



April 12, 2011

Supreme Court Advisory Committee
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711-2248

RE: Report of the Uniform Forms Task Force dated January 11, 2012

Members of the Advisory Committee:

As judges with many years of experience in family law cases, both as attorneys and as judges, we write to provide additional information for the Supreme Court Advisory Committee as it considers its recommendations to the Supreme Court of Texas regarding the forms promulgated by the Uniform Forms Task Force. Pursuant to the Code of Judicial Conduct, we are authorized to speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, and the administration of justice. Our purpose is to inform the Committee of the practical problems faced by our trial courts with forms already in existence and our opinion that the forms before the Advisory Committee will surely not change the status quo and may actually cause more problems for the judicial system and the public's perception of the fair and efficient administration of justice.

In his letter to State Bar President Bob Black of January 25, 2012, Chief Justice Jefferson framed the issue as "how best to provide our poorest citizens access to the rule of law." We acknowledge that legal services organizations are unable to meet the demand of those Texans who are unable to afford an attorney and qualify for legal aid. Producing forms is one response to the problem, however it falls far short of providing "our poorest citizens access to the rule of law." What is most needed is access to competent and qualified legal advice, and it is incumbent upon the bench and bar to engage in innovative thinking and comprehensive discussions which will expand the delivery of legal services to the poor. Forms alone cannot and will not accomplish that goal.

The numbers of self-represented litigants coming into our courts has grown exponentially over the years. In addition to decreased funding of legal aid services, the proliferation of forms on the Internet and the level of comfort people have gained in using computers have created a false sense of confidence and security in the use of such forms.

A belief that “one size fits all” forms will provide a solution for the poorest of our citizens is illusory and much too simplistic. The Supreme Court’s forms initiative is **not** limited to low-income persons and in fact, the forms will be made available to every litigant who wishes to represent himself or herself. Forms will not decrease the number of self-represented persons coming before our trial courts. Few if any self-represented persons are appearing in court without forms. There are volumes of self-represented litigants because there are so many forms available. Self-represented litigants do not need more forms, especially forms which misstate Texas law—they need access to legal advice.

Irrespective of their ability to afford an attorney, self-represented litigants appear before the courts with complex social problems which differ from individual to individual, and despite their complexity, they are using forms that do not address their unique problems. It is become increasingly common for our courts to encounter spouses who have had children with one or more persons other than their spouses during marriage, and those who already have child-related orders because of the involvement of the Attorney General’s Office or the Department of Family and Protective Services. While a petitioner may qualify as indigent, that party’s spouse may have assets that could be divided, but they have no knowledge of the nature and extent of the marital estate and have no idea how to obtain information about it.

Self-represented litigants are completing forms that claim there is no property when there is. They are claiming the children born to anyone other than their husband are not children of the marriage. They are swearing under oath that their husband is not pregnant [because they have no idea what the terms *petitioner* and *respondent* mean], and they are waiving and/or failing to divide their ownership interest in cars, houses, and retirement plans. Litigants often believe that a marriage ends at separation, and they will only list property acquired prior to separation as property of the marriage. They do not consider anything acquired after separation to be part of the marital estate because they do not understand

Texas family law. They tell us they have no retirement because “they are still working”, because they do not understand that unvested benefits, or vested benefits not yet in pay status, or in some cases, the right to a potential employment benefit, such as deferred compensation, can be an asset. They have no comprehension that there may be claims that are property, such as a spouse’s claim for damages from an automobile accident, or spouse’s claim from a refinery explosion or ship channel accident. The orders for child support frequently fail to have a step down provision or a start date, so someone is going to have to tell them years down the road that they do not have an enforceable child support order. A spouse may have committed family violence, yet how is a party to know the legal effect that a pattern or history of family violence may have on whether the parents are appointed as joint managing conservators or whether a spouse should have possession of a child under a standard possession order?

In some cases, litigants are admitting to the commission of an offense or committing perjury in very significant instances, such as admitting they have never filed a tax return; acknowledging that they lied to a mortgage company about their income; admitting that they lied on bankruptcy schedules; or admitting that they have committed a criminal offense, such as injury to a child or assault. They are making judicial admissions by filing pleadings that say they have no property, no children, and no debts. We have people seeking name changes who are swearing that they are not required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure, and they have no idea what the law requires or the ramifications of their failure to follow it. Simply stated, nobody is providing them with needed legal advice about the ramifications of these confessions and judicial admissions.

Litigants without legal training are not likely to be aware that there is no confession of pleadings in family law cases. Therefore, they are usually unaware that even in a default hearing, they must prove separate property claims by clear and convincing evidence to overcome the statutory presumption that all property on hand at the time of the divorce is community property. They may be unaware that they must produce proof by a preponderance of evidence to overcome a presumption that parents should be appointed as managing conservators.

Family law involves many legal issues. It includes basic property law, probate law, bankruptcy, real estate, securities, tax and estate planning. The practice of family law is difficult enough for attorneys who possess only a passing knowledge of family law practice and procedure, yet we are expecting persons who have no legal training or understanding of the law to handle the most important of their personal affairs without access to competent legal advice.

Given the unique and often complicated issues involved in family law cases, it is not surprising that many self-represented litigants become overwhelmed to the extent that they do not carefully read the instructions for completing the forms, and come to court with forms partially completed or not completed at all. They will check boxes regarding circumstances that are inapplicable to their case while failing to check other boxes for elements that are essential to the case. The trial judges are not permitted to give these persons legal advice. We are required by law to hold them to the same standards as attorneys. Yet, we know they are not and the nature and breadth of family law is much too involved for a layperson to go it alone. They need legal advice.

By giving its stamp of approval to family law forms, the Supreme Court of Texas will be representing to the general public that:

1. A family law case is not a significant lawsuit.
2. Anyone can represent himself/herself in a family law case.
3. If you check the boxes on the form, you can protect your rights and those of your children.
4. If you check the boxes on the form, you will have an enforceable order.

Any sense of satisfaction that a self-represented litigant may feel in completing forms promulgated with the imprimatur of the Supreme Court of Texas and obtaining a divorce by using them will develop into indignation and anger when that party comes to realize the role those forms may have played in that party's loss of important personal, parental and property rights at the hands of the Supreme Court and the trial courts that allowed that party to checklist his/her way into losing them. Triumph will become tragedy.

Family law cases are not always ripe for expedition. We know that there are many judges who will accept any paperwork which may be given them by self-represented litigants just so they can efficiently and expeditiously handle the volume of self-represented litigants who are currently showing up in their courts. Yet, we also know that there are many judges like ourselves who care about the rule of law and the long-term implications of decisions made by parties in family law cases. We believe in informed decision making, and forms cannot ever be a substitute for competent legal advice. Efficiency and expedition do not always equate to fairness and access to justice.

There is a real need for a discussion about how best to provide a comprehensive remedy to access to justice by those who cannot afford an attorney. As much as each of us believes that judicial leadership is necessary to effect a solution, we believe that the State Bar of Texas is better suited as the forum tasked with such an undertaking. Therefore, we respectfully request that the Supreme Court Advisory Committee recommend that the Supreme Court of Texas abate the work of the Task Force and the adoption of family law forms and refer this matter to the State Bar of Texas.

Thank you for allowing us the opportunity to provide this information.

April 12, 2012
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Yours very truly,



Hon. Sheri Y. Dean
309th Family District Court

Hon. Don R. Emerson
320th District Court

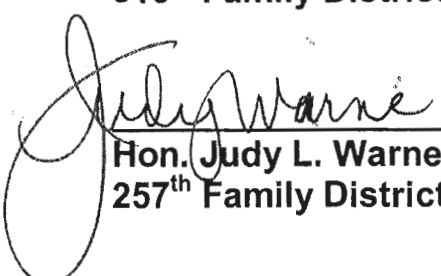
Hon. David Farr
312th Family District Court

Hon. Victor H. Negrón, Jr.
438th Civil District Court

Hon. Chris Oldner
416th District Court

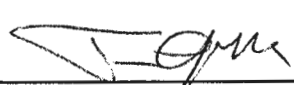
Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
318th Family District Court



Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court



Hon. Jim York
246th District Court



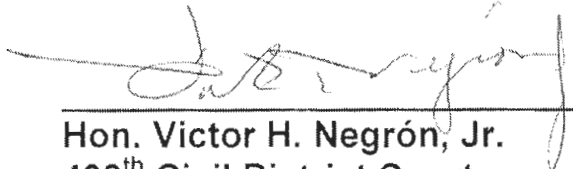
Hon. Doug Warne
Senior District Judge

Yours very truly,

Hon. Sheri Y. Dean
309th Family District Court

Hon. Don R. Emerson
320th District Court

Hon. David Farr
312th Family District Court



Hon. Victor H. Negrón, Jr.
438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
318th Family District Court

Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

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320th District Court

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438th Civil District Court



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416th District Court

Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
318th Family District Court

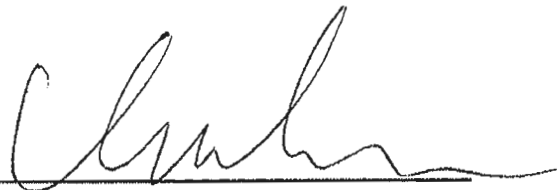
Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

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Page 6 of 6

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309th Family District Court



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320th District Court

Hon. David Farr
312th Family District Court

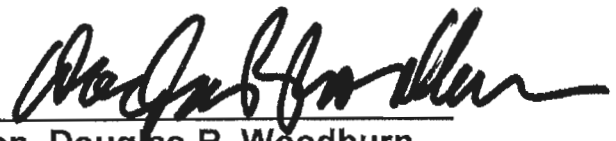
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438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
318th Family District Court

Hon. Judy L. Warne
257th Family District Court



Hon. Douglas R. Woodburn
108th District Court

Yours very truly,

Hon. Sheri Y. Dean
309th Family District Court

Hon. Don R. Emerson
320th District Court

Hon. David Farr
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438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
415th District Court

Hon. Dean Rucker
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Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

Yours very truly,

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320th District Court

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438th Civil District Court

Hon. Chris Oldner
416th District Court

Hon. Graham Quisenberry
415th District Court



Hon. Dean Rucker
318th Family District Court

Hon. Judy L. Warne
257th Family District Court

Hon. Douglas R. Woodburn
108th District Court

Alta Harker

Hon. Aleta D. Hacker
326th District Court

Age Group	Percentage of Respondents
18-29	65
30-49	75
50-69	85
70+	80

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Figure 1

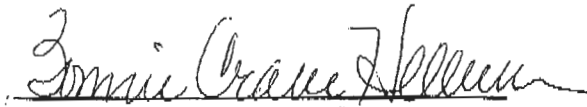
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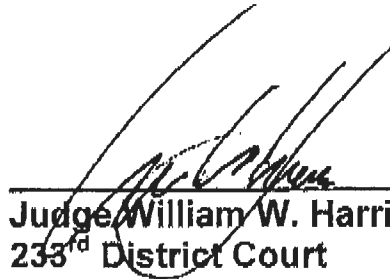
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Table 1

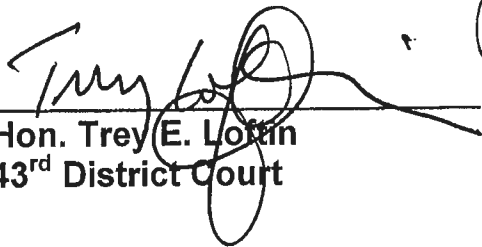
Figure 1

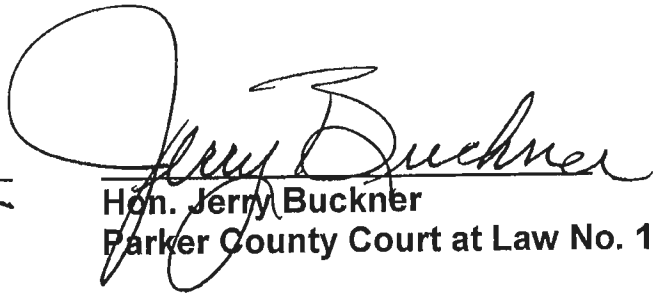


Hon. Bonnie Crane Hellums
247th Family District Court



Judge William W. Harris
233rd District Court


Hon. Trey E. Loftin
43rd District Court


Hon. Jerry Buckner
Parker County Court at Law No. 1
