

The State of Texas
House of Representatives



Jim Jackson

DISTRICT 115
July 23, 2012

The Honorable Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Dear Justice Hecht,

This letter is to inform you of concerns I have regarding the rulemaking process for House Bill 79 (82nd Session, 1st Called Special Session). H.B. 79 was passed for several reasons, chief among them was to update and streamline the court system. It was also intended and promised by the authors that it would keep processing of small claims and Justice of the Peace cases simple and user friendly so a lay person can understand it and navigate it without an attorney. It appears that, in the rulemaking process, several proposed rules will actually make navigating the legal system more cumbersome and technical. Also, several rules seek to change current law where the law remains silent.

As an example, Rule 578 is concerning to me. The information you are seeking to obtain in default judgment proceedings runs contrary to history and precedent. The historical treatment of default judgments is that if a person is in default, then the traditional burden of proof is unnecessary. Requiring creditors to meet burden of proof criteria even after default - which is defined as "failure to fulfill an obligation" - seems contrary to previous rulings and common law.

Another proposed rule that concerns me is Rule 739, which alters existing rules relating to eviction cases. This rule, and others relating to eviction cases, are essentially dealing with "breach of contract" cases in which a balance is currently struck. Tenants are already extended numerous protections at the expense of a property owner. Any further weakening of property owners' rights is also not consistent with Texas law, which values private property and the rights of the property owner. I consider additional steps, and additional costs, in the legal process a weakening of property owners' rights.

While well-intentioned, I believe that these changes, and possibly others, being considered in the rulemaking process for H.B. 79 overstep the authority given to the Office of Court Administration. Article 5, Section 31(b) of the Texas Constitution says that the OCA has rulemaking authority as long as they are, "not inconsistent with the laws of the state." While these proposed rules may not run counter to current law, enacting rules where the law is silent is, by definition, not consistent with current law.

While I support your efforts to implement H. B. 79, I encourage you to not to move beyond implementation and into making substantive policy changes, which is solely, and rightly, the purview of the legislature. Where OCA does not have the authority to make changes, but feels changes are necessary, I would be happy to consider them for inclusion in the Judiciary & Civil Jurisprudence Committee interim report.

Please feel free to call if you would like to discuss the matter further.

Best Regards,

A handwritten signature in dark ink, appearing to read "Jim".

Jim

cc: David Slayton
Sen. Robert Duncan

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