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# Questions, allegations surround Texas probate courts

## Observers say Harris County has most flagrant cases

By **Lise Olsen** Published 5:30 am, Sunday, June 24, 2007

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“If the judge has the wrong motives, you are going to have problems,” says William C. McCulloch, Harris County’s senior probate judge. He said one reason he uses very few lawyers - about 10 got more than 60 ... [more](#)

A **Houston Chronicle** investigation of hundreds of records and thousands of court-ordered payments, as well

as interviews with judges and lawyers, found evidence of questionable billings and favoritism in Texas probate courts – with the most troubling examples in Harris County.

The Chronicle documented cases in which probate judges allowed appointees to charge more than \$200 an hour for nonlegal work, including selling cars, visiting pawnshops and arranging to get the lawn mowed.

Earlier this year, one Harris County judge approved paying \$1,000 in fees to a lawyer for attending her ward's funeral and burial.

In several complex cases, judges approved unusually high fees as well as questionable deals and expenditures, the newspaper found.

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Statewide, 2,000 lawyers report they primarily practice probate law. But, according to a Chronicle analysis of approved court fees over three years, a handful of attorneys handled the most lucrative probate court deals.

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The Texas Code of Judicial Conduct says judges should avoid "favoritism and nepotism." Jurists are further instructed to avoid regularly conducting business with those likely to appear in their court.

Yet the Chronicle found top probate-court appointees in Texas included a judge's son, ex-probate judges and ex-court employees, judges' campaign treasurers, judges' close friends, former law firms and investment partners.

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The Texas Code of Judicial Conduct does not spell out what kind of favoritism is prohibited. Though judges agree they cannot appoint their own wives or children, the rules on other relationships are less clear. Review comes only if a judge receives a rare formal complaint.

In the past decade, only one sitting probate judge has been disciplined for appointing friends or family, **Probate Judge Don R. Windle** of Denton County, who was reprimanded last year for appointing his wife and his investment partner.

## Intersecting

In probate court, professional association and financial benefit often intersect.

Lawyers and accountants who do probate work depend on judges to assign them cases that will pay substantial fees, sometimes hundreds of thousands of dollars. And probate judges rely on many of those same lawyers and accountants to financially support their campaigns when it's time to run for re-election.

The practice is legal and common, though critics counter that it creates an appearance of impropriety and favors those who contribute to judges.

## Campaign contributions

In Harris County, the Chronicle analysis shows, those who got the most business in probate cases contributed tens of thousands of dollars for the 2006 judicial races.

Two Harris County probate judges raised more than \$100,000 for last year's election, though they had no opponent. Both said they did so to discourage potential challengers.

One, **Russell Austin**, used part of that money to pay his ex-wife, who served as his treasurer, a 20 percent commission on her fundraising activities.

Another, **Mike Wood**, used contribution money to buy a \$2,000 aquarium for his new office. Wood, who spent more than almost any other judge running in Harris County last year, also used campaign funds to pay thousands in cell-phone bills, Houston club fees and trips — permitted officeholder expenses under campaign laws.

According to Harris County records, he travels more than twice as much as any other probate judge, visiting resorts in Alaska, California, New Mexico and other states with campaign and county funding.

A few judges have used top-paid appointees as their campaign treasurers, including Judge **Nikki DeShazo** of Dallas County, who still does, and Austin of Harris County, who no longer does.

Both say the practice is legal and see no conflicts.

## Judges are the monitors

Most probate matters zip through the courts, generate little controversy and cost \$500 or less. Complaints mostly come from contested cases that generate higher fees.

The system relies on an individual judge to police his or her handpicked appointees. Family members can object to high legal bills or unwanted real estate sales, but the judge decides.

"If the judge has the wrong motives, you are going to have problems," acknowledges **William C. McCulloch**, Harris County's senior probate judge. McCulloch said one reason he uses very few lawyers — about 10 got more than 60 percent of the fees in his court — is because he thinks others overcharge.

**Russell J. Verney**, a longtime **Reform Party** activist who studied probate problems for four years as former director of the Texas office of the nonprofit **Judicial Watch**, claimed the judges' self-monitoring has failed, adding that "the most flagrant cases are in Harris County."

Some judges and lawyers dismissed critics as poor sports who made their own problems worse by being greedy and argumentative. As long as disputes continue, so do bills.

In Harris County, the top-paid professionals in Austin's court included one of his former law students, his law school friend and a lawyer with whom he has shared office space and real estate investments.

Between 2003 and 2005, he ordered more than \$400,000 in fees paid to one of his former law students — a 12-year lawyer who became one of his top-paid appointees during her first 18 months as an attorney.

During the same time, he also approved more than \$375,000 to a former law school classmate who had recently returned to practice in Texas and mainly specialized in real estate law.

Austin also gave appointments to **George Kuhn**, a former investment partner of the judge's. Kuhn, like the others, has been a contributor to Austin's election campaigns and says he has done probate work for years, though he also describes himself as a real estate lawyer.

Kuhn got \$285,486 for work on 56 cases. Some payments came during a time when he and Austin jointly owned property in Harris County.

Though it's not against the law, judges in Texas are prohibited under the judicial conduct rules from regularly doing business with those who also often appear in their court. In 2006, Windle was reprimanded for giving work to a businessman with whom he co-owned a plane.

## Denied investments

In an interview, Austin initially denied having financial investments with Kuhn but remembered after the Chronicle provided him with details and records.

Kuhn said he would discuss only investments reflected in public records. Kuhn said he has jointly owned at least three properties with Austin and others over the past 30 years, including 100 acres in Liberty County and Kuhn's own home.

Austin and Kuhn co-owned the Houston home until May 2005, when Austin signed over all ownership interest, records show.

Austin said no money exchanged hands, though the house is appraised at more than \$360,000.

Most judges accept campaign contributions from appointees — though some refuse to raise money when they are unopposed.

Several judges said they would be uncomfortable allowing top-paid attorneys to serve in their campaigns as treasurers or fundraisers, though it is legal.

"It just raises unnecessary questions," said Guy Herman, the head administrative probate judge for the state.

Still, some judges do it.

### **Practice not questioned**

DeShazo of Dallas has used the county's top-paid probate attorney as her campaign treasurer and chief fundraiser for decades — though mostly she has run unopposed.

That attorney's firm, which includes three top appointees, earned about 18 percent of the \$2.8 million in fees awarded by Dallas County probate judges from 2003 to 2005.

The same lawyer, **R.W. Calloway**, also sits in as judge for DeShazo. Calloway, a board-certified probate attorney, shows up in court when DeShazo tells him she will be away.

His fellow attorneys present that day then "elect" him to serve as judge, under a statute applied only to Dallas County. Calloway serves without pay, which saves the county money, DeShazo said.

In 24 years, Calloway and DeShazo said, no one has questioned the practice.

And Calloway said that no one has formally objected to his fees in probate cases.

In Harris County, McCulloch used his son, who gets work in other courts but not in McCulloch's, as his treasurer.

Statewide, probate judges defended using people they know as court appointees.

"I don't want it to look like I'm just giving money to my friends," said Wood of Harris County Probate Court. "I'm appointing a fiduciary, the highest duty in the law. I'm not going to appoint somebody I don't trust."

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