scheduling accommodations to facilitate volunteer service by pro bono attorneys. One example is to hear pro bono cases first on the daily calendar to minimize inconvenience to volunteer attorneys.

4) Explore the feasibility of offering reduced rates for continuing legal education programs to attorneys who provide pro bono representation.

5) Remove legal impediments for government lawyers to provide pro bono representation.

Pursue Financial Resources for Legal Services.

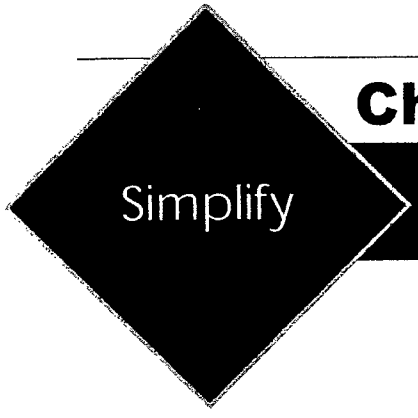
Since many individuals who proceed without representation do so because of their limited incomes, legal service organizations could play a critical role in addressing the needs of self-represented litigants. The current funding levels of these organizations are not, however, adequate to meet the demand. Legal service organizations are forced to make difficult choices when using their resources, leaving many individuals without representation.

The Working Group recommends that options be pursued that would increase the resources available to legal service organizations, including funding increases at the national level and identifying innovative programs within the state that have found ways to stretch the limited funding to provide more services.

Clarify Supreme Court Rule Concerning Unbundled Legal Services.

Unbundling of legal representation is one way to make representation available to more litigants. However, the Rules for Professional Conduct for Attorneys (SCR Chapter 20[7]) are not clear concerning this type of representation. The Working Group recommends that the Supreme Court Rules be changed to allow the unbundling of legal services.

[7] Wisconsin SCRs are available on the Court System Web site: www.courts.state.wi.us/supreme/sc_rules.asp.



Chapter Four

The objective of the **SIMPLIFY ACTION AREA** is to make the materials, forms, and instructions commonly used by self-represented litigants easier to understand and to complete. A litigant's inability to complete required forms can frustrate both the litigant and the court. No matter how well the system informs or refers litigants, some individuals will decide to proceed without an attorney. Steps must be taken to make forms user-friendly.

Currently, a variety of pro se forms are available around the state, but these forms are ordinarily useful only within the counties in which they are developed. State-developed forms would reduce the variety of forms circulating, increase compliance of the forms with law changes, reduce the burden on local organizations to keep forms current, and provide the foundation for assistance programs on a regional or statewide basis.

Issues

Understandable Forms and Instructions.

Self-represented litigants may have difficulty understanding and completing court forms because the language and format of many court forms can be overwhelming. As a result, the self-represented litigant asks for guidance from court staff, becomes frustrated when help is not available, and may ultimately file the wrong form with the court.

The simplification of court forms, especially in the family law area, could help the self-represented litigant navigate the court process. As noted in the final report of the Commission on the Delivery of Legal Services, "there is a critical need for uniform, reliable, user-friendly forms and instructional materials to assist pro se litigants."

Simplified forms can assist the self-represented litigant, but will not, however, fulfill their potential unless understandable instructions are also developed. These instructions should allow self-represented litigants to gain a better understanding of what information is required within each part of the form.

Non-English-speaking litigants also have a difficult time completing forms. While it may not be practical to develop forms in languages other than English, instructions in several languages would allow non-English-speaking litigants to understand and complete the forms.

Mechanism for Updating Forms and Instructions.

The simplification of forms and instructions should be completed on a statewide basis to ensure that forms are consistent and current. This approach would require that a statewide organization or committee be responsible for developing these forms and instructions. However, equally important is a mechanism to update these forms for changes in the law. Currently, the Records Management Committee of the Director of State Courts Office is responsible for updating statewide forms as necessary. While this committee would be a logical choice for updating the simplified forms, the committee is probably not equipped to handle this extra work and the question of the mandatory use of the forms becomes an issue (Supreme Court Rule 70.153[8] in conjunction with Wis. Stat. § 758.18[9] provides for the mandatory use of all standard forms developed by the Records Management Committee.).

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[8] **SCR 70.153 Judicial conference, forms.**
(1) The standard court forms that the judicial conference is required to adopt under section 758.18 of the statutes shall be developed by the records management committee, an advisory committee to the director of state courts office.
(2) Under article VIII of the bylaws of the judicial conference, the judicial members of the records management committee act on behalf of the judicial conference in the adoption of standard court forms.
(3) Each standard court form shall include a notice that the form may be supplemented with additional material.
(4)(a) Upon adoption of a standard court form, the records management committee shall distribute or make a copy of the form available to the clerks of circuit court, the circuit court judges, the state bar of Wisconsin and other persons who are required to use the form.

(b) Within 90 days after the date of distribution of a standard court form under par. (a), an interested person may file with the records management committee a written objection to the mandatory use of the form, to the content of the form or to both the use and the content.

(c) The records management committee shall respond to the objector under par. (b) in writing within 90 days after receipt of the objection.

(d) Within 30 days after the date on which he or she receives the written response of the records management committee to an objection filed under par. (b), the person filing the objection may file with the clerk of the supreme court a petition for review of the decision of the records management committee. The supreme court may request a response from the records management committee and establish a schedule for submission of the matter to the supreme court for determination.

[9] **Wis. Stat. § 758.18 Judicial conference:** standard court forms. The judicial conference shall adopt standard court forms for use by parties and court officials in all civil and criminal actions and proceedings in the circuit court.

Since mandating certain forms for self-represented litigants is not the intent of developing simplified forms, assigning the updating function to the Records Management Committee may not be practical.

Access to and Distribution of Forms and Instructions.

Once simplified forms are developed, mechanisms for access to and distribution of these forms and instructions need to be established. To ensure that litigants in all counties have access to these forms and instructions, electronic and paper copies must be available.

Electronically, the forms should be available on appropriate Web sites, such as county sites, the state court Web site, and the State Bar Web site. By making the forms available on a broad range of Web sites, more self-represented litigants will use them.

But since many self-represented litigants may not have access to the Internet, paper copies of the forms are also needed within each county. Logistically, these forms could be provided to counties on a computer disk to print as needed. This approach would also allow some modification of the forms that may be needed in each county.

Potential Actions

- Create simplified/readable forms.
- Create simple, concise instructions for completing forms.
- Identify a responsible organization to create and update forms.
- Make standard forms and instructions available electronically.
- Develop local procedural instructions in each jurisdiction.

Working Group Recommendations

Creation of Simplified Family Law Forms.

A significant area of difficulty for self-represented litigants is understanding and completing forms. This is especially evident in the area of family law cases. While the Records Management Committee is responsible for developing standard forms, few standard forms have been developed in the area of family law. The Working Group recommends that simplified family law forms be developed for use in Wisconsin. The simplified forms should be made widely available in both electronic and paper formats.

Establish a Coordinator Position in the Director of State Courts Office.

This report identifies a number of recommendations to address some of the current challenges of self-represented litigants. However, many of these responses would benefit from establishing a full-time position at the state level that would coordinate future actions. For example, if simplified court forms are developed, regular maintenance will be required. A coordinator could be responsible for updating forms as needed. In addition, a coordinator could provide technical assistance to counties interested in establishing self-help programs and also provide training to judges, court staff, and volunteers on handling self-represented litigants.

Provide Educational Material on the Internet.

The Internet provides the opportunity to provide explanatory and educational materials to self-represented litigants. While forms have been mentioned for inclusion on the court system Web site, additional materials could also be provided. These materials might include directions to courthouses, descriptions of courts, or procedural information.

The Working Group recommends that the Wisconsin court system Web site include a section for self-represented litigants. This section could include various forms of information that can be easily updated as needed. In addition, links to legal services, local court sites, or local service providers could provide enough information for self-represented litigants to get the help they need.

Judges' Views of *Pro Se* Litigants' Effect on Courts

[**Editor's Note:** Eleven state court judges in Wisconsin filed an amicus brief in *Kelly v. Warpinski*, a case in which the petitioners asked the Wisconsin Supreme Court to take original jurisdiction and rule on their argument that the state constitution conferred a right to appointed counsel in civil cases. In their brief, the amici explained how *pro se* litigants burdened the courts; the amici argued that original jurisdiction in the supreme court was warranted under state law. Below we reproduce the portions of the brief on the burden on the courts. Dan Conley, O. Thomas Armstrong, and Jeffrey O. Davis, with Nathan R. Mathews (Quarles & Brady LLP, 411 E. Wisconsin Ave., Milwaukee, WI 53202; 414.978.86090), represented the amici on the brief. The full brief (Clearinghouse No. 55,816) is available in the Poverty Law Library of the Sargent Shriver National Center on Poverty Law. See www.povertylaw.org/poverty-law-library/case/55800/55816.]

Introduction

Eleven current and retired judges[1] from the Milwaukee and Dane County Circuit Courts move this Court for leave to appear *amicus curiae* for the limited purpose of supporting Petitioners' requests that the Supreme Court take jurisdiction of an original action. The Movants do not take a position on the appropriate remedy, if any, for the complex issues raised by the Petitioners. Likewise, Movants do not suggest that any such remedy should cover all civil matters.[2] Rather, Movants have experienced first hand the burden caused by self-represented litigants on the Wisconsin court system, other litigants, and the *pro se* litigants' own causes and ask that this Court find that the Petitioners raise issue *publici juris* which warrant exercise of original jurisdiction.

Argument

I. *Pro se* Civil Litigants Represent a Significant and Growing Burden on a Judicial System Which Is Not Well-Equipped to Deal with Them.

A lawyer who represents herself is said to have a fool for a client. That problem is compounded—and the effects and burdens extend well beyond the disadvantaged lawyer/client—when the "fool" also lacks any legal training or experience. Yet, this predicament occurs every day in Wisconsin courts involving important and complicated matters vitally affecting the lives of the state's citizens. This memorandum analyzes the burden that the lack of representation for impoverished civil litigants has on the Wisconsin courts and its personnel, as well as other litigants in the system.

A. *Pro Se* Litigants Are a Significant and Growing Part of State Trial Courts' Caseloads.

Every year, tens of thousands of civil *pro se* litigants file or defend actions in the state of Wisconsin. Statistics released by the Wisconsin Pro Se Working Group, a committee of the Office of the Chief Justice, reveal that 70% of Milwaukee County family law cases in recent years involved non-represented litigants, some 10,204 persons in this category alone.

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[1] The Movants are Judges Carl Ashley, Thomas P. Donegan, Christopher R. Foley, Mark A. Frankel, Michael D. Guolee, Michael Malmstadt, Patricia D. McMahon, Marshall B. Murray, Richard I. Sankovitz, Mary E. Triggiano, and Joseph R. Wall.

[2] Small claims matters, for example, quite naturally involve high numbers of self-represented litigants. Having a right to counsel in these cases may not result in as significant of a reduction in the burden to the court system that doing so, for example, in family law matters may.

Wisconsin Pro Se Working Group, *Meeting the Challenges of Self-Represented Litigants in Wisconsin, Report to Chief Justice Shirley S. Abrahamson*, at 8 (December 2000). To provide context, more than 100,000 civil actions[3] were opened *statewide* last year, approximately half of which were family law cases. Office of Court Operations, *Yearend Caseload Summary—Statewide Report* (generated May 6, 2004), http://www.courts.state.wi.us/about/pubs/circuit/docs/caseloadstate03.pdf. Moreover, the number of *pro se* litigants in civil matters has been increasing during the last decade, both in Wisconsin and nationally.[4] *Meeting the Challenges of Self-Represented Litigants in Wisconsin*, *supra*, at 5, 7 (2000); Rebecca A. Albrecht *et al.*, *Judicial Techniques for Cases Involving Self-Represented Litigants*, 42 Judges J. 1, at 16 (2003).

B. Unsophisticated and Inexperienced *Pro Se* Litigants Complicate the Process and Burden the Entire System.

Due to a fundamental lack of understanding of the process, in combination with a deficiency of access to resources and guidance in the face of their complicated legal issues, self-represented litigants produce time-consuming frictions at every level of the state court organization. The bulk of *pro se* litigants are demonstrably indigent, very few of whom have any legal experience or training that prepares them for the complexities of the adversarial system. In the context of custody hearings, this Court already has explicitly recognized the burden of poorly educated, frightened, and inexperienced litigants on the entire judicial process. *Joni B. v. State*, 202 Wis. 2d 1, 11, 549 N.W.2d 411 (1996).

A multitude of specific burdens on the court system are caused by self-represented litigants. *See Meeting the Challenges of Self-Represented Litigants in Wisconsin*, *supra*, at 9. Principally, *pro se* litigants need assistance and seek it directly from the court staff, encumbering already strained resources by forcing personnel to instruct on the most common practices and procedure. *Id.* This also raises conflict issues for court personnel, who are charged with remaining impartial in the litigation process, and places staff in an ethically precarious position related to unauthorized practice of law. *Id.* at 9, 17–18; State Bar of Wisconsin, *Commission on the Delivery of Legal Services—Final Report and Recommendations*, at 30–31 (June 1996). Judges likewise endanger violation of the judicial code by providing help to litigants. Albrecht *et al.*, *supra*, at 16. They must also personally expend an inordinate amount of time deciphering pleadings[5] and hearings, when properly scheduled, are slow and onerous. *Meeting the Challenges of Self-Represented Litigants in Wisconsin*, *supra*, at 9.

C. *Pro Se* Litigants Complicate Not Only Their Own Cases But Can Increase the Burden and Transaction Costs of Other Parties, Represented or Not.

One self-represented party causes problems for all litigants in the action. It goes without saying that even the most determined self-represented individual finds herself significantly disadvantaged in the litigation by a typical inability to understand and clearly and properly assert her cause (or lack thereof). *Id.* at 18; *Commission on the Delivery of Legal Services*, *supra*, at 30, 35. However, *represented* litigants also experience problems

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[3]Small claims cases are *not* included in this figure.

[4]Far from abating, this trend appears to be accelerating in the most recent years. Informal numbers from the Milwaukee County Office of District Court Administrator indicate that the percentage of family law cases involving at least one self-represented litigant has increased from 72% in 2002 to 74.4% last year. Preliminary year-to-date numbers for 2004 indicate that 76.6% of Milwaukee County family law cases have involved at least one *pro se* litigant. Likewise, excluding small claims cases, informal statistics in District 1 suggest a trend of increasing self-representation in non-family civil cases from 37.9% in 2002, to 38.3% in 2003, to 44.9% (preliminary) year-to-date. Telephone Conversation with Bruce M. Harvey, District 1 Court Administrator (Nov. 17, 2004).

[5]Wisconsin courts commonly note that a pleading from a self-represented party, "like many *pro se* petitions, is difficult to understand." *See, e.g., Amek Bin-Rilla v. Israel*, 113 Wis. 2d 514, 516, 519, 335 N.W.2d 384 (1983).

arranging for depositions and other discovery, giving notice and being properly notified, and responding to poorly articulated but often colorable claims and defenses. These problems significantly increase the expense for the represented party. *Meeting the Challenges of Self-Represented Litigants in Wisconsin*, *supra*, at 9.

D. A Telling Example.

Many of these difficulties are exemplified in the recent case of *In re Paternity of Demetrius A.Y. v. Ronnie J.*, 271 Wis. 2d 242, 677 N.W.2d 684 (Ct. App. 2004). In this paternity action lasting over a dozen years in the Wisconsin court system, conclusive genetic testing, admissions from the mother, and other evidence made it clear that the appellant could not have been the father of the children. *Id.* at 249. That is, "all parties recognize[d] that a meritorious defense exist[ed] to the two false claims of paternity." *Id.* at 256. The appellant had launched repeated unsuccessful *pro se* attempts to open the default judgments of paternity against him, to no avail.[6] *Id.* at 247–48. After over a decade of litigation, appellant finally was able to retain counsel and comparatively quickly got the judgments expunged.

It is not surprising that it took a dozen years for the judgment to be reversed despite admittedly conclusive evidence supporting appellant's position. The case is full of inadequate notices, failures to respond, scores of appearances by only one party, "fundamental deficiencies in the record," and grossly inadequate attempts by the appellant to represent himself. *Id.* The court summarized the problem concisely: "[I]t is an understatement to say that Ronnie was a less than sophisticated *pro se* litigant." *Id.* at 255. Rather, it was "obvious that through most of his travail, Ronnie was the victim of his own uninformed knowledge of the intricacies of the judicial system." *Id.* at 256. The Wisconsin court system, including its judges, staff, attorneys, and other litigants were also obviously victimized by the years of unnecessary litigation[7] in the matter. Such cases are far too common.

E. The Courts' Inherent Power to Appoint Counsel Has, for a Number of Reasons, Not Been an Effective Means of Addressing the Problem.

Wisconsin courts have an inherent power to appoint counsel for the representation of an indigent litigant. *State ex rel. Fitas v. Milwaukii County*, 65 Wis. 2d 130, 134, 221 N.W.2d 902 (1974). However, while a circuit judge may act on an individual case basis, this remedy does not adequately meet the needs of the litigants and the court system because: (1) judges are mindful of limitations in funding for appointed civil counsel; (2) except in unusual situations, such appointments come only after an application for counsel by the *pro se* litigant, many of whom are not capable of properly making the request; (3) referral to, or appointment of, one of the independently operating legal clinics is not an alternative due to low funding and staffing levels and because *pro se* litigants likely have already been turned down by those organizations for the same reasons; and (4) referral to private attorneys is sporadically used due to the inconsistencies in the *pro bono* commitments of the greater legal community. *See Meeting the Challenges of Self-Represented Litigants in Wisconsin*, *supra*, at 11–13 (2000); *Commission on the Delivery of Legal Services*, *supra*, at 43–44. The current approach is rife with inefficiencies and has resulted in a heavy burden on the lower courts and its litigants. *Id.*

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[6] Tellingly, the trial court had denied the appellant's most recent *pro se* attempt in part because he had failed to file his motion in a timely fashion. *Id.* at 249.

[7] Astoundingly, after a dozen years in the court system, the Appellate Court noted that "[n]o judicial consideration of the merits has ever occurred." *Id.* at 256.

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Page 4 of 5
Civil Gideon

FIVE YEAR STRATEGIC PLAN FOR THE TEXAS ACCESS TO JUSTICE COMMISSION

(Adopted May 27, 2009)

I. Introduction

Under the dedicated leadership of Chair James Sales, major progress was made on the goals set forth in the Five Year Strategic Plan adopted on October 4, 2004. (Attached as Appendix A.) Unfortunately, the current economic recession, a growing poverty population, the continued failure of Federal assistance to meet the increasing need, plummeting IOLTA revenue due to the recent decline in interest rates, and the devastating effects of natural disasters such as Hurricane Ike, have left our state in desperate need of greater resources to provide equal access to justice.

The Commission proposes that the following strategic objectives and initiatives be taken to address the State's critical needs for legal services to the poor:

II. Continue Efforts to Ensure Stable Funding for Legal Services Providers

A. Change State Bar Dues Form from "opt-in" to "opt-out" for Access to Justice Campaign contributions to ensure full consideration of needs by State Bar members.

B. Persuade Texas law firms, lawyers and corporations to sponsor annual fellowships to fund the costs of a lawyer working for a recognized legal services provider (similar to a Skadden Arps Fellowship Program).

C. Assist with and promote law school endowments that are conditioned on the recipient spending an agreed amount of time with a recognized legal services provider.

D. Explore legislation or rule changes that increase funding for legal services to the poor.

E. Continue hosting annual Gala to increase funds and awareness for access to justice efforts.

III. Continue Education and Outreach Efforts to the Profession

A. Continue and augment long-term program to educate the public and government officials about the realities of unequal access to justice and the need for enhanced resources.

B. Continue recognition of lawyers who actively engage in pro bono in publications and bulletins.

B. Explore a pro bono exemption for corporate lawyers licensed in other states to handle pro bono cases in Texas.

C. Pursue effort to enlist General Counsel to join the corporate counsel committee and publicize the committee in the Texas Bar Journal whenever appropriate.

D. Establish an annual giving campaign for corporations doing business in Texas.

E. Leverage Corporate Counsel relationships to encourage increased pro bono participation among law firms and colleagues.

X. Develop a Legislative Strategy on Issues Affecting Legal Aid

A. Devise a program for better educating legislators on the needs of low-income Texans.

B. Continue to establish productive relationships with legislators and develop a network of lawyers available to contact their local representatives to support increased funding for legal services.

C. Formulate or assist in the formulation of legislation, in consultation with the State Bar of Texas Board of Directors, designed to enhance delivery of legal services to the poor.

D. Formulate methods to seek removal of impediments to, and to encourage participation of, government lawyers in the provision of pro bono services to low-income Texans.

XI. Enhance Partnerships with Law Firms to Increase Firm Participation in Access To Justice Efforts

A. Develop a model for creating a law firm leadership circle, which establishes best practices for law firms relating to pro bono and access to justice initiatives.

B. Enhance "lend-a-lawyer" law firm programs in which firm staff dedicate their time to a legal aid agency for a period of time.

XII. Expand Efforts to Address Gaps in Legal Services

A. Develop strategies for increasing access for Limited English Proficiency populations within legal services.

B. Explore the formation of a government attorneys committee to work on pro bono policies as they apply to federal, state, city and county employees.

C. Study and develop strategies for Civil Gideon.

D. Study and develop recommendations regarding self-representation.

TEXAS ACCESS TO JUSTICE COMMISSION

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April 30, 2010

Civil Gideon
Page 12

The Supreme Court of Texas
Attn: Mr. Blake Hawthorne
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

Dear Justices of the Supreme Court of Texas:

Re: Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period, December 1, 2009, through April 30, 2010

On behalf of the Texas Access to Justice Commission (hereinafter, the "Commission"), I am providing this report to the Supreme Court of Texas which summarizes the major activities of the Commission for the period December 1, 2009, through April 30, 2010. In addition to this written report, the Commission and its members are always available to meet with the members of the Supreme Court of Texas to discuss its programs and activities or answer questions.

Annual Event and Fundraising Committee

The Commission will host the *Champions of Justice Gala* May 4, 2010, at the AT&T Executive Education and Conference Center in Austin. The event will be chaired by David J. Beck, The Honorable Deborah Hankinson, Joseph D. Jamail, Jr., and Charles W. Matthews. This year, the Gala will raise funds to provide desperately needed civil legal services for the men and women of our armed forces. Justice Harriet O'Neill will emcee the event, and Joe Jamail will be the keynote speaker. The Gala will begin with a reception at 6:30 p.m. and dinner at 7:15 p.m. The Emily C. Jones Lifetime Achievement Award, which reflects the highest honor given for a career dedicated to supporting legal services for poor Texans, will be presented to Charles Matthews and to Justice Harriett O'Neill in

Business Continuity Plan *without* operational procedures in place would be meaningless and could result in a false sense of security. The Operational Guidelines document will focus on data integrity and protection, operational procedures, security procedures and routine maintenance. The Work Group is currently surveying legal services providers to assess what their most critical functions are. After this survey, the Committee will devise a disaster plan to assure technological continuity in those critical function areas.

Name changed back

Civil Gideon Task Force

The Civil Gideon Task Force, chaired by Judge Katie Kennedy, has been charged with studying and developing strategies for Civil Gideon. To this end, the Task Force is planning to survey the judiciary and the legal aid community regarding areas in which the appointment of counsel is most warranted. Information gleaned from these surveys will provide documentation to substantiate eventual recommendations on Civil Gideon from the Task Force. The Civil Gideon Survey to the Judiciary has been circulated to the Commission and a corresponding Civil Gideon Survey to legal aid providers will be drafted. The Task Force has also solicited feedback from the State Bar's Civil Legal Services to the Poor Committee. Following any necessary revisions, the Task Force will then begin the process of circulating the Judicial Survey.

Supreme Court Task Force to Expand Legal Services Delivery

The Task Force, chaired by Jeanne C. "Cézy" Collins, continues to consider programs to expand delivery of legal services statewide and to explore opportunities to promote pro bono involvement within the sections and organizations represented in the group.

The Task Force has recently created a listserv for its members to facilitate communication, which can be used to announce pro bono events, recruit volunteers, seek scholarship and grant applicants, and work on Task Force-wide pro bono projects. The Task Force is also considering a strategic planning retreat to consider the recently submitted Plans of Action and to develop strategies for how the sections can be most effective in the delivery of civil legal services on a statewide level.

The Task Force has also created the new Disaster Relief Subcommittee, which had its first meeting on March 16. The subcommittee will focus on continuing efforts related to disaster response and volunteer mobilization. Presently, the subcommittee is compiling all of the information that has already been produced related to this topic and will make it all available in one place on the State Bar's web page.

Texas Access to Justice Foundation Update

The Texas Access to Justice Foundation has worked tirelessly with its access to justice partners to strengthen its financial position during this time of historically low interest rates. Revenue from IOLTA for 2009 was approximately $5.5 million, which is down from $20 million in 2007 and $12.2 million in 2008. The Texas Supreme Court's help in amending the comparability rule, revising benchmarks and the Foundation's work to increase non-IOLTA resources including fundraising, legislative advocacy for appropriations and increased filing fees and fines, and the launch of a cy pres campaign have all been instrumental in keeping funding for legal aid available. However, the Foundation projects that after funding from the one-time legislative appropriation ceases in 2011 and with the dismal prognosis of low interest rates, the Foundation will significantly reduce grant funding to legal aid providers for the 2010-11 year.

Like all agencies receiving state appropriations, the Foundation was asked by Governor Perry to submit an impact plan for a five percent reduction in general revenue funds for the biennium, which amounts to a total of $2.3 million from the biennium appropriation approved by the 81st Texas Legislature. The Foundation is grateful for the tremendous support of Chief Justice Jefferson in asking the Governor to exempt funding for legal services grants from this budget reduction. (See Exhibit 9.)

Grants

The Foundation has informed current grantees of the projected decline in funding and has asked grantees to begin planning for a reduction in grants for 2010-11 and 2011-12. The Foundation Board approved a revision in the grant carryover policy to allow the grantees greater flexibility in planning for the impending reduction.

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ACCESS TO JUSTICE COMMISSION

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Name change
Civil Gideon Task Force
Page 16
Name changed

December 1, 2009

The Supreme Court of Texas
Attn: Mr. Blake Hawthorne
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

Dear Justices of the Supreme Court of Texas:

Re: Report of the Texas Access to Justice Commission to the Supreme Court of Texas for the period May 1, 2009, through November 30, 2009

On behalf of the Texas Access to Justice Commission, I am pleased to summarize the major activities of the Commission for the period May 1, 2009, through November 30, 2009. The Commission and its members are, of course, available to meet with the Court to answer any questions.

Annual Event and Fundraising Committee

The Annual Event and Fundraising Committee has focused its efforts on increasing the profile of access to justice issues statewide while raising much needed funds for civil legal aid in Texas. In honor of the Texas Access to Justice Foundation's 25th Anniversary, the Commission hosted an Anniversary Gala at the AT&T Executive Education and Conference Center in Austin on May 27. Proceeds from the event, which will be used to fund legal aid services for poor Texans, totaled more than $296,000.

Justice Harriet O'Neill served as Master of Ceremonies, and the attendance of the entire Court contributed greatly to the success of the Gala.

The Gala featured presentations honoring two individuals who have made lasting contributions to access to justice in Texas. Houston lawyer James B. Sales, the outgoing chair, and current Chair Emeritus of the Texas Access to Justice Commission, was presented the Harold F. Kleinman Award. Emily

Strategic Plan

The Committee formed a Strategic Planning Work Group, comprised of a small subset of this Committee, to identify areas that the Committee should consider over the next three years. The Work Group will develop a plan including objectives it can focus on in the long term to assist and enhance the capabilities of services organizations. In addition, the Committee will continue to monitor the maintenance of the previously installed baseline technology to ensure that the providers are most efficiently utilizing technology in the delivery of legal services.

Name change

Task Force on Expanding the Civil Right to Counsel in Texas

Former Commission Chair James B. Sales created the Task Force on Expanding the Civil Right to Counsel in Texas to evaluate Civil Gideon efforts nationally, to study the need for such efforts in Texas, and to propose a plan for Texas that best suits this state's needs. The Task Force is comprised of representatives of the Commission, the Texas Access to Justice Foundation, the State Bar of Texas Legal Services to the Poor in Civil Matters Standing Committee, and the State Bar of Texas' Poverty Law Section. Sales appointed Judge Katie Kennedy of the Commission and Andrew Strong of the Legal Services to the Poor in Civil Matters Standing Committee as co-chairs. Other members include Jeanne C. "Cezy" Collins of the Commission, Chuck Herring of the Legal Services to the Poor in Civil Matters Committee, Betty Balli Torres of the Texas Access to Justice Foundation, Jonathan Vickery of the Texas Access to Justice Foundation, Nelson Mock of the Poverty Law Section, and Jerome "Jerry" Wesevich of the Poverty Law Section.

The Task Force met for the first time on March 26 and discussed various strategies for evaluating the need in Texas and increasing awareness of Civil Gideon across the state. At that meeting, the Task Force decided to develop two surveys, one for the judiciary and one for legal aid practitioners. The purpose of the surveys is to determine what, if any, areas of law and types of cases most warrant representation. The Task Force is currently reviewing a proposed survey of the judiciary on Civil Gideon issues, which will be presented to the full Commission for approval.

TEXAS ACCESS TO JUSTICE COMMISSION

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facsimile: (713) 651-5246

Civil Gideon Task Force
Page 15;16

May 1, 2009

The Supreme Court of Texas
Attn: Blake Hawthorne
Supreme Court Building
201 West 14th, Room 104
Austin, Texas 78701

Re: **Texas Access to Justice Commission's Report to the Supreme Court of Texas for the period December 1, 2008 through April 30, 2009**

Dear Mr. Hawthorne:

On behalf of the Texas Access to Justice Commission (hereinafter, the "Commission"), I am providing this report to the Supreme Court of Texas which summarizes the major activities of the Commission for the period December 1, 2008 through April 30, 2009. In addition to this written report, the Commission and its members are always available to meet with the members of the Supreme Court of Texas to discuss its programs and activities or answer questions.

Resource Development Update

Plummeting Interest Rates Affect Texas Access to Justice Foundation

On December 16, 2008, the Federal Reserve lowered its benchmark interest rate to an all-time low of zero to .25 percent. This has caused a severe decline in funding for civil legal aid in Texas which depends primarily on interest on lawyers' trust accounts (IOLTA). Legal aid now confronts a never before experienced crisis in funding of epic proportion. Based on that precipitous decline, the Foundation has estimated, based on early projections, that IOLTA funds in 2009 could decline to approximately $1.5 million – down from more than $20 million in 2007. This collapse of IOLTA funding has imposed an enormous strain on the delivery of legal services to an ever increasing number of low income and poor Texans seeking legal help.

computer software and hardware. This prototype pilot program was offered to non-profit legal services programs that do not have designated information technology staff. All technology questions presented to the Help Desk were documented so that the Committee could collect the data to better understand the technical and technological needs that similarly situated legal services organizations confront on a day-to-day basis.

Business Continuity Checklist

The Business Continuity/ Disaster Recovery Work Group concluded that a Disaster Plan or Business Continuity Plan would not benefit most legal service providers given the diverse state of their technology infrastructures. With that in mind, the Work Group plans to develop Information Technology Operational Guidelines for Disaster *Avoidance* that would prime these organizations for routine, professional technology operations. The Committee would share these guidelines with the providers, but with the goal of increasing reliability and client information safety. It is titled *Disaster Avoidance* because routine disasters (faulty equipment, utility failures, staffing turnovers, malicious software), which are much more prevalent than and just as crippling as a hurricane, can be easily avoided. Many providers currently have no established procedures in place for these occurrences. Attempting to build a comprehensive Business Continuity Plan *without* operational procedures in place would be meaningless and could result in a false sense of security. The Operational Guidelines document will focus on data integrity and protection, operational procedures, security procedures and routine maintenance.

Strategic Plan

The Committee has formed a Strategic Planning Work Group, comprised of a small subset of this Committee, to identify areas that the ATJ Technology Committee should consider over the next three years. During the next six months, the Work Group will discuss possible areas on which the Committee can focus in the long-term to assist and enhance the capabilities of legal aid service organizations. In addition, the Committee will continue to monitor the maintenance of the previously installed baseline technology to ensure that all legal service providers are maintaining an acceptable level of essential technology.

Civil Gideon Task Force

Commission Chair Jim Sales created the Civil Gideon Task Force to evaluate Civil Gideon efforts nationally, to study the need for such efforts in Texas, and to propose a plan for Texas that best suits this state's needs. The Task Force is comprised of representatives of the Commission, the Texas Access to Justice Foundation, the State Bar of Texas Legal Services to the Poor in Civil Matters Standing Committee and the State Bar of Texas' Poverty Law Section. Sales appointed Judge Katie Kennedy of the Commission and Andrew Strong of the Legal Services to the Poor in Civil Matters Standing Committee as co-chairs. Other members include Jeanne C. "Cezy" Collins, of the Commission; Chuck Herring, of the Legal Services to the Poor in Civil Matters Committee; Jonathan Vickery, of the Texas Access to Justice Foundation; Lisa Melton, of the Texas Access to Justice Foundation; Nelson Mock, of the Poverty Law Section; and Jerome "Jerry" Wesevich, of the Poverty Law Section.

The Task Force met for the first time on March 26 and discussed various strategies for evaluating the need in Texas and increasing awareness of Civil Gideon across the state.

Supreme Court Task Force to Expand Legal Services Delivery

The Task Force, chaired by Karin Crump, continues to meet quarterly to consider programs to expand delivery of legal services statewide and to explore opportunities to promote pro bono involvement within the sections and organizations represented in the group. At its February meeting, the Task Force received updates on section activities. The Task Force also welcomed Betty Balli Torres, Executive Director of the Texas Access to Justice Foundation and Commission Chair Jim Sales to discuss the current revenue crisis confronting legal aid. Crump encouraged sections to reach out to their membership in a concerted effort to contribute their respective section's efforts to combat the funding crisis.

In 2007, the Task Force created the Pro Bono Section Awards to recognize annually outstanding pro bono efforts of one large-, one medium- and one small-sized section. In 2008 the Award was expanded to include State Bar associations and organizations that foster pro bono projects as well.

The Pro Bono Section Awards were presented at the April meeting of the State Bar of Texas Council of Chairs. The Task Force received outstanding nominations in every category. Pro bono projects included mobilizing section members to provide substantive law seminars, recruiting pro bono attorneys in rural communities, offering direct legal assistance in pro se appellate cases, allocating funding for law students, and instituting internships for students with legal services providers. The three winning projects, Texas Young Lawyers Association (large-sized), Taxation Section (medium sized) and Cameron County Bar Association (small-sized) were awarded $1,000 each to invest into their ongoing pro bono projects.

The *Texas Young Lawyers Association* (TYLA) created a video, *Healing the Wounds: Navigating the Legal System After Surviving Domestic Abuse*, which directly benefits hundreds of low-income Texans. The video is available in Spanish and English and includes details on what victims of domestic violence can expect when utilizing the courts to obtain a protective order, a temporary restraining order, or a divorce. TYLA distributed over 1,500 copies of the video in less than three months. In addition, several live presentations were conducted throughout the state at shelters and other support agencies dedicated to survivors of domestic violence.

The *Taxation Section* created the Tax Court Pro Bono Program, which promotes the administration of justice in cases before the United States Tax Court by providing legal instruction to pro se petitioners in the small tax case sessions of the United States Tax Court. The Tax Court Pro Bono Program is the first of its kind in the nation whereby a state bar association makes its members available to impoverished taxpayers on a pro bono basis to help resolve their tax controversies with the Internal Revenue Service. The Program provides free access to seasoned tax practitioners who help evaluate a pro se taxpayer's tax controversy, negotiate toward settlement and/or provide advice on presenting evidence during a Tax Court trial. The money awarded to this section will help fund interpreters at the calendar calls for non-English speaking clients, train volunteers, and defray the costs of obtaining copies of necessary documents needed to defend a low income taxpayer.

Texas Bar Blog
FEATURING THE LAWYERS & LEGAL PROFESSIONALS OF TEXAS

STATE BAR of TEXAS

State Bar of Texas Blog

Posted at 2:03 PM on March 30, 2009 by John Sirman

Strong named general counsel of A&M System

On Friday, March 27, the Texas A&M University Board of Regents selected **Andrew Strong** as general counsel of the Texas A&M System. As general counsel he'll be responsible for all legal matters affecting the system and provide legal counsel to A&M's board of regents, chancellor, and CEOs.

Strong is a partner in the Houston office of Pillsbury Winthrop Shaw Pittman LLP, which he joined in 2005 after serving as the managing partner of Campbell, George & Strong since 1994. At A&M Strong replaces former general counsel **Jay Kimbrough**, who now works in the governor's office. According to an article in the Bryan College Station Eagle, details of Strong's starting date as general counsel are being worked out.

Strong is a former president of the Texas Young Lawyers Association and currently serves as chair of the State Bar of Texas Legal Services to the Poor in Civil Matters Committee, co-chair of the Texas Access to Justice Commission's Civil Gideon Task Force, and chair of the Children at Risk's Public Policy and Law Center.

Comments (0) Read through and enter the discussion with the form at the end

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JONATHAN P. FRIDAY
PHILIP C. FRIDAY, JR.

BARBARA ANNE KAZEN

April 13, 2012

Supreme Court Advisory Committee
Austin, Texas

Re: In Support of Forms for Family Law Cases

Dear Committee Members:

I have been licensed since 1969 and certified as a Family Law Specialist since 1975. I am a member of the subcommittees on Self-Represented Litigants and Limited Scope Representation.

Opponents argue that making forms available will encourage litigants not to hire a lawyer, even if they could afford one.

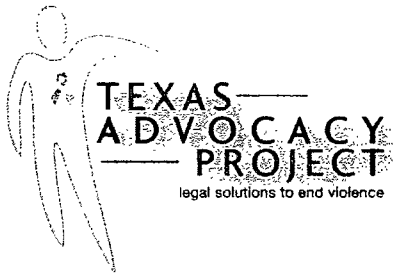
But even if this occurs, there are ways to mitigate it. Court-approved forms could be linked with lawyer-referral services. It is a simple matter to provide information for lawyer-referral in the same locations as the forms are provided. Such information could even be included in the forms-packet itself. Indeed, information could include a recommendation that hiring a lawyer is preferable in all cases.

At the very least, the foregoing practice would likely increase the number of lawyers hired for consultation regarding the forms and the judicial process.

But regardless of the effect of Court-approved forms on hiring lawyers, the forms are sorely needed by the large number of litigants who could never afford a lawyer in any event.

Sincerely,

Philip C. Friday, Jr.



Supreme Court Advisory Committee
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2248

Re: Supreme Court Uniform Forms

Dear Members of the Committee:

Texas Advocacy Project (formerly Women's Advocacy Project) is a statewide, nonprofit, legal organization that provides free legal services to help Texas women who are experiencing domestic violence and sexual assault. Started in 1982 as a legal hotline, the agency has evolved as an expert on legal issues affecting survivors of interpersonal violence. We now provide a range of family law legal and training services that promote the use of legal protections to end violence against women. Our attorneys are committed to ensuring that victims in Texas have effective access to the judicial system.

We are here today to express our strong support for the creation of standardized, Court-approved forms.

All told, the Project provided legal services in 5,353 cases in 2011, serving over 12,113 low income Texans. In addition, the Project's training services provided training resources to 1765 judges, prosecutors, crime victim services personnel, legal advocates, medical professionals, and others. Our Technical Advocate assisted 2,290 clients and their children with a broad range of advocacy services allowing them to access important resources like Crime Victims Compensation funds and extensions of protective orders when their abusers were soon to be released from prison. The Project's statewide programs served clients in 180 out of 254 Texas counties last year representing over 97% of the state's population. Our clients are the poorest of the poor. About 90% of them eligible to receive food stamp benefits.

Texas Advocacy Project operates three statewide legal advice hotlines: the Family Violence Legal Line, the Sexual Assault Legal Line, and the Family Law Hotline. Each day, we hear the difficulties of those who cannot afford a lawyer and who cannot get help through legal aid. For those who need a protective order, we are thankfully able to provide them with the Court-approved protective order forms. We have seen first-hand how these forms have both protected and changed lives. We have seen women be freed of years of abuse. And, possibly more remarkably, we have seen women empowered by using the forms.

We support the use of Court-approved pro se forms—like the ones being proposed today-- in uncomplicated divorces. Each year, thousands call our family law hotlines seeking legal advice. The majority of them have no property and many have no minor children. By their nature, their cases are legally simple. They are the type of cases in which forms are generated by paralegals in family law firms using ProDoc. There are currently several sources of forms readily available to these clients. The issue is not the availability of forms as much as that the content of the forms varies widely. Without uniformity in the forms, there is no guarantee

that the forms include correct legal information. Further, the client cannot be assured that the court will accept the form. We commonly hear from callers that counties will not accept pro se forms, that certain courts will only accept "their" form, or that the court will not accept pro se forms in which changes have been made in pen, or where blanks are not filled in by typewriter. All of these issues pose significant access to justice problems for callers who are living at or below the poverty level and may be missing work or without childcare for future court appearances. Not to mention the unique burden all of this poses on victims of family violence. We strongly believe that a Court-approved divorce form would significantly alleviate many of these issues.

While we believe it is always best to have a lawyer, and we continue to strive to reach that goal, it is important that we help those who do not have access to one. It is for this reason that we call upon the Court to adopt the Divorce Kit proposed by the Supreme Court Uniform Forms Task Force.

Sincerely,

Andrea Sloan
Executive Director

Denise Margo Moy
Legal Director

ENLIGHTENED FAMILY JUSTICE INSTITUTE (EFJI)
PRESENTATION TO SUPREME COURT ADVISORY COUNCIL
APRIL 13, 2012

WRITTEN STATEMENT

1. Introduction of EFJI & its Board of Directors.
2. Purpose for making public comment.
3. Reasoning & Analysis.
4. Recommendations.
5. Conclusion.

1. Introduction: My name is Richard Shannon. I am, like a few members of this Committee, a 50 year member of the Bar. I have been in private law practice for 42 years as a solo practitioner. Previously, I served as a Texas Assistant Attorney General and later as a Special Counsel to the Commissioner of Insurance. I have been practicing family law and mediating family law cases for about 17-18 years.

In the fall of 2009, I formed Enlightened Family Justice Institute, a Texas non-profit organization. Our one page Vision Statement is attached. Our Vision is: **Design the administration of justice to serve families by resolving legal issues through due process and by facilitating the healing of human conflicts.** The phrase "healing of human conflicts" is taken from USSC Chief Justice Warren Burger as referenced below.

EFJI has an application pending for status as a tax-exempt charitable, scientific and educational organization under IRC sec. 501(c)(3). EFJI is governed by a five member Board of Directors. The Board is composed of an inter-disciplinary team of professionals – a research psychologist at UT-Austin, a clinical psychologist practicing marriage and family counseling, a Ph.D. in communications from UT Austin, a Master in Social Work with 20+ years experience in strategic planning, and myself. Briefly, **Prof. Ed Anderson,** Ph. D.

research psychologist, is Associate Professor of Human Development and Family Sciences; he is well qualified to conduct scientific field studies of court processes and procedures. **R. Bryant Hill** holds a Ph.D. in Communications and Rhetoric from U.T. Austin; he currently operates Bryant Hill Media; Bryant has extensive experience with grant applications and the administration of public grant applications. **Stephanie K. Nestlerode**, M.S. Social Work Administration, University of Wisconsin—Madison; she is Founding Partner of Omega Point International, Inc. a social works consulting firm. Ms. Nestlerode offers a wealth of experience in strategic planning and organizational development and meeting facilitation. **Dr. Lisa Walker**, Ph. D. holds a doctorate in Human Development and Family Sciences – U. T. Austin. Dr. Walker is a Licensed Marriage and Family Therapist Associate, a Collaborative Consultant, a Parenting Coordinator and a Certified Family Life Educator. She frequently works as a mental health professional on a collaborative law team. I am the 5th member of the EFJI Board.

Our EFJI Board has spent two years developing a strategic plan to implement the EFJI Vision [hold up copy of one page Vision Statement] – namely **"Design the administration of justice to serve families by resolving legal issues through due process and by facilitating** [using Chief Justice Burger's phrase] **the healing of human conflicts."** Our resumes are attached to our written statement.

In 1982, United States Supreme Court Chief Justice Warren E. Burger, stated in his Annual Report on the State of the Judiciary.

> "The obligation of our profession is, or has long been thought to be, to serve as healers of human conflicts. To fulfill our traditional obligation means that we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about." (Emphasis supplied.) My personal and professional experiences with family conflict and with families going through divorce motivated me to do something

pro-active with the vision growing within me for reform of family law courts. However, the challenges confronting a "change agent" for court reform are, well, daunting to say the least. In the back of my mind was the cautionary statement, "Who am I to rush in where angels fear to tread?" Nevertheless, I was fired by a passion that would not go away. Consequently, I stand before you today as the founder and President of Enlightened Family Justice Institute (EFJI).

2. **Purpose for making public comment:** This meeting of the SCAC is not the proper occasion for EFJI to lay out its strategic plans. **This is, however, a proper occasion for EFJI to introduce the core concept of its Vision – namely, Justice for children and families is possible ONLY IF court processes and services are structured "to facilitate the healing of human conflict."** Of course, EFJI shares with the Equal Access to Justice Task Force and it associated Commission the aspiration that Justice of this character be equally available to all who seek family court services. A core question is: What do we mean by "Justice" to which all will have equal access?

3. **Reasoning & Analysis.** First, what do we mean by "Justice" to which all will have equal access? Philosophers and legal theorists have debated and discussed this concept for over 2000 years. It is not reasonable to expect that we will arrive at a consensus on the meaning of Justice in the context of deliberating on "equal access to justice". It is worthwhile to devote some time to seek as much common ground as possible on what we mean by "Justice" in the context of providing equal access. Is there a consensus around the Burger definition of justice? It is equally important to discuss the processes employed to administer "Justice". Why? The means to an end – "Justice" – shapes the end or outcome, the public face of "Justice".

For example, traditional adversarial litigation is the current process that predominates in trial courts today. This process is widely perceived to be inefficient and to produce outcomes with extremely negative consequences for children, their parents and for separating couples. This perception is expressed cogently in, *"Innovations in Court Services"*, edited by Cori K. Erickson and published by the Association of Family and Conciliation Courts (AFCC), Madison, Wisconsin, 2010. The Introduction to *"Innovations in Court Services"*, pages 9-10, states the social need as follows:

> "Family courts around the world are recognizing the need to shift the way families in transition experience their court process, rejecting the traditional model where family conflicts are settled in a courtroom under the rule of law. Experts and research point to the need for innovative, collaborative, holistic and interdisciplinary processes to resolve family disputes. Courts are increasingly aware that family discord and conflict primarily stem from social and emotional processes, rather than a legal event (Schepard & Bozzomo, 2008).
>
> "These same courts find themselves looking to provide therapeutic jurisprudence to address the families' underlying emotional needs and dysfunction. Therapeutic jurisprudence (Winick & Wexler, 2003) enriches the practice of law through the integration of interdisciplinary, non-adversarial, non-traditional, creative, collaborative, and psychologically beneficial legal experiences. The shift in this paradigm takes responsibility for these families' problems from the judicial system alone and places it on the shoulders of society. In this place, a multitude of interdisciplinary professionals can come together to solve these problems and address the families' needs."

The Vision of EFJI is to implement the aspirations of Chief Justice Burger as amplified by the above quote from *"Innovations in Court Services"*.

The "adversarial system" for administration of justice stimulates conflict by encouraging parties to fight. Why? Each party is encouraged to win a war of

perception intended to persuade the judge that they deserve a ruling in their favor. The warfare turns into a blame game. Hostilities rise and responsibility goes out the window. Problem solving is absent. The costs incurred in such litigation fights are often disproportional to the issues. Consequently, litigation is frequently unnecessarily expensive and contentious.

Mental health professionals are united in their view that conflict between and among caretakers of children necessarily harm the children. The result is that the parties and the children all lose.

Justice for children and adults who are divorcing or separating must address both legal issues and relationship issues. The present system for administering justice for children and couples addresses only legal issues in an adversarial context.

The energy that drives litigation of legal issues often stems from unresolved relationship issues; and, present day courts are not structured to address relationship issues. It is possible to develop problem-solving family law courts that address relationship issues. Some courts have already done much to adopt such innovations.

Therefore, the solution lies in a shift away from administration of justice that is **adversarial**. How? The shift may occur through an innovative set of procedures and court services that are **collaborative and therapeutic** in nature. Some courts have already moved in this direction. See, *"Innovations in Court Services"*, published by AFCC, 2010; and "Exemplary Family Court Programs and Practices" published by AFCC, May 2005.

In August 2000, The Conference of Chief Justices & Conference of State Court Administrators passed a Resolution in Support of Problem-Solving Courts. (Emphasis supplied; see attached Resolution.) Resolution No. 4 states as follows:

> "4) Encourage, where appropriate, the **broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice** to improve court

processes and outcomes while preserving the rule of law, **enhancing judicial effectiveness**, and meeting the needs and expectations of litigants, victims and the community." (Emphasis supplied.)

The problem of self-representing (*pro se*) litigants: The growing number of self-representing (*pro se*) litigants is a powerful warning sign that our adversarial litigation system is broken when it comes to giving children and couples access to justice. In the view of EFJI, the adoption of uniform "do-it-yourself forms" – whether the consequences be good or bad – will do little to address the **inherent inefficiencies and ineffectiveness** of justice administered through adversarial litigation.

The burgeoning number of cases with self-representing (*pro se*) litigants is due in part to an increase in poverty documented in the past 30 years. I suspect that this trend is also due in part to the public's increasing disgust with certain consequences and behaviors associated with the adversarial litigation system.

Both proponents and opponents of "do-it-yourself forms" appear to agree on one thing: the presence of self-representing (*pro se*) litigants in any litigation poses a serious problem for access to justice and/or the administration of justice. The percentage of family law proceedings in which one or both parties are *pro se* is mushrooming. The proponents and opponents of Agenda Item #4 differ in the solutions offered.

EATJ and other proponents of "do-it-yourself forms" seem to assume that justice has been gained if the self-representing litigants succeed in getting a court decision in the form of an order or decree. These proponents argue that the availability of uniform forms and instructions acceptable to trial judges are essential aids for the self-representing litigants to get "into court" and obtain justice in the form of a court order or decree. These proponents assume that entry of a court order or decree equals justice.

The SBOT and its FLS takes the position that self-representing (*pro se*) litigants need legal advice from attorneys in order to avoid (1) unintended loss of

rights and (2) increased inefficiencies and costs in the administration of justice and (3) development of a dual standard for self-representing (*pro se*) litigants and for litigants who are represented by an attorney and (4) shifting costs and burdens to other participants in the judicial system that result for self-representing (*pro se*) litigant who avoid personal costs by not using an attorney.

The opponents' claim that self-representing (*pro se*) litigants fall into two classes, namely: (1) those that are truly indigent and cannot afford attorney fees and other litigation expenses and (2) litigants who have the means to hire an attorney and simply elect to represent themselves to save costs or for some other reason.

The SBOT and its FLS propose solutions based upon the assumption that the presence of competent legal advice is the answer to the problem. The set of solutions proposed by SBOT and its FLS would: (1) facilitate and lower costs in screening the truly indigent self-representing (*pro se*) litigants from those who have the means to pay for legal services but elect to represent themselves; (2) provide programs and procedures that would (a) increase the availability of *pro bono* legal services for the truly indigent or (b) increase availability of reduced fee or limited scope services for litigants who have limited means; and, (3) impose increased fees and/or sanctions on those self-representing (*pro se*) litigants who have the means to hire an attorney and simply elect to represent themselves to save costs or for some other reason.

The SOLUTIONS 2012 Task Force – looking at the public policy implications of Agenda Item No. 4 – suggests that adoption of this proposal is an opening move to shift the courts from an "adversarial system" to an "administrative system". The philosophy and concept of an "administrative system" would "reduce, wherever possible, the need for full-service attorneys" (in the words of Carl Reynolds, immediate past Director of the Office of Court Administration (OCA)). This shift is claimed to increase "efficiency" in the administration of justice. G. Thomas Vick, Jr., co-chair of the SOLUTIONS 2012 Task Force, is of the opinion that an "administrative system" of justice "embraces

the concept of encouraging and creating a culture of self-represented litigants." Mr. Vick is of the further opinion that the "administrative system" of justice" concept, "represents the most fundamental change in the history of Texas jurisprudence."

A Justice system should produce **effective** out-comes in an **efficient** manner. Changes in the administration of justice should not sacrifice either **efficiency** or **effectiveness**. In family law cases, **effectiveness** may be measured by looking at the impact of judicial decisions on the well-being of children and divorcing-separating couples. (Therapeutic Jurisprudence.) Techniques exist in the behavior sciences for measuring such impacts.

The cause of **inefficient** and **ineffective** administration of justice for children and families is largely due to the adversarial litigation system. This is not because members of the Bench or Bar are good or bad. The lawyers are not the problem. It is a "systems" problem. The solution to a "systems" problem is to take a holistic view of the "system" of administration of justice.

A forms driven "administrative system" of justice" appears to sacrifice **effectiveness** purely for the sake of achieving some **statistical efficiency**. **Effective** jurisprudence is a **deliberative process**. A forms driven process does nothing to aid judicial deliberation. In fact, a forms driven "administrative system of justice" smacks of a robotic system in which justice might be delivered by computers. Computers cannot resolve human conflicts. Such a judicial system would be devoid of thought, judgment, wisdom, compassion, and many other human qualities that our society values.

Trial courts with jurisdiction over family law proceedings should be designed to provide equal access to a form of Justice that is both **efficient** and **effective** in serving the best interest of children and the well-being of their parents. **Efficiency and effectiveness are equally important**, and both of these values must be balanced in the administration of Justice for families. Trial court practices and affiliated services should facilitate the healing of human conflict while administering justice through due process. This is the "mark" of a justice

system that serves the best interest of children and the well-being of their parents.

The proponents and opponents of "do-it-yourself forms" miss this mark. A forms driven "administrative system of justice" and an "adversarial litigation system of justice" also miss this mark.

A systematic program for the introduction of innovations at the trial court level is required to hit this "mark" – innovations to put in operation a set of procedures and court services that are **collaborative and therapeutic** in nature. Texas is long over-due in its response to the August 2000 call by The Conference of Chief Justices & Conference of State Court Administrators for **Problem-Solving Courts to enhance judicial effectiveness**.

4. **Recommendations:** EJIF requests that this Advisory Council to the Supreme Court discuss and then adopt and present the following recommendations to the Supreme Court.

EFJI Recommendation No. 1: A science-based study be coupled with any introduction of Uniform Forms & Instructions for any family law proceeding. The purpose of such a study would be to measure the positive and negative impacts on the users of the forms and on the Bench and Bar.

EFJI Recommendation No. 2: Uniform Forms & Instructions, if adopted by the Texas Supreme Court, be introduced through a series of pilot projects in selected jurisdictions to test the positive and negative impacts.

EFJI Recommendation No. 3: The Texas Supreme Court establish either (a) a Permanent Judicial Commission on Family Court Innovations or (b) change the charter of its Permanent Judicial Commission on Children, Youth & Families to include the study and promotion of innovations **"to facilitate the healing of human conflict"** by procedures and court services that provide a frame-work for cooperative and therapeutic problem solving.

EFJI Recommendation No. 4: The Texas Supreme Court issue an Order Creating a Family Court Innovations Task Force with a charter to study, propose,

and implement innovations in family court procedures and services that provide a framework for cooperative and therapeutic problem solving.

EFJI Recommendation No. 5: The Supreme Court and/or the Chief Justice of the Supreme Court assign to the Director of the Office of Court Administration, pursuant to Gov't Code, secs. 72.011 and 72.027, the duty to

a. perform research on and develop standards for the effectiveness of judicial decision-making as respects the well-being of children, parents, and couples who are governed by court orders or decrees in family law proceedings;
b. perform research on trial court local procedures and practices as respects the impact on the well-being of children, parents, and couples who are governed by court orders or decrees in family law proceedings; and,
c. develop a program of grants to support the design and implementation of pilot projects to introduce innovations in procedures and practices of and services provided by those trial courts with jurisdiction over family law proceedings with the intention that those trial courts will facilitate the healing of human conflicts.

5. **Conclusion.** Trial court with jurisdiction over family law proceedings should be designed to provide equal access to a form of Justice that is both efficient and effective in serving the best interest of children and the well-being of their parents. Efficiency and effectiveness are equally important and both of these values must be balanced in the administration of Justice for families. Trial court practices and affiliated services should facilitate the healing of human conflict while administering justice through due process. This is the "mark" of a justice system serves the best interest of children and the well-being of their parents.

A systematic program for the introduction of innovations at the trial court level is required to hit this "mark" – innovations to put in operation a set of

procedures and court services that are **collaborative and therapeutic** in nature. This would be an answer to the August 2000 call by The Conference of Chief Justices & Conference of State Court Administrators for **Problem-Solving Courts to enhance judicial effectiveness**.

ENLIGHTENED FAMILY JUSTICE INSTITUTE
STATEMENT OF VISION, MISSION & OBJECTIVES
PLUS COMMENTS & CAUTIONS

VISION: Design the administration of justice to serve families by resolving legal issues through due process and facilitating the healing of human conflicts.

MISSION: Create and implement programs – using integrated systems design principles and practices -- to realize the Vision.

OBJECTIVES: Design and integrate processes into the judicial system that stimulate and encourage the healing of family relationships and to aid families -- and individuals functioning within the family -- to move progressively toward optimal healthy relationships. Break the cycle of dysfunctional patterns being repeated in each successive marriage and divorce and in each successive generation though interventions integrated into the judicial system intended to:

- Avoid use of the justice system to do harm to those who are in the troubled relationship and are impacted by it (children and extended family),
- Make available neutral family system assessments to aid and enhance judicial decision making,
- Enhance parenting skills and effectiveness,
- Teach healthy methods of dealing with family conflicts,
- Aid and foster healing of damaged relationships,
- Increase awareness of psychological "wounds" that generate conflict in marriage, and
- Increase efficiency and reduce the stress on judges, attorneys, and other service providers.

Develop innovative case management processes to achieve these objectives with performance review and measurement in a context of total quality improvement.

COMMENTS: Integrate the disciplines of law, mediation and other ADR non-adversarial processes, psychotherapy, and spiritual growth into judicial procedures.

Family relationship problems being intertwined with legal issues require a balanced focus.

Emphasize prevention and provide access to programs for families with serious relationship challenges prior to their entering the judicial system.

Build-in flexibility so the processes themselves may grow, develop, and evolve with self-correcting feedback mechanisms. Seek early intervention, prevent escalation, and encourage reconciliation.

CAUTIONS: Avoid bureaucratization and centralization -- keep the processes dynamic and sensitive to the needs of the families and those assisting troubled families.

Send your comments to: Richard A. Shannon/P. O. Box 82455/Austin, TX 78708-2455.

Anderson, Edward R.

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- Ph.D, University of Virginia 1989
- Human Development & Family Sciences
-
- Office: SEA 2.424
- Office Number: 512 471-5808
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- Fax: 512 471-5630
- edward.anderson@mail.utexas.edu

Dr. Anderson specializes in the adjustment of children and families to parental divorce and remarriage. His interests include understanding how divorced parents' dating and re-partnering affects children and family relationships, how divorced parents balance the potentially competing demands of their personal and parenting lives, how family members respond to and deal with conflict, and how prevention programs affect divorcing or at-risk-for-divorce families. Dr. Anderson has published in numerous journals, including Journal of Family Psychology, Journal of Marriage and Family, and Monographs of the Society for Research in Child Development. He has received grant support from the National Institute of Child Health and Human Development and the National Institute of Mental Health. In 2006, he received the prestigious President's Associates Excellence in Teaching Award at UT. Currently he serves on the editorial board of Journal of Research on Adolescence and Journal of Prevention and Intervention in the Community.

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SKILLS

Writing/Editing	Media Relations	Budget Management
Publications Management	Project Management	Art Development
Public Speaking Training	Research & Analysis	Photography
Community Relations	Print Design	Digital Media Editing

EXPERIENCE

Principal, May 2007-present, Bryant Hill Media

- Provide public relations, photography and design services to clients.
- Write press releases, corporate bios and informational features.
- Compose and make story pitches to media reps.
- Help develop corporate mission and branding statements.
- Photograph events, products, staff and clients for Web and print.
- Design print and electronic collateral including newsletters, direct-mail cards and brochures.

Publisher (now advisory only), May 2007-present, *Living Austin*

- Brought in by investor to start new Austin real estate magazine.
- Produced editorial plan for first two issues.
- Hired and worked with design staff to produce publication.
- Wrote and edited all content for publication.
- Shot and/or edited all photography for publication.
  (Investors now seeking additional funding for publication.)

Editorial Director, July 2004-April 2007, Southwestern University

- Established editorial direction and messaging for all major university publications and admission marketing materials including magazines, brochures, direct mail and e-communications.
- Established and maintained new contacts at key state media outlets.
- Composed press releases and garnered regular, increased visibility in state media outlets.
- Wrote op-ed pieces for the university president.
- Developed editorial plan, set production schedule, and assigned features and departments as the editor for *Southwestern@Georgetown* magazine.
- Maintained communications and publications schedules and output while operating at only 25 percent staff.
- Produced film for alumni and donors in support of university's $125 million fundraising campaign.
- Art-directed photography for key university publications and renegotiated vendor rate structure to reduce standard photography costs by 25 percent.
- Photographed subjects for print and on-line marketing materials.
- Conducted media, market and peer institution research.
- Supervised public relations associate.
- Instituted and managed three-tiered public relations internship program for communication studies majors at the university.

Project Manager, October 2002-December 2003, Annette Strauss Institute for Civic Participation

- Initiated the Speak Up! Speak Out! program in Austin high schools.
- Managed events associated with this grant program and generated media coverage for its events.
- Drove support and participation of key political constituents.
- Secured corporate sponsorship from more than 30 Austin businesses.
- Crafted educational materials, programs, brochures and public relations documents.
- Supervised production of promotional film.
- Drafted reports to foundations on program progress.
- Recruited and trained all teachers and volunteers.
- Researched and developed database of foundations for grant funding.
- Moderated political campaign focus groups across the country.

Communications Consultant, 1991-2002

Consulting Highlights:

- Developed networking collateral for Strategic Impressions, a communications and image consulting company.
- Served as research analyst for the Campaign Mapping Project, a grant project at the University of Texas at Austin funded by the Ford Foundation and the Carnegie Corporation.
- Created corporate mission statement for David Cochran Custom Homes that established corporate mission and culture and provided foundation for initial public relations campaign.
- Contributed to corporate news magazine, edited freelance articles, fielded press inquiries, drafted press releases and wrote executive speeches for CSX Transportation.

Instructor, Virginia College at Austin, May 2002-April 2004
Assistant Instructor, University of Texas at Austin, 1994-1998
Graduate Instructor, University of Virginia, 1992-1994

- Taught more than thirty college courses in Effective Speaking, Public Speaking, Introduction to Communication, Business & Professional Communication and Approaches to Media and Cultural Studies.

EDUCATION

Ph.D., Communication Studies, University of Texas at Austin, 2001
M.A., Rhetoric & Communication Studies, University of Virginia, 1994
B.A., Rhetoric & Communication Studies, University of Virginia, 1991

SOFTWARE SKILLS

Microsoft Office Suite
Adobe Creative Suite
Final Cut Pro
Mac or PC Environment

PUBLICATIONS

Co-authored "Campaign Forums" in *Campaign Talk: Why Elections Are Good For Us* by Roderick P. Hart, Princeton University Press, 2000.

PROFESSIONAL AFFILIATIONS

National Communication Association

AWARDS & RECOGNITION

CASE Award of Excellence for 4-color Magazine Series, 2006
CASE Achievement Award for Publications Writing, 2005
CASE Special Recognition Award for Feature Writing, 2005
CASE Award of Excellence for Magazine Visual Design, 2004

References available upon request.

Stephanie K. Nestlerode, MSW
Founding Partner of Omega Point International, Inc.
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EXPERIENCE

Omega Point International, Inc., Driftwood, TX **2008 – Present**

Nurturing Leadership for the Common Good by providing learning opportunities that inspire, guide, and cultivate skills.

Omega Point International, Inc., Colorado Springs, CO **2002-2007**

Helped organizations translate noble intentions into wise choices by applying and learning partnership skills. Organizations enhanced their ability to bring their unique contribution into the world.

Omega Point, Monument, CO **2000-2001**

Partnered with organizations to create and sustain success by aligning leadership, culture and strategy. Strategic intent flows into exceptional implementation through the application of new skills to existing challenges.

The Nestlerode Group, Monument, CO **1993-1999**

Consulting services focused on leadership development, dialogue, systems thinking, organizational assessment and positioning, vision creation, and change management. Adjunct faculty member for Chapman University.

Organizational Technologies, Inc., Anaheim Hills, CA **1992-1993**

Facilitated quality management efforts within client organizations emphasizing leadership development, cultural change and quality tools.

Baptist Medical Center, Columbia, SC **1987-1992**

Directed the integration of strategic planning and quality management. Key components included leadership development, training, metrics, and quality teams. Managed the Certificate of Need process.

Lexington Medical Center, West Columbia, SC **1981-1987**

Directed strategic planning and marketing research. Designed cost accounting, productivity and patient satisfaction monitoring systems. Founding Member and President of the Carolinas Society for Hospital Planning/Marketing.

South Carolina Division of State Health Planning, Columbia, SC **1980-1981**

Coordinated data acquisition and analysis for the State Health Plan. Authored the Health Status Section. Staffed the Statewide Data Use and Analysis Committee.

Health Planning Council, Inc., Madison, WI **1974-1980**

Provided technical assistance to community groups in program development. Coordinated plan development and reviewed program applications. Designed innovative models for primary healthcare delivery. Chaired the Wisconsin Data Coordination Committee.

EDUCATION/HONORS

Certificate in Gerontology (electives in Marketing), University of South Carolina, 1986
Masters of Science in Social Work Administration, University of Wisconsin-Madison, 1978
Bachelor of Arts in Social Work with Highest Honors, University of Oklahoma, 1974
Graduated Phi Beta Kappa

RICHARD A. SHANNON

ATTORNEY-MEDIATOR
CONFLICT MANAGEMENT SYSTEMS DESIGNER

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Austin, Texas 78708-2455

Phone: (512) 733-8259
Fax: (512) 533-0800
E-Mail: richard@shannonlaw.pro

SUMMARY

Currently serve as General Counsel of Concertas, LLC, a dispute systems design firm. Served as In House Legal Counsel and Director of a Start-Up Inter-Net Company, Insurance Company General Counsel, Trade Association Executive Director, private law practitioner with experience as lead counsel in contested case hearings as well as trial and appellate proceedings in state and federal courts, mediator, advocate on public interest issues, Special Counsel to Major State Agency and Assistant Attorney General, State of Texas.

LICENSES HELD

Texas Supreme Court, United States Supreme Court, U.S. Circuit Court - 5th Circuit, and U.S. District Courts.

(Previously held licenses in the fields of insurance and securities.)

EDUCATION

Juris Doctorate: University of Texas, Law School.
Bachelor of Arts: University of Texas at Austin.
Honors: Omicrom Chi Epsilon, Xi Chapter - Founding Member, [National Honor Society in Economics].

POST GRADUATE TRAINING

South Texas College of Law; Advanced Administrative Law Course and Employment Regulations in Texas Business Law - State Bar of Texas; Law-Science Academy, Crested Butte, Colorado - Tuition Scholarship; Legal Writing Seminar, University of Texas; Advanced Civil Litigation; Basic Mediation Training - American Academy of Attorney-Mediators, Inc. and Travis County Dispute Resolution Center; Commercial Mediation Training - Austin Association of Mediators. Credit for numerous continuing legal education seminars.

RELATED SKILLS

Experienced in using PC word processing, spreadsheet and related applications.

PROFESSIONAL BACKGROUND

Present: Concertas®, LLC – Founder and Principal. This dispute system design firm has created Conflict Transformation Systems® (CTS®) for a wide range of conflict situations and civil disputes, including employment, closely held businesses, and family law courts. Principal of Law Office of Richard A. Shannon, Attorney-Mediator.

Eighteen Months: .COMDAQ CORPORATION d/b/a EquiDAQ Corporation In House Legal Counsel and Director of Business Development and Co-Founder. This high-tech start-up company intended to establish an integrated capital creation exchange for intellectual and financial capital. Co-inventor on approved patent pending using object-oriented intelligent search agents. Raised over $750,000 in seed stage capital. Counseled on (1) intellectual property law issues as Head of Patent Development Team (2) securities issues related to fund raising and regulation of an inter-net based securities exchange and (3) set-up of HR Department for anticipated rapid growth of employees.

Thirty Years: PRIVATE LAW PRACTICE. Law Offices of Richard A. Shannon represented business clients, including major financial institutions with hundreds of millions in assets and venerable business firms before public agencies (principally insurance companies and managing general agencies) and designed and created complex business arrangements for our clients. Counseled with company officials on both business and private matters. Engaged in delicate negotiations on high stakes issues. Developed novel interpretation theories on major public issues. Advocate in contested case hearings on licensing matters. Appeal administrative decisions to district and appellate courts, state and federal. Served as mediator in over 125 cases in many areas of law.

Served as General Counsel and Secretary for a property and casualty insurance company and Executive Director for Texas Surplus Lines Association, Inc. [an insurance trade association], Previously licensed as an insurance risk manager, managing general agent, Group I (Life, Health and Accident Insurance), Variable Annuity, and Securities - Series 6 and 63.

Four Years: TEXAS DEPARTMENT OF INSURANCE - SPECIAL COUNSEL. Represented estates of insolvent insurers having assets in excess of $100 million; worked with personnel of insolvent companies to collect assets. Selected by Board Chairman for a special legislative drafting project on a topic of high public visibility; exercised creativity in working with complex legal theories and issues to draft legislation that was enacted by the Legislature. Administered legislation [unauthorized and surplus lines insurance and proxy and insider trading regulations] that impacted vast areas of the insurance industry, reported directly to Insurance Commissioner. Worked with industry leaders to teach, counsel and aid practical implementation of the regulatory changes.

Three Years and Six Months: ASSISTANT ATTORNEY GENERAL FOR STATE OF TEXAS. Represented a major state agency in holding full charge responsibility for land acquisition projects representing over $100 million annually. Used innovative techniques to resolve major disputes and to persuade local jurors on damage issues. Developed the art of writing to persuade client's representatives to settle cases without litigation when the client had an unlimited budget to litigate and had adopted a one offer -- no negotiation" policy. Displayed creativity in writing an official opinion interpreting federal and state statutes so as to permit the construction of roadside rest areas and beautification projects along major federal highways.

OTHER EXPERIENCE: Developed a nation-wide network marketing company with over 2,500 representatives.

LISA M. WALKER, Ph.D., LMFTA, CFLE

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Collaborative Consultant, Parenting Coordinator
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Dedicated to the Healthy Resolution of Family Matters

Education

University of Texas at Austin, Ph.D. in Human Development and Family Sciences, 2004
Rhode Island College, MA in Psychology, 1994,
Rhode Island College, BA in Psychology, 1992

Honors and Professional Associations

Independent Practitioner, Austin Psychotherapy Associates
Lecturer, University of Texas at Austin, 2003 to 2007
Licensed, Marriage and Family Therapist Associate
Certified Family Life Educator
Certified Gottman Educator
Research Associate, University of Texas at Austin, 2001-2005
Health Education Coordinator, Urban League of Rhode Island,
Case Worker, Bellevue Mental Hospital, Kingston, Jamaica
Board of Directors, Brown Fox Point Pre-School, Brown University, Rhode Island (1995-1997).
President, West Indian Social Club, Rhode Island College, 1992-1993
Member, National Council on Family Relations
Member, Texas Council on Family Relations
Member, Texas Counseling Association
Member, Texas Association of Licensed Marriage and Family Therapists
Member, American Association of Licensed Marriage and Family Therapists
Member, International Academy of Collaborative Professionals
Member, Collaborative Law Institute of Texas
Member, The Association of Family and Conciliation Courts
Scholarship, Ima Hogg Memorial, University of Texas at Austin, 2001- 2003
Scholarship, Pre-emptive Fellowship in Human Ecology, University of Texas at Austin, 2000-2001
Phi Beta Kappa, University of Rhode Island

Special Training

Collaborative Law Basic, Intermediate, Advanced, and Interdisciplinary Training
Parenting Coordination/High Conflict Couples
Basic Mediation
Family Mediation
Interest-based Negotiation
Gottman Method Couples Therapy
Gottman Transition to Parenthood
Remarriage/Repartnering Counseling
Intimacy Counseling
Cognitive Behavioral Therapy
Anger Management
Stress Management
Conflict Resolution

Presentations and Publications

Algert, K. A., Walker, L. M., Demetri, J. & Tull, J. (2008). Collaborative Case Autopsy. Collaborative Law Spring Conference February 29, 2008

Walker, L. (2007). Increase Probability of Success by Getting Comfortable with Managing Strong Emotions in Collaborative Divorce. Collaborative Review, Journal of the International Academy of Collaborative Professionals.

Walker, L. (2006). Parental Repartnering after Divorce: What counselors need to know. St Edward's University, Austin Texas, Invited Speaker, Fall 2006.

Walker, L. Adolescent Gambling: A New Risk Behavior and Emerging Public Health Problem, Presented at the Child and Adolescent Health Psychology Seminar, The University of Texas at Austin, Department of Health and Kinesiology (Invited Lecturer), Spring, 2005

Walker L. Pathological Gambling in Adolescence: A Bio-Psycho-Social Perspective, Presented at the Child and Adolescent Health Psychology Seminar, The University of Texas at Austin, Department of Health and Kinesiology (Invited Lecturer), March, 2004

Anderson, E., Greene, S., Walker, L., Malerba, C., Forgatch, M., & DeGarmo, D. (2004)
Ready to Take a Chance Again: Transitions into Dating Among Divorced Parents. Journal of Divorce & Remarriage, 40, 3/4, 6 1-75.

Peterson, F. Walker, L. Pathological gambling in adolescents: A bio-psycho-social perspective, American Public Health Association Conference, Washington, DC, November, 2004

Walker, L. & Peterson, F. Sexual risk-taking in young adolescents; Looking at the full picture. International Youth Conference, Kingston, Jamaica, WI, August, 2004.

Walker, L. (2004). The Young adolescent's interest and intention to engage in sexual risk-taking. Doctoral Dissertation.

Peterson, F., Walker, L., Jordan, T., Rheinboldt, K., & White. C., & Hodgkinson, M. Evidence-Based Sexuality Education: Moving from Just Say No to Just Say Know. American Public Health Association Conference, San Francisco, CA, November, 2003.

White, C., Peterson, F., Jordan, T. Walker, L. Improving Teacher Sexual Health Literacy: An Evidence Paradigm for Teacher Training, Presented at the American Association of Sexuality Educators, Counselors, and Therapists Annual Conference, Las Vegas Nevada, June, 2003

Walker, L., Malerba, C., Smith. M.A., & Anderson, E. Effects of Friend's and Family member's Suicide Attempt on Adolescent Psychopathology: Cross-Sectional and Longitudinal analysis. National Council on Family Relations 64th Annual Conference: Families over the Life Course: Bridging Research and Practice, Houston, TX, November 2 1-24, 2002.

Rollins, J. & Walker, L. Ethnic and Religious Differences in Adolescent Females' Perceptions of Male and Female Responsibility for Sex and Contraception, American Orthopsychiatry Association Conference, Toronto Canada, March 12-15, 1997.

Walker, L. Adolescent Sexuality in the Nineties: What every teen should know. Area-wide Health Education Conference, Providence, Rhode Island, March, 1996.

Walker, L. (1996). Cross-Cultural Look at Young Women's Attitude towards Contraceptive Use. Master's Thesis.

CAUSE NO. _____

IN THE MATTER OF	§	IN THE DISTRICT COURT
THE MARRIAGE OF	§	
_____	§	
PETITIONER	§	
AND	§	
_____	§	
RESPONDENT	§	_____JUDICIAL DISTRICT
AND IN THE INTEREST OF	§	
_____	§	
_____	§	
_____	§	
CHILD/REN	§	TRAVIS COUNTY, TEXAS

TEMPORARY ORDERS

DATE OF HEARING _____

APPEARANCES

Petitioner _____

[ ] Appeared in person and/or [ ] Appeared by attorney
[ ] Did not appear

Respondent _____

[ ] Appeared in person and/or [ ] Appeared by attorney
[ ] Did not appear

Other _____

[ ] Appeared in person and/or [ ] Appeared by attorney
[ ] Did not appear

PROPERTY

Wife shall have temporary exclusive use and possession of
Home: _____
Motor Vehicle: _____

Husband shall have temporary exclusive use and possession of
Home: _____
Motor Vehicle: _____

INVENTORY AND APPRAISEMENT

The parties shall each deliver to the opposing party a sworn inventory and appraisement of all separate and community property owned by the parties by the following date _____.

MEDIATION

The parties are ordered to participate in mediation on or before _____.

EXPENSES AND DEBTS

Husband shall be responsible for the timely payment of the following debts:

_____

_____

_____

Wife shall be responsible for the timely payment of the following debts:

_____

_____

_____

TRAVIS COUNTY STANDING ORDER

The Travis County Standing Order Regarding Children, Property, and Conduct of the Parties shall remain in effect.

TEMPORARY CONSERVATORSHIP

[ ] Mother and Father are appointed Temporary Joint Managing Conservators.
OR
[ ] _____is appointed Temporary Sole Managing Conservator and
_____is appointed Temporary Possessory Conservator.

AT ALL TIMES, Mother and Father shall each have the following rights (Sections 153.073, Texas Family Code):

1. The right to receive information from any other conservator of the child/ren concerning the health, education, and welfare of the child/ren.
2. The right to confer with the other parent to the extent possible before making a decision concerning the health, education and welfare of the child/ren.
3. The right of access to medical, dental, psychological, and educational records of the child/ren.
4. The right to consult with a physician, dentist, or psychologist of the child/ren.
5. The right to consult with school officials concerning the child/ren's welfare and educational status, including school activities.
6. The right to attend school activities.
7. The right to be designated on the child/ren's records a a person to be notified in case of an emergency.
8. The right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child/ren.
9. The right to manage the estates of the child/ren to the extent the estates have been created by the parent or the parent's family.

AT ALL TIMES, Mother and Father shall each have the following duties (Section 153.076, Texas Family Code)

1. The duty to inform the other conservator of the child/ren in a timely manner of significant information concerning the health, education, and welfare of the child/ren.
2. The duty to inform the other conservator of the child/ren if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows (1) is registered as a sex offender under Chapter 62, Code of Criminal Procedure, or (2) is currently charged with an offense for which on convision the person would be required to register under that chapter. The notice required to be made must be made as soon as practicable but not later than the 40th day after the date the conservator of the child/ren begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. A conservator commits an offense if the conservator fails to provide notice in the manner required.

DURING THEIR RESPECTIVE PERIODS OF POSSESSION Mother and Father shall have the following rights and duties (Section 153.074, Texas Family Code):

1. The duty of care, control, protection, and reasonable discipline of the child/ren
2. The duty to support the child/ren, including providing the child/ren with clothing, food, shelter, and medical and dental care not involving an invasive procedure.
3. The right to consent for the child to medical and dental care not involving an invasive procedure.
4. The right to direct the moral and religious training of the child.

MOTHER AND FATHER SHALL SHARE THE FOLLOWING RIGHTS AND DUTIES, enumerated in Section 153.132, Texas Family Code, in the manner indicated

Mother Exclusively	Father Exclusively	Jointly By Agreement	Independently Exercised By Both	
[ ]	[ ]			The right to designate the primary residence of the child/ren
[ ]	[ ]			The right to receive and give receipt for periodic payments for the support of the child/ren and to hold or disburse these funds for the benefit of the child/ren
[ ]	[ ]	[ ]	[ ]	The right to consent to medical, dental and surgical treatment involving invasive procedures
[ ]	[ ]	[ ]	[ ]	The right to consent to psychiatric and psychological treatment of the child/ren
[ ]	[ ]	[ ]	[ ]	The right to represent the child/ren in legal action and to make other decisions of substantial legal significance concerning the child/ren
[ ]	[ ]	[ ]	[ ]	The right to consent to marriage and to enlistment in the armed forces of the United States
[ ]	[ ]	[ ]	[ ]	The right to make decisions concerning the child/ren's education
[ ]	[ ]	[ ]	[ ]	The right to the services and earnings of the child/ren
[ ]	[ ]	[ ]	[ ]	Except when a guardian of the child/ren's estate or a guardian or attorney ad litem has been appointed for the child/ren, the right to act as an agent of the child/ren in relation to the child/ren's estate if the child/ren's action is required by a state, the United States or a foreign government
[ ]	[ ]	[ ]	[ ]	The duty to manage the estates of the child/ren to the extent the estates have been created by community property or the joint property of the parents

The parent who has the right to establish the primary residence of the children shall

[ ] maintain the child/ren's primary residence within Travis County
[ ] maintain the child/ren's primary residence within Travis County or any county contiguous to it
[ ] maintain the child/ren's primary residence within the following geographic area _____
[ ] have the right to determine the child/ren's primary residence without regard or restriction to geographic location

CHILD SUPPORT

_____ is ordered to pay temporary child support to _____

(Check one below)

[ ] Monthly $_____ each month beginning _____
and continuing on the _____day of each month thereafter

[ ] Semi-monthly $_____ two times each month beginning _____
and continuing on the _____and _____ days of each month thereafter

[ ] Every two weeks $_____ every two weeks beginning _____
and continuing on the alternate _____ thereafter

[ ] Weekly $ _____ every week beginning _____
and continuing each _____ thereafter

All child support payments shall be paid through the Texas Child Support State Disbursement Unit, P. O. Box 659791, San Antonio, Texas 78265-9791.

The party entitled to receive the support shall establish an account at the Travis County Domestic Relations Office, P. O. Box 1495, Austin, Texas 78767 (Location: 1010 Lavaca St, Austin, Texas).

[ ] Father [ ] Mother is ordered to maintain and pay the premiums for health insurance coverage for the child/ren

Father is ordered to pay _____% and Mother is ordered to pay _____% of the child/ren's health expenses not covered by health insurance.

SPOUSAL SUPPORT

_____ is ordered to pay temporary spousal support to _____

(Check one below)

[ ] Monthly $_____ each month beginning _____
and continuing on the _____day of each month thereafter

[ ] Semi-monthly $_____ two times each month beginning _____
and continuing on the _____and _____ days of each month thereafter

[ ] Every two weeks $_____ every two weeks beginning _____
and continuing on the alternate _____ thereafter

[ ] Weekly $ _____ every week beginning _____
and continuing each _____ thereafter

All spousal support shall be paid through the Travis County Domestic Relations Office, P. O. Box 1495, Austin, Texas 78767 (Location: 1010 Lavaca St., Austin, Texas).

PARENTING TIME WITH CHILDREN

[ ] The parties shall have possession of the child/ren as set out in **SCHEDULE A – POSSESSION.**

OTHER

TEMPORARY INJUNCTIONS

The parties are temporarily prohibited from:

[ ] Removing the child/ren from the following geographical area _____

[ ] Hiding the child/ren from the other party

[ ] Making disparaging remarks regarding the other party, or the other party's family, in the presence or within the hearing of the child/ren

[ ] Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties, whether personal property or real estate, and whether separate or community, other than in the ordinary course of business

[ ] Incurring any indebtedness, other than for legal expenses in connection with this suit, or in the ordinary course of business, or for reasonable and necessary living expenses

[ ] Making withdrawals from any checking or savings account in any financial institution for any purpose other than for legal expenses in connection with this suit, or in the ordinary course of business, or for reasonable and necessary living expenses

[ ] Spending any sum of cash in the possession of or subject to the control of either party other than for legal expenses in connection with this suit, or in the ordinary course of business, or for reasonable and necessary living expenses

[ ] Damaging, destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties

[ ] Hiding, or misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any property of one or both of the parties

[ ] Communicating with the other party in vulgar language or in an offensive manner

[ ] Placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication

[ ] Going to, entering, or interfering with the other party's temporary exclusive use and possession of the home specified in these orders, except for the purpose of exchanging the child/ren as set out in these orders

[ ] Going to or entering the other party's place of employment

[ ] Doing any act calculated to embarrass, harrass, injure, or humiliate the other party

[ ] Interfering in any way with the other party's court-ordered possession of the child/ren by taking or attempting to take possession of the child/ren, directly or through any other person, from their residence, school, or any other place, other than for the purpose of exercising rights of possession as specifically authorized in these orders

[ ] Interfering with the other party's temporary exclusive use and possession of the motor vehicle specified in these orders

EDUCATION FOR DIVORCING PARENTS

The parties are ordered to attend the following educational seminar for divorcing parents _____ on or before _____.

OTHER

_____
_____
_____
_____
_____
_____

Required Notice if Signed by Associate Judge
All parties are hereby notified of the right to appeal to a District Court (for a trial de novo) pursuant to Section 201.001 et seq. or 201.101 et seq. of the Texas Family Code. This order is signed and rendered by an Associate Judge pursuant to Section 201.007 or Section 201.104 of the Texas Family Code.

Signature of Associate Judge or District Judge *[ONLY ONE SIGNATURE NEEDED]*

Rendered on _____.
Signed on _____.

_____
ASSOCIATE JUDGE PRESIDING

Rendered on _____.
Signed on _____.

_____
DISTRICT JUDGE PRESIDING

AGREED

_____
Petitioner

_____
Respondent

APPROVED AS TO FORM

_____
Attorney for Petitioner

_____
Attorney for Respondent

SCHEDULE A – POSSESSION

GENERAL TERMS AND CONDITIONS

"Party A" is the parent who has the exclusive right to designate the child/ren's residence, in this case the *(check one)*

- □ Mother
- □ Father

"Party B" is the other parent.

"School" means the primary or secondary school in which the child is enrolled, or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.

Party A is ordered to surrender the child/ren to Party B at the beginning of each period of Party B's possession. Party B shall pick up the child/ren *(Check one)*

- □ at the residence of Party A
- □ at the residence of Party B
- □ at the following location: _____

If a period of possession begins at the time the child/ren's school is regularly dismissed, Party B shall pick up the child/ren *(Check one)*

□ at the child/ren's school
□ at the location where the school bus takes the child/ren
□ at the following after-school care location: _____
Or, if school is not in session on that day, at the following location:

_____
at the following time: _____

If the child/ren will not be in school on that day, Party A shall notify Party B in advance.

Party B is ordered to return the child/ren to Party A at the end of each period of Party B's possession. Party B shall return the child/ren to Party A *(Check one)*

- □ at the residence of Party A
- □ at the residence of Party B
- □ at the following location: _____

If Party A and Party B live in the same county at the time a decree is entered and party B remains in the county but Party A moves out of the county, then beginning on the date Party A moves, Party B shall return the child/ren *(Check one)*

- □ at the residence of Party A
- □ at the residence of Party B
- □ at the following location_____

If a period of possession ends at the time the child/ren's school resumes, Party B shall deliver the child/ren *(Check one)*

□ to school in time for the beginning of the child/ren's school day

□ to Party A's residence at the following time: _____

Or, if school is not in session on that day, to the following location: _____

at the following time _____

If the child/ren will not be delivered to school on that day, Party B shall inform Party A that the child/ren will not be delivered to school and the reason.

If a child brings personal effects from one party's residence to another, the party where the personal effects were brought *(Check one)*

□ is ordered to ensure that the child returns to the other party's residence with the personal effects that were brought,

□ need not ensure that the child returns to the other party's residence with the personal effects that were brought.

Either party may designate any competent adult to pick up and return the child/ren, as applicable. A party or a designated competent adult shall be present when the child/ren is/are picked up or returned. A party

□ may

□ may not

designate *(Specify person)*_____to pick up or return the child/ren.

A party shall give notice to the other party in possession of the child/ren on each occasion that the party will be unable to exercise the right of possession for any specified period. Repeated failure of a party to give notice of an inability to exercise possessory rights may be considered as a factor in a modification of those possessory rights.

Written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due.

PARTY A AND PARTY B SHALL HAVE POSSESSION OF THE CHILD/REN AT ANY AND ALL TIMES MUTUALLY AGREED TO IN ADVANCE BY THE PARTIES AND, IN THE ABSENCE OF MUTUAL AGREEMENT, SHALL HAVE POSSESSION OF THE CHILD/REN AS SET OUT HEREIN.

PARTY A SHALL HAVE THE RIGHT OF POSSESSION OF THE CHILD AT ALL OTHER TIMES NOT SPECIFICALLY DESIGNATED FOR PARTY B.

IF PARTY A AND PARTY B RESIDE 100 MILES OR LESS APART, POSSESSION SHALL BE AS FOLLOWS:

□ **WEEKENDS** Party B shall have the right to possession of the child/ren on weekends throughout the year beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the first, third, and fifth Fridays of each month and ending at

- □ 6 p.m. on the following Sunday
- □ _____ p.m. on the following Sunday
- □ the time that school resumes on the following Monday

□ **WEEKEND EXTENDED BY HOLIDAY** If a weekend period of possession of Party B coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the summer months when school is not in session, the weekend period of possession shall begin, if applicable, at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the Thursday immediately preceding the Friday holiday or school holiday and shall end, if applicable, at

- □ 6 p.m. on the Monday holiday or school holiday
- □ _____ p.m. on the Monday holiday or school holiday
- □ the time the child/ren's school resumes after the Monday holiday or school holiday

□ **THURSDAYS** Party B shall have the right to possession of the child/ren on Thursdays of each week during the regular school term beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

and ending at

- □ 8 p.m. on Thursday
- □ _____ p.m. on Thursday
- □ the time the child/ren's school resumes on the following Friday

The following provisions govern possession of the child/ren for vacations and specific holidays, and supercede conflicting weekend and Thursday or regular weekday periods of possession.

□ **FIRST PART OF CHRISTMAS HOLIDAY AND CHRISTMAS DAY** Party B shall have possession of the child/ren in even-numbered years beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed

□ _____ p.m.

on the day the child/ren is/are dismissed from school for the Christmas school vacation and ending at noon on December **28**, and Party A shall have possession for the same period in odd-numbered years.

□ **SECOND PART OF CHRISTMAS HOLIDAY** Party B shall have possession of the child/ren in odd-numbered years beginning at noon on December **28** and ending at

□ 6 p.m. on the day before school resumes

□ _____ p.m. on the day before school resumes

□ the time that school resumes

after that vacation, and Party A shall have possession for the same period in even-numbered years.

□ **THANKSGIVING** Party B shall have possession of the child/ren in odd-numbered years beginning at

□ 6 p.m.

□ the time the child/ren's school is regularly dismissed

□ _____ p.m.

on the day the child/ren is/are dismissed from school before Thanksgiving and ending at

□ 6 p.m. on the following Sunday

□ _____ p.m. on the following Sunday

□ the time that school resumes

after that vacation, and Party A shall have possession for the same period in even-numbered years.

□ **SPRING VACATION** Party B shall have possession of the child/ren in even-numbered years beginning at

□ 6 p.m.

□ the time the child/ren's school is regularly dismissed

□ _____ p.m.

on the day the child/ren is/are dismissed from school for the school's spring vacation and ending at

□ 6 p.m. on the day before school resumes

□ _____ p.m. on the day before school resumes

□ the time that school resumes

after that vacation, and Party A shall have possession for the same period in odd-numbered years.

□ **SUMMER FOR PARTY B** If Party B gives Party A written notice by April 1 of each year specifying an extended period or periods of summer possession, Party B shall have possession of the child/ren for 30 days beginning not earlier than the day after the child/ren's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each. If Party B does not give Party A written notice by April 1 of each year specifying an extended period or

periods of summer possession, Party B shall have possession of the child/ren for 30 consecutive days beginning at 6 p.m. on July 1 and ending at 6 p.m. on July 31.

□ **PARTY A'S VISIT DURING PARTY B'S SUMMER** If Party A gives Party B written notice by April 15 of each year, Party A shall have possession of the child/ren on one weekend beginning Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one extended period of summer possession by Party B; provided, however, that Party A picks up the child/ren from Party B and returns the child/ren to that same place.

□ **SUMMER FOR PARTY A** If Party A gives Party B written notice by April 15 of each year or gives Party B 14 days' written notice on or after April 16 of each year, Party A may designate one weekend beginning not earlier than the day after the child/ren's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, during which an otherwise scheduled weekend period of possession by Party B will not take place; provided that the weekend designated does not interfere with Party B's period or periods of extended summer possession or with Father's Day if Party B is the father of the child/ren.

□ **CHILD/REN'S BIRTHDAY** The party not otherwise entitled under this order to present possession of the child on the child's birthday shall have possession of the child

□ *(check if desired)* and the child's minor siblings

beginning

□ at 6 p.m. on that day

□ at _____ ___.m. on that day

and ending at

□ 8 p.m. on that day

□ at _____ ___.m. on that day

provided that that party picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.

□ **FATHER'S DAY** The father shall have possession of the child/ren beginning at

□ 6 p.m. on the Friday preceding Father's Day

□ *(time)* _____ ___.m. and *(day)* _____

nd ending at

□ 6 p.m. on Father's Day

□ *(time)* _____ ___.m. and *(day)* _____

provided that, if he is not otherwise entitled under this order to present possession of the child/ren, he picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.

□ **MOTHER'S DAY** The mother shall have possession of the child/ren beginning at

□ 6 p.m. on the Friday preceding Mother's Day

□ *(time)* _____ ___.m. and *(day)* _____

nd ending at

□ 6 p.m. on Mother's Day

□ *(time)* _____ ___.m. and *(day)* _____

provided that, if she is not otherwise entitled under this order to present possession of the child/ren, she picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.

IF THE PARTY A AND PARTY B RESIDE OVER 100 MILES APART, POSSESSION SHALL BE AS FOLLOWS:

□ **WEEKENDS** Party B shall have the right to possession of the child/ren on weekends throughout the year beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the first, third, and fifth Fridays of each month and ending at

- □ 6 p.m. on the following Sunday
- □ _____ p.m. on the following Sunday
- □ the time that school resumes on the following Monday

Party B may elect this alternative option: If Party B gives written notice to Party A within 90 days after the parties begin to reside more than 100 miles apart, Party B shall have possession of the child/ren for one weekend per month of Party B's choice, beginning at 6 p.m. or the time the child/ren's school is regularly dismissed on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes or at the time that school resumes after the weekend. Party B must give Party A fourteen days' written or telephonic notice preceding a designated weekend.

□ **WEEKEND EXTENDED BY HOLIDAY** If a weekend period of possession of Party B coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the summer months when school is not in session, the weekend period of possession shall begin, if applicable, at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m. on the Thursday immediately preceding the Friday holiday or school holiday

and shall end, if applicable, at

- □ 6 p.m. on the Monday holiday or school holiday
- □ _____ p.m. on the Monday holiday or school holiday
- □ the time the child/ren's school resumes after the Monday holiday or school holiday

The following provisions govern possession of the child/ren for vacations and specific holidays, and supercede conflicting weekend and Thursday or regular weekday periods of possession.

□ **FIRST PART OF CHRISTMAS HOLIDAY AND CHRISTMAS DAY** Party B shall have possession of the child/ren in even-numbered years beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the day the child/ren is/are dismissed from school for the Christmas school vacation and ending at noon on December **28**, and Party A shall have possession for the same period in odd-numbered years.

□ **SECOND PART OF CHRISTMAS HOLIDAY** Party B shall have possession of the child/ren in odd-numbered years beginning at noon on December **28** and ending at

- □ 6 p.m. on the day before school resumes
- □ _____ p.m. on the day before school resumes
- □ the time that school resumes

after that vacation, and Party A shall have possession for the same period in even-numbered years.

□ **THANKSGIVING** Party B shall have possession of the child/ren in odd-numbered years beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the day the child/ren is/are dismissed from school before Thanksgiving and ending at

- □ 6 p.m. on the following Sunday
- □ _____ p.m. on the following Sunday
- □ the time that school resumes

after that vacation, and Party A shall have possession for the same period in even-numbered years.

□ **SPRING VACATION** Party B shall have possession of the child/ren each year beginning at

- □ 6 p.m.
- □ the time the child/ren's school is regularly dismissed
- □ _____ p.m.

on the day the child/ren is/are dismissed from school for the school's spring vacation and ending at

- □ 6 p.m. on the day before school resumes
- □ _____ p.m. on the day before school resumes
- □ the time that school resumes

after that vacation.

□ **SUMMER FOR PARTY B** If Party B gives Party A written notice by April 1 of each year specifying an extended period or periods of summer possession, Party B shall have possession of the child/ren for 42 days beginning not earlier than the day after the child/ren's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each. If Party B does not give Party A written notice by April 1 of each year specifying an extended period or periods of summer possession, Party B shall have possession of the child/ren for 42 consecutive days beginning at 6 p.m. on June 15 and ending at 6 p.m. on July 27.

□ **PARTY A'S VISIT DURING PARTY B'S SUMMER** If Party A gives Party B written notice by April 15 of each year, Party A shall have possession of the child/ren on one weekend beginning on Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one extended period of summer possession by Party B; if an extended period of summer possession by Party B exceeds 30 days, Party A may have possession of the child/ren on two nonconsecutive weekends during that time period; further provided that Party A picks up the child/ren from Party B and returns the child/ren to that same place.

□ **SUMMER FOR PARTY A** If Party A gives Party B written notice by April 15 of each year , Party A may designate 21 days beginning not earlier than the day after the child/ren's school is dismissed for the summer vacation and ending not later than seven days prior to school resuming at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each, during which Party B shall not have possession of the child/ren; provided that the period or periods so designated do not interfere with Party B's period or periods of extended summer possession or with Father's Day if Party B is the father of the child/ren.

□ **CHILD/REN'S BIRTHDAY** The party not otherwise entitled under this order to present possession of the child on the child's birthday shall have possession of the child

□ *(check if desired)* and the child's minor siblings

beginning

□ at 6 p.m. on that day

□ at _____ ___.m. on that day

and ending at

□ 8 p.m. on that day

□ at _____ ___.m. on that day

provided that that party picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.

□ **FATHER'S DAY** The father shall have possession of the child/ren beginning at

□ 6 p.m. on the Friday preceding Father's Day

□ *(time)* _____ ___.m. and *(day)* _____

nd ending at

□ 6 p.m. on Father's Day

□ *(time)* _____ ___.m. and *(day)* _____

provided that, if he is not otherwise entitled under this order to present possession of the child/ren, he picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.

□ **MOTHER'S DAY** The mother shall have possession of the child/ren beginning at

□ 6 p.m. on the Friday preceding Mother's Day

□ *(time)* _____ ___.m. and *(day)* _____

nd ending at

□ 6 p.m. on Mother's Day

□ *(time)* _____ ___.m. and *(day)* _____

provided that, if she is not otherwise entitled under this order to present possession of the child/ren, she picks up the child/ren from the residence of the party entitled to possession and returns the child/ren to that same place.