

Proposed Resolutions
for consideration by the
Legislative Committee
of the
Texas Judicial Council

October 31, 2008

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Record of Associate Judge's Hearing in a De Novo Hearing

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the record from the hearing before the associate judge in a de novo hearing before the referring court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of Texas Family Code Section 201.009, a court reporter may be provided during a hearing held by an associate judge appointed under Chapter 201 of the Code, and a court reporter must be provided only when the associate judge presides over a jury trial or a contested final termination hearing. Thus, many records of hearings before associate judges are made by means such as electronic recording rather than by a court reporter. The referring court should be permitted to use the record of the associate judge's hearing in any form in which it is maintained. The current provisions of Sections 201.009(e) and 201.015(a) of the Texas Family Code appear to limit the referring court's ability to consider the record of the associate judge's hearing only if it was made by a court reporter.

Purpose

The Texas Family Code should be amended to allow a referring court to consider the record of the associate judge's hearing in any form in which it is maintained.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Judicial Action on Associate Judge’s Proposed Order or Judgment

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to judicial action by the referring court on an associate judge’s proposed order or judgment;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of Texas Family Code Section 201.2041, a proposed order or judgment of an associate judge appointed under Texas Family Code Chapter 201 Subchapter B when review by the referring court is not requested becomes the order or judgment of the referring court by operation of law without ratification by the referring court. However, many courts still require the signature of the referring court on such orders or judgments.

Purpose

Subsection (a) of Texas Family Code Section 201.2041 should be amended to clarify that the signature of the referring court is not required.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Jurisdiction of Child Protection Courts

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the jurisdiction of child protection courts;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Currently, child protection court associate judges appointed pursuant to Subchapter C of Chapter 201 of the Texas Family Code have jurisdiction over matters under Chapters 262 and 263 of the Family Code. Such language is unduly restrictive. For example, the child protection do not have jurisdiction to preside over cases filed by Texas Family and Protective Services seeking a court order to facilitate an investigation of abuse or neglect, as such actions are governed by Section 261, Texas Family Code.

Purpose

Section 201.201 of the Texas Family Code should be amended to provide jurisdiction to child protection court associate judges over matters within Title 5, Subtitle E of the Texas Family Code.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Exemptions and Qualifications for an Associate Judge to Carry a Firearm

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the qualifications for a judicial officer to carry firearms;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Government Code Section 411.201(a) specifies the judicial officers who are eligible for a license issued by the Department of Public Safety to carry a concealed handgun under special requirements applicable only to judicial officers, but it does not include associate judges appointed pursuant to Chapter 201 of the Texas Family Code.

Purpose

Including associate judges appointed pursuant to Chapter 201 of the Texas Family Code in the list of active judicial officers specified by Government Code Section 411.201(a) would extend the exemptions and qualifications for carrying a firearm already provided to other elected or appointed judges in Texas.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Post Judgment Relief in Child Support Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to post judgment relief in child support cases provided in Section 201.104(d) of the Texas Family Code;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

As currently enacted, Family Code Section 201.104(d) requires that all post-trial matters in cases heard by child support associate judges be handled by the referring court judge who does not have any knowledge of the facts or issues in the case.

Purpose

Section 201.104(d) should be amended to carve out those post-trial matters in cases where the associate judge has made the last controlling order, and that order has not been appealed to the referring court. In these instances, the associate judge would be allowed to hear post-trial motions. This change would promote judicial efficiency, as it would allow the associate judge who is familiar with the case to hear and rule on post-trial motions instead of requiring the referring court judge to do so.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Child Support Review Process

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to a judge's role in the child support review process provided by Chapter 233 of the Texas Family Code;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Chapter 233 of the Family Code involves the Child Support Review Process (CSRP), a useful tool for the Office of the Attorney General (OAG) to take expedited administrative action to resolve Title IV-D cases. The CSRP enables the OAG to establish, modify, and enforce child support and medical support obligations, to determine parentage or to take other action authorized by state or federal law. The agreed child support review orders are negotiated in administrative negotiation conferences between the child support officer and the *pro se* parties. Section 233.024(a) of the Family Code currently requires the court to sign every agreed child support review order signed by the parties, even if the court believes a particular order may not be in the best interest of the child. There is a need in extraordinary circumstances to allow a court to hold a hearing and perhaps modify an agreed order if the court finds that the agreed order as presented is not in the best interest of the child.

Purpose

The proposed revision to Section 233.024(a) would require the court to sign an agreed child support review order unless the court finds that the order is not in the best interest of the child.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

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TEXAS JUDICIAL COUNCIL

De Novo Hearing Following a Jury Trial

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to a de novo hearing following jury trial;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of Texas Family Code Sections 201.015 and 201.2042, a party to a child protection case referred to an associate judge and tried to a jury is entitled to a de novo hearing before the referring court. A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial. This could result in termination of parental rights without the ability of the parents to have a trial by jury, if the original trial was a jury trial before an associate judge in which the jury returned a verdict denying termination, the associate judge entered judgment in conformity with the jury verdict, the Department requested a jury trial, and the referring court reversed.

Section 201.2042 of the Texas Family Code should be amended to prohibit a request for a de novo hearing from an order or judgment of the associate judge rendered following a jury trial on any issue or finding which conforms to the jury verdict. The order of the associate judge in conformity with the jury verdict should be deemed an order of the referring court. A de novo hearing would still be allowed for a recommended order or judgment of an associate judge rendered notwithstanding the jury verdict or not in conformity with the jury verdict.

Purpose

Prohibiting a de novo hearing by the referring court from an order or judgment of an associate judge rendered in conformity with a jury verdict would preserve the due process rights of the parties to child protection cases under Texas Family Code Chapter 201 Subchapter C.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Mandatory Refusal to Register Motor Vehicle

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring county tax assessor-collectors and the Department of Transportation to refuse to register a motor vehicle if the owner of the vehicle owes a county money for a fine, fee, court cost, or tax that is past due;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current law permits (but does not require) a county tax assessor-collector and the Department of Transportation to refuse to register a motor vehicle if the owner of the vehicle owes money to the county for a fine, fee, or tax that is past due. A fine, fee or tax is considered to be past due if 90 or more days have passed since the date the obligation was due. Under current law, a county tax assessor-collector may only refuse to register a motor vehicle if the owner of the vehicle owes money to the tax assessor-collector's county; if the owner of the vehicle owes money to the a different county, the tax assessor-collector may not refuse to register the vehicle.

Purpose

Sections 502.185 and 702.003 of the Transportation Code should be amended to: (1) require county tax assessor-collectors and the Department of Transportation to refuse to register a motor vehicle of the owner of the vehicle owes money to the county for a fine, fee or tax that is past due; (2) consider money that is owed to a county or a city to be past due if 60 or more days have passed since the day the obligation was due; and (3) require a tax assessor-collector to refuse to register a motor vehicle if the owner of the vehicle owes money to any county.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Simplify Criminal Court Costs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to simplify criminal court costs;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The State's system of criminal court costs is complex. Determining the correct amount of court costs to assess upon a conviction for a particular offense involves looking at a number of different statutes and settling certain factual questions. Consequently, one cannot readily specify the amount of court costs for a particular offense. Additionally, because the total amount of court costs to be assessed in a case is the sum of a number of individual court costs described in separate statutes, the overall effect that changes in court costs would have on criminal defendants is difficult to discern.

Purpose

Statutes concerning criminal court costs should be amended to make criminal court costs for particular offenses much easier to determine without changing the total amount of funds realized from court costs. Specifically, the statutes should be amended to: (1) convert court costs that are assessed only if certain events occur into costs that are assessed in all convictions; (2) convert court costs that are assessed only upon conviction of certain offenses into fees that are assessed in all cases (or at least all felonies, all Class A and B misdemeanors, and all Class C misdemeanors); and (3) combine separate statutes that create criminal court costs into one broader statute that calls for the sum of the court costs, but continues to direct the court costs to the same destinations as is done currently.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Clarify Procedures for Writs of Habeas Corpus in Death Penalty Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to clarifying the procedures for handling writs of habeas corpus in death penalty cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current statutory law specifying the procedures for the handling of writs of habeas corpus proceedings in death penalty cases contain ambiguities that are interpreted differently by courts. There have also been court decisions that show the statute in its current form is incomplete, such as dealing with time frames for the filing of an application and the process for establishing a defendant is mentally competent to waive his right to file an application. Trial court notifications are also required to the Court of Criminal Appeals in some instances but not others, which can result in delays and inefficiencies in handling death penalty writs. Counsel appointed on a subsequent writ is not required to be on the Court of Criminal Appeals list of qualified attorneys, nor are such attorneys currently required to be compensated for their services on such cases.

Purpose

Article 11.071, Code of Criminal Procedure, should be amended to: (1) Clarify ambiguous provisions; (2) Conform the statute to court decisions that specify certain procedures; (3) Require additional notices be sent to the Court of Criminal Appeals to apprise it of proceedings that are returnable to it; and (4) provide for the appointment and compensation of competent counsel on a subsequent writ as is already required for both initial and untimely writs.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Due Process in Connection with Collections from Inmate Trust Accounts

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to clarify the mechanism for providing due process to offenders sentenced to prison so that court costs, fees and fines may be collected from their inmate trust accounts in appropriate cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Defendants who are convicted of felonies and ordered to serve time in prison are also usually ordered to pay fines, court costs, and restitution. Historically, only a small percentage of inmates have voluntarily paid. Accordingly, there has been an effort by judges in recent years to order that money from inmates' trust accounts be withdrawn to satisfy fines and court costs. But inmates sometimes successfully argue that such withdrawals are an unconstitutional taking of property without due process of law.

Purpose

Written judgments in criminal cases should specify not only the amount of fines, court costs and restitution he or she must pay, but also the timetable for and means of making those payments. The question of whether a defendant is to satisfy fines, court costs and restitution through withdrawals from the defendant's inmate trust account should be considered when the defendant is sentenced so that the defendant has an opportunity to contest any such withdrawal. Any court order calling for withdrawals from an inmate's trust account to satisfy fines, court costs and restitution should be made a part of the written criminal judgment.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Priority of Payments for Offenders on Community Supervision or Parole

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to clarify the priority of payment for offenders under community supervision and parole supervision;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Judges are authorized to impose a number of financial obligations on defendants who have been convicted and placed on community supervision. Examples of these obligations include fines, court costs, reimbursement for court-appointed attorney services, child-support, restitution, and reimbursement for the expenses of jail confinement. There are many other possible financial obligations as well. Defendants on parole have similar court-imposed financial obligations.

Most defendants are not in a position to pay the full amount of their financial obligations at the time the obligations are assessed. Accordingly, most defendants agree to make monthly payments toward these obligations. Consequently, not all financial obligations can be satisfied immediately. This situation gives rise to questions concerning whether certain court-imposed financial obligations should be satisfied before others. Currently, Texas law does not specify any priority of payment.

Purpose

Statutory provisions should be enacted that prioritize the various fees a defendant may be ordered to pay as a condition of community supervision or parole. In the community supervision context, judges should be required to confer on a standardized method of prioritizing the financial obligations of offenders under community supervision, with a default prioritization specified, but also with latitude for individualized discretion in cases that demand it.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Providing Information on Child Support Obligations to Sentencing Judges

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to allow sentencing judges to take into account the existence of child support obligations;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Repaying Debts report, Part III, Table 4, shows the total financial obligations of probationers in three Texas counties, as follows:

Table 4: Offense Debt and Child Support Obligations

DEBT DETAIL	Probation Group 1: Large Urban		Probation Group 2: Medium Urban		Probation Group 3: Rural	
	CS	no CS	CS	no CS	CS	no CS
% w/ Known Child Support Debt	7%		13%		15%	
Avg Monthly Child Support Debt	\$377	---	\$373	---	\$412	---
Avg Monthly Offense-Related Debt	\$77	\$76	\$94	\$91	\$67	\$79
Total Monthly Debt	\$453	\$76	\$467	\$91	\$479	\$79

This breakdown accounts for those having a known child support enforcement case. Those owing child support have, of course, a greater financial burden overall with a total financial obligation averaging around \$470 monthly compared to \$76 to \$91 for those with no known child support obligation. Most of the difference in total debt is due to the child support obligation, but there are differences in the offense-related debt as well. The rural county seems to assess lower offense-related obligations on those with a child support obligation while the other counties do not have the same distinction.

This infers that the sentencing judge has some awareness of the child support obligation facing a defendant in her courtroom, which could plausibly be the case in a smaller jurisdiction where the

same judge could handle both family and criminal matters. In larger jurisdictions this would not be the case, and the fact that federal law¹ makes information about child support obligations confidential would foreclose any ability of the sentencing judge to take into account those competing financial obligations. There is some indication that this federal constraint may soon change, and should that occur, sentencing judges could be systematically made aware of child support obligations.

The Automated Registry system,² funded in 2007 and presently under design, will provide courts with several different sources of state database information, and may be able to provide sentencing judges with information about child support obligations.

Purpose

Enact legislation to authorize sentencing judges to obtain information about an offender's child support obligations and to take that information into account for purposes of assessing a fine.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

¹ 42 U.S.C. §654(a); see also Texas Family Code §231.108.

² See General Appropriations Act, p. IV-27, OCA Rider 15, and the project webpage at: <http://www.courts.state.tx.us/oca/registry/reghome.asp>.

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Supporting the Repaying Debts Research Recommendation

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, in particular the proposals relating to the Office of Court Administration requesting and the Legislature providing funding for continued research;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature fund the Office of Court Administration in keeping with the following statement of the Background and Purpose of such effort.

Background

The Repaying Debts report is a significant step forward in illustrating some very basic characteristics of the financial burdens borne by offenders on probation or parole in Texas. However, more research is needed to understand if there is a “tipping” point in which additional court imposed financial obligations may negatively impact the ability to collect on the obligations, or negatively impact the ability of the offenders to successfully terminate their probation or parole.

No study in Texas has tried to explore the level of court-imposed financial burden as a correlate with the risk of recidivism. If high levels of financial obligations correlate with supervision failure, policies can then be directed at integrating this factor in risk assessments and in designing supervision strategies that consider this as a critical element to address in trying to improve outcomes.

Also of particular interest is the employment dynamic of these groups. All employment data used in the Repaying Debts study are based on “point-in-time” assessments of the offenders at the time of their respective placements and terminations from supervision, so there is no indication whether the offenders tend to be steadily employed over periods of time versus employed intermittently with little stability. It is possible that many employed at the beginning of supervision soon lose their jobs. The report illustrated that a greater portion of the revoked offenders were unemployed when compared to their successful counterparts. Further research could help shed light on the dynamics around this apparent relationship. Data from the Workforce Commission can be used to explore the employment history of offenders in relation to their payment records and recidivism.

Greater understanding is needed about the “tipping point” where the amount owed by the offender is so great that collections begin to suffer. There is potentially a range of obligation

amounts where collections can be expected to ultimately yield at or close to the full obligation. However, it may be the case that offenders begin to fall substantially short of staying current in their debts when such ranges are passed.

The research could benefit from private sector groups that specialize in developing profiles of an individual's ability to repay debts. Many such entities exist and specialize in efforts related to the collection of offense-related debts. Informal discussions with one such group concluded that creating a profile of an offender's likelihood of repaying their financial obligations was feasible and worthwhile.

Purpose

Support further research into the dynamics of court-imposed financial obligations, through support of OCA's Exceptional Item Number 4, Targeted Research.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Financial Obligations of State Jail Felons

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to require that state jail felons be admonished to discharge their court-imposed debts upon release from state jail;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 1991 the legislature prospectively repealed the Penal Code and established the Punishment Standards Commission (PSC) to rewrite it and propose sentencing reform. The result of that effort was a fourth degree of felony in addition to the three that already existed (below the level of capital). This became the “state jail felony” when the legislature took up the PSC’s recommendations in 1993. State jail felons serve a “flat time” sentence of up to two years; they do not earn good conduct time and are not eligible for any form of early release. When the sentence is complete, there is no supervision, and thus no mechanism for enforcement of outstanding payments owed by the offender.

Purpose

Amend section Government Code §501.016 to require the Department of Criminal Justice to admonish state jail felons, upon release, to report to the district clerk of the releasee’s county of conviction in order to resolve any outstanding court costs, fees, or fines.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Appointment of Presiding Judges by the
Chief Justice of the Supreme Court of Texas**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71 of the Texas Government Code, and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to appointment of the presiding judges of the administrative judicial regions;

NOW, THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The state is divided into nine administrative judicial regions, with a presiding judge for each region. The presiding judges are the backbone of trial court administration in the state with duties including promulgating and implementing regional rules of administration, advising local judges on judicial management, recommending changes to the Supreme Court for the improvement of judicial administration, acting for local administrative judges in their absence, and assigning visiting judges to hold court when necessary to dispose of accumulated business in the region.

Currently, section 74.005 of the Texas Government Code provides that the Governor appoints the presiding judges for the nine administrative judicial regions. The Texas Constitution places in the Supreme Court the responsibility of ensuring that justice in Texas is efficient. Similarly, the Legislature has statutorily charged the Court, under Texas Government Code section 74.021, with “administrative control over the judicial branch and . . . the orderly and efficient administration of justice.” Further, under section 74.049 of the Texas Government Code, the Chief Justice of the Supreme Court of Texas has the obligation to perform the duties of a regional presiding judge in the absence of that judge, and under section 74.001, the Chief Justice calls and presides over the annual meeting of the regional presiding judges.

The Chief Justice currently makes appointments to the State Pension Review Board with the advice and consent of the Senate, providing a precedent for the procedure advocated here.

Purpose

Judicial independence and the coherent administration of the Judicial Branch strongly suggest that section 74.005 should be amended to provide that the Chief Justice appoints the presiding judges to the administrative judicial regions, with the advice and consent of the Senate.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Implement Supreme Court Jury Task Force Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the recommendations of the Supreme Court Task Force on Jury Assembly and Administration;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Supreme Court Task Force on Jury Assembly and Administration was formed in 2006. The Task Force was charged with reviewing the Texas statutes and rules concerning the summoning of jurors, particularly Government Code Sections 62.001 – 62.501 and Texas Rules of Civil Procedure 216 – 236. The Task Force was comprised of 29 members including lawyers, judges, law professors, lay persons, and legislators. Key Task Force recommendations include (1) expressly authorizing the Secretary of State to compile a master source list of jurors available for each county to summon; (2) directing each county to adopt a jury administration plan that must be adopted by the Supreme Court (or the Court’s designee); (3) repealing Sections 62.001 – 62.018 and Section 62.021 that deal with jury administration; (4) amending the existing qualifications for jury service and exemptions from jury service; (5) clarifying and consolidating statutory penalties for those who fail to respond to a jury summons; (6) providing funding for the Secretary of State to improve the accuracy of juror lists, for counties to obtain software, for the training of jury assembly room managers, and the Supreme Court’s supervision of jury plan process; (7) granting the Supreme Court express rulemaking authority to accomplish needed reforms; and (8) granting the Supreme Court express authority to ensure that counties prepare and adopt written jury plans.

Purpose

Enact legislation consistent with the report of the Supreme Court Task Force on Jury Assembly and Administration.

BE IT FURTHER resolved that the Judicial Council supports an increase in the amount of the jury fee paid in civil cases in district court from \$30 to \$60 and in civil cases in county-level courts from \$28 to \$60 with the increased amounts being directed to the State for improvements in the accuracy of juror lists and related purposes.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Judicial Interest on Campaign and Officeholder Account program

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to the creation of a Judicial Interest on Campaign and Officeholder Account program.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 1984 the Texas Supreme Court established an Interest on Lawyer's Trust Account (IOLTA) program. Interest earned from the IOLTA accounts is dedicated to helping non-profit organizations provide legal services to low-income Texans.

Currently there is no similar program for judicial candidate and officeholders who wish to have the interest earned on their campaign accounts put to a similar use.

Purpose

The Election Code should be amended and a new section created promulgating a voluntary program similar to the IOLTA program for judicial candidates and office holders. The new program shall be called the Judicial Interest on Campaign and Officeholder Account (JICOA) program and in as many respects as possible mirror how the IOLTA program is run. Judicial candidates and officeholders are forbidden from using campaign funds for "personal use" under Tex. Elec. Code Sec. 253.035. Therefore, Tex. Elec. Code Sec. 253.035(d) should be amended and language added which states that payments of interest from a JICOA account pursuant to the Election Code is not "personal use." Amending 253.035(d) to explicitly reflect that JICOA use is not "personal use" would eliminate or reduce possible future litigation over this issue.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Jury Note-Taking

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to jury note-taking;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current Texas law neither authorizes nor prohibits note-taking by jurors. The practice of allowing note-taking by jurors varies from court to court.

Purpose

Jurors are better able to fulfill their duty to decide fact issues in the cases in which they serve if they are permitted to take notes during trial. Accordingly, statutes should be enacted that permit jurors to take notes during trial.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

State Funding for Child Protection Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the background and statement of purpose below, which embraces child protection court funding proposals by the State Bar Court Administration Task Force, the Office of Court Administration, and the Permanent Judicial Commission for Children, Youth and Families;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Permanent Judicial Commission on Children, Youth and Families was established in November 2007 to strengthen courts for children, youth and families. As a corollary, the Supreme Court has established a grant-making capability with federal Court Improvement Project funds of almost \$2 million per year.

The State Bar Court Administration Task Force was charged by the Bar with studying issues relating generally to the administration of the courts of Texas and specifically those raised in the 2007 Texas Legislative Session, including S.B. 1204 and C.S.S.B. 1204. The Task Force studied and approved a proposal from C.S.S.B. 1204, updated in its administrative provisions, which provides a mechanism for state grants from the Children's Commission to counties to improve child protection cases.

The Child Protective Services cases filed in El Dorado, Schleicher County, in April 2008 made abundantly clear that many types of cases could require special judicial supervision and benefit from additional resources and expertise. OCA and 7th Region Presiding Judge Dean Rucker coordinated significant assistance to the judge presiding over the case and the judicial personnel of Tom Green and Schleicher counties to manage this extraordinary case. Resources that were provided include additional visiting judges; assistance with the referral of volunteer attorneys; videoconferencing technology for hearings; supplies, equipment, and funding for additional clerk's office personnel; arrangements for the electronic filing of court papers; tools to allow judges and attorneys to collaborate online; and administrative assistance obtaining emergency funding from the state to the counties. Having dedicated resources and a clear legal mechanism

to provide those resources in such cases – as proposed by the Court Administration Task Force and as proposed in C.S.S.B. 1204 - would have been highly useful in this endeavor.

Purpose

Provide grants for counties for child protection cases, as follows:

- Provide that the Permanent Judicial Commission for Children, Youth and Families will develop and administer the program, and monitor the use of the grant money;
- Provide that the Permanent Judicial Commission for Children, Youth and Families will determine whether to award a grant to a county-applicant that meets the eligibility requirements; and
- Provide that the grants be used to improve safety or permanency outcomes, enhance due process, or increase timeliness or resolution in child protection cases.

BE IT FURTHER RESOLVED that the Judicial Council supports new state funding for grants to counties for these purposes.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Report of the State Bar Court Administration Task Force

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the report of the State Bar Court Administration Task Force;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The State Bar Court Administration Task Force was charged with studying issues relating to the administration of the courts of Texas and specifically those raised in the 80th Texas Legislature, including in S.B. 1204 and C.S.S.B. 1204. With 47 members, the Task Force was a diverse group of lawyers, judges, law professors, lay persons, and legislators representing key constituencies and stakeholders in the administration of Texas courts. The Task Force Report begins to chart a course toward a simpler and more comprehensible civil court system for Texas.

Purpose

Enact legislation consistent with the report of the State Bar Court Administration Task Force, with the following exceptions:

BE IT FURTHER RESOLVED that the Judicial Council supports the appropriation of additional funds to the Judicial Branch, consistent with the resource recommendations of the State Bar Court Administration Task Force

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Reimbursement of Expenses

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to reimbursement of expenses in matters involving the State Commission on Judicial Conduct;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 33.004, Texas Government Code, provides that the commission shall reimburse expenses of its members, special masters, and employees in performing their duties. Section 33.004 is silent as to reimbursement of expenses of special counsel for the commission or other persons appointed by the commission to assist the commission in performing duties.

Purpose

Section 33.004 should be amended to authorize the commission to reimburse the expenses of special counsel for the commission, or any other person appointed by the commission to assist it in performing duties.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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Appeal from a Public Censure of a Judge

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to providing an appeal from a public censure of a judge;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article V, Section 1-a(8) of the Texas Constitution provides that for good cause, the State Commission on Judicial Conduct shall issue an order of public censure or shall recommend to a review tribunal the removal or retirement of the judge. Section 1-a(9) provides that a review tribunal's order of public censure, retirement or removal may be appealed. However, there is no provision for appeal of the commission's order of public censure. Chapter 33, Texas Government Code, provides for appeal from a sanction issued by the commission, but provides no right of appeal from a more serious censure issued by the commission.

Purpose

Chapter 33 of the Government Code should be amended to provide a judge who has been censured by the commission the right to appeal the censure to a seven-justice review tribunal.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Allow Capias Pro Fine Hearings by Video Teleconference

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to allowing capias pro fine hearings to be conducted by electronic means;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

A defendant arrested pursuant to a capias pro fine must be brought before the court that issued the capias pro fine for a hearing. Ideally, the defendant is to be brought before the court immediately after the arrest. If this is not possible, the defendant is to be placed in jail until the next business day at which time he or she is to be brought before the court.

The hearing must be held before a judge of the court that issued the capias pro fine. The hearing is not to be conducted by a judge acting as a magistrate. Often, getting the defendant to the judge's courtroom for the required hearing presents a logistical challenge because some courtrooms are located many miles away from the jail. This difficulty discourages some judges from issuing capias pro fines in the first place.

Purpose

New provisions should be added to the Code of Criminal Procedure that would permit judges to conduct the statutorily-required capias pro fine hearings by video teleconference.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Allow Courts of Appeals to Hear Appeals that Originated in Small Claims Court

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to authorizing the courts of appeals to hear appeals from small claims court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In *Sultan v. Mathew*, 178 S.W.3d 747 (Tex. 2005), the Supreme Court of Texas interpreted Section 28.053 of the Government Code to make the decision of the county-level court on an appeal from small claims court final in the sense that no appeal of the county-level court's decision could be made to the court of appeals. The statute in question applies only to judgments from small claims courts. The decisions of county-level courts on appeals from justice courts may be appealed to the courts of appeals.

Purpose

The decisions of county-level courts on appeals from judgments in small claims courts should be capable of being appealed to the courts of appeals. Section 28.053 should be amended to authorize such appeals.

Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals
Vice-Chair, Texas Judicial Council

STATE OF TEXAS

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TEXAS JUDICIAL COUNCIL

Plea via Video Teleconference in Class C Misdemeanor Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the proposal to allow defendants in Class C misdemeanor cases to enter pleas via video teleconference;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Individuals who are arrested for and charged with certain Class C misdemeanors such as assault are generally taken to jail where they are then “magistrated.” Frequently, the person serving as the magistrate will be the judge handling the actual case. Sometimes, individuals wish to enter a plea in the case during magistration which is permissible if the person serving as the magistrate will handle the actual case and if the magistration is conducted in person. If, however, the magistration is conducted via an electronic broadcast system as permitted by Article 15.17 of the Code of Criminal Procedure, there is no current legal authorization for the judge to accept a plea.

Purpose

Statutory provisions should be enacted that permit a defendant arrested for and charged with a Class C misdemeanor to enter a plea in the case during the magistration process via video teleconference. This would improve judicial economy.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Require Four-year Terms for all Municipal Judges

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring four-year terms for all municipal judges;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Municipal judges are presently appointed to serve terms of either two years or four years. In most cities, the term of office is two years. All other types of Texas judges serve terms of at least four years. The consequence of a two-year term is that there is greater potential for city officials to exert inappropriate pressure on municipal judges to use their judicial positions to raise revenue.

Purpose

Article XI, Section 11 of the Texas Constitution and Sections 29.005 and 30.00006(d) of the Government Code should be amended to mandate four-year terms for all municipal judges in Texas. This would result in all judges in Texas serving terms of at least four years and would further the important objective of judicial independence.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Permit Adopted Adult to Inherit from Biological Parent

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to permitting adopted adults to inherit from their biological parents;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 2005, the Legislature made a significant change to the law governing inheritance by a person who is adopted as an adult. Under prior law, both persons adopted as adults and persons adopted as minors inherited not only from their adoptive parents but also from their biological parents. The 2005 changes resulted in adopted adults no longer inheriting from the adult's biological parent. See Family Code § 162.507(c) and Probate Code § 40.

This change in the law may lead to an absurd result. For example, assume that Mother and Father have a child in 1985. Mother dies in 1990 and Father marries Step-Mother in 1995. As time passes, Child and Step-Mother become close and shortly after Child reaches age 18, Step-Mother adopts Child. If Father dies intestate, Child will not be considered an heir because the statute provides that an adopted adult may not inherit from a biological parent.

Purpose

The changes made to the law in 2005 should be reversed so that an adopted adult may inherit from a biological parent.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Clarification of Notice Provisions on Presentation of Account for Final Settlement

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the clarification of notice provisions on presentation of an account for final settlement:

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 407 of the Probate Code concerns the citation that is to be issued upon presentation of an account for final settlement in a probate action. The statute instructs the court clerk to issue citation, but then follows with instructions for the personal representative to issue notice to each heir or beneficiary by certified mail. Section 33(f)(4) of the Probate Code requires citation issued by the clerk of the court to be served by the clerk, if service is by certified mail. The type and method of citation or notice needs to be clarified. Either the clerk or the personal representative should issue and serve citation to each heir or beneficiary – both the clerk and personal representative need not do so. Additionally, many some probate judges require posting of a citation upon the filing of a final accounting. There is no specific language in Section 407 requiring the posting of citation, but posting serves to notify creditors that the estate is about to be closed and that their right to collect their from the estate is about to end.

Purpose

Section 407 of the Probate Code should be amended to clarify that upon the filing of an account for final settlement, the clerk serves citation by posting and the personal representative provides notice to each heir or beneficiary by certified mail unless the court directs otherwise.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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Deny Letters if Personal Representative fails to follow Filing and Notice Rules.

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to empowering county clerk to deny the issuance of additional letters testamentary or letters of administration when the personal representative has failed to comply with statutory reporting and notice requirements.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under current law, county clerks have no authority to deny requests for additional letters testamentary or letters of administration from personal representatives who have not timely filed their inventory, appraisal and list of claims (*see* Probate Code §§ 250, 251) or timely given notice to certain entities that the entity is named as a devisee in a written will (*see* Probate Code § 128A).

Purpose

Sections 128A and 250 of the Probate Code should be amended to direct clerks not to issue additional letters testamentary or letters of administration until the personal representative has complied with the filing and notice provisions of those statutes. Consistent amendments should be made to Sections 153 and 187 of the Probate Code. This change will serve to encourage better compliance by personal representatives with the statutory requirements of Section 128A and 250.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Repeal of Bad Parent Disinheritance Provision

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to repealing the bad parent disinheritance provision;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Sections 41(e) and 41(f) of the Probate Code provide that a parent who has committed certain bad acts will not be able to inherit from his or her minor child. Bad acts which trigger this disinheritance include the voluntary abandonment of a child, the voluntary abandonment of the mother of a child prior to the child's birth, and criminal responsibility for the death or serious injury of "a" child.

The statute's intentions are laudable, but the provisions contravene Article I, Section 21 of the Texas Constitution which provides that "[n]o conviction shall work . . . forfeiture of estate." The attorney general has already found the statute to be unconstitutional (Op. Tex. Att'y Gen. No. GA-0632 (2008)).

Purpose

Sections 41(e) and (f) of the Probate Code should be repealed.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Provide Information to FBI for Gun Sale Restrictions

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring court clerks to report mental commitment, guardianship, and certain other information to DPS for use in an FBI database to prevent certain people from purchasing guns.

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

A national data base exists that is used by law enforcement to identify certain potentially dangerous individuals who should be prohibited from purchasing guns. These individuals include convicted felons and those convicted of family violence offenses as well as persons who have been committed as inpatients in mental hospitals and those who have been found to be mentally incapacitated. Texas partially participates in providing information to this data base by providing information on felony and family violence offense convictions. However, Texas does not currently provide information on mental commitments and guardianships. Consequently, the data base is incomplete which allows certain dangerous individuals to purchase guns.

There have been numerous incidences in recent years in which persons who had been mentally committed in the states not fully participating in the gun control information program were able to buy guns and then killed judges, law enforcement officers, and other citizens. National legislation offers funds to states to offset any cost associated with adding this additional information to the national data base.

Purpose

Statutory provisions should be enacted that would require court clerks to report mental commitment, guardianship, and certain other information to DPS for use in an FBI database to prevent certain dangerous individuals from purchasing guns.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

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TEXAS JUDICIAL COUNCIL

Time Period within which Child born through ART must be born in order to Inherit

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the setting of a time period within which a child born through Alternative Reproduction Techniques (ART) must be born in order to inherit;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under current law, a child born through alternative reproduction techniques decades after a decedent's death can make a claim to the estate. This scenario is likely to be contrary to what the decedent would have desired.

Purpose

A time period should be established within which a child born after a decedent's death by alternative reproduction techniques (ART) must be born in order to claim a share of the decedent's estate in both testate and intestate situations. A time period of three years would be reasonable.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Clarification of Application of School Zone Court Cost

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal that would clarify the circumstances in which the \$25 court cost for child safety is to be assessed;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 102.014(c) of the Code of Criminal Procedure requires a person who is convicted of an offense under Subtitle C, Title 7, Transportation Code (Rules of the Road) to pay an additional \$25 court cost if the offense occurred within a school crossing zone. Article 102.014(c) also requires a person convicted of an offense under Section 545.066 of the Transportation Code (passing a school bus) to pay an additional \$25 court cost. These court costs fund school crossing guard programs and sometimes other related programs.

The final sentence of Article 102.014(c) states that the \$25 court cost “shall be assessed only in a municipality.” There are two possible meanings of this language. First, the meaning could be that only municipal courts are to assess the \$25 court cost. The second possible meaning is that the fee is to be assessed by any court, but only if the offense occurred in a municipality. The Comptroller has issued a determination of legislative intent consistent with the second possible meaning described above.

Purpose

Article 102.014(c) should be amended to say that the \$25 court cost shall be assessed only if the offense was committed within a municipality. This change would be consistent with the Comptroller’s determination of legislative intent and would provide clear guidance to the trial courts of Texas concerning when the \$25 fee should be assessed.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

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TEXAS JUDICIAL COUNCIL

Technical Correction to Code of Criminal Procedure Section 102.016(b)

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal relating to Code of Criminal Procedure Section 102.0169b) which addresses court costs to support the breath alcohol testing program;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background Section 102.016(b) of the Code of Criminal Procedure authorizes a municipality or county which maintains a certified breath alcohol testing program but does not use the services of a certified technical supervisor employed by the Department of Public Safety to defray the cost of maintaining the program by retaining \$22.50 of each “consolidated court cost” collected under Article 102.075. Article 102.075 was repealed in 2003 and was replaced by Section 133.102 of the Local Government Code. The consolidated court cost is now assessed pursuant to Section 133.102.

Purpose

Section 102.016(b) of the Code of Criminal Procedure should be amended to reference Section 133.102 of the Local Government Code instead of Article 102.075 of the Code of Criminal Procedure.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council