**[Ex 2-3h] 2006-10-11 791071a October 11 2006 Texas Senate Hearing on Jurisprudence**

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Hearing the state's going to have to pay the attorney's fees for the lawyer to come down to the hearing to justify the fee that he's already justified. So I've been here 13 years and I think it works pretty well. Okay, thank you for your testimony.

Appreciate your being here. The committee is going to stand in lunch recess until 1.30. Okay How are you doing? We're going to recess to 1.30. I think we're going to get started even though I'm the only member here. The Senate Committee on Jurisprudence will reconvene and we'll call Glenn Karish, Alvin Golden, and Harry Wolfe as a panel.

Please, if you'd, in whatever order you select, introduce yourselves and say who you represent and proceed with whatever words of wisdom you have for the committee. Thank you, Mr. Chairman. I'm Glenn Karish.

I'm an estate planning and probate attorney here in Austin. I'm the chair-elect of the real estate probate and trust law section of the State Bar of Texas. On my left is Alvin Golden, who's also an estate planning and probate attorney here in Austin.

He's one of our former chairs and on my right is Harry Wolfe, who is a council member on the real estate probate and trust law council and he practices in San Antonio. And we are delighted to be here at the committee's request to provide whatever kind of assistance we can. We, as you know, Senator, we are, our section, which has 7,000 members across the state, is very active in drafting legislation in the probate, guardianship, and trust law area.

We have standing committees that are working constantly evaluating necessary changes and suggesting changes to the legislature. And, for example, we have a committee that works on guardianship law changes all the time. Linda Gores from Houston is our chair.

And we just want to make sure that you know, and that the committee knows, and your staff knows, that we will be happy to help in any way we can. We have attorneys who are specialists in the areas who are available on our committees to work on proposals and do whatever kind of tweaking that the committee thinks is necessary. And we appreciate all that the committee has done for us in the past and would be happy to help in any way we can.

I don't know if anyone else has anything. We'd be happy to answer any questions that you may have. I appreciate y'all being here very much.

You were here for the morning. I think I saw all three of you out in the audience, so if you've got anything to say in relation to the suggestions that were made by Judge Herman and others as to proposed rewordings or additions to the sections in question, we'd be glad to hear from you on that. Well, one thing I saw you ask about in the morning, we absolutely have no problem with the idea that lawyers should not be paid legal fees for services other than legal services.

We think that's what the law is now, and that's certainly been the experience in our practice. So if a lawyer is a guardian, he shouldn't be charging for legal services to take the ward to the barbershop. We have no problem with that.

The guardianship code has a number of places where there's a best interest standard. If there's a need for a best interest standard on the sale of real estate, then perhaps that's a place where it should be specifically placed, but we think guardians are required to act in the best interest of the ward and have no problem with that. Okay, thank you.

Y'all have any? I hate for you to drive all the way up from San Antonio, Harry, and not tell the committee anything. Mr. Chairman, the only thing I'd like to add to what Mr. Carey said is that it's very, very difficult to legislate good judicial conduct, just like it's very, very difficult to legislate good conduct for lawyers, for legislators, for any other walk of life. We are not prepared, as the chair knows.

Our process is we go to committees, the committees study things, it comes to the full Real Estate Probate and Trust Law Council, we review the committees, we seek expert advice, and ours is a very deliberative process, so we're not prepared to address specific legislation today, but as Mr. Carey said, we are happy to be available to the committee at any time to give our input as to language and as to how any given proposed change might affect the judicial system as we presently know it. I don't think the system is broke. I think there are things that go wrong in the system, just like any other system, but I think it's basically sound and it's just a question of seeing if there are ways to improve it.

Great. Thank you very much. Appreciate your being here.

Thank all three of you. Thank you, Mr. Chairman. Chair calls Susan Norman.

Good afternoon, Mr. Chairman. Good afternoon. My name is Susan Norman.

I'm an attorney from Houston. I represent a man named Perry Lee Watley. I would like to read you first Mr. Watley's statement, since he cannot be here today.

My name is Perry Lee Watley. I am a former United States Marine and I serve the great state of Texas and my country with honor. I retired from Exxon Mobil in Baytown, Texas and retired with a pension, which I can no longer obtain, to take care of myself.

I am now 84 years old, having celebrated my birthday in August in the company of my wife. You might be wondering why I cannot be here today, so I've asked my lawyer, Susan Norman, to read my statement to you. I'm not here because Probate Judge Mike Wood, since 2005, has made it impossible for me to travel, move around, transact my business and take care of my wife.

Mike Wood has stated publicly that when he finds me, he will have my wife and me brought to court in chains. I will try to explain what he has done in simple terms so that the lawyers on this committee can draw legal conclusions. After my first wife, Florence, died, I married Don Johnson, who was my caregiver, in 2005.

We were married in the Baptist faith and we expected that this would be respected. The affidavit of our pastor is submitted today. Our relationship to the Lord has been no impediment to Mike Wood's abusing his office to separate us.

In 2004, I revoked all powers of attorney given to anyone. I then executed a new power of attorney in favor of my wife and gave her the sole authority to speak for me. That has not been an impediment to Mike Wood, despite my desires that we be left alone.

A federal judge's order sums up what occurred until November 15, 2005, and I've asked Susan to read portions to you to submit his order. On September 29, 2005, a Jimmy Walker, a man who gives money to Wood for his campaigns, was allegedly appointed as my guardian. When this appointment was made, I was not served with notice to appear.

I was in the hospital in Massachusetts. My wife was not served with notice. I did not know Jimmy Walker.

In the early morning hours of November 10, 2005, Walker, along with a Ray Black, another Wood supporter, came to Massachusetts and put me on a plane to Houston without telling my wife and leaving her there alone. I could imagine how scared she was when she came to see me and I was not there. Walker and Black have billed me for that trip when they forcibly brought me back without dawn.

As of that date, November of 2005, I had not been in Mike Wood's court, and to this date, Mike Wood has never seen me except maybe on television. In June of 2006, the Court of Appeals declared that what Mike Wood did, he did without any legal right, without jurisdiction, and that all he did since September 9, 2005, was void. This, again, was no legal impediment to Mike Wood, to Walker, or to Black, who kept my monies and have failed to return them.

Dawn and I are broke, yet Wood and his friends have my monies, my home, my credit cards, and bank accounts. What is disturbing to me is that the Court of Appeals said that Mike Wood had no right to do this, and now I am told, and have the records to prove, that it was Mike Wood that initiated a secret elder abuse petition accusing Dawn of abusing me. Despite being told by the state that I was not being abused, Wood, Walker, and Black have persisted in trying to take my monies and separating me from Dawn.

Dawn is my wife, and I work for my monies, not these lawyers and Mike Wood who have stolen my golden years from me. I have asked that the Court of Appeals opinions be submitted to you so that you can see what has transpired. Mike Wood has stated publicly that he has twice found me incompetent, and yet I have never met Mike Wood nor seen him.

I am told that he picked the doctor who alleged I was incompetent, that this doctor gives him money. Mike Wood has also called every judge connected in my fight to free myself from him, from Walker and from Black. He has accused Dawn of abusing me so that he could appoint a guardian over me.

The Adult Protective Services reports show that Dawn has never abused me, but in fact has taken care of me in accord with my wishes. When I authorized Dawn to deliver funds to my lawyers to fight those lawyers, Walker and Black, Dawn acted in my direction. Wood disqualified every lawyer who would not do what he wanted, which was to cooperate with Walker and Black.

Until September 28, 2006, the Court of Appeals had not even issued an opinion in the underlying case, in the appeal of the underlying case. This was no impediment to Mike Wood's abusing his power and again signing an order while the case is on appeal, giving Jimmy Walker control over me and my estate without serving me with a single piece of paper, without serving me to come to court. While I do not want to be served, it would seem that if I am not served, I should not have my property stolen and that when I choose my lawyers, no one should interfere with my lawyers either.

Wood stated publicly that he was doing this for my best interest. That statement made on KTRK-TV by Wood was made in the belief that I would never get the APS, the Adult Protective Service reports. Once we got the reports, I authorized APS and my lawyers to release them to the Houston Chronicle and KTRK-TV and to file and make them public so that the whole state of Texas could see what Wood has done to me and to Dawn.

Wood started the state action against me. He sought sanctions against Dawn in the case where he was a judge and he called Walker in advance and agreed to give him my estate. A look at Walker's bonding application, which is provided herein, shows that nine days in advance of the mandatory hearing required by law, Walker, Wood, and Black all determined I was incapacitated before any evidence was ever taken.

Jimmy Walker paid almost $7,000 for a $2.5 million bond over Perry Lee Whatley's estate before a hearing was ever held, for which Mr. Whatley has never been served. I know that I deserve better than this, and I know that the good people of Texas deserve a system of justice that assures that their wishes, not the wishes of the judges and their friends, come first. I was once a millionaire, but I am now a pauper, as I told the 14th Court of Appeals on October 2, 2006.

Where did my monies, cars, credit cards, and bank accounts go? Ask Mike Wood why he went against my express wishes and gave my estate to three lawyers, Walker, Black, and a Roy L. Fuller who brought the guardianship suit despite having no legal right to do so. This committee has one chance to protect senior citizens and to assure that this never happens again. I urge you to remember that all of you have parents and some of you have grandparents.

Would you want Jimmy Walker and Mike Wood doing this to them? Would you want your widowed mother or father in their senior years being hailed into court by lawyers who never worked for their monies? Being threatened with chains despite having broken no laws? Wood used the word chains when he threatened Don and me on television. I worked, I paid taxes, I voted. I never broke the law in my life.

Now in the twilight of my life, Don and I get Mike Wood and Jimmy Walker, who despite what the superior courts have said is wrong, keep taking and taking and taking and tormenting us. You have this chance to help those who can't help themselves. Please use it.

That concludes Mr. Watley's statement. I would like to address some possible misconceptions from earlier testimony in this case. There's been a lot made here of recusal.

That is an absolute dead gut level issue that must be addressed by the committee. This recusal issue in which Mr. Watley is involved arose because on August the 3rd, 2005, Judge Wood was heard and seen to be communicating ex parte with the appointed ad litem in this case. A recusal was filed.

There have been three mandamus opinions issued related to the Watley case. For the non-lawyers, a mandamus opinion is extremely difficult to get. More mandamuses are denied outright than are granted.

There has been one mandamus opinion issued against a judge of probate court number one in Harris County, Texas, who was assigned to hear the recusal of Mike Wood. The recusal of his next door neighbor brother lawyer. He refused to recuse himself.

A judge under recusal, when a motion is filed, good, bad, or indifferent, has two choices, recuse or refer. Judge Austin said, I refuse to recuse myself and conducted the hearing anyhow. The court of appeals said, that's wrong, vacate the order, it's void.

We filed a recusal against Judge Wood on June the 1st of this year. The court of appeals issued its opinion saying that every act taken by Judge Wood from September the 9th, 2005, forward, was void for lack of jurisdiction. On September the 29th, 2005, when this alleged hearing took place, where Jimmy Walker was appointed, the case was in federal court.

We had removed it to federal court on a civil rights violation, because we believed it was a civil rights violation for my client to have his money and his liberty taken with no service of process. Section 875 of the Texas Probate Code is jurisdictional. Service must be had.

You must serve the ward, the proposed ward, the spouse, if there is one, family members, the proposed temporary guardian, who must be named in the application, and you must serve the appointed ad litem. Those citations are not part of this record, which I will submit to you, because they don't exist. Ms. Norman, let me ask you, I'm hesitant to get into the details, because I really want to hear your recommendations.

Yes, sir. I have a way to improve the system. At the same time, so as not to be spending time not understanding what you're saying, are Mr. Whatley and his now wife, are they married under a marriage license issued in the state of Texas? Yes, they are.

I have the affidavit of the pastor who married them here with me. Then the other question is, do they live in Texas? Yes, they do. They live here? Yes, they do.

Why haven't they been served? They've not been able to be found to be served. Are they hiding? Mr. Whatley does not want to be served by a court with no jurisdiction. Everything that the court is currently doing, it's doing while the case is on appeal.

The court of appeals has the only jurisdiction in this case. Mr. Whatley does not want to be served, and he has not been served. Okay.

Now, my understanding is that this all began as a result of Robert Whatley and Jeannie Anderson, who's his niece. His niece and nephew. Initiating guardianship proceedings.

They initiated guardianship proceedings once they found out he was married. He was okay until he got married. Then it was, in their view, apparently he became incompetent the minute he got married.

Now, that was not a temporary guardianship proceeding. That was just plain vanilla guardianship. We think he's incompetent.

We want to be in control. The temporary guardianship has never been served on Mrs. Whatley. It's never been served on Mr. Whatley to appoint the temporary guardian, Jimmy Walker.

There was a trial in December, December 12th of last year, and Mr. Whatley was not present. His wife was present but did not participate because her lawyer withdrew on that day. She was not allowed to participate.

And orders were issued on December 14th. Those orders flow from the September 9th date that the Court of Appeals was considering in its mandamus, where we said there was outstanding recusals which had not been referred, and we believe that that prevented Judge Wood from going forward. The Court of Appeals agreed with us.

They agreed with us on June 1st when they issued their original opinion. They ordered Judge Wood to vacate orders issued on three particular days. And I will refer you back to what Judge Wood said this morning.

The Court of Appeals tells me what to do, and I do it. That's not true in this case. The Court of Appeals told Judge Wood on June 1st, vacate orders issued on three separate days, September 29th, October 13th, and December 14th of 2005.

None of those orders has been vacated. On August 8th, the Court of Appeals issued a supplemental opinion saying we meant what we said the first time. During this time, the underlying case was on direct appeal.

On September 28th, the Court of Appeals issued its opinion in that appeal. We requested the appeal be dismissed, and they agreed. The appeal should be dismissed because there's no final order because all the orders issued, signed by Judge Wood, were void for lack of jurisdiction.

So you can't have a final order if the proceedings are void. You can't start over. I mean, they're just void.

Until the Court of Appeals releases its case, which will be a minimum of 60 days after September 28th, there is no jurisdiction in Probate Court No. 2 for this case, and yet Judge Wood is conducting a trial next Monday on this same case. We've tried to recuse him.

We can't get a judge. There's been one recusal hearing on one issue, and it was no surprise Judge Burwell from Galveston, a statutory probate judge from Galveston, denied the recusal. She didn't address the disqualification issue.

We've also filed a disqualification against Judge Wood because when we filed the first recusal, he filed a motion for sanctions against Mrs. Watley. That disqualified him. We've also got Senator Gallegos earlier said, go to the Judicial Conduct Commission if you've got the transcript.

On the 29th of September, Judge Wood said in the transcript that, I don't know how they found out about Jimmy Walker. Somebody must have gotten horsewhipped. All I did was call him and tell him it was going to be an interesting case.

Based on the strength of what Judge Wood says, if that's true, then Jimmy Walker spent almost $7,000 for a nonrefundable $2.5 million bond, which states in the bond that my client has been found incapacitated. How did that happen? Nine days before the hearing in which he was to be determined whether he needed a guardian. Jimmy Walker is the guardian.

Jimmy Walker has been reappointed by Judge Wood on August the 14th of this year. All of Mr. Watley's annuities are tied up. His house is tied up.

His cars. A long time ago, Jimmy Walker sent something to the state of Texas freezing any activity on the vehicles. His credit cards are canceled.

He has no money. So who's living in his house? He has his wife's grandchildren living there. He's not living there.

He's not there. They want to serve him so they can have some jurisdiction over him. Is this the case where so many recusals have been filed at federal court that finally the federal court said don't do this again? Well, that's not exactly correct.

That's a misstatement of the facts. The case was removed to federal court under a civil rights basis. On June the 2nd, a new federal judge who we have good reason to believe was in contact with Mike Wood through various ways, remanded an original federal civil rights case back to Probate Court No.

2 and issued an order. He did issue an order saying no more case, the Watley case could not be removed to federal court without his permission. We are appealing that order because it's a sua sponte, judge-generated sanction order which nobody asked for and is inappropriate.

So that portion of that order is being appealed because it's a sanction. We're appealing a sanction. We consider and still consider that it's a violation of my client's civil rights to take his money and limit his freedom.

Mr. Watley was under lockdown from September the 12th or 13th in Massachusetts until November the 10th. He couldn't, under Jimmy Walker's, under the alleged guardian's orders, he couldn't leave, he couldn't go to the doctor to get his broken hip repaired. Jimmy Walker determined that it was unnecessary.

He couldn't have access to his wheelchair because the wife might take him out of the hospital or out of the nursing home. He was brought back to Houston on November the 10th by Jimmy Walker and Ray Black. He was locked down in a nursing home where Jimmy Walker testified he was spending $10,000 a month to make sure that there was security there so Mrs. Watley could not take him out of the nursing home.

That went on until June the 1st when the Court of Appeals issued their opinion. On June the 1st, he left the nursing home. The nursing home, by the way, let him sign himself out.

They did not consider that he was incompetent at that time. Mr. Watley... Why wasn't he served while he was in the nursing home in Houston? I don't understand that. I don't know why he wasn't served in the nursing home.

But let me tell you truthfully, we've got a number of other witnesses. We're interested in your recommendations for improvement to the system. My recommendations for improvement to the system go right along with David Wookeson's proposed change to the Texas Government Code 25.00255 where the administrative judicial district judge would be the one who assigns not a probate judge, not one of the 17 band of brothers, somebody else impartial.

Because a recusal, by its very nature, is an allegation of bias against a judge. There's got to be something there. If it's frivolous, then sanctions could lie.

For all the reasons that we have in this case, we believe that the recusals are valid, but we've never gotten a hearing on them. The proposed changes. Although Section 875 prohibits ex parte appointments of temporary guardians, it's regularly done in Harris County as witnessed my nine day prior to the hearing bond paid for by the proposed temporary guardian who was never named in the application for temporary guardianship.

The remedy should be, should the judge not follow Section 875 or the Texas Probate Code, then the legislature can mandate that the Court of Appeals shall, not may, but shall grant mandamus relief vacating the appointment. If such relief is granted, all funds taken shall be restored to the estate before any further proceedings can take place. What is happening now with my case and with other cases, the friends of the court are using the ward's or the decedent's monies to finance their own participation in the process to the exclusion of anybody else's ability to fight.

So the ward's money, he can't use his own money to fight. This will prevent the so-called guardian from keeping the funds and starting again while he retains monies that he either doled out improperly or kept for himself. In any action to recover based on a violation of Section 875, the district courts, not the probate courts, shall have original and exclusive jurisdiction over those matters to prevent the probate judge from blessing the theft by transferring the case to himself.

Right now, if it's alleged that an action is incident to either a guardianship or a decedent's estate, a probate court can suck that case right back into his own court. Under recusal, we've already dealt with recusal. There's got to be a change in Section 25 of the government code.

It's got to allow for an unbiased and impartial judge to hear the recusal hearing. Ex parte telephone calls. In this particular case, there have been multiple phone calls acknowledged by not only federal judges, but Mike Wood himself, that he called other judges in other jurisdictions, federal judge at home, the probate judge in Massachusetts, working with them to continue the effect of the void orders and the guardians' nine-day early application.

The legislature can cure this problem by including language that states in part, upon the filing of a motion alleging ex parte contacts, the judge at whom the motion is directed shall testify at hearing in full and shall disclose the nature, time, place, and context of the contact. The judge hearing the matter shall make findings regarding the ex parte contacts and shall, within 10 days, forward his findings to the State Commission on Judicial Conduct for its investigation.

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

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