**[Ex 2-3d] 2006-10-11 791069a October 11 2006 Texas Senate Hearing on Jurisprudence**

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Just so everybody will kind of know what's going on, we call this meeting for 9 a.m. and it is about 9.03 now. The reason we're not starting is this is a seven-member committee and I like to start it with a quorum. We don't have one right now.

Senator Corona is as usual punctual, responsible, it's much appreciated, much appreciated by the chair. There are two other senators somewhere in the building. We're trying to locate them now and get them here for a roll call so that we can then begin.

It's the chair's intention, just so people can kind of plan their day, if we finish by noon, great. If we don't and we don't have to, it's the chair's intention to recess briefly for lunch and by briefly, I don't mean 30 minutes, I mean like we'd probably recess until 1.15 and then come back and continue this afternoon with any more testimony that may be provided. So we'll stand sort of at ease for a few minutes, try to locate these other two senators if we can.

Great. If we can't, we'll start without them in a few minutes anyway. Thanks.

How are you? I used to go to a lot of seminars for various things. I'd always get there early and I'd always bring with me pre-printed papers directly. And I'd sneak it anywhere that I could put for myself or my friends.

It's a school that they eventually started selling. It's in the neighborhood. So the idea came up that they could raise money for the school that way.

And because everybody always wanted to come back and sneak it in. So it worked out pretty well. They auctioned it off actually.

That's all of it? Yeah. I volunteered and it was on the board. My kids have been all through kindergarten.

It's changed a lot. It's a good family. We've had a lot.

Y'all still live out there? Mm-hmm. We still live there. It's still an old neighborhood.

It wasn't that old. It was too hot back in the 1960s. It was a two-bedroom.

Between the floors. Nobody wanted to go up there. I would always go up there to see clients because nobody else wanted to go up there.

But it is still beautiful. We've lost you. That's my laundry.

Okay. What is she? But she was not in June. No.

No, we know of one for sure. We severely suspect the other two. Although they didn't take any action.

Okay. Hello, cutie. Thank you.

Thank you. The Senate Committee on Jurisprudence will come to order. We don't yet have a quorum.

We're still one short. But I'm told that Senator Gallegos is en route from Houston and won't be here for about another half hour. So we're going to begin with the three of us.

We're hearing testimony on interim charges one and two. And we'll be starting with charge one. Are there any questions, Senator Harris or Senator Cronin? Any opening remarks you all would like to make? Okay.

Charge one is to examine and make recommendations relating to the jurisdiction of statutory county courts, including the development of standardized language for Chapter 25 of the Government Code, to confer specific types of jurisdiction on statutory county courts, and to ensure the statutes are clear and concise. We have as a panel, and I'd call forward to the desk at the front, please, Judge Rusty Ladd, Judge Alfonso Charles, Judge Lamar McCorkle, and Bob Wessels. If you all could come forward.

I've got witness cards from the four of you all. Anybody else who would like to testify today on this or any other charge, if you'd fill out one of these witness cards. Do you have blank witness cards? And then I think there are blank witness cards in the rear, if you'll just bring them up to the clerk, that would be helpful.

Good morning, gentlemen. Good morning, Senator. Who's going to start out? Probably I will, sir.

Okay. If each of you just identify yourself and who you represent before you begin your testimony, we'll proceed. Very well.

My name is Judge Rusty Ladd. I'm from Lubbock County, here on behalf of the County Courts of Law Association. As folks here are probably aware, the Judicial Council was determined to explore the jurisdictional quagmire or dilemma, however you want to put it, regarding statutory county courts of law.

A committee was formed that Judge Charles and I, at least, were a member of. And the resolution that is before, I think, you guys from the Judicial Council, is a result of the work that we did and recommended to the Judicial Council. And I think it very accurately reflects the dilemma that sort of exists between the massive and probably very impractical work it would be to overhaul county courts as a system, lets county courts of law that exist now retain the jurisdiction they have, and that can be as far-ranging as almost district court jurisdiction to one like mine, which is a very limited jurisdiction, while at the same time providing statutory relief and uniformity for any new county courts of law that might be created.

That's a very short and succinct way, I think, to put the resolutions there before you. Thank you. Any questions of the witness? Apparently not.

Yes, sir. I'm Judge Alfonso Charles from Gregg County, and I was also on the committee. I'm sorry, sir, which county? Gregg County, Longview, Texas.

And one of the other things, too, that this would do is with a proposal from the committee would attempt to clean up a lot of the language that already exists that's confusing in Chapter 25 and try and get some standard uniform language for several of the jurisdictions. And our hopes in talking with several of the other counties that are in county courts of law would be that they would also use this as an opportunity to kind of clean up some of the languages that exist in their counties and try and make as much as possible the general language for county courts of law more uniform while still allowing counties that wanted to remain the same with their current jurisdictions, either it be like mine is almost unlimited on both criminal and civil or stay the same on if they're at a $100,000 cap on civil right now. But also the attempt would be to try and clean up as much of that language, especially on the family law section where there's so many different varieties of the way family law is described to try and clean up as much as possible on that type of language, too.

Thank you. Any questions? Next. My name is Lamar McCorkle.

I am actually sitting in for Chief Justice Linda Thomas, who is the chair of the committee that reviewed this. She is in Dallas not feeling well today and asked if I would step in because I've been working with it as well. I'm in Harris County.

I'm a district judge. I think that the critical issue I could bring to this is that the county court judges throughout the state have worked on this, and the document that's being presented or the proposal that's being presented is a consensus document as far as a proposal goes. And all judges all across the state have worked on it in one way or another.

Thank you. Yes, sir. Bob Wessels.

I'm the court manager for the county courts in Harris County. Here as a resource and be happy to answer any questions. Okay.

Got any questions? Senator Harris, got any questions? Not yet, Mr. Chairman. All right. All right.

Thank all four of you. Appreciate your being here very much. Thank you.

Chair calls Sally Emerson. Good morning. Welcome to the committee.

Thank you. Let me just. Senator Harris.

You county court judges who have jurisdiction over family law, you all also have associate judges that hear the cases first on temporary? Yes, sir. On temporary orders, there is often. I hate to ask you to do this, but if you'd come back to the mic so we're recording all this.

I'm sorry, ma'am. There's often an associate judge senator that will hear temporary orders before the case gets to us in a statutory county court like mine or Judge Charles that has family law jurisdiction that's practically the same as the district courts. Then we have the same resources as far as availability of a court master or an associate judge to hear temporary orders.

In the smaller counties like Gregg County, we're not going to have that. We'll hear. We'll start out with the temporary orders.

The only thing, we'll have the court master for the AG child support cases, but other than that, we'll take it from the beginning. So you have a 4D master? Yes, we do. Okay.

Thank you. Do you have associate judges at the district court level in Gregg County? No, we do not. Do not.

And how about? In Lubbock County, we do, sir. Yes, sir. Okay.

That's because the law school's there. Could be a possibility. Do most of the cases go to the county courts out there in Lubbock? I'm sorry, sir? Do most of the family law cases go to the county court or do they go to the district court out in Lubbock County? It is evenly distributed.

There are six district courts in Lubbock and three county court at law, so whenever a new case is filed in a family law case, then it falls in line with one of the nine courts. So I have a ninth of the cases that get filed. All right.

So then you don't have your district courts out there divided up into, say, only civil litigation, only family law, only criminal. We don't have as a matter of statute. Several years ago, Lubbock County judges at both levels, statutory county court and district court, formed a gentleman's agreement, if you will, amongst themselves so that, for example, there are two county courts at law that handle criminal and family.

There's one county court at law that handles non-family civil cases and family. No one was really wanting to take on all the family law cases, and the district courts have a similar arrangement. Okay.

Thank you. Thank you very much. You're welcome.

I appreciate it. Thank you, sir. Okay, Ms. Emerson.

I apologize, Mr. Chairman. Oh, it's okay. I got a delayed reaction.

It's okay. Not enough coffee yet. Early in the morning? Welcome again to the committee.

Thank you again. Chairman Wentworth and members of the committee, thank you so much for allowing me to speak to you today on behalf of the Texas Family Law Foundation. My name is Sally Emerson.

I'm a family law attorney from Amarillo, which is in Senator Seliger's district, not too far from Senator Duncan's district, which my law firm actually has an office in Lubbock, and I went to Tech Law School and undergraduate there, too. What a great law school. Pardon? What a great law school.

It is. It's a fabulous law school. Yeah, for those who couldn't get in Baylor.

Actually, I actually reside in Potter County, the northern part of Amarillo. Under current law, whether a statutory county court has jurisdiction in family law cases depends on the county in which the court's located. As a statewide organization, the Texas Family Law Foundation favors retaining the current method of the legislature, granting jurisdiction to family law cases to statutory county courts on a county-by-county basis.

We do not advocate granting all statutory county courts family law jurisdiction, nor do we advocate removing family law jurisdiction from those statutory county courts that currently have that jurisdiction. We feel that legislators and their constituents in each area of the state, including the family lawyers in each area, know what is best in any given area, and we will defer to the judgment of our members as to whether statutory county courts in a given county ought to have family law jurisdiction. And we understand the committee is considering a better way of defining cases that are family cases and proceedings, which is the phrase used in Chapter 25 of the Government Code to grant family law jurisdiction to statutory county courts.

And we support any effort by the legislature to clarify which cases are to be brought in which courts. While we have not seen any language upon which we can express an opinion at this time, we pledge to stay actively involved with your committee's work and your staff to develop the best approach to achieve that goal. And, Mr. Chairman, I'd appreciate taking just a minute to express on behalf of Texas family lawyers our apologies for not being actively involved in the legislative process in the past, as we should have been.

And you may be aware that many Texas family lawyers have concerns about measures that have been passed recently by the legislature and other issues that you're sure to be asked to consider in the next legislative session. The decisions you make affect Texas families, and those are our clients, and we have been remiss in not speaking up on their behalf in the past. We intend to change that.

Some of us have been grumbling lately, but we have no one to blame. We admit we have no one to blame but ourselves, because we've sat on the sidelines, and we haven't come and testified in your committees. And to be honest, a lot of us were not even aware that some of the various bills were being considered until they were passed and made law.

So the leadership of the Texas Family Law Foundation has decided that we are going to be active, we're going to be in the game from here on out, year in and year out, to give you perspective of those who actually represent Texas families every day. So toward that end, we have hired professional representation to work with you and your staff, and we are putting into place resources to communicate with and mobilize our members so that you will have the best thinking on the important issues that you consider that will affect Texas families. And because your charge is limited to review of the jurisdiction of the statutory county courts, I'm not going to go into our agenda today, but I want you to know that we will be contacting the committee and their staff soon to lay out our agenda, and we hope to become well acquainted with each of you.

And I'd also like to announce, Mr. Chairman, that the Texas Family Law Foundation is going to be actively working with other segments of the legal profession on issues of joint concern, such as protecting the right to a jury trial and keeping Texas courts open and seeing that our judicial system has the resources needed to do its job effectively. And I'd like to thank you again for allowing us to address you today, and we look forward to working with you. Mr. Chairman.

Thank you. Senator Harris. Now, up to now and for years, and I've wondered where the family bar has been since my law partner and I have practiced predominantly family law.

You all have left it up to Harry Tindall and Jack Sampson, and in turn they've been able to do certain things to justify their seminars and their rewrites, and everybody goes down and takes their classes after the session. Now, you say, and I'm kind of reading right now what you've been saying, the inferences there that there are some of you within or a majority of you within the family bar that what they advocated when we passed in the name of the family bar was not what the family bar wanted. Is that what I'm understanding? I believe you're understanding that correctly.

All right. Now, you're saying that you want to leave it court by court, county court by county court basis as far as which statutory county courts hear family law. We had a situation years ago in Tarrant County where we had a statutory county court judge that every time a condemnation case got to him, he instructed, openly instructed the jury to enter their vote, cast their vote for the people who were doing the condemning.

We came in, or the legislature came in and took away original jurisdiction from that judge and put it in district court. And I'm kind of wondering what, are you in essence telling us that you think some of the county court judges out there are incompetent to hear family law or why is it you do not want it to be straight across the board where all statutory county courts can have original jurisdiction on family law cases? Well, I can give you a perfect example. I practice up in the Panhandle.

Several of the counties up there have statutory county courts that handle family law and several of them have statutory county courts that do not. It works on a county to county basis, I believe, because in each county it seems like that particular county is able to determine how much is needed, what the case flow is, whether or not that county court law needs to be hearing family court or needs to have family law jurisdiction. In Potter County we have one county court law that does have family law jurisdiction and we have one county court law that does not have family law jurisdiction.

And the judges, it's kind of like Judge Ladd was talking, the judges have gentleman agreements between the district and the county and that one county court at law is to the percentage that each takes and the case flow is fine. On the southern part of Amarillo, Randall County, we have a brand new county court at law, a statutory county court at law. It's number two.

We've had one for years and years, one statutory county court at law with family law jurisdiction. He has pretty much acted almost as an associate judge down in Canyon because he has heard all the family law temporary matters. Then for the final matter we have to go to the district judge.

So they're in the process right now of getting that all straightened out with this second statutory county court at law that's going to have family law jurisdiction. Now it's going to ease the case flow and it's going to make it a lot better for us because the same judge that hears temporary is going to probably hear the final. So I'll just give you those two examples as an example that on a county-to-county basis it seems like if you left it on a county-to-county basis where each county and the constituents of each county and their judicial group is able to determine that, I think that's going to be better than just a broad base.

Here's how it's going to be. Let's say we come in and we go ahead and standardize the county courts as to their jurisdiction and in particular as to the jurisdiction relating to family law. It will still be up to the locals as to how they want to portion that out.

Will it not? I'm sure it will be. I'm sure it can be. And that way each county has that tool available to them.

I mean you don't even want that tool to be made available, if I'm understanding you correctly, to courts other than those that currently have it. Well let me just tell you that I have well seen judges who have family law jurisdiction who do not like family law cases, do not want to handle family law cases, and to force them and say, well now you've got the jurisdiction. I know one of our judges doesn't have family law jurisdiction.

He doesn't want it. And I don't really think it's fair for a judge who honestly does not want it to say you have to have family law cases. Maybe he shouldn't be running for judge.

Exactly. But the problem is there's a lot of them on the bench right now like that. They're already there.

They may be there for four more years. But I just don't know that putting a broad base will correct it. Now we have members in all counties across the state.

And I'm just speaking for what I believe our members on a county to county basis would like to probably say that they would like to keep it as a county to county basis. Who is going to be working with the members of the legislature at the direction of the Family Law Council? You mentioned that you have hired people to interface with the members. Who are those more or less? Who can I expect to be calling on me as to how you all want changes or don't want changes in the Family Law Code? Well, Steve Bresnan is who I expect to be the one that will be contacting you.

He's the one that we are working with, the Family Law Foundation. Steve Bresnan does not even know what a waiver is, waiver citation. Well, he got me here today, so he pointed me in the right direction.

What, you mean I'm going to have to be teaching him? Yes. All right, thank you. Senator Gallegos.

Ms. Emerson, let me ask you, and I've read your testimony here. I guess what my concern is, I don't know what goes on in Amarillo. I know what goes on in Harris County in Houston, Texas, but as far as these family court fights and who you pick, who you don't want to pick, what judge is interested, what judge is not interested, see, I'm not there.

I don't know what the judge is, who is. I am in Harris County. In some of these cases, in the past, I'm not a lawyer, but I see when a judge picks a certain lawyer to be ad litem or guarantor or call it what you want, where funds are basically drained out of an estate that basically has a minimum, and all of a sudden, at the end of the case, there are no funds.

That's a different charge. It is? Yes, we have two charges. I was going to say, I hope you're not going to ask me a probate question because I really don't know anything.

**This file is longer than 30 minutes.**

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