



STATE BAR *of* TEXAS

SOLUTIONS 2012

**REPORT TO THE STATE BAR BOARD OF DIRECTORS
APRIL 13, 2012**

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April 2, 2012

Bob Black, President
State Bar of Texas

Dear President Black.

At your instance, SOLUTIONS 2012 has studied the efficacy of creating and mandating the use of forms to assist indigent Texans to navigate our courts and to offer alternative solutions that might better serve that constituency. It has been my pleasure to co-chair this task force with Tim Belton, a public member of the Bar Board from Bellaire, Texas.

The strength of the SOLUTIONS 2012 task force is that its members come from a variety of backgrounds. Most have spent significant time *actually* helping poor people in the courts and *actually* dealing with the challenges they face—for most of us it was not a theoretical exercise. Our number includes past and present members of the Access to Justice Commission (ATJ), a District Clerk, family lawyers, former Chair of REPTL, current and former members of the judiciary, current and former SBOT Board members, a director of a Domestic Relations Office, the Executive Director of Lone Star Legal Aid, as well as public, non-lawyer members. They are listed in the report. While there was not unanimity on every issue, the report that follows represents a consensus of that group after hours of study, debate, questioning, and robust discussion of the issues. The first section of the report outlines effective alternatives for addressing the pro se litigant issue that the task force believes are viable. The diversity of our state dictates that there can be no “one size fits all” to the problems of assisting the poor. So a variety of alternatives is presented for your consideration. It was also beyond the scope of our work to suggest the funding or the manpower for these alternatives. The second section details serious and specific concerns about the implementation and use of the proposed forms for the indigent. It was not the task of the group to consider the legal sufficiency of the forms.

Neither the ATJ nor the Office of Court Administration (OCA) could provide any statistical justification that these forms are needed other than anecdotal evidence from a handful of courts. Likewise there is anecdotal evidence that this is not a viable solution and from practitioners that these forms, with the Supreme Court imprimatur, could even be harmful.

However, the most troubling aspect arising from this study is that the promulgation of these first few forms is in fact the beginning of a larger plan to

fundamentally change the practice of law in Texas. While the ATJ was created to work on the issues of assisting the poor, it has now seemingly been co-opted by the OCA to transform the practice in many areas of the law into a forms driven practice. The CourtTex Blog, written by Carl Reynolds endorses the following concept: "Courts and administrative agencies should reform their rules and processes and provide information and assistance in order to reduce, wherever possible, the need for full-service attorneys."

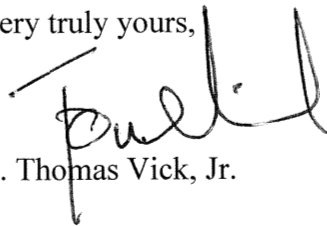
Mr. Reynolds embraces the concept of encouraging and creating a culture of self-represented litigants. He does not distinguish between low income Texans and any other litigant who wishes to represent himself in our courts. Frankly his vision is outside the scope the ATJ was created and funded to address. The forms being discussed today are the first step in this process—a process that has neither been discussed nor endorsed by the 90,000 members of the State Bar of Texas, the leadership of the Bar, or the Court. It represents the most fundamental change in the history of Texas jurisprudence.

If the practice of law in Texas is to be reduced to set of check the box forms, and our judiciary is to become a network of do-it-yourself help centers, then it seems that the lawyers of this state ought to have input in that decision.

Our most disadvantaged citizens, the people that ATJ has a mandate to serve, are entitled to competent and thoughtful representation and should not be handed a batch of forms and told to follow the instructions in the hope that justice might somehow find them.

This is not really about divorce and it is not about family lawyers. It is about taking the first steps to changing the way we practice law. I appreciate your leadership on this issue and your defense of our profession and our judicial system.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. Thomas Vick, Jr.", written over the typed name below.

G. Thomas Vick, Jr.

GTV:jc

TIMOTHY D. BELTON

March 31, 2012

The Honorable Robert Black
President
State Bar of Texas
1414 Colorado Street
Austin, Texas 78701

Dear President Black:

I have been honored to represent the public of Texas as Co-Chair of Solutions 2012. I also want to thank Chairman Beverly Godbey for appointing me to chair the Affordable Legal Services subcommittee of the State Bar of Texas Board of Directors. Serving as a public member of the Board, in addition to the Solutions 2012 task force and the Affordable Legal Services subcommittee, has been a great privilege, a sobering responsibility and truly humbling.

This opportunity to serve prepared me well to voice an informed point of view, from the perspective of a member of the public, on the legal profession's commitment, and especially the commitment of the State Bar, to serving the public's interest and extending justice to those least able to afford legal counsel. While our report speaks for itself, I want to use this opportunity to offer that perspective regarding the issues surrounding pro se litigation and the Texas Supreme Court's initiative to develop uniform forms for divorces.

What I heard during the debate over the forms was a tug of war between lawyers who stressed the importance of achieving justice in each individual's case and those who see a system so overwhelmed it must be changed to process cases administratively in the name of "efficiency." Little regard has been given to the public's concern that "efficient processing" often fails to provide justice in a number of cases that appear eligible for the proposed forms, but for which the forms turn out to be insufficient and even harmful.

Here is where I come down on that issue: Our democratic society is based on individual civil liberties and individual justice. The direction the Court is taking moves us away from individual justice to a collective justice system in which the system's need for efficiency trumps the interests of individuals whose most intimate interests may be forever damaged in the processing. Orwell would be proud. The fact that other states have gone down that road does nothing to relieve my concern because I value the emphasis our Texas heritage puts on families and individuals. Seldom if ever has Texas failed to lead, much less followed bad precedence.

TIMOTHY D. BELTON

I arrived at these concerns as a citizen and as a business person. Marriage, divorce and the role of the family in the common good of our society are of critical public policy concern and not a merely a matter of judicial efficiency. At a time when the family, the fundamental building block of our society, is under so much threat, and with divorce forms and instructions already available from the Family Law Section and numerous website and software vendors, I do not understand why the Justices of our Supreme Court take upon themselves a sense of urgency to make divorce faster and cheaper as the starting point for the program of judicial efficiency. Certainly, some other area of the law much less contentious would be a more appropriate starting point. Should these Justices feel compelled to use their authority as related to marriage and divorce, this member of the public would rather see the Court increase access to justice under the advice of counsel, not to increase cheap and efficient divorces. At what time could the need for sage counsel be greater than on the precipice of dissolving a marriage, especially when not just the emotional issues, but the legal issues, are complex? The data is clear that reconciliation is far more likely when counsel is involved.

Further, the macro data suggests that divorce cases are not clogging the courts. Texas' population increased over the last decade by roughly 20%. The Office of Court Administration told us that court capacity at the least kept pace with that growth. Divorce cases, thankfully, have increased only about 6%, so the *rate* of divorce has declined substantially while court capacity has increased faster. If demand for divorce is down relative to the population, where is the need to put the State's limited resources behind making the supply of divorces cheaper and more efficient?

I'm not happy with the number of divorces in our culture, but I submit that the public's good and the soundness of our culture would be enhanced by helping the poor access the advice of counsel, rather than a downloadable form that in most cases would take a law license to complete accurately. With counsel, couples may reconcile or they may end their marriages, but the outcomes in either event will better protect the interests of the families and individuals involved than handing them some blank forms, processing the forms like a passport application and getting them through the system with reduced concern for their most personal interests.

While limited to criminal cases, the Sixth Amendment to our US Constitution anticipates that the accused is entitled to a speedy trial "AND to have the assistance of counsel for his defense." Such counsel was considered essential to the process of criminal justice where the accused may not be able to afford counsel. I submit it is as true for disputing civil parties – they are better off with counsel, not a form. I'm NOT suggesting that the state provide disputing civil parties with counsel at the tax payers' expense, but would suggest that the Court and the State Bar of Texas invest its collective efforts to support access to justice for the poor with new solutions to provide counsel, not just another form, of which we already have plenty.

I conclude my service on the Solutions 2012 task force with a better developed understanding of why lawyers call themselves "Counselor" and not "Judicial Administrator." It is because they do

TIMOTHY D. BELTON

counsel. No form can do that. On matters where so much is at stake if an error is made, counsel should be involved. Access to the courtroom floor and access to justice are not the same things. Access to justice begins and ends with expert legal counsel.

I pray the Court will consider the solutions presented herein and cooperate with the State Bar of Texas to develop solutions to provide affordable access to justice and not sacrifice justice on the altar of judicial efficiency.

Thanks again for the opportunity to serve Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy D. Belton", with a long horizontal line extending to the right.

Timothy D. Belton
Co-Chair, Solutions 2012
President and CEO
TDECU Holdings, LLC



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Edinburg
(Former SBOT Board Member; Texas Access to Justice Commission Commissioner; Chair, Texas Center for the Judiciary)

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SOLUTIONS 2012 TASK FORCE

Memorandum

TO: State Bar Board of Directors

FROM: SOLUTIONS 2012
Tom Vick-Co-Chair, Tim Belton-Co-Chair, Pablo Almaguer, Hon. Georgina Benavides, Roy Brantley, Theresa Chang, Thelma Clardy, Janna Clarke, Ouisa Davis, Becky Baskin Ferguson, Jerry Frank Jones, Natalie Cobb Koehler, Kyle Lewis, Marilea Lewis, Hon. Donna Kay McKinney, JoAl Cannon Sheridan, Ike Vanden Eykel

DATE: April 13, 2012

SOLUTIONS 2012 is a task force appointed by State Bar President Bob Black in response to an invitation by Chief Justice Wallace Jefferson to the State Bar to look at access to justice for all Texans and ensure that all methods of improving access are considered, including possible Supreme Court-endorsed forms for indigent pro se litigants. SOLUTIONS 2012 is only one of the groups looking at issues of import to the Court as it seeks to improve indigent access to our Courts and allow trial courts to more efficiently and effectively rule on matters brought before them by pro se litigants.

The Task Force members would like to express their gratitude to State Bar President Bob Black for his confidence in them and humbly offer this report to the State Bar Board of Directors, the Supreme Court Rules Advisory Committee, and ultimately the Supreme Court of Texas. The highest priority of SOLUTIONS 2012, in all its considerations, has been ensuring that our judicial system works equally for all citizens regardless of ability to pay, coupled with ensuring that our court system be effective and efficient for all those who are part of the system, as well as all those who look to that system for resolution of personal and societal disputes.

Any discussion regarding challenges facing the judicial system and potential changes to processes that ensure all citizens have access to that system deserves full and open consideration by all those involved in the system – judges, lawyers, court personnel, legal aid and pro bono programs, local bar associations, and the citizens that use our courts. SOLUTIONS 2012 is pleased that the process of open and frank discussions has begun as attempts are made to identify the core challenges facing court efficiency balanced with open access to our courts. SOLUTIONS 2012 began the process of identifying who pro se litigants are, which courts are facing backlogs, and whether it is possible to identify whether pro se litigants are primarily indigent or have resources but choose self-representation.

SOLUTIONS 2012 recognizes the importance of Courts ensuring access to justice is a reality balanced with ensuring that Courts operate effectively and efficiently. SOLUTIONS 2012 suggests that any systemic changes to our system of laws should be made with the utmost care to ensure that ability to pay does not differentiate the level of justice a citizen can expect. Working together it is clear that Texans can identify core challenges and solutions to those issues.

SOLUTIONS 2012 was tasked with exploring any and all methods that might ensure that indigent Texans have access to legal assistance. While some of the concerns and some of the challenges expand beyond the indigent community, SOLUTIONS 2012 worked to remain within the confines of its charge.

There are numerous challenges to ensuring that every person appearing in court has access to a lawyer. All those who have been involved in these discussions agree having a lawyer is highly preferable to using a form. The priority is to find creative ways to meet that challenge in a large state where there is often great disparity between where the large populations of indigent are located and where the largest number of lawyers practice. In addition to geographic differences, other challenges include the lack of lawyers who practice in particular areas of law most faced by indigent litigants; and the increasing number of indigent litigants who do not seek assistance from a lawyer.

In addition, SOLUTIONS 2012 was asked to consider the advisability of forms promulgated by the Supreme Court of Texas without regard to any particular forms that might be in existence or under consideration. That task is complicated because there are numerous forms already in existence and used in courts throughout Texas. Discussion regarding forms included the potential for creating a two-tiered system of justice based on ability to pay; the danger of coercion in the use of forms; and that many forms might be used in partnership with some of the potential solutions that are offered. For instance, pro se clinics and community justice programs provide lawyers to assist pro se litigants in ensuring that their documents are correct, that they understand the process, and that questions regarding property and custody are better understood by a litigant. These partnerships between legal aid lawyers, pro bono lawyers, Courts, and pro se litigants are viable solutions and are working well in some areas of the state.

SOLUTIONS 2012 held its initial meeting February 10, 2012, and heard reports from Trish McAllister, executive director of the Texas Access to Justice Commission; Carl Reynolds, executive director of the Office of Court Administration; and Steve Bresnen, lawyer and lobbyist for the Texas Family Law Foundation. SOLUTIONS 2012 then spent four hours exploring and discussing the background of forms as well as the current issue that led up to the appointment of SOLUTIONS 2012. Two workgroups came out of the first meeting to ensure that a full discussion of the charge to SOLUTIONS 2012 could be completed according to a very short timeline. Both workgroups met three times and then returned to a meeting of the entire group. After studying the reports for each workgroup, the following information was approved for presentation to the State Bar of Texas Board of Directors.

SOLUTIONS 2012 divided into two workgroups with broad topic areas to consider:

Indigent Pro Se Litigants — To look at the issue of poor citizens seeking access to a judicial system that many believe is underfunded at the same time that programs that provide free lawyers are also facing severe budget cuts.

Indigent Pro Se Forms — To look at the development of standardized forms for use by indigent pro se litigants and issues surrounding that proposal.

SOLUTIONS 2012 did not explore the financial or implementation challenges that might be associated with any of its potential solutions, recognizing that even those challenges will vary across the state. Additionally, there are geographic considerations that may make each of these proposals more workable in some areas of the state than others. All of these issues should be examined carefully to determine which ones are feasible with existing resources and which ones may require additional funding sources. It is clear that with a state as varied as Texas, resolving challenges that face the judicial system will require cooperation by courts, legal aid and pro bono programs, bar associations, State Bar sections and committees, and individual lawyers. As with all programs, one size generally does not fit all and creating awareness of issues facing Courts with potential solutions allows those most involved to identify solutions most likely to work within their context.

Indigent Pro Se Litigants (See Appendix 1)

An extensive menu of potential solutions was compiled that might be used to ensure indigent Texans receive the legal assistance needed for adequate representation in our court system as well as to assist indigent pro se litigants. The possible solutions: A) incentivize volunteers; B) expand current programs or projects; or C) are based on ideas that are different from current programs or projects. The chart is further broken down into statewide and regional solutions.

Some of the proposed solutions already exist in some form in Texas. For example, online chat or video programs take advantage of technology to connect resource heavy areas with areas that have less access, rural areas with urban areas, and clients with attorneys. Some of these programs could be easily replicated or expanded throughout the state depending on the needs of an area. Community Justice Projects could easily be replicated throughout the state as could partnering self-help centers with volunteer attorney groups.

Some of the proposed solutions are already in use by law firms, especially larger firms, and could easily be expanded. For instance, there are firms that dedicate one or two associates to a legal services organization which helps indigent Texans receive representation, helps underfunded and understaffed legal services agencies provide lawyers, and provides lawyers who might not otherwise get courtroom experience a vast array of experience. Other ideas that have worked for private firms include lend-a-lawyer programs and adopt a legal aid office programs. There are numerous creative ways to partner firms and legal services organizations where education and outreach to firms can be extremely effective.

There are proposed solutions that involve the Supreme Court of Texas, as well as the entire judiciary. There is a concern that the Unauthorized Practice of Law Committee efforts ought to be strengthened and that the public be better educated about those who are not lawyers but prey on those in need of legal assistance. Also, expanding the judicial education component might have merit. Judges have been discussing the issue of pro se indigent litigants for many years and continue to look for ways to ensure that courts effectively manage the judicial process, especially as they work through ethical considerations. Many judges are aware of a national movement to relax the rules of evidence to assist pro se litigants but that movement is not popular with the judiciary because it moves the judge into the role of an advocate.

When putting together a comprehensive list of proposed solutions, mandatory pro bono or mandatory pro bono reporting must be included. This proposed solution produces strong negative reactions by most Texas lawyers, is opposed by bar leadership of the State Bar of Texas, and is not a feasible consideration at this point.

Indigent Pro Se Forms (See Appendix 2)

SOLUTIONS 2012 was not tasked with reviewing particular forms that are in existence or those under development. Instead, SOLUTIONS 2012 looked at the policy issue of whether forms are a viable solution in assisting indigent pro se litigants with access to our Courts, including considerations in the development, implementation, and updating of such forms. While there are numerous forms in existence, and the reality is that once forms are available there is little hope of controlling who might access and use the form, this subcommittee sought to remain true to its charge of considering forms used by indigent pro se litigants.

SOLUTIONS 2012 believes that before solutions regarding forms can be proposed, questions must be asked and answered before moving forward. SOLUTIONS 2012 hopes that by posing these questions it assists the work of the Supreme Court Rules Advisory Committee and possibly begins the process of developing parameters and questions for any potential solution or draft form created to assist indigent pro se litigants.

Issues of importance include whether forms (without the assistance of counsel) can actually be created; whether the public and our system of justice well-served through the development of forms; whether there are costs of production and updating of forms that might require a fiscal commitment; whether there is a way to ensure that only those who qualify or meet the criteria use potential Supreme Court of Texas-sanctioned forms; whether there is a real need for these forms in the face of no statistics that differentiate between indigent and other pro se litigants; and whether forms might create a two-tiered justice system. All of these questions are important in looking at any form as well as any program that might impact how our justice system works as well as public's confidence in that system.

For example, the State Bar Family Law Section publishes the Family Law Practice Manual every biennium, which includes standard forms for family law cases such as divorces. A committee (appointed by the section) made up of 12-15 people meets to update the Family Law Practice manual based on case law, rules, and legislative changes. The committee meets approximately five to six times each publication cycle to update the manual. This equates to about 460 hours of meeting time for all the committee members that attended. This time estimate only includes meeting hours and does not include the hours spent by committee members outside of meetings. Additionally, State Bar staff worked 3,439 hours on implementing the language developed by the committee for the practice manual.

It is clear that self-represented litigants come from all spectrums of society and are not just indigent people. If a form is created for indigent self represented litigants, who will screen for eligibility? The District Clerks do not want to get involved in the screening, and there already is a movement to generally contest every pauper's oath. A solution to this problem might be to come up with a letter or checklist of things an indigent self-represented litigant could show if unable to pay. If the purpose of creating forms is to help indigent pro se litigants, there must be a method to limit usage to those who meet that threshold. There is a concern that judges will be required to accept the forms even if the people who use them are ineligible or the forms are

incorrect. Another concern is that these forms will put victims in the position of being re-victimized. Discussions included the need to be able to alter the “mandating order” to make sure judges can ensure a decree is complete before signing off on or accepting it.

Conclusion

SOLUTIONS 2012 presents this report and its considerations in hopes that the Court and Rules Advisory Committee have another resource to meet the challenges faced in ensuring access to the justice system and assisting with court efficiency.

SOLUTIONS 2012 reviewed materials on the Office of Court Administration website, including Carl Reynolds’ blog posts; the Court Order creating the Texas Access to Justice Commission and the Self Represented Litigants Task Force; materials from the Family Law Foundation; and data from the Office of Court Administration and National Center for State Courts. It discussed statistics, philosophy, and the potential evolution of the legal system toward an administrative system. There are numerous statistics and reports regarding the development and usage of forms in courts throughout the country. Some of the documents indicate that forms provide relief to those using them and to court efficiency. In Texas, forms are used by pro se litigants and there are some courts that have already by necessity begun the process of standardizing what is used in their courtrooms. The Family Law Section Forms Manual is available in law libraries throughout the state as are other sets of forms.

SOLUTIONS 2012 has had a very short time to look at the issue, consider some of the alternatives, and offer some “cautionary concerns” as well as potential answers to those concerns in meeting the very real challenges of access to justice by indigent Texans and effective court processes. SOLUTIONS 2012 hopes that future discussions and new ideas continue to be frank and open and that the collective wisdom of all those involved ultimately ensures that our justice system remains strong. This report is its best effort to produce proposals to ensure that our legal system is effective and open to all those in need and to assist the Court and the Bar in the effective administration of justice.

Appendix 1

**Indigent Pro Se Litigant
Workgroup Report
Received and Approved by SOLUTIONS 2012, March 9, 2012**

The possible solutions identified below by the Indigent Pro Se Litigant Subcommittee are solutions that either A) Incentivize volunteers; B) expand current programs or projects; or C) are based on ideas that are different from current programs or projects. No fiscal note or feasibility study has been done regarding any of these programs but are offered as options that might be acceptable or built upon throughout the state to address issues of particular courts.

Premise: These solutions are to address the needs of people who are indigent under TAJF/LSC standards. They are not listed in any particular order.

STATEWIDE Potential Solutions

Possible Solutions	Description	Comments
A) Offer CLE based incentives	Provide free or reduced price incentives to attorneys that handle pro bono cases. Use of TXBAR scholarships to provide to lawyers for CLE's.	Is there a way to incentivize non Texas Bar CLE organizations to participate as well? What is the impact on the TXBAR CLE bottom line?
C) Pro-Bono Smart Phone Application	Use an app to help connect lawyers with indigent citizens in need of representation.	An attorney in Arkansas has developed the first interactive pro bono mobile app to create "iProBono" available to Arkansas pro bono attorneys free of charge through iTunes. Would need technical assistance to build the application. The state of Illinois is also using such an app.
C) Pro Bono Matching Website	Use a website to post pro bono cases to be handled by volunteer attorneys.	Some case matching websites currently exist (such as Legal Match) where the public can post their case and a lawyer will respond to it if they want to handle the case. Consider developing such websites for pro bono cases.

<p>C) Online Chat/Video Programs</p>	<p>Use online chat or video programs through websites to provide one to one assistance to individuals in need of assistance.</p>	<p>Encourage legal aid, volunteer groups and local bars to develop an online chat feature on websites. Use remote access terminals in rural counties with video conferencing and online chat capabilities.</p>
<p>B) Expand clinics throughout the state</p>	<p>Set up clinics (or develop a model clinic for bars to use) where volunteer attorneys provide assistance directly to low income persons in specified cases. Example: Community Justice Programs.</p>	<p>The Dallas Volunteer Attorneys Program (DVAP and Legal Aid of NW Texas) sponsors four Assisted Divorce Clinics per month. They use volunteer attorneys to help low-income clients with uncontested family law cases. Staff and volunteers help low-income clients prepare their uncontested family law cases. Malpractice insurance for volunteers is provided by Legal Aid of Northwest Texas. Give bar leaders a project like this with training at the Local Bar Leaders Conference.</p>
<p>A) Reduce liability for attorneys who handle decrees</p>	<p>Offer or reduce liability for attorneys who handle decrees for uncontested cases.</p>	<p>Might require legislative or other disciplinary rule amendments or petitioners can be screened by a local legal services provider. Provided by SBOT liability coverage?</p>
<p>A) Extend liability coverage to attorneys who handle pro bono cases</p>	<p>For attorneys that handle pro bono cases through a legal aid service, they would be covered under the liability insurance coverage provided through the SBOT.</p>	<p>Provided by SBOT liability coverage.</p>
<p>C) Use technology to provide CLE training</p>	<p>Utilize resources such as webinars, phone seminars, or tools such as Skype, to provide free CLE training to attorneys on how to handle pro bono cases.</p>	<p>No commentary.</p>
<p>C) Judicial Education Component</p>	<p>Develop rule to say that it is not a violation to help an indigent pro-se litigant through the court system. Have judges/court clerks hand-out a one page information sheet about the court process to those individuals who are indigent and</p>	<p>Providing information vs. providing legal advice, including their staff. Coordination between Supreme Court, State Bar, and Texas Center for the Judiciary (TCJ). The TCJ receives grants from the Court of Criminal Appeals.</p>

	who are not represented by a lawyer.	
B) Pre-Paid Legal Insurance Programs	Explore the use of Pre-Paid insurance programs to determine options in assisting indigent citizens. Encourage the public to use Pre-Paid Legal programs for reduced cost legal services.	There are currently Pre-Paid legal insurance programs in the state.

Regional Potential Solutions

A) Offer incentives to attorneys who provide training (such as clinics) to other attorneys on how to handle pro-bono cases	Identify incentives for attorneys who provide training to other attorneys on how to handle pro bono cases. Such incentives include CLE credit, free or reduced price CLE's, reduced price section memberships, etc.	Conduct annual seminars to recruit and train lawyers to take family law cases through Volunteer Legal services. May not benefit small firms or solo practitioner, or in rural areas.
C) Education of indigent pro se litigants	Require indigent pro se litigants to attend mandatory training (such as a clinic) on how to file pro se.	It will be difficult to enforce the mandatory requirement of attending training sessions in order to proceed with a case. In Colorado, legal clinics are staffed by legal aid providers. Development of resources to assist pro se litigants; not necessarily as a prerequisite to self-representation. Remove the mandatory requirement and look for resources to offer.
A) or B) Encourage local bar associations to create lawyer referral services	Educate local bar's on the benefits of implementing a certified referral service.	Currently, the State Bar, and most of the local bar referral services throughout the state require members to have Professional Liability Insurance as a condition of membership. Largely this is done because the American Bar Association requires it as a condition of its certification. Additionally, referral services generate revenue, and do not refer indigent callers to private attorneys. Rather referral services refer such callers to legal aid providers and resources. For example, in 2011, the State Bar of Texas Lawyer Referral Service referred 26% of its calls to legal aid

		resources (including legal aid services, other community services, agencies, websites, etc.) Two referral services in the state offer modest means panels that provide services to individuals above the poverty line, but that have limited means (as defined by the referral service). May need to inquire with the ABA about dropping the requirement (for ABA Certification) that lawyer referral services must require professional liability insurance from its members.
B) Establish More Domestic Relations Offices (DRO) Using Public/Private Partnerships	Using existing DROs as a model, find ways to use public and private partnerships to create additional DROs throughout the state.	Need technical assistance in establishing a DRO in other communities.
B) Use of Self Help Centers	Establish self help centers available to indigent pro se litigants throughout the state. Such help can be kiosks, volunteer/staff attorneys, reference materials, etc. Ideally a lawyer is available to assist in the self help center.	Currently, there are self help centers in Angelina County, Bexar County, Collin County Law Library, Fort Bend County, Grayson County, Harris County Courthouse, Hidalgo County, Lubbock County, Montgomery County, Nacogdoches County, Smith County, Tarrant County, Travis County, and the Lutheran Ministries and Social Services of Waco. Bringing together stakeholders is critical.
C) Local Volunteer Attorney Group	Create volunteer board/group to be contacted by listserv or monthly email alerting lawyers/local bar associations to needs in their communities.	Waco has a monthly volunteer attorney gathering where bar associations get together at churches with printers, etc., lawyers do the screening and pass on to the next table where someone prepares forms; perhaps local bar assns. Should form local ATJ committees to explore these types of activities. SBOT can provide technical assistance.
B) Mentoring Programs for Attorneys	Offer CLE credit for attorneys to serve as mentors.	State Bar of Texas Pro Bono Mentor Program offers five hours of CLE credit for taking a case referred by a pro bono program or legal aid program. The Dallas Volunteer Attorneys Program (DVAP) and other volunteer attorney programs offer mentoring for pro bono attorneys. Houston Volunteer Lawyers Mentoring program provides mentoring to an attorney who handles an HVLP case. HVLP mentors are available to answer any procedural or substantive law questions that may arise in pro bono cases.
B) Legal Hotline	Develop a model legal hotline for	Similar to the Legal Line hotline run by bar associations

	local bars to use to provide assistance to indigents in need of legal assistance.	throughout the state.
B) Lend a Lawyer Program	Encourage law firms to place lawyers in fellowships with Legal Services or other pro bono programs for several months or for particular projects/cases.	Many law firms work with legal aid organizations to work on pro bono cases. Law firms are a great resource for offering volunteer attorneys to serve poor citizens. An organized effort to pair law firm volunteers with legal aid organizations will better help to maximize available resources.
B) Adopt a Legal Aid Office	Urban lawyers and law firms to “adopt” legal aid offices to handle cases in rural areas and metropolitan areas.	Rural areas could benefit with additional assistance from attorneys in metropolitan areas. Using technology (as described in this document) can help provide assistance to poor citizens in rural areas.
B) Lawyer for the Day (on site at courts)	Using limited scope representation, lawyers volunteer to perform a discreet task for a low income client with the representation limited to one day.	Examples of cases handled could include negotiating resolution of an eviction, preparing a parenting plan, or negotiating settlement of a consumer debt.
B) Mobile Self-Help Center	Lawyers from the self-help centers at the courthouse join volunteer attorneys from the local bar to staff the mobile center on visits to communities within the county.	Mobile Self-Help Legal Access Center (Ventura County, Calif. Superior Court) was designed to reach those in outlying communities in the county who are unable to utilize the self-help centers located at the courthouse. It is equipped with computers, video stations and shelves stocked with books, pamphlets and self-help instruction manuals and packets. The center focuses its services on low and moderate income individuals, particularly the elderly, disabled, victims of domestic violence, those with language barriers and those who lack transportation. Individuals who visit the center are frequently encouraged to seek private counsel whenever possible. Referrals are made to the Lawyer Referral Service of the Ventura Bar Association and to low cost or subsidized legal services. The program also maintains a list of lawyers willing to provide legal services on a task-by-task basis.

B) Strengthen UPL Efforts	Protect the public, especially the indigent, from those who offer legal assistance but are not lawyers.	Work with UPL Committee.
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Other Solutions

C) Statewide Mandatory Pro Bono or Mandatory Reporting	Require all attorneys to handle a specified amount of pro bono legal services to indigent clients every year or pay a fee to legal services. Or consider a mandatory reporting requirement of pro bono hours. The leadership of the State Bar of Texas is opposed to mandatory pro bono and mandatory pro bono reporting.	<p>A local mandate in El Paso requires attorneys to handle two pro bono cases every year. This system has been successful in helping provide legal services to the poor. However, there is no official enforcement mechanism to ensure attorneys follow the mandate.</p> <p>Currently only New Jersey has implemented mandatory pro bono but counter points will have to be heard on the issue. Some of the subcommittee members expressed an adamant opposition to this option but others felt that inclusion of the topic was necessary.</p>
C) Pro Bono Requirements for Board Certified Attorneys	Require attorneys who want to become board certified (or recertified) to handle pro bono cases every year.	Would require rule changes to the Texas Board of Legal Specialization standards for certification. How do we define “pro bono” – is it a case referred by a LSC agency? What do we do about non-LSC covered areas? Rural areas? Allow for some kind of credit for having taken a complex pro bono case for certification or recertification? Would non-family board certified attorneys want to do it or would it just involve family board certification?
C) Newly Licensed Attorneys to Handle Pro Bono Cases	Require newly licensed attorneys to handle two pro bono cases as a condition of their licensure.	Make sure they get mentoring. Consider quality of service and whether oversight is necessary.

Appendix 2

**Indigent Pro Se Forms
Workgroup Report
Received and Approved by SOLUTIONS 2012, March 9, 2012**

INTRODUCTION: *SOLUTIONS 2012 looked at the use of standard forms from a broader policy perspective, and identified what it came to call “cautionary concerns” pertaining to a statewide implementation system. A number of questions are included below in order to raise awareness of these issues. It is hoped that by posing these questions, the work of the Supreme Court Rules Advisory Committee can move forward more expeditiously. Because the group did not review or consider actual draft forms, the following considerations may be helpful in evaluating any proposed solutions including potential forms for indigent pro se litigants. Part VII considers some policy questions that have been raised through this process and while not directly related to forms should be considered in conjunction with other cautionary concerns.*

I. Which Forms?

The subcommittee has spent much of its time discussing forms in general and the concern of the forms being developed for certain conditions (indigent, no children, no property) being used outside of that context. While there are no real statistics that we can find regarding the number of litigants that fit these narrow parameters, there are stories of people indicating that they have no children or property when in actuality they have one or both. The subcommittee is fearful that the expansion of forms created for simple situations, with the Supreme Court’s certification, will hurt those who come to our courts for relief more than help them.

II. Keeping the Forms Current

If forms are to be utilized in Texas courts, it is important that they be updated to reflect current law. In considering this issue, the following questions must be addressed.

- Who will update the forms?
- When will the forms be updated? For instance, will the forms be updated at a recurring, specific time (Ex: annually, bi-annually), and if so, will they be dated to indicate when the last update occurred?
- Who will provide the monetary resources necessary to continue updating these forms? Possible cost incurrers include the Office of Court Administration, the Supreme Court of Texas, the State Bar of Texas, particular sections of the State Bar of Texas, and the Legal Aid Community.
- **NOTE:** The State Bar Family Law Section publishes the Family Law Practice Manual every biennium, which includes standard forms for family law cases such as divorces.
 - A committee (appointed by the section) made up of 12-15 people meets to update the Family Law Practice manual based on case law, rules and legislative changes. The committee meets approximately five to six times each publication cycle to update the manual. This equates to about 460 hours of meeting time for all the committee members that attend. This time estimate only includes meeting hours and does not include the hours spent by committee members outside of meetings. Additionally, State Bar staff worked 3,439 hours on implementing the language developed by the committee for the practice manual.

III. *Form Eligibility*

Self represented litigants are individuals from all spectrums of society. In other words, the pool of self represented litigants is not solely comprised of indigent Texans. Therefore, the following questions must be answered.

- Who is eligible to use the forms?
- If form usage is permitted only by indigent litigants, what is the definition of indigent? How is this definition determined and by whom?
- How are potential SRLs screened to determine eligibility and who will perform the screenings?
- How is eligibility determined? (Ex: checklist, at point of distribution, questionnaire)
- Would potential litigants be required to confirm they are eligible to use forms?
- Would there be something on the form that says “Judge will accept if certain conditions are met and there is verification of indigency?”
- What happens if the forms are used by someone determined to be ineligible?
- If it is determined that the forms were used by someone who is ineligible, will there be some type of recourse? If so, will it be the same recourse as other litigants? Would litigants need to sign an affidavit?

IV. *Form Usage*

There are already numerous forms being used across Texas by SRLs. Is there an overriding need for a form with the Supreme Court’s imprimatur for indigent pro se litigants? Some considerations:

- What will be the cost to ensure correct form usage?
- How will it be ensured that the forms are completed correctly?
- Who will ensure that the forms are completed correctly?
 - District Clerks:
 - Most District Clerks are not lawyers and can not be involved with this issue for multiple reasons, including time constraints, Unauthorized Practice of Law (UPL), etc.
 - They would not be immune from lawsuits.
 - If they are charged with helping to complete the forms, would they need insurance coverage to cover them if a lawsuit were to arise and if so, who will pay for it?
 - Law Clerks:
 - Whose law clerks?
 - Would these individuals be lawyers?
 - If law clerks are charged with helping to complete the forms, who will pay for insurance coverage to cover them if a lawsuit were to arise?
 - Court Staff:
 - Most court staff are non-lawyer personnel and by helping individuals complete the forms, they might be entering into potential UPL territory.
 - Who will pay for insurance coverage to cover court staff if a lawsuit were to arise?
 - Lawyers:
 - Would this be the responsibility of legal aid lawyers, pro bono lawyers, briefing attorneys, or others?

- How will pro bono lawyers and clinic groups confirm that the forms are being used by the target population?
 - Would briefing attorneys have judicial immunity if they assist with completing the forms?
 - Who will pay for insurance coverage to cover these lawyers if a lawsuit were to arise?
 - Domestic Relations Office (DRO):
 - Would this be the responsibility of DRO or similar program?
 - Good resource for non-indigent litigants.
 - Could offer educational seminars.
 - Judges:
 - What will be their duty and how will it be implemented?
 - Will they be asked to help with forms? Does that interfere with their judicial duties?
 - Will judges have to discern if forms are completed correctly and contain all required information? Furthermore, if a form is incorrect, is it the judge's responsibility to make corrections?
 - Should the entity that released the form be responsible for making corrections?
 - Will rules promulgated violate the court's discretion to sign a form that may be incorrect or may not resolve all issues?
 - If the form is not completed correctly, doesn't this create a bigger problem for our courts?
- What happens if a form is filled out incorrectly?
- What type of resources will be available for making corrections?
- Whose responsibility will it be to make corrections?
- Concerns of potential UPL issues. Do these forms encourage unauthorized practice of law?
- Does using a pro se form change the current judicial framework in that pro se litigants are held to the same standards as attorneys?
- How could groups be encouraged to complete the form (Ex: local bars)?
- Could local bar groups or pro bono clinics be authorized to utilize and disperse the forms?
 - If so, what kind of protection would be available to them?
 - Should forms include some type of defining marker/stamp to show that they are court approved for the indigent to use?
 - Would training be provided for clinics, and if so, by whom?
 - Would funding be available to support legal aid clinics that distribute forms?
 - Would some type of waiver of liability be needed for pro bono attorneys?
 - Would liability insurance coverage be necessary?
- What happens if a Supreme Court form is involved in an appeal that makes it to Supreme Court?
 - Who would hear the case?
 - The waiver issue would need to be addressed.

V. *Other Resources for Distribution of Forms*

In determining how forms are to be used, it is important that all potential resources for the distribution of these forms be identified. The following information lists possible form distributors and identifies questions concerning each type.

- Law School Clinics

- Would there be lawyer supervision?
- Would there be a financial eligibility evaluation?
- Websites
 - Would litigants be able to live chat with an attorney?
 - Would litigants need to meet indigent status requirements?
 - Would litigants be screened for financial and substantive eligibility?
 - Where will the monetary resources come from to support a website?
 - Who will maintain the website?
- Law Libraries
 - Would this lead to a potential UPL issue?
 - Most counties don't have librarians, so what type of resources would be able to them?
- Self Service Kiosks
 - Would they be required to meet the same type of criteria/protections as websites that have a live chat attorney?
- Pro Se Clinics
 - Would these pro se pro bono clinics be approved by the State Bar of Texas?
 - Would it be possible to create a kit/clinic in a box?
 - What kinds of requirements would be implemented?
 - How would clinics ensure that forms are used for those who qualify as indigent?
 - What if one person qualifies and the other does not? (Ex: husband qualifies, wife does not)
- Legal Aid Offices
 - Will legal aid offices be able to provide these services?
 - Will funding be increased to cover the additional services?
 - If additional funding is needed, where will it come from?
- Local Bar Programs
 - How will the judge know that they met required criteria as indigent? (Ex: stamp)
 - How will they be approved?
- Attorney General Child Support Division
 - Is this something they should do?

VI. *Research*

The rationale for the utilization of approved forms in Texas courts should be supported by sound research and evidence. Unfortunately, it appears that no national data is currently available on this issue. Furthermore, the available data does not distinguish between all SRLs and indigent SRLs and appears to be more anecdotal than substantive, in that the number of indigent people who have been denied services is not clearly indicated.

- While complete data does not appear to be available, we were able to obtain the following pro bono data from El Paso to serve as a snapshot.
 - Cases referred in 2010 – 204.
 - Cases referred in 2011 – 275.
 - Attorneys participating in mandatory pro bono program – Approximately 400.
- Accurate pro se data is not readily available. Some counties have revealed that the number of pro se litigants reflected in Office of Court Administration (OCA) data does not reflect what they have seen in their county.

- Additionally, data is not available to distinguish between pro se indigent and self represented litigants.

VII. *Authority*

SOLUTIONS 2012 members determined that the following issues kept arising and should be included as part of the report.

- Efficacy of creating form outside the parameters of TAJC.
 - What is the response to those who claim the Texas Access to Justice Commission appears to have gone outside the boundaries of the order? For example, the Texas Supreme Court’s Misc. Docket No. 01-9065 at paragraph 3(1) sets forth the purpose of the Texas Access to Justice Commission (TAJC):
 - The Texas Access to Justice Commission is created to develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents.
 - It might also be argued that the TAJC exceeded its authority in establishing the Self Represented Litigants Committee (SRLC) in 2010.
 - Still further, it appears that the OCA is determined to use the TAJC and the SRLC resources to buttress support for its Texas Court Help website. This is revealed by a document – Organization Capacity of Key Partners: Qualifications of Key Project Staff. At paragraph (3) this document defines (TAJC) Self Represented Litigants Committee (SRLC) and at page three, it declares:

“Later, in 2010, the TAJC established the SRLC to coordinate implementation of strategies to expand and enhance self-represented litigation access to the Court system. TAJC will produce the companion videos to the step by step guides on Texas Court Help.” Via TAJC’s state-of-the-art production studio, the Commission will provide resources for pre-production through post-production, as well as encoding and duplication in the preparation for uploading to the Texas Court Help website and additional platforms. Both the Commission and the SRLC will promote the website and ultimately evaluate the success of the project.

Question: Who will be in charge of the Texas Court Help website?

Answer: This very document provides the answer.

“OCA will house Texas Court Help; hire and supervise programming and usability contractors; provide translation services; write how-to-guides and scripts for the website; and facilitate promotion of the website through their contacts with the Court system.

(Paragraph (2) Office of Court Administration) page 2 of 4.)

Question: Why is this Self Represented Litigant Committee also not limited to assist the poor as required by Misc. Docket No. 01-9065?

Answer: It seems to violate Misc. Docket No. 01-9065.

Question: How far reaching are these initial forms and strategies?

Answer: March 26, 2009, Texas Access to Justice Commission charged the Special Projects Committee to include various proposals. Proposal four was to request the Supreme Court of Texas to direct the Commission and the Office of Court Administration to develop standardized forms. A bullet point under this proposal four reveals the far reaching strategy -

“Forms and instructions should be developed with priority to the following areas: family law, landlord-tenant disputes, consumer complaints, small-claims court disputes, expungements, guardianship, simple wills, restraining orders, pleadings necessary to defending against such as answers, discovery requests and trial preparation, occupational driver’s licenses, and small estate probate matters.” (Texas Self Represented Litigants Work Group, March 26, 2009, page 4)



IKARD GOLDEN JONES PC

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March 30, 2012

Tom Vick—Co-Chair
Tim Belton—Co-Chair
Re: Solutions 2012

Gentlemen:

I have reviewed the Committee Memorandum. With the greatest of respect, I see the forms issue differently.

1. **The Sky is not Falling.** These forms will be a benefit to Texas law. There good should far outweigh any harm. These forms are not the beginning of a fundamental change in the practice of law.

About the time I graduated from law school the first free standing legal aid office was opened in Austin . There was a very strong reaction by many local lawyers; they believed legal aid was going to ruin their practices and completely change the practice of law. No such thing happened. A few years later Travis County Legal Aid expanded to the surrounding counties. The lawyers in the those counties likewise had a strong reaction and dire predictions. Again, nothing dramatic happened.

2. **Court Access by the Indigent.** The Texas Supreme Court has concluded that there are many indigent Texans who do not have access to our courts. They have concluded that forms for simple divorces is the most feasible answer available. Without the infusion of substantial funds or man power commitments, they are right.
3. **Helping the Trial Judges.** A key to providing better access to the courts means making it easier for trial judges to deal with pro se litigants and the forms they bring to them. If each pro se brings the same forms, a judge can more readily determine if it is in proper order and thus more effectively and efficiently dispense justice.

- 4. Impact on Law Practices: Use by the Non Indigent Pro Se.** Committee members expressed concern that people who could afford a lawyer will use these forms to their own detriment. That seems a very reasonable prediction. But that problem exists today. There are already numerous forms available and layman are using those commercial forms and the existing Texas Family Law Manual. Forms coming from the Texas Supreme Court will not acerbate this problem. But as said above, one set of uniform forms for the trial judge to review may allow her to better caution these foolish people. In the end, the Valvoline rule will decide.
- 5. The Problems with Forms.**
- a. **General Rule.** Clearly forms are not as good as lawyers.
 - b. **Filling Them Out.** There are always problems with people filling out forms correctly.
 - c. **Forms Are Better Than Nothing.** One committee member said, with forms we are moving to an environment where the indigent have forms and everyone else has lawyers. But now we have a situation where indigents have nothing (or a hodgepodge of commercial forms).
 - d. **Form Abuse.** Committee members expressed concern that a husband (it could easily be a wife) would, with forms in hand, demand that his wife sign these Texas Supreme Court endorsed forms. No doubt that will occur. However, those same husbands are now using documents prepared by lawyers (or by a computer program) to make those same improper demands. As another committee member said, "People abuse people, not forms."

An example of a possible solution: require over the signature lines a statement such as "**YOU DO NOT HAVE TO SIGN THIS FORM. YOU ARE ENTITLED TO APPEAR IN COURT AND HAVE A JUDGE CONSIDER YOUR POSITION.**"

- 6. Costs** The subcommittee on alternatives did not address the costs of their alternatives. Clearly the costs of those options in money and or lawyer time is substantial. If the necessary time and money could be devoted to those solutions, it would be vastly preferred over forms.

The forms subcommittee thinks the costs of administering, gatekeeping and updating the forms will be expensive. The gatekeeper is a false issue. The cost of updating simple forms should not be very much. Sufficient Family Law lawyers can be recruited to review and update these forms.

The simplest and the least expensive solution are standardized forms.

7. **Texas Supreme Court Forms for the Indigent Only.** While probably the intent of the Court, it is an impossible ambition.
 - a. The committee report suggests that forms should be only for the indigent and thus a gatekeeper would be necessary.
 - i. It is not realistic to think that the Texas Supreme Court would create forms in secret and that are to only be released to persons who have proved to a gatekeeper that they are indigent.
 - ii. Nor is it reasonable to think that once an indigent had filed a form petition and the court had signed a form judgment that they would be filed in a secret clerk's file.
 - iii. Without this, someone will find the form and put it on the internet.
 - iv. Thus, any form endorsed by the Court will be available to all citizens.
 - v. And even if such forms were clearly marked to only be used by indigent persons, it is very easy to foresee other pro se litigants nonetheless using these forms.
 - vi. Nor is it hard to imagine a trial court judge when presented with some commercial form that is a mess, that she might suggest or require a pro se litigant to use the form with which she is very familiar.
 - b. The committee report also suggests that the forms will involve the costs of a gatekeeper. A gatekeeper is not necessary, practical or realistic.
8. **Alternatives to Forms.** The subcommittee on alternatives did a very, very good job of suggesting alternatives. Many of which would be vastly superior to forms. However, they specifically did not address the costs of those alternatives. Yet it is plain to see that each of those alternatives requires substantial resources to carry out, either in money or lawyer man power or both.
9. **Anecdotal Evidence.** The committee members complained repeatedly that the need for forms was based on anecdotal evidence and not any careful study. The committee never produced any study that these forms would be harmful or damaging to Texans or the practice of law. Attached is a memo that shows the prevalence of forms in other states. There was no evidence that the forms in those other states caused problems.
10. **Form Usage Problems Are Already With Us.** The subcommittee on forms lists numerous issues about the use of forms. All of these issues are with us today because of the existing computer forms.
11. **Another Alternative.** A very economical alternative is to have the Family Law Practice Manual committee prepare and make available the basic forms needed for pro se litigants. If that does not work, there will undoubtedly be sufficient

Family Law lawyers who will serve on an advisory committee to update these forms as necessary.

12. Probate Practice. A few comments on the use of forms in my practice area of probate, guardianships and trusts.

- a. **Forms in the Hands of Lawyers.** No question, forms in the hands of lawyers is a boon to the practice of law.
- b. **Forms in the Hands of Laymen.** There is also no question that laymen people who use forms, write their own wills, get mixed results. But we have a strong pro se tradition in our State and that is not going to change.
- c. **Statutory Forms in Probate.** There are already numerous statutory forms used in the area of practice:
 - i. Powers of attorney.
 - ii. Medical powers of attorney.
 - iii. Directives to physicians.
 - iv. Designations of guardian in case of later need.
 - v. Affidavits of heirship.
- d. **State Bar Forms.** The State Bar has produced numerous forms and form books over the years. In my area, I am personally aware of
 1. Texas Guardianship Manual
 2. Texas Probate System
- e. **Commercial Forms.** There are also commercially available forms for almost all areas of the practice, including wills, trusts, advance directives, probate, and guardianship.
- f. **Pro Se Limitations in Probate Court.** There are substantial questions about a person representing themselves in probate. For example if someone wants to serve as executor of an estate or as guardian, they are not acting on their own behalf and are probably disqualified from acting pro se. Clearly this is the position of some of the statutory probate judges.
- g. **Probate Issues.**
 - i. In the probate area it would be helpful if a person asking only to be guardian of the person of an incapacitated person would be permitted to represent themselves and if forms would be available.
 - ii. The statutes on affidavits of heirship should be reviewed to allow banks and financial institutions to accept them so that people can more readily collect estates that only have a small bank account.
 - iii. Sometimes this can be addressed by the Collection of Small Estates by Affidavit Process. However, currently that is not available if there is a will; even if there is agreement not to probate the will. That statute should also be reviewed.


Jerry Frank Jones

Statewide Uniform Forms - All 50 states + D.C.

Executive Summary:

Total states + D.C. with standardized forms: 49
 Total states requiring courts to accept forms if used by litigant or lawyer: 37
 Total states with family law forms: 48
 Total states with divorce forms: 37
 (Of divorce forms, 31 states have divorce with children, 30 have divorce with real property, 33 have forms for custody matters, and 39 have forms for child support matters)
 Total states with forms available online: 49
 Total states which limit access to forms to low-income litigants only: 0
 Total states with a self-help website: 39

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Totals	49	37		48	37	31	30	49	0	39
Alabama	Yes	-----	State Bar created 25 forms and 20 Court approved forms: landlord/tenant, SAPCR, divorce	Yes	Yes	-----	-----	Yes	No	-----
Alaska	Yes	-----	18 different categories of forms including appeals. SRL forms issued in past 12 years	Yes	Yes	Yes	Yes	Yes	No	Yes
Arizona	Yes	Yes (protective order kit only)	12 categories of forms: divorce, small claims, appeals, eviction protective order, etc. & 16 Family Procedure Forms 01/2009	Yes	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	-----	Protective order and some probate forms are approved by the Supreme Court. Other form kits for SRLs are provided by the ATJ Commission in collaboration with legal aid. While these forms are not court ordered, they are supported by the Court and widely accepted.	Yes-protective order Kit	-----	-----	-----	Yes	No	-----
California	Yes	Yes	Hundreds of forms in existence for over 30 years. Forms are accepted and required by all courts in the state.	Yes	Yes	Yes	Yes	Yes	No	Yes
Colorado	Yes	-----	Adoption, family, domestic relations, appeals, probate, protective order, small claims, water, juvenile, criminal, civil, paternity, misc.	Yes	Yes	Yes	Yes	Yes	No	Yes
Connecticut	Yes	Yes	Administrative, civil, criminal, family, general, housing, juvenile, probate, small claims, appellate, protective order	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
<u>Delaware</u>	Yes	Yes	Civil, family, criminal, traffic, appeals	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>D.C.</u>	Yes	Yes	Family, domestic relations, protective order, civil, small claims, landlord/tenant, criminal, probate. Additional family law forms, including divorce forms, are provided on the Bar website	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Florida</u>	Yes	-----	Family, probate, landlord/tenant, small claims, guardianship	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Georgia</u>	Yes	-----	Juvenile, probate, protective order, criminal, domestic relations	Yes-protective order Kit	-----	-----	-----	Yes	No	Yes
<u>Hawaii</u>	Yes	-----	Family, civil, small claims, landlord/tenant, traffic, criminal, protective order	Yes	Yes***	Yes	Yes	Yes	No	Yes
<u>Idaho</u>	Yes	Yes	Family, landlord/tenant, name change, small claims, protective order, judicial consent to abortion.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Illinois</u>	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
<u>Indiana</u>	Yes	Yes	Civil, criminal, and appellate matters. Started 10 years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Iowa</u>	Yes	Yes	Civil, small claims, family, divorce, protective order, commitments.	Yes	Yes	-----	Yes	Yes	No	Yes
<u>Kansas</u>	Yes	Yes	Civil, family, landlord/tenant, probate and juvenile. 20+ categories. 100+ forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Kentucky</u>	Yes	Yes	Probate and protective order form appear to be available for use by non-attorneys. All other forms (wide variety) available on Court's website appear to be for lawyers only. Bar provides ongoing divorce self-help clinics.	Yes-protective order Kit	-----	-----	-----	Yes	No	-----

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
Louisiana	Yes	Yes	Protective order forms available for attorneys and non-attorneys/victims of domestic violence.	Yes-protective order Kit	---	---	---	Yes	No	---
Maine	Yes	Yes	Consumer, civil, criminal, family, foreclosures, money judgment, protective order, small claims, protective custody, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Family, landlord/tenant, small claims, traffic, protective order, and more. Started 20+ years ago.	Yes	Yes	Yes	Yes	Yes	No	Yes
Massachusetts	Yes	---	Family, limited scope representation, probate, small claims, landlord/tenant, municipal courts.	Yes	Yes	Yes	Yes	Yes	No	Yes
Michigan	Yes	Yes	Adoption, civil, criminal, guardianship, protective order, name change, emancipation, parental consent, juvenile, mental commitment, probate.	Yes	---	---	---	Yes	No	Yes
Minnesota	Yes	Yes	33 categories including divorce, protective order, traffic, small claims, bankruptcy, etc. Packets started being developed in mid-1990's. Court and Bar studied and concluded forms were needed.	Yes	Yes	Yes	Yes	Yes	No	Yes
Mississippi	forms are currently in development	---	---	---	---	---	---	---	---	---
Missouri	Yes	Yes	Family: divorce, modification of protective order and custody, name change and paternity. SRLs MUST USE these forms.	Yes	Yes	Yes	Yes	Yes	No	Yes
Montana	Yes	---	Over 50 categories of forms including family law, discovery, appeals, protective order, landlord/tenant, probate, taxes, small claims.	Yes	Yes	Yes	Yes	Yes	No	Yes-Bar

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
<u>Nebraska</u>	Yes	Yes	Appeals, court records, children and family, estates, financial/medical, parental consent waiver, general trial procedure, guardianship, name change, small claims, worker's comp and protective order.	Yes	Yes	Yes	-----	Yes	No	<u>Yes</u>
<u>Nevada</u>	Yes	Yes	Civil, protective order, family, guardianship, landlord/tenant, appellate, divorce.	Yes	Yes	Yes	Yes	Yes	No	<u>Yes</u>
<u>New Hampshire</u>	Yes	Yes	Appeals, divorce, domestic relations, child welfare, juvenile, adoption, estates, guardianship, probate.	Yes	Yes	Yes	Yes	Yes	No	<u>Yes</u>
<u>New Jersey</u>	Yes	Yes	Civil, criminal, family, municipal, landlord/tenant, tax, appellate, foreclosures, small claims, juvenile, protective order.	Yes	-----	-----	-----	Yes	No	<u>Yes</u>
<u>New Mexico</u>	Yes	Yes	Civil, criminal, municipal, landlord/tenant, guardianship, domestic relations.	Yes	Yes	Yes	Yes	Yes	No	<u>Yes</u>
<u>New York</u>	Yes	Yes	Family law, divorce, protective order, criminal, and variety of civil forms. Civil forms have been used for decades.	Yes	Yes	Yes	Yes	Yes	No	<u>Yes</u>
<u>North Carolina</u>	Yes	-----	Criminal (88), civil (131), protective order, child support, paternity, juvenile. Divorce packets and self-help center provided at local district court level.	Yes	Yes	-----	-----	Yes	No	-----
<u>North Dakota</u>	Yes	Yes	Appeals, child support, visitation, guardianship, probate, protective order, small claims, simple divorce.	Yes	Yes	-----	-----	Yes	No	<u>Yes</u>
<u>Ohio</u>	Yes	Yes	Protective order and some custody & support forms. Other domestic relations forms, including simple divorce forms, are provided by local courts.	Yes-protective order Kit	-----	-----	-----	Yes	No	-----

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE+ KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
<u>Oklahoma</u>	Yes	Yes	Protective order, child support, civil, appeals, criminal appeals.	Yes	-----	-----	-----	Yes	No	-----
<u>Oregon</u>	Yes	Yes	300+ family law forms, small claims, landlord/tenant, some criminal. Coalition of family law lawyers sought legislative mandate to create forms. Maintained by the Family Law Council, State Court Administrator and State Court Advisory Committee.	Yes	Yes	Yes	-----	Yes	No	Yes
<u>Pennsylvania</u>	Yes	-----	Probate, foreign adoptions, appeals, civil, landlord/tenant, expungements. Other forms including family law and divorce forms are provided at local court level.	-----	-----	-----	-----	Yes	No	-----
<u>Rhode Island</u>	Yes	Yes	Administrative appeals, civil, family, landlord/tenant, traffic, pre-trial. Limited family law forms. Criminal and small claims forms are "coming soon."	Yes	-----	-----	-----	Yes	No	Yes
<u>South Carolina</u>	Yes	Yes	Some civil and simple divorce created for SRLs. Divorce forms: uncontested, no kids, no property. But the SRL can modify the forms to include kids and property and contested matters. Also a lot of court-approved forms that are geared to attorneys.	Yes	Yes	-----	-----	Yes	No	Yes
<u>South Dakota</u>	Yes	-----	Protective order, divorce, name change, parenting time, civil	Yes	Yes	Yes	Yes	Yes	No	Yes

Statewide Uniform Forms - All 50 states + D.C.

STATE	STATE-WIDE FORMS	COURT-REQUIRED ACCEPTANCE	SUBJECT-MATTER	FAMILY LAW FORMS	DIVORCE FORMS	DIVORCE + KIDS	DIVORCE + REAL PROPERTY	FORMS AVAILABLE ONLINE	INCOME RESTRICTIONS?	STATE SELF-HELP WEBSITE
<u>Tennessee</u>	Yes	Yes	Divorce no kids, no property were approved by the Supreme Court in 2011. They are the only Court approved forms. Tennessee's OCA has developed other forms available to lawyers and non-lawyers, but they have not been approved by the Court. These OCA forms include: protective order, child support, criminal, probate, small claims, traffic.	Yes	Yes			Yes	No	Yes
<u>Texas</u>	Yes	Yes	Protective Order Kit in 2005	Yes- protective order Kit				Yes	No	
<u>Utah</u>	Yes	Yes	Divorce, child support, enforcement, protective order, landlord/tenant, guardianship, parentage, probate, small claims, expungement.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Vermont</u>	Yes	Yes	Civil, small claims, family, protective order, criminal, probate, name change, guardianship, partner adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Virginia</u>	Yes	Yes	Protective order, traffic, paternity, child support, juvenile, mental health, civil.	Yes				Yes	No	
<u>Washington</u>	Yes	Yes	Divorce, custody, child support, protective order, juvenile, title, financial, criminal, adoption.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>West Virginia</u>	Yes	Yes	Divorce, family, appeals, child support, custody, protective order, guardianship,	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Wisconsin</u>	Yes	Yes	Divorce, family law, small claims, name change, juvenile, probate, protective order, appeals.	Yes	Yes	Yes	Yes	Yes	No	Yes
<u>Wyoming</u>	Yes	Yes	Divorce, child support, child custody.	Yes	Yes	Yes	Yes	Yes	No	Yes



SOLUTIONS 2012 TASK FORCE

State Bar of Texas Blog Posts (Feb. 7 – March 30, 2012)

Input sought by SOLUTIONS 2012 task force regarding indigent pro se litigants

The Supreme Court of Texas last year created the Supreme Court Task Force on Uniform Forms to develop forms to assist indigent self represented litigants. Its findings have been referred to the Supreme Court Advisory Committee. The Court has accepted the State Bar of Texas' offer to assist with how best to provide our poorest citizens access to the courts.

State Bar President Bob Black has appointed SOLUTIONS 2012, a task force to collect data, information, and recommend potential solutions regarding issues faced by indigent pro se litigants. The task force is co-chaired by Tim Belton of Bellaire, a public member of the State Bar Board of Directors, and Tom Vick of Weatherford, a former board member. The task force will provide a report to the State Bar Board of Directors at its April 13 meeting and to the Supreme Court Advisory Committee at its April 13-14 meeting.

The State Bar invites all who have an interest to join in the discussion to propose the best possible solutions to ensure the administration of justice and public protection under the law.

For more information visit www.texasbar.com/solutions.

To provide input, please leave a comment below.

Comments (53) Read through and enter the discussion with the form at the end

grady mitchell - March 30, 2012 7:20 PM

it my belief, that ever person has the right to be a pro see plaintiff ,i called serveral subosed free leagle an they know nothing , the one filing the forms knows best

Steve Bresnen - March 30, 2012 2:57 PM

The whole notion of uniform forms has been opposed by the local Bar organizations representing the vast majority of lawyers in Texas, including: the Family Law Section of the State Bar, Texas Family Law Foundation, General Practice, Solo and Small Firm Section, Immigration Section, Panhandle, Tarrant, Dallas, Bexar, Gulf Coast, and on and on.

Remember: People are not standardized and neither are their cases.

Jimmy Vaught (Austin)

It is my understanding that most of the form documents prepared by the Uniform Force Task Force are directed at Family Law. Although the efforts to increase access to justice and reduce

the strain on the courts posed by pro se litigants are well intended, Texas families should be concerned about the unintended consequences. Family lawyers who have reviewed the draft forms discovered serious legal problems that could not be resolved by most pro se litigants. These problems not only are related to drafting considerations, but also to fundamental legal issues that average laypersons will not be able to resolve by themselves, or even recognize until serious mistakes have been made.

In my practice, it is not uncommon to see pro se litigants who have suffered significant unintended consequences which cannot be corrected. Virtually every one regrets not hiring or consulting with an attorney.

Dale A. Burrows (Denton)

As a family law attorney and member of the Denton Bar Association I wish to send you an email voicing my opinion to the Supreme Court Task Force on Uniform Forms for pro se litigants. I strongly believe this is a colossal mistake an oppose it.

Kenneth D. Fuller (Dallas)

I am Board Certified in Family Law and have practiced family law in the State of Texas since 1962 and have limited my practice to family law matters since my certification in 1976. It has been my practice to supply pro bono representation to needy clients during that period of time and for the last ten years my entire practice has been limited to pro bono representation of needy clients through the Dallas Volunteer Attorney Program (DVAP). I work with DVAP to the extent of 800 to 1000 hours per year. The largest part of my work with them is supervising the assisted divorce applicants. This entails reviewing their applications, working with the paralegals , reviewing pleadings and problems regarding jurisdiction, service and return of process, reviewing wage withholding orders and other related documents required by our local practice and ultimately assisting with the prove up and entry of decrees and mentoring other attorneys with all these tasks and other matters dealing with family law.

From the prospective of almost fifty years of family law pro bono experience I respectfully offer the following observations:

Legal forms in the hands of lay clients attempting to utilize self help in family law matters is an invitation to a legal train wreck to the participant. It has been our experience at DVAP that even with pro bono attorneys we need to closely monitor the forms we supply before they are filed. We require that they use our forms, have staff attorneys on call for questions or volunteer mentors and require that all pleadings be reviewed by the staff attorneys prior to filing. Even with these safeguards in place it is amazing the number of mistakes that slip through. In our assisted divorce, where the applicants are pro se, we prepare the pleading, require their attendance at a 2-3 hour petition class where they are reviewed with the paralegal and given a presentation by a volunteer attorney with an opportunity to have their questions answered. This same process is repeated when the Decree and supporting documents are prepared by OUR PARALEGALS.

We handle in excess of 1,000 cases per year in this manner. We have tried over the years to conduct our program with less supervision and fewer staff and it just doesn't work. There is an ongoing need to keep documents updated to comply with legislative changes and court decisions, an example is the recent change that does away with the need of a notary. We already had any

number of cases claiming that the supposed Signatory did not sign a waiver, decree or other documents. With the new statute I expect this to increase. Another example is the new statute allowing Wardens of penal institutions to designate an agent for service of citation who then servers the prisoner. DIVORCES ARE REAL LAW SUITS THAT REQUIRE THE ADVICE AND GUIDANCE OF A KNOWLEDGABLE ATTORNEY.

Our State and Federal Constitution are the Bed Rock of our judicial system. The next most important element of our system is, in my humble opinion, our network of independent attorneys who assist the consuming public in asserting the rights guaranteed by these documents. If any system is instituted that destroys the participation of the practicing bar it will fail. By promulgating the proposed forms the attorneys who supply pro bono services are being thrown under the bus. This will be breaking faith with the attorneys who have been assured over the years that “Pro Bono Is No Threat To Your Practice “. In the face of this often repeated assurance, we now spend thousands of dollars of State Bar money promoting a practice that is a direct attack on the private attorney. I would respectfully remind each of you that we have no choice in whether or not to belong to the bar and pay our dues but we do have a choice in which programs we participate in and to what extent we participate.

The proposal to provide forms for self help divorces is ill advised, divisive within the bar and a risk to those who will be lured into their use. If lawyers can’t cope with these forms without mentoring how can we expect that the public will be able to properly employ them ?

The committee working on these forms are openly admitting that the ultimate goal is to enable all those who don’t want to hire a lawyer to get their own divorce. They have a multitude of schemes for accomplishing this ranging from, providing standby legal advice at the courts to limited representation plans for the attorneys on specific issues, all without any consideration of economic screening of the applicants. This at best ignores the practicalities of spending more time drafting an agreement limiting your liability, to who is going to represent the client in their negotiations with the limited representation lawyer and to what extent does the lawyer have to discuss what other issues might come up that the client hasn’t considered.

We cannot serve the poor people of Texas that cannot pay a lawyer. With the drastic loss of IOLTA FUNDS We are in a financial crises to finance pro bono services. Yet we seem to have unlimited Bar monies to pursue a program to supply free legal services to those who have the where with all to pay for legal services but simply don’t desire to do so and we are going to enable them to do so with the expenditure of our mandatory dues.

In nearly 50 years of practice I have not felt it necessary to communicate with The Court on a matter of policy. I am now at the virtual end of my professional career as a Family Law Specialist and feel I have at least a modicum of insight into the facts and issues involved in the attempt to promulgate these forms. I do not attribute evil intent to those opposed to my views. I do however, state unequivocally, they are short sighted in what they are attempting and have not taken into account the many adverse ramifications of their contemplated plan. We should take a page from the book of our Brethren in the medical profession “ First Do No Harm “.

Sherri A. Evans (Houston)

I am writing to address my sincere opposition to the Uniform Forms Task Force. I am a board certified attorney, former chair of the Gulf Coast Family Law Specialists, board member of the

Texas Academy of Family Law Specialists, and Vice-Chair of the Family Law Council for the Family Law Section of the State Bar of Texas. As a member of the Family Law Council and former chair of the Section's Pro Bono Committee, I have spent years promoting legal assistance to families who are unable to afford legal representation.

However, as a practicing family law attorney, I know that all pro se litigants are not necessarily indigent or low-income. Therefore, by making family law forms readily available to all litigants, irrespective of their ability to pay, this initiative will result in a dramatic increase in the number of pro se litigants in the court system and will diminish our ability to provide pro bono services to individuals who truly need legal aid. In addition, merely providing a set of forms with instructions will not solve the problems caused by pro se litigants in the courts; instead, it will greatly add to the problem, especially if their primary need is legal advice.

By way of example, a pro se litigant will not necessarily know that (1) a child support obligation will be reduced by 5% on the emancipation of each child; (2) child support should be ordered paid until a child reaches the age of 18, or graduation from high school, whichever is later; (3) a wage withholding order or medical support order should be filed to guarantee payment of child support and/or medical support; (4) that a QDRO is required to divide any qualified retirement plan; (5) separate property is not part of the divisible estate of the parties. These issues can and do exist in even the most amicable divorce situation.

If the true goal of this initiative is to provide assistance to Texans who are unable to afford legal representation, then there are certainly other viable alternatives available that should be explored in collaboration with the leadership of the Family Law Section. For example, the Formbook Committee of the Family Law Section prepares an extensive Family Law Practice Manual (FLPM), together with practice notes. These forms are prepared by board-certified family law attorneys for use in family law matters. The FLPM could and should be made available to all legal aid providers, to attorneys who agree to take a requisite number of pro bono cases, and to other organizations dedicated to providing legal services to the poor. With a united goal, the possibilities are endless; divided they are limited. I urge the Court to work together with the courts having family law jurisdiction and the leadership of the Family Law Section to devise a plan that will enhance legal assistance to low income litigants across the State.

For these reasons, I would respectfully request this Court to reconsider the current course of action and the creation of Court-approved "do it yourself" divorce kits. Across the state, I believe you will find that this initiative is opposed by most family law attorneys and the vast majority of the courts.

Alexander Geczi (Richardson)

I am opposed to the creation of Pro Se forms in family law cases, and I have listed FIVE persuasive reasons for my opposition, below.

1. There is a great deal of misinformation out there, and attorneys are needed to clarify these matters for clients. I often have to correct client's beliefs about what they can and can't do. Some people come up with crazy ideas regarding how to divide their property. One very common mistake is who owns property that is titled in one spouse's name. Most people believe that a house or car that was bought during the marriage but titled in one spouse's name belongs to that spouse. They don't understand that it is community property, and for that reason, many of them

would have abdicated their ownership interest in the property had they not consulted with me. Another common mistake is how people divide their property. Parties may agree to split a house or retirement account 50/50, but they omit the proper language in the decree and/or do not follow up with the proper title transfers or QDROs. The list goes on - there is misinformation about child support, visitation schedules, alimony, etc. An attorney is needed to clarify this misinformation and to guide the clients in the right direction so that they do not inadvertently give up fundamental rights.

2. In many situations, it will oppress women and cause harm to children. I don't say this to be sexist; I say this because it is a societal fact of life, and I see it frequently in my everyday practice. Women often feel powerless in divorces and believe what their dominating husbands tell them. (I understand that not all men are like this, and I've dealt with domineering wives; however, this is a common situation that I see.) As a result, the women often acquiesce to nominal, if any, child support, give up any hope for a fair division of property or alimony, and feel powerless regarding visitation and decision-making issues, even when they have been the children's primary caregivers. The child support and visitation issues are becoming even more concerning as 50/50 schedules are becoming more common and men are forcing their wives to agree to them so that they do not have to pay as much child support. Allowing such domineering men to even further control the divorce is a big mistake.

3. The courts are frustrated by the pro se litigants who gum up the courts' resources and time. The courts have to send the pro se's back to correct basic things. The pro se litigants don't know where to go, and they often end up asking the law library or filing clerks for advice. The clerks are frustrated because they can't help them with legal advice. The attorneys who stand in line behind them are frustrated because of the delay. The attorney's clients are frustrated because their attorneys are charging them for the wasted time.

4. It will damage the credibility of family law practitioners. Most attorneys think that family law is a no-brainer. And in some cases it is. However, upon closer examination, most family law situations require the expertise of a skilled family law practitioner. A skilled practitioner recognizes when a CPA is needed to advise about tax considerations, when a financial planner is needed to help a couple figure out how to budget and divide their assets, when a psychologist is needed to coach the parents on how to co-parent and minimize the effect of the divorce on the children. A skilled family law practitioner is part counselor, talking a hysterical client into seeing their situation more rationally; part litigator, ready to fight for a client who has no where else to turn; part negotiator, knowing when it is better to mediate and settle case for the best interest of the parties' relationship. Not just anyone can do these things. Creating these forms implies otherwise, and will only work to minimize and undermine our role in the legal community.

5. These forms will discourage attorneys from either entering this area of practice or from staying in it. Family law is one of the lowest paying areas of practice. Every attorney thinks they can practice family law, thereby creating more competition. The downturn in the economy has made it even harder to find and convince clients why they should hire you. These forms will further undermine our practices, force us to consider more "competitive" pricing (ie, lowering our rates), and turn away bright talent. Long-term, this will harm both clients, attorneys, and the practice of family law.

These are just five good reasons why these forms should not be created. If I had more time, I could come up with more. Unfortunately, I am an overworked, underpaid, underappreciated solo family law practitioner, new mother, and wife, whose time is limited. But I love what I do, and I feel strongly about this issue. And I know that I am not the only one. We have tremendous resources, both financial and intellectual, in the family law bar - please use them!

I do what I can to help clients in need - I offer free or low-cost consultations to low-income clients, I try to minimize costs for my clients where I can, and I take pro bono cases. If it is the goal of the committee to create forms to assist the low-income population, then there are other ways to accomplish this. Put more funding into organizations like Legal Aid or Citysquare. Create more organizations that can help these people. Staff courts with attorneys who can offer basic guidance to pro se's. Encourage local bar associations and incentivize firms into involving attorneys and accepting more pro bono cases. Create "scholarships" for people so that they can hire attorneys. Rather than creating forms, which are simply a band-aid to a systemic problem, create a committee that will investigate and come up with better solutions than what I have listed here.

These forms are a bad idea. They will only make our situation worse and discourage future attorneys from entering this area of practice.

Charles Quaid (Dallas)

As an attorney with over 31 years practicing civil and family law, I have made a career commitment to providing pro bono representation to those in need, as well as financially supporting state and local bar associations that offer free or low cost legal services (as well as private sector efforts). I find that similar efforts are common place with members of the Texas Bar, especially those who practice family law. It is therefore disconcerting that there is the perception of a need to create "pro se forms" for litigants to represent themselves in family law matters and what appears to be a rush to accomplish same without the input or blessing of the Family Law Bar of this state. Having served a number of years on a Supreme Court Task Force leading to the 1999 revisions of the rules of discovery, I am aware first hand of the lack of understanding or appreciation of the practice of family law that exists within the Bar. Family Law deals with the most personal and emotional of issues, during a time when neuro-science tell us the participants are experiencing the most devastating period of life that they will ever experience. While the issues may at times be simple, they are most often not. It is irresponsible to believe there is no need to seek, and more so to encourage parties not to seek, the advice of a lawyer to help guide them through this difficult time. It is criminal to encourage them to use "self-help" through "one size fits no one forms" when they are numerous available resources for those truly in need. The marketplace has also found its own level and there are thousands of Texas lawyers who provide low cost divorce and representation in other family law matters. The AG 's office is both funded and required to provide some of these services. The perceived belief that this is an area that needs this type of remedy is ignorant, at best.

As all family law matters are unique, it is hard to envision forms that will adequately provide clarity and provide the parties with Orders that are correct and enforceable. Because of years of federal and state legislation, a divorce decree or SAPCR Order is a complex creature. The forms will be outdated ever time the Texas Legislature meets. The forms will have to be able to address local rules, practices and policies. The impact on the Courts that must deal with litigants trying to muddle through has obviously also not been thoroughly considered. Forms do not address the how, where, and when of Courthouse procedure or decorum. In some Courts, each pro se Order

has to be "pre screened " by a Judge. Inevitably, the parties are unable to even obtain entry of their" form order" because of errors, a basic lack of understanding of what the Order is to accomplish and/or basic lack of understanding applicable rules, laws or deadlines. This in turn, requires untold man hours from Judges and courthouse personnel to be taken away from other pending matters, including involving issues of domestic violence and the best interest of the thousands of Texas children under the continuing jurisdiction of our Courts.

While, at some point, and with the assistance of the Family Bar, there may be a place for such an well-intentioned endeavor, it appears that deferral of approving such forms at this time is the more prudent course.

Kathy Kinser (Dallas)

I am a practicing Family Law attorney, Board Certified since 1984, and I am simply appalled by what is happening with the Task Force and the forms that are being drafted in the name of "access to justice." Having spoken directly with one Justice, who denied the forms even existed, it is unfathomable to me that the Court does not see that what is being drafted to be "approved" by the Supreme Court of Texas does not provide the public with "access to justice" but only puts tools in their hands to further complicate their lives during the divorce process. The twenty or so forms that I have reviewed are not just for use by people who have no children and no property, which is what one of your Justices told me, and do not even correctly set forth what facts and information a person needs to make an informed decision about what form to use. By way of example, one form has boxes to check for "no child under the age of 18" and "no child born or adopted of the marriage" but entirely leaves out that there might be a child over the age of 18 entitled to support.

The use of forms that mention retirement benefits will clearly result in an irreversible division (or not) of retirement benefits because no "form" can cover the thousands of employers in this country that require very specific language, and usually a separate order, to divide retirement accounts. Where is the Task Force going to put an unsuspecting non-employee spouse on notice that they need to get a Qualified Domestic Relations Order to get what they are entitled to?

If these forms are approved by the Court and distributed to the public, it is the Court that will be ultimately responsible for the thousands of cases that are disposed of wherein spouses are cheated out of their rightful share of the community estate. It will be the Court that is ultimately responsible for spouses being cheated out of their separate property. Worst of all, it will be the Court that will be ultimately responsible for the thousands of orders that do not adequately protect children.

As a practicing attorney, I believe that if these forms are approved and distributed, within a year I will have some poor unsuspecting spouse in my office, complaining about what happened in their divorce and wanting their rightful share of the property. It will be too late. Property divisions become final and are not "fixable" after they do.

As far as the children's issues, some may be able to be modified, but not all provisions can be. Ultimately, all the family law attorneys will be able to do is to refer these folks back to the Supreme Court to answer the "whys?" about what happened to them

I do not believe the Supreme Court wants to create a travesty for an unsuspecting spouse or parent. Please reconsider the path you are on and work with the Family Law Section to develop a

workable solution to whatever problems have been identified. The one thing that I do not understand about this push for “access to justice” in the family law area ONLY is that our Section does more pro bono work than all the other Sections COMBINED. Perhaps what the Court needs to focus on is having the other Sections of the Bar focus on providing access to justice for people that need help in those other fields of law.

Thomas Liddell (Houston)

The use and promulgation of the proposed forms will be a disaster in family law.

Melissa Parker (Houston)

Judge Warne tells me that there is a lot of talk about getting family law forms standardized. I have been the coordinator in the 257th for almost 16 years. I have never seen or heard from more pro-se litigants. The legal advice that they are wanting and needing cannot be addressed with a form. There are various forms that are already available and the pro-se parties still want help filling them out. I get at least 5 phone calls a day wanting legal advice and needing to know the steps to take in their case. In my opinion, the answer to the pro-se influx does not seem to form related. Family law can be complex and having lawyer representation seems to be the only real answer.

John Graml (Houston)

I think it is absurd for the State Bar to provide "Pro Se" forms to the public, I did a bit of work in UPL for the bar, and one would have to ask that this borders on UPL...I will review and complete the survey. I do not think the bar should be providing forms to non-lawyers, there are enough out there already in office supply , grocery stores, etc.

Carol Wilson (Dallas)

Please do not approve or publish the proposed family law forms proposed by the Access to Justice Commission. Family law is not simple. Family law deals with some of the most personal, valuable, and needy people in the lives of every Family Law litigant, our own loved ones. Family law is litigation which is more complicated than most simply because it deals with the emotions, morals, and highly personal decisions people make within their families. You as a body have made many complicated and complicating decisions in the history of Texas Family Law jurisprudence.

I am disappointed to learn that the Supreme Court of Texas, the very body which through which I am licensed, has been persuaded that the subject matter of law that I devote my life to is so simple that a few forms can be published to allow non-lawyers to do my work.

Published forms are not the way to make justice accessible to all. Forcing our legislature to deal rationally with the needs of all of its citizens, continued encouragement of lawyers to take pro bono Family Law cases as I do are far better than allowing non-lawyers to mis-use forms you publish and end up in greater legal problems than they had before. I am one of the lawyers who takes pro bono Family Law cases. Most of the ones I have taken are long, complicated, and costly in my time and that of my staff. Just because people cannot pay my hourly rate does not mean their legal issues are uncomplicated. These are better ways to provide justice for all.

Tom Ausley (Austin)

Regarding the Uniform Forms Task Force, I have expressed my opinion to the State Bar and to

the honorable Supreme Court Justices on several occasions now. One aspect of this problem that the Task Force and the Justices may not have considered is that these forms likely will not be used only by low-income litigants or litigants who have short marriages, little property, and no children. There is the very real possibility that parties who wish to “cram a deal down the other party’s throat,” metaphorically speaking, will use these forms to their advantage.

Unfortunately, in my family law practice, I see many cases in which the balance of power between the spouses is greatly off-kilter. We often have potential clients call our office and describe a scenario in which the opposing spouse is offering a “great deal,” and is recommending that the parties just settle the matter between them without involving lawyers. These are the scenarios in which a fearful spouse can be intimidated into accepting a property division or conservatorship and child support arrangement that an impartial judge would never order. These are the cases in which a mother might accept far less in child support than she normally would be entitled to under the law; or, a party might agree to some type of conservatorship arrangement that sounds good in theory, but is unworkable in practice. This scenario also creates the kind of case in which the moneyed spouse or primary wage-earner may hide assets or fail to disclose fully the nature and value of assets, thus giving rise to a property division that is neither reasonable nor equitable.

I believe that the Task Force’s intent to provide Court access to parties who cannot afford lawyers is an honorable one; however, I fear that what many family law litigants will save in legal fees in their initial causes of action will be wiped out by the costs they will incur later trying to correct the problems or be forced to live with them, that were caused by their failure to seek proper legal advice when necessary.

Karen McKay (Houston)

I personally just handled a case in which a couple used forms they "got online" to draft a decree for themselves. The court rejected their filing, and very kindly informed them which portions were defective. They were put to both expense and a lot of time wasted in order to repair the errors made through following a "do-it-yourself divorce" form. Not only did they waste their own time, they wasted the Court's. I think we can all agree that the danger of multiplying this unnecessary burden on our family law courts, as well as exposing people to entirely avoidable risk by encouraging them to view divorce as a "self-help" activity, far outweigh any nugatory "alternative option" to the public. In the end it saves nobody money or time, and the potential for both abuse and disastrous outcomes are readily apparent. Even if there were any perceivable benefit to this scheme, it should fail on the magnitude of the "Oops" factor alone.

Dale Burrows (Coppell)

As a family law attorney and member of the Denton Bar Association I wish to send you an email voicing my opinion to the Supreme Court Task Force on Uniform Forms for pro se litigants. I strongly believe this is a colossal mistake and oppose it.

Shannon Moore (Houston)

I am a practicing Family law attorney since 2002. I reviewed the proposed “do it yourself” divorce forms and it is my understanding that neither the Family Law Section of the State Bar of Texas nor the Texas Family Law Foundation was consulted before this project began. I believe

that these forms will result in serious legal problems given that they create a “do it yourself” set of divorce forms.

With the many unintended consequences that can occur during an agreed divorce, below is the first and simplest scenario that comes to mind.

Should a pro se litigant go forward and believe that they can proceed in drafting a divorce decree where each party keeps their own property and they in fact draft a decree in that manner, and say they do not list separate property as specifically confirmed as their separate property (and identifying that property). The Decree instead states that “they keep all property in their name” (– which happens most of the time when they have come to my office for help). But later, when in fact they have separate property in their name, and a former spouse who is “not happy” files a Suit to Divide Undivided Property because the other spouse’s separate property was not listed. Well, through the appellate Courts and the Texas Supreme Court, that spouse waived their claim to their own separate property, which is now presumed community because they believe that the forms covered all of the legalities. When, in fact, the Courts have stated that since the first spouse did not rebut the community property presumption at the entry of the Agreed Final Decree of Divorce, that spouse has waived their claim to prove their separate property in the subsequent suit to divided undivided property. See *Pearson v. Fillingim*, 332 S.W.3d 361, Tex. 2011.

I urge this Court and State Bar of Texas Board to seriously consider the unintended consequences of the “do it yourself” divorce forms and reject the use of any such form. These pro se litigants need legal advice not a form.

Daniella Lyttle (Austin)

I practice family law and primarily family-based immigration law here in Austin, TX. I have some serious concerns about the impact of these forms on the Hispanic/Latino community.

As it is right now, there is plenty of fraud in the immigration field. Notaries in Mexico are licensed lawyers, notaries in Texas are not lawyers. This has caused a lot of confusion and has allowed a lot of fraud to take place against the Latino community.

Just like "Notarios" print forms and "help" people with their immigration cases, Notarios will print forms and "help" people with their family law cases even though they have no knowledge or training in the field of family law and are basically guessing to get these forms filled out. I'm sure I don't have to tell you that they are not asking the right questions or customizing decrees and orders for their clients.

Last week I met a bookkeeper who is not an accountant but provides those services for many constructions companies and she mentioned to me that a lot of people come to her for help in other areas besides tax they ask her about immigration law, family law, etc. Although this particular bookkeeper has not done this, she mentioned to me that she knows many bookkeepers who CHARGE their clients to print off the current forms available for family law and fill them out for their clients. They don't put their name on the petition but they go as far as taking the petition to Court and doing everything else "behind the scenes."

Making these forms available not only hurts our business, but it allows others, like Notarios to make money unlawfully practicing law. We have no control of who would use these forms and I guarantee that in the Latino community, Notarios and others will be printing these documents and will make money filling out these forms. We can't allow them to practice law and these forms make it too easy for them to do it unlawfully.

I would like this to be taken into consideration. If you need me to explain this in person to anyone, please let me know. Most of my clients are Spanish-speaking, because I am, and I know what is happening in the Latino community and would be happy to share with you and others who will listen.

Fred Krasny (Sugar Land)

I was an Assistant Attorney General in the Child Support Division for 6 years and worked for Lone Star Legal Aid (formerly Gulf Coast Legal Foundation) in the family law section for 15 1/2 years. I have been in private practice, 95% family law, for three years. In addition, I am on the Board of Directors of Fort Bend Lawyers Care.

In my experience, providing forms for pro se litigants is disastrous. I have seen many instances of pro ses filing their own petitions without a basic understanding of what the form in front of them means, much less understand service, time frame for divorce, jurisdiction and venue. I have seen more than one case of a pro se getting a final order without including all their children because the husband was not the father of a child born during the marriage then come to the AG or Legal Services to try unravel that knot. And then there are the pro se cases in which the other side hires an attorney and the Petitioner is completely unprepared to answer discovery, appear at mediation and hearings and trial.

Every day in Court I watch pro se litigants try to finalize their divorces and very rarely do they succeed. In the meantime, they are frustrated because the Court's clerks won't tell them what they need to do and neither will, for the most part, the Judges. I know the clerks and Judges are frustrated because of the time that is used up dealing with pro ses.

It also is curious that forms for people being sued on debts or for forcible entry and detainer are not being provided--only family law.

Guy Gebbia (Austin)

Self-help kits will create many more problems than they are even remotely intended to solve.

John Underwood (DeSoto)

The promulgation of pro se forms by the Texas Supreme Court is not a good idea and will most likely cause a great deal of harm especially when there are children involved. When children are involved the pro se litigant, who is not an attorney, is actually representing the children because the amount of child support and the possession of and access to the children will greatly affect their lives. If a pro se litigant is abusive to their spouse and/or to the children, either emotionally or physically, they may very well coerce their spouse into agreeing to the divorce decree setting the amount of child support below the guidelines and/or by giving them "standard possession" of the children. Under those circumstances the orders would not be in the best interest of the

children. To insure that this situation does not occur, the trial judge would have to review the decree in detail and ask questions about the amount of child support and inquire into the relationship between the parents and the children. This would make the judge "a lawyer in the case". Even if the judge would be willing to do this, it would be very difficult since in the usual situation at prove ups only one spouse appears in Court and testifies with no input from the other spouse.

As for the division of property, and I understand that there would not be any restriction on who could use the forms whether a modest community property divorce or divorces with substantial property, most lay persons do not think about what property would be considered community property and what would be considered separate property and how to bring that to the attention of the judge. Take for instance the cash surrender value on life insurance policies or what part of employee benefits is community property or what portion of a personal injury recovery would be separate property and what part would be community property. Additionally most people believe, when the judge orders one spouse to pay certain debts, that the order relieves the other party of that debt. They do not realize that the decree does not bind those creditors. When the property and debt division becomes final there cannot be a modification of that portion of the decree as is the case with custody, support, and visitation of the children.

It is admirable that you want to make access to the Courts more affordable to people. However in the case of all but the most simple divorce cases, with no property and no children, the problems likely to be caused by the pro se litigant could, and probably will, create a great deal of expense to have an attorney straighten out those problems.

The Honorable Carroll Wilburn (Chambers County)

I am a court of general jurisdiction considered a suburb of Houston and spend almost 60% or more of my time on family law matters. More and more litigants are representing themselves pro se and in some instances (no children and generally no property) do an adequate job using generated forms.

The rest are hopelessly lost and only manage to create problems for themselves and their children for years to come. I have strictly adhered to our judicial canons of ethics for years and find it impossible to help anyone in this situation without violating these canons. I do understand the Supreme Court's desire to help indigent citizens get relief but have found that many folks that appear before me really do have funds to hire attorneys but choose to represent themselves. The consequence of this choice will in all probability be disastrous. I am retiring next year at the end of almost 30 years on the bench and find this to be the most distressing problem that I have encountered in 41 years of being a trial lawyer and trial judge. Thanks for keeping us informed and my praise to the Family Law Section of the State Bar for striving so diligently for excellence in family law matters.

Wendy Burgower

I hope that you will relay to the Supreme Court my concerns and opposition to the proposed forms project that is currently under review. I realize that the Access to Justice Commission's Self-Represented Litigants Committee seeks to assist those pro se litigants in what is perceived to the "simple" divorce, however, as a practitioner of over thirty years, the proposed "forms project" is misguided and will only result in more complex litigation after the divorce.

I am dismayed that no one associated with this project (that being the Supreme Court or Access to Justice) sought the support, input or approval of the Family Law Section of the State Bar of Texas before this project was initiated. The Family Law Section presents about 99% of the CLE and is the 'author' of the Texas Family Law Practice Manual. This is the most widely used "form" book in the state. If the committee even took the time to look at the Texas Family Law Practice Manual the committee would understand that the "simple" divorce still requires advice and skill from a practitioner. It is unbelievable to me that the project would not have officers and past chairs of the Family Law Section involved in a "family law" project. Three members of this committee have admitted that they were under the misguided notion that the project will only deal with "agreed divorces with no property and no children". I understand that the forms include estates with real estate involved. This means there is property—and again, I maintain that these forms if used in a divorce with children will result in more hostile and costly litigation in the future.

I have reviewed the subject matter and the proposed forms. With all due respect, this "seven-point" agenda creates substantial deviations from our statutes and will mandate further changes in our Rules of Procedure. The entire project smacks of some kind of back room hidden agenda of some attorneys who obviously are running their own agenda and leading the Supreme Court to sign off on their "hidden" agenda. Their agenda is not "helping those in need...or the public good". If this were truly the underlying purpose, then the committee would have requested the input from the attorneys and judges who practice family law every day and really understand the needs of the public.

I am privy to the April 2010 meeting in Dallas, where family law attorneys were present. Why would none of the members or those associated with the project communicate with any of these representatives? Why would ANY person associated with ANY project of the Supreme Court completely ignore the input of the largest group of family law attorneys in our state to this project? Again, what is the real agenda of those who are so eager to put these forms in the mainstream?

I also understand the records of correspondence about the forms project with the Court, the Section and the Foundation, as well as the financial information regarding the project are not easily accessible to those who seek this information. What is being "shielded" from the public? Is this really "confidential" or just something the committee is not willing to release for our scrutiny?

I realize that I am but one family law attorney. I hope that my voice, however, is not falling on deaf ears. Those members of the committee that truly look to service those individuals who really need assistance in their legal affairs are being misled if they, in fact, think that these forms are a service. They are not. But, as past chair of the Family Law Section of the State Bar of Texas, I am outraged and astounded that the committee has no interest in the input of the section. We have always attended all the Committee of Chairs meetings, we have always presented needed CLE at all State Bar conventions, and we are one of the largest bodies of practicing attorneys in this state (over 5,000 members). Our membership is voluntary and consists of more solo practitioners than any other section. We are the attorneys who actually service most of the public that need legal assistance. Where is the process to include our voice?

Charles Hardy (San Antonio)

Please accept this as my firm opposition to the concept of the drafting and dissemination of standardized “Pro Se Forms” in Texas.

My specific comments and objections are as follows:

- This misguided effort will exacerbate the problems that exist with Pro Se litigants.
- These efforts are not working toward the stated goal of helping the indigent.
- It is a terrible mistake to encourage individuals to represent themselves through the promulgating of these types of forms (you might remember the adage of “he who represents himself...”).
- We all regularly see pro se litigants who have irreparably put themselves into a situation that we find it impossible to reverse.
- It is patently unfair to offer certain litigants the opportunity to operate in court under a different set of rules than the rest of us.

I would urge the Court to instead direct your efforts toward encouraging the Bar to expand their efforts to assist the indigent through programs like the “Community Justice Program” in San Antonio. These programs offer the indigent an opportunity to obtain real legal advice through attorneys.

George Clifton (Tomball)

As a member of the Family Law Section of the State Bar of Texas and as a Board certified family law specialist I wish to speak in opposition to the 7-point plan offered by the Access to Justice Commission to help pro se litigants handle their own family law cases. As a practicing family law specialist for over 35 years I think I speak from experience when addressing this topic.

No one associated with the Texas Supreme Court or Access to Justice sought the opinion, much less the support, of the Family Law Section of the State Bar or the Texas Family Law Foundation before the forms project was initiated. This appears to be just group of people running their own agenda who got the Court to sign off on it under dubious circumstances. Three members of the Court have independently said they thought the project only dealt with agreed divorces where there are no children and “no property.”

I am against the plan and against the method the Access to Justice Commission has used to try and advance it’s agenda. It is essential the recommendations of the Family Law Section be sought and followed. I strongly request that the plan offered be rejected.

David Biles (Denton)

This morning, the 393rd District Court in Denton heard 12 divorce proveups, 10 of which were pro se appearances. All had used “forms” from the internet and from the Texas Family law Practice Manual.

The presiding judge had to deny relief to 9 of the 10 pro se appearances because the forms were incomplete, didn't incorporate sufficient provisions for children, or were – in the words of the Judge – “just something I can't do because what you've put on this document is legally impossible.

The pro se parties couldn't make forms work, even with all the instructions in the Practice Manual. The Judge rejected some because it had conservatorship rights in conflict with the possession schedule, some totally blew child support and medical support, and some didn't award property with appurtenant allocations of rights and obligations for those assets and debts. And all this with the explanatory notes and comments in the Practice Manual.

Don't invite another 20 people to the courthouse to be turned away frustrated with the judicial and legal systems – and denied justice.

PS – I've got a client who's been in three continuous years of post-divorce litigation and incurred nearly \$100,000 in legal fees to “fix” his internet form divorce. Not a positive spin on providing forms to pro se parties.

Barbara Nunneley (Hurst)

As a Family Law Attorney I am requesting that you abandon your efforts to mandate Family Law pleadings and order forms.

Most of the litigants who will utilize these Supreme Court Approved forms will self-inflict legal injuries on themselves and their children. They will be ill-equipped to know how to fill out the forms without competent legal advice. I can't believe that the Supreme Court of Texas is going to tell all Texans that they have come up with forms that will accomplish a divorce or modification! What will the litigants think or do when they find that the forms were used but the relief the litigant thought he/she was getting has not, in fact occurred?

Your so-called forms are tantamount to the practice of law for these litigants and that is an inappropriate role for the Supreme Court or any court.

I suggest a better use of resources would be for the Access to Justice Commission to concentrate of providing legal services and advice to those who want to represent themselves.

Susan Oehl (Houston)

I am an attorney in Houston, and have been practicing family since I was first licensed in 2006. I, along with many of my colleagues, have reviewed the proposed “do it yourself” divorce forms and have very serious concerns about the short term and long term ramifications these forms will have on our practice, and the pro se litigants utilizing them. I was even more shocked to learn that the Family Law Section of the State Bar of Texas and the Texas Family Law Foundation were not consulted in the least before this initiative began. It cannot be reiterated enough: 90% of the 850 Family Law Section of the State Bar of Texas members polled believe that these forms will result in serious legal problems.

The dockets in the family law courts are experiencing an overwhelming docket of cases. Harris County is no exception. One can very easily observe this by spending only a few minutes in your typical family law district court on any given day. Pro se litigants delay the efficiency of the

courts by presenting unenforceable agreements and other necessary information to effectively resolve their divorce on their own. Based on my personal observations, these forms will only add to the chaos we are currently experiencing. Judges are turning pro se litigants away on a daily basis because their “forms” are wrong, or incomplete. These pro se parties often leave even more dumbfounded than when they first walked into the courthouse, because the Judge is unable to give them legal guidance. The orders that do make it through are often ambiguous and unenforceable, and the Judge is in no position to review them for potential issues that might result in more litigation months or years down the road. This is a waste of judicial resources! Other states using these types of forms have similar problems further delaying resolution of this “agreed” divorces.

Although these forms are intended for use in an “agreed divorce” with no children, adopting the use of these forms might result in their misuse when a “creative” pro se litigant uses them as a guide to handle a more complex divorce. Agreements can be easily reached, but reducing that agreement to an enforceable, properly drafted decree, and the other attendant documents necessary to resolve a case is quite another task. Further, property law, especially in the context of a divorce, can be rather complex. Pro se litigants utilizing these forms will likely never understand their property rights and whether they are actually receiving a fair and equitable division of the estate. This will result in repeat litigants who are often left with no recourse to correct these self-inflicted mistakes, once discovered (if ever). Sound legal advice and proper drafting of decrees will resolve these issues on the front end and prevent the unnecessary time and expense of further litigation in the future.

I request that this Court and State Bar of Texas Board give serious consideration to the unintended consequences of the proposed divorce forms and oppose their implementation and use. A divorce is a real lawsuit, and necessitates the advice of a knowledgeable attorney. There has to be a better way to provide those in need with competent legal aid. I sincerely hope that the overwhelming opposition to this initiative will assist the Court and State Bar of Texas Board in further exploring the inevitable chaos that will result in our practice, as well as in courthouses across the State of Texas if such forms are made available to pro se litigants.

Meg Biggart (Houston)

As a newly licensed lawyer who practices family law, I am very concerned about the new proposed “do it yourself” divorce forms. It is my understanding that the forms were created without consultation with the Family Law Section or the Texas Family Law Foundation. While the forms are intended to assist the family law courts and pro se litigants, they will only exacerbate the problems, as pro se litigants agree to terms they don’t understand, are not in their best interest, and are unenforceable.

While indigent individuals need help with family law matters, they need it in the form of a pro bono attorney, not a form. Additionally, being indigent is not a prerequisite to using the forms; therefore, many individuals with children and property will use these forms as a way to avoid finding an attorney which only led to additional problems down the road when issues arise with their decree.

Drafting a divorce decree is rarely a simple task and should not be left up to a pro se litigant to decide. Additionally, litigants who have lawyers must inevitably be held to a higher standard than pro se litigants unless courts hold pro se litigants to the same standards as they hold lawyers.

Holding one party in a case to a different standard than the other party is contrary to the very premise of our court system. Litigants who hire counsel (whether paid or pro bono) will be punished for doing so.

I urge this Court to highly consider the ramifications of creating these “do it yourself” divorce forms. Litigants need free legal advice, not forms.

Nicole Voyles (Houston)

I have practicing law since 2004 and practicing family law primarily since 2006. I have reviewed the proposed “do it yourself” divorce forms and I find them extremely problematic. It is my understanding that neither the Family Law Section of the State Bar of Texas nor the Texas Family Law Foundation was consulted before this project began which is entirely inappropriate considering the attorneys that make up these groups will be the ones fixing the problems in the forms if they want to disseminate to the public. It is my understanding that 90% of the 850 Family Law Section of the State Bar of Texas members polled believe that these forms will result in serious legal problems. It is my hope that this correspondence will open the eyes of the Supreme Court and State Bar of Texas Board of the problems arising from using “do it yourself” divorce forms. These forms could be extremely detrimental because of the following reasons:

As it stands, the family law courts are slammed with an unimaginable heavy case load, especially in Harris County. Pro se litigants delay the efficiency of the courts by presenting unenforceable agreements and improperly filling out the required information. These forms will only add to the chaos of misused forms. Other states using these types of forms have seen numerous problems further delaying the divorce process. I see these forms causing issues in the courts on a day to day basis when I am in court.

Pro se litigants often agree on creative, but unenforceable, resolutions to property. It is necessary for attorneys to be involved in the drafting process to make certain the parties decree is drafted in a way that is enforceable in the future. Often times, pro se litigants do not understand the forms they are filling out therefore causes more damage than good. It is only after these parties have entered into badly drafted orders that they often show up in my office and at that point it is difficult, if not impossible to correct. The time to resolve enforceability issues is before the Decree is entered. However, the family law judge is not in a position to alter the terms of the property agreement in the Decree. These litigants need an attorney, not a form, to draft an enforceable Decree.

Pro se litigants additionally agree on resolutions to property on the surface (and possibly in the form), but an ambiguity can result in a complete misunderstanding. Again, the family law judge is in no position to review the form for potential misunderstandings. These litigants need an attorney, not a form, to ensure that they understand what they are signing and all of the ambiguities and potential interpretations.

Additionally, while the forms are intended for the so called “agreed divorce” with no children, these forms can be misused as a guide to a divorce entailing children and other complicated property matters. I can imagine that people trying to cut the cost of hiring an attorney will grab these forms and try to tweak them even if their case is much more complicated than the form intended.

Finally, pro se litigants do not understand the complexities of property and how important it is to divide all the community and separate property assets in a divorce. They also do not understand the intricacies of the required closing documents to effectuate the transfer of these assets and liabilities in a divorce. I have seen many cases where the parties do not file the proper closing documents to transfer assets so even though they may have a divorce decree that states one thing the asset is still in both names. For instance if the parties are not effectively counseled they may not know they need to file a new deed in the property records to put the asset in only one parties name. Many parties believe that they have a small estate, but do not understand there may be issues separate or mixed character property within their small estate. If not handled carefully, these parties could miss important issues like filing a qualified domestic relations order and other necessary closing documents, tax issues, and reimbursement issues. The litigants may never understand their property rights and whether they are actually receiving their intended share of the estate.

I urge this Court and State Bar of Texas Board to seriously consider the unintended consequences of the “do it yourself” divorce forms and reject the use of any such form. These pro se litigants will be misguided by the forms and this will cause them more problems in the future than if they hired an attorney and had it done correctly the first time.

Tim Daniels (San Antonio)

Please forward my objection to the Commission's Plan to the Texas Supreme Court and to other entities or persons you deem appropriate.

I object to the Commission's Plan to provide pro se litigants with standardized forms. One of my primary reasons for my objection is my representation of the ex-husband in three lawsuits spanning four years. His story follows.

Desiring to save money on attorney's fees and being induced by an internet advertiser that getting divorced using a provider's standard forms would be easy and save money, the husband and wife jointly prepared the Decree and Marital Settlement Agreement. Unfortunately, nobody explained the legal terms contained within the Decree and Marital Settlement Agreement to these litigants, one with a GED, the other with a college degree I believe. They did not consult a lawyer prior to the Decree becoming final.

Unfortunately, through misunderstandings, they failed to address division of their house and failed to appreciate wording that awarded certain assets to the party in possession. Since they continued to share the house, the standard clause awarding personal property to the party in possession was not workable in their situation.

In a subsequent five jury day trial involving the owner of the land under their home, each ex-spouse had to explain why their Decree included a statement denying that they owned their home, which they built and had been paying for. A second lawsuit between the ex-spouses was necessary to divide the jury's unjust enrichment award for their interest in their home.

A third lawsuit between the ex-spouses concerned the boat, which the husband understood was his because for years after the divorce he made the loan payments and exclusively used the boat. Unfortunately, the Decree and Marital Settlement Agreement forms awarded the boat to the party in possession when the Marital Settlement Agreement was signed--weeks before the Decree was

entered and the wife had moved out of the marital residence, taking all personal property she wanted (leaving the boat for the husband). The ex-wife did not object to the ex-husband making the loan payments and having exclusive use and control of the boat after the Marital Settlement Agreement was signed.

The several Bexar County judges who were involved in hearings or the trials resulting from this standardized form nightmare expressed frustration at the consequences of such litigants using standardized forms.

The attorney's fees for the three lawsuits, involving four attorneys exceeded \$150,000. Note that the five day jury trial pitted the ex-spouses against the landowner, who of course was not a party to the pro se divorce. These clients could have easily afforded attorneys for the divorce. Now they regret using the standardized forms.

My other objection to providing standardized forms to litigants is that providing a certain form or wording constitutes legal advice that such form meets the pro se litigant's immediate needs without thoroughly questioning the litigant in order to determine the litigant's needs and misleads the pro se litigant into relying on the standardized form despite developments in the litigation that require amended pleadings. For example, how would the pro se litigant learn the intricacies of separate property versus community property characterization, much less how to correctly plead for same and award same? I recall all form books in my law library and ProDoc warnings that all forms should be adapted to the client's situation.

Norma Bazan (Fort Worth)

I am writing to express my opposition of the 7-point plan of the Access to Justice Commission to help pro se litigants handle their own family law case regardless of income level; whether children or property is involved; and whether a case is contested or agreed. I believe any such plan will only serve to harm pro se litigants who will eventually learn that their fill in the blanks form cause irreparable injury that may not be corrected in a court of law.

While I have only been licensed to practice law for just over 3 years my experience in the family law arena spans over 20 years. I began my family law career as a receptionist for Family Court Services and then rose to the level of a family law secretary with the Tarrant County Domestic Relations Office. Thereafter, I worked for a well-known family law firm in Tarrant County for over 10 years. Once I obtained my Board Certification as a paralegal in the area of family law through the State Bar of Texas, I then worked with a prominent family law attorney in Fort Worth, Texas. I then worked as the Court Coordinator for a Family Law District Judge in Fort Worth, Texas and maintained that position for 8 years while obtaining my law degree. After being licensed in 2008, I continued to work specifically in the area family law as a sole practitioner, then as an attorney for SafeHaven of Tarrant County, and now as an Associate Attorney in a law firm. My opposition of this 7-point plan is due to the following observations:

First and foremost, I do not find that anyone associated with the Texas Supreme Court or Access to Justice sought the opinion or support of my specific local family law bar association, much less the hundreds of other family law bar associations throughout Texas. As a member of the association for over 10 years (and as a Board Member for the 2011-2012 term), I did not receive a survey or a request to provide an opinion regarding "fill in the blank forms" before any project or committee was formed. In fact, I have no knowledge of how the Committee members were

assigned to this project. Are they practicing lawyers in the area of family law? Have they had a family law practice catering only to clients with a certain income level? Have they held their own family law practice and struggled with maintaining that law practice?

Secondly, I do not believe that the Access to Justice Commission's committee was developed only after input from the Family Law Section of the State Bar of Texas or the Texas Family Law Foundation. Additionally, even after notice was sent requesting information about the forms project with the Supreme Court it took some time to receive such information. Shielding the Bar of such information served only to show an air of secrecy on an issue that affects hundreds of family law attorneys in Texas.

Third, even though several members of the family law bar were present at the April 2010 Dallas forum on the issue of "self-represented litigants," no one associated with the project communicated with those leaders or with the Foundation.

Fourth, the Texas Supreme Court's endorsement of family law "fill in the blank forms" will only create problems, rather than solve them! By statute, the Texas Supreme Court has administrative control over the State Bar of Texas, an agency of the judiciary. There is no express statutory authority for the Supreme Court of Texas to become engaged in the practice of developing and approving forms for litigants. To do so, would negate our checks and balances in that there may come a time when the Supreme Court may have to consider and rule on a form developed or approved by the Supreme Court! Also, to endorse specific forms for only one specific area of the law will serve to foster belief that a litigant does not require even a consultation with an attorney to ensure a boiler plate form will be sufficient for his or her individual case.

Fifth, I am also aware that at least 90% of the Family Law Section's members responded to polling by stating that a litigant relying on a court-approved form to handle their case pro se can face serious legal problems in the future as a result of a poorly drafted judgment or a judgment that does not provide language for a specific situation.

Sixth, providing court-approved documents to litigants will have no effect on the Texas Supreme Court but it most definitely will effect a litigant who relies on such forms. And, the Texas Supreme Court will not have to deal with the aftermath of improper judgments –rather it will be the family law attorney who will have to consult with potential clients and attempt to remedy (if possible) the defective judgment.

Seventh, working in a Family Law District Court as a Court Coordinator for over eight years, I understand that pro se litigants have a tendency to ask for legal advice from not only the clerk's where their petitions are filed but from Judge's who finalize their case. However, it should not be the practice of the Supreme Court to become involved in issues relating to clerk's duties or Judge's decision to either reject or approve a final judgment.

Eight, an indigent litigant has several options and resources to assist them with their legal needs which include Legal Aid, Texas Attorney General's Office, programs for domestic violence, and programs through Law Clinics. On the other hand, a litigant who is not indigent and has property that may or may not be divisible and has the resources to retain legal representation for their specific case; may decide that a "court-approved form" is all that is necessary to petition and

finalize their divorce. It will not be until after that litigant has finalized his or her case that it is determined that the “fill in the blanks form” is defective and will cost more to rectify.

Ninth, the litigant most likely to be effected by these “fill in the blank forms” will be the female litigant. A woman who has chosen to stay home and raise children while her husband works and maintains the household may have little to no understanding of the community estate, such retirement benefits and/or the financial condition of the community estate. Providing court-approved fill in the blank forms to women who are in such a situation can be detrimental. And because that woman may not have access to the community financial accounts, she may rely on that less costly “fill in the blank form” to provide her with a just and right division of her community estate. While there are thousands of professional women in the State of Texas, there are also hundreds of thousands of women who have little to no understanding of their legal rights at time of divorce and who need to assistance of an attorney to insure their rights are protected.

In conclusion, the laws of the State of Texas are not only convoluted, they are ever changing. Attorneys provide a vital role in the preparation, interpretation, and representation of a client’s legal needs, not only in the courtroom, but in matters that can be settled out of court. To simplify that role by providing “fill in the blank forms” that any person can use sends a negative message to the citizens of Texas that an attorney is just not required to handle their specific case.

For these reasons, I wholeheartedly oppose these fill in the blank forms.

Tyler Moore, Jr. (Houston)

Why didn’t the Supreme Court or Access to Justice seek the opinion of the Family Law Section or the Family Law Foundation before initiating the forms project? This whole project seems to have circumvented the lawyers most concerned with family law cases and those who have to step in and clean up after the pro se litigants have “handled” their own cases. I think the project is ill-advised and should be scrapped.

Who provides the advice and counsel when these pro se litigants make the decisions which have legal consequences, some of which are unforeseen? If all there is to practicing law and litigating cases is filling out forms, then we wasted three years of our lives in school. Clerks can do that.

If the seven point agenda of the Access to Justice seeks to substantially change the procedural rules and statutes governing family law cases so judges, lawyers, clerks or others will “appropriately relate to pro se litigants, that is wrong. Two different sets of rules won’t work. You will create a mess. It’s interesting that the Supreme Court rarely hears family cases anyway, so respectfully, don’t do this.

Keith Spencer (Bedford)

I am extremely concerned that the proposed do it yourself divorce forms presently being promulgated by the State Bar of Texas will have serious and unintended consequences for the very persons they were intended to help. Every week I interview individuals who have been duped into signing forms prepared by their estranged spouses. Some are illiterate or speak a different language. Others are abuse victims cowed into signing. Others are victims of forgery. By the time they get to my office, the deadlines for a new trial have usually expired. Frequently they have been duped out of their homes, retirement benefits, child support, and/or access to their children. A common trend is for the dominate spouse to name themselves the primary

conservator of the children whom actually live with the other parent in order to avoid child support obligations. Geographic restrictions of the residence of the children, an indispensable tool in protecting the children's relationships with parents, are routinely absent from these do it yourself forms. Further, I have yet to see a form prepared by pro se litigants which can suffice as a QDRO.

Family law is a highly specialized area of the law having evolved significantly over the last twenty five years. We deal with people's livelihood and life altering issues involving their relationships with their children. I believe that the bulk of pro bono hours spent by attorneys in Family Law dwarf other areas of practice. It is unnecessary and counterproductive to promulgate forms which have the unintended consequence of promoting and facilitating injustices similar to those described above. It is also clear that these forms are being drafted without the assistance or input from the Family Law Bar. Despite its noble goal, the result of this Equal Access to Justice Initiative may irreparably harm the very persons it was intended to help. Your experience in Family Law gives you better insight into the nature of this problem than most. Please assist the Family Law Bar in addressing and remedying this problem.

David Kulesz

I wanted to express my opposition to the Supreme Court Task Force on Uniform Forms. I have been practicing law since 1979 and have been board certified in family law since 1990. Briefly, these forms are inappropriate, misguided, and in many cases harmful and problem causing. The process by which this is set up has been deceptive and has not included the persons and organizations with the most knowledge and experience. I do not oppose help being given to pro se litigants who do not have property or children. That is clearly not what this task force is proposing or has done with their forms. Every lawyer in this state should oppose this project. I encourage you to take the necessary action to stop this process and protect Texas lawyers from this unfortunate situation. Thank you for your time and service.

Thomas Simchak (Houston)

As a long-time practitioner in family courts in Harris and other counties, I am well aware that not everyone can afford legal representation, and I am equally aware that the funds being sent to the State Bar Equal Access To Justice via IOLTA accounts has been greatly reduced in recent years due to barely-above-zero interest rates. I am also aware that there are persons who can afford legal representation but choose to go it alone without the assistance of a lawyer.

However, the current project/commission seems to be operating in near-total secrecy. The commission was initially set up to oversee the stated goal of helping low income persons acquire legal services from lawyers, but it has gone far beyond that goal. How this happened, I have no idea, but I believe that this commission needs to be reined in.

To have forms available to all, with or without detailed information on how to prepare the forms along with the potential ramifications of using the forms is short-sighted. There will be nothing to guarantee that anyone will actually read the instructions, nor will there be anything to guarantee that anyone who does in fact read the instructions will comprehend the ramifications.

I could go on for some time about the potential for abuse of such a system, and the problems such abuses would cause to either or both parties to a divorce, not to mention any minor children, but I choose not to write such a lengthy comment. Suffice to say that I am not in favor of the

commission or the project as it currently stands. More transparency, much more transparency is a necessity.

Beth Matthews (Orange)

As a small town solo practitioner, I handle many divorces. Most of the people I deal with have some property and children. These 2 areas are rife with difficulties for a lay person to understand. They don't get the terminology, much less the complex issues that children, retirement benefits, real estate, etc. entail. If these pro se forms are initiated I believe my practice will morph into primarily trying to fix divorce decrees which are messed up and produced results the parties didn't intend.

While most attorneys support an attempt to provide legal services to the poor, I believe most do not support efforts to teach lay persons how to practice law in our stead. What can you possibly be thinking to encourage this lunacy?

Andrew D Leonie - *March 29, 2012 9:38 AM*

A number of excellent solutions have been proposed apart from the new challenge for the Commission to remain true to its purpose - access to legal services, ie lawyers. Gary Nickelson proposed an expanded pro bono avenue similar to what occurred with volunteer lawyers in the Eldorado matter, where we lawyers take it upon ourselves to provide a solution. In the same spirit it has also been proposed that the family law section itself undertake to develop a set of basic pro bono forms. Some of us have also proposed that friends of the court be appointed, funded by a special addition to filing fees, to assist by reviewing all pro se pleadings and proposed judgments. These are all good ideas, but I think we still need to compel the production of hard numbers and facts from the office of court administration to see if this is a real problem or not. Anecdotal evidence should not be the basis for providing such a drastic solution to an assumed problem. We need to see real numbers folks!

Norma A - *March 28, 2012 10:33 AM*

I have been in the family law legal field for over 20 years. I started out as a receptionist with Family Court Services; then as a secretary for the Domestic Relations Office; then as a secretary for a family law firm; then as a legal assistant in that same family law firm; then as a Board Certified Legal Assistant in the area of family law through the State Bar of Texas for another prominent family law attorney; then as a Court Coordinator for a family law district judge for over 8 years; and now as a licensed attorney for over 3 years. Not only do I understand the family law issue from a legal standpoint, I also understand the pitfalls of family law while growing up because my mother was abused by my father for years before he divorced her and left her to raise 4 children on a 6th grade education. My mother did not need a "fill in the blank" form as she would have been unable to understand the ramifications of checking a "box". Also, if my father had known of a "fill in the blank form," he would have made my mother sign it without the benefit of assistance. What my mother needed back then was an organization geared toward assisting her personally in order to solve her legal issues. Nothing has changed today -- we still have litigants with little education; we still have battered women/men; we still have husbands (sometimes wives) who are the primary breadwinners of the home while wife (or husband) stays home to raise the children; and we still have people believing that one spouse is entitled to his/her retirement accounts because he/she earned it while working. Providing "any" litigant with a fill in the blank form does nothing to help the truly indigent who need our assistance. I have taken several pro bono cases during my short time as an attorney and that is

because I and my managing attorney (Gary L. Nickelson) believe it is important to give back to the community. I had one case where my client was only married 11 months and wished to obtain a "simple no children, no property divorce". I advised her that there were forms she could use and she stated that she had been provided with "forms" but she did not understand how to fill them out. The forms she showed me are almost identical to the ones proposed by ATJ; however, because of her limited understanding of the meaning of some words, she was too afraid to fill them out. These are the people the ATJ should target! I also took a case where the parties used a "fill in the blanks" form because they were getting along and didn't believe they needed an attorney. They had children and a home. After the divorce, they began having issues and one party sought modification. Unfortunately, modification was not available as it related to the residence and the provisions in the "fill in the blanks" Decree were prepared incorrectly. I am a big proponent of helping the low income litigant because I remember what it was like to live without food on a daily basis (during my childhood), but throwing "fill in the blank" forms to litigants so they can be "checked off" as having been helped (and making someone's numbers look good) is not the answer.

Cynthia Diggs - March 23, 2012 7:02 PM

I fully recognize the need for providing solutions and services to those who cannot afford them, especially in the area of Family Law, which is my specialty. I nevertheless see in my practice the problems that arise from do-it-yourself divorces. The fact is, people can already get forms for family law cases, since they are all over the internet. More forms, with the imprimatur of the Supreme Court, is not the answer. The problems stem from how litigants use and mis-use the forms. Divorce and paternity decrees in Texas often have to be very complex documents of 40 pages or more. The emotionally or financially weaker spouse is often harmed by the use of these forms and the absence of legal counsel to level the playing field. Worse yet, sometimes these do-it-yourself-divorces impact the children of these marriages in a manner that is truly nightmarish. It is sad to have to say to a client: I wish you had come to me before.

I am also disturbed more generally by the notion that everyone can and should practice law. I am disappointed by the suggestion that a bunch of forms is as good as an undergraduate and law school degree, as good as years of legal experience, as good as annual CLE, as good as board certification, and I am disturbed by the implication that you really don't need a lawyers-- just a few forms.

And the snobbery that pervades this effort should embarrass its proponents. I am sure the notion is that areas in which individual clients are most often served: family law, criminal law, estate planning, probate, collection, immigration, personal injury, and the like, are "simple" areas of practice and "anyone" can do it. Aside from the blatant inaccuracy (and extreme legal snobbery) of this sort of thinking, it ignores another reality. The average individual client is the client who is most in need of representation by a lawyer. The average individual client simply does not have the knowledge to represent himself in the average case. And the average individual without representation is far more likely to be run over by an opponent with counsel.

On the other hand, I am willing to bet that no one will propose antitrust forms, or patent litigation forms for those who want to represent themselves in such matters. Ironically, the typical institutional clients seeking these types of services would be far more likely to be able to bring themselves up to speed, and to fend for themselves, if they did have to proceed pro se. But

naturally, Mr. Reasoner and others involved in this effort aren't proposing forms for use with large and capable corporate clients who really don't need lawyers, are they?

Chris Peterson - March 20, 2012 1:34 PM

I don't believe that the Texas Supreme Court has the power under the Texas Constitution to take this action.

Texas Constitution, Article V, Sec. 31. COURT ADMINISTRATION; RULE-MAKING AUTHORITY; ACTION ON MOTION FOR REHEARING. (a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.(d) Notwithstanding Section 1, Article II, of this constitution and any other provision of this constitution, if the supreme court does not act on a motion for rehearing before the 180th day after the date on which the motion is filed, the motion is denied.

Can someone point out to me under what authority the Texas Supreme Court is acting?

Chris Peterson - March 19, 2012 4:40 PM

I don't think that the forms will solve the issues involved in pro se representation. Quite frankly, it won't give access to justice because they will still be filled out incorrectly, follow along work (like deeds and QDROs) won't get done, and Judges will still be asked to give legal advice from the bench. In fact, I think that if the Supreme Court adopts standard forms for pro se litigants the amount of pro se litigants will actually increase because the forms had the "seal of approval" of the Supreme Court of Texas.

The time and money spent on these types of projects would be better spent on increased funding to the legal aid organizations that already exist and to providing student loan reductions for those willing to work for indigent defense organizations for certain time periods.

Ben Selman (Waco) - March 19, 2012 7:59 AM

The debate over the standardization of forms emits of two very serious issues.

First, as to the promulgation of bar or court approved universal forms--

It is without question that the resolution of family law issues is not capable of being reduced to a set of universal forms that would, in any sense, be of manageable size or of any useful durability. The best interest of Texas children produced by errors in judgment would be the most serious concern with potential misapplication of the forms promulgated. The potential for serious property errors in any judgment is over-whelming.

Augmenting the currently available "commercial" forms with a set of universally available uniform forms for Texas litigants, including indigent litigants, is a good step forward to prevent

abuses and errors generated by commercial vendors and the inconsistencies in forms available through web-sites and some of our counties.

Second, as to the use of the universal bar or court generated forms--

Generally speaking, forms are only as useful in settling complex or difficult law questions as the sophistication (by training and/or experience) of the user. Most laymen do not have the sophistication to successfully use any set of forms to correctly answer complicated issues by judgment.

Failing, therefore, to couple the promulgation of universal pro se practice forms with significant reconsideration of pro bono service rules and requirements does not seem to resolve the core problems of patently wrong, or inconsistent, results in family law cases related directly to "form" usage by laymen.

Issues of whether there should be mandatory pro bono reporting and compliance, coupled with consideration of the very serious liability and insurance coverage for attorneys fulfilling pro bono requirements appear critical to use of forms considerations.

Concurrent with the consideration of adoption of universal forms for use by pro se or indigent litigants should be an equally intense study leading to adoption of requirements for pro bono services by licensed attorneys.

Susan D. Sheppard - *March 18, 2012 7:51 AM*

What I have seen in my 24 1/2 years as an Associate Judge (recently retired) is an enormous rise in the number of family law litigants representing themselves. Many, probably most, are representing themselves because they simply cannot afford lawyers, but a significant number represent themselves for reasons separate and apart from money. There has been a shift toward administrative proceedings that have ill-defined boundaries with judicial proceedings as a result of the federal Title IV-D laws, and of course we live in a different do-it-yourself culture in which we prepare our own electronic tax returns, sell our own houses, consult medical websites and order pharmaceuticals online--and get our CLE over the internet!

The courts are open to all. I think the trend is toward an ever-growing judicial docket of cases filed and defended by folks representing themselves. It would be wonderful for all who need and want legal advice to have it, but that has been a difficult challenge to provide. I believe that promulgating clear forms--especially form orders for judges to sign--is an increasingly important piece of providing justice to families.

Assigning the promulgation task to a statewide task force has offered a process for experts, professionals, advocates, and interested stakeholders to produce some good results. If there are no uniform statewide forms, I think the courts will continue to see--and spend extraordinary amounts of time addressing--problems arising from the use and misuse of forms generated from reputable and disreputable websites, forms promulgated by other states, forms adapted from forms used by individual Texas judges, and forms suggested by state and national advocacy groups. This mishmash and enormous variety of good and bad, up-to-date and out-dated, enforceable and unenforceable, legally sufficient and insufficient paperwork--used carefully by

some and haphazardly by others--is what is happening now. What makes anyone think people will stop representing themselves if there are never any uniform forms in Texas?

I would like to see the Family Law Section of the State Bar work in support of this project rather than in opposition.

Jennifer A. Broussard - *March 17, 2012 7:22 PM*

All of the posts on both sides seem to be heart-felt and well-reasoned. I will say here what others have said repeatedly and what I have posted on several other sites dealing with these forms. I have made a very fine living cleaning up after pro se litigants who have screwed themselves and their children using forms. When I read the forms, they seem quite clear but the responses of the pro se litigant to the questions (or fill in the blank) are simply bizzar. Lay people read things into questions which simply have nothing to do with the matter before them. Think about how they respond to questions on the stand or their responses to discovery OR what they read into the standard mutual injunctions! So, whether the forms they acquire are from the Family Practice Manual or from some online family law site OR carry the almighty seal of approval from the Supreme Court of Texas and its task force, they ARE going to screw them up....and I will make more money. IF the Supreme Court forces these forms on the public, I think the law licenses of the Supreme Court Justices and those who served on the task force should be on the line just as my license is on the line when I screw up someone's case. If the Supreme Court is going to tell uninformed pro se litigations that all they have to do to protect their rights and their children's rights is fill out a form, then the Supreme Court of Texas Justices and the task force members need to be accountable to these people.

I should think the Judiciary who actually deals directly with the poor, the uneducated, the unsophisticated pro se litigants (as opposed to reading case law and listening to the rarified arguments of appellate specialists) would send up a hew and cry against these forms. I often sit through the uncontested docket in the 9 Harris County Courts and see the large number of pro se litigants who approach the Bench thinking they have done all the necessary work only to be told that they are no where near the goal. Most of the Judges are as kind as they can be to these people but the pro se wants the Judge to tell them what to do. Of course, unless the Judge is going to practice law from the Bench s/he cannot. But, by the time the Judge finishes diplomatically dismissing the frustrated and confused pro se, the Judge has wasted not only his/her limited, precious time but kept other pro se parties and practicing attorneys and their clients waiting. The waste of judicial time is notable. I cannot speak about this matter in the small rural counties but in the larger counties in this state, the courts are backlogged. There simply are not enough courts but we cannot afford more. (I should think that in the smaller counties the fact that the courts sit as general jurisdiction courts would their dockets equally as burdened and their time no less precious.)

I would agree that if the parties LITERALLY have nothing - no children, no real estate, no retirement plans -- then a form is fine. Whether or not they can figure out how to properly have a waiver signed (I see this problem all the time) and file it or properly effect service, these folks can effectively use forms. BUT, if there is a child, if they own real estate, if one of them has any kind of retirement plan or deferred compensation plan, forms are absolutely inappropriate without at least consultation with an attorney. I could actually see that as a practice for someone who wanted to slow down and get out of the courtroom -- just reviewing documents for pro se litigants before they go to court.

I really have to put this effort of our all-knowing Supreme Court in the same category of wisdom in which we have placed their edict that ALL family law matters in ALL counties MUST be concluded within 6 months of suit having been filed. Yeah! That worked well, didn't it?!! If this mandate is put into force, the result will be even more dismal, but the impact will be far more grave.

Jeanice - March 16, 2012 6:42 PM

I am a new attorney who has been practicing family law for about four years now. However, based on my experience, I believe that I can offer some insight into this issue.

I worked in the legal aid environment during law school and opened my own practice immediately afterwards. I work with my clients depending on their financial situation. For clients that cannot afford a \$5,000 retainer fee, I usually ask them to put down a smaller retainer and make payments based on a payment plan. The majority of the time, I receive my money but in business you have some clients that just will not pay no matter the arrangement.

However, I believe the solution is not developing pro-se forms but a better model regarding providing legal assistance to low-income litigants. My doctor, who has been practicing for 30 years, had most of his loans substantially reduced because he maintains in a medical practice office in a low-income area of Houston. His medical school debt was almost completely covered because the government offered him loan repayment to practice medicine in a low-income area, where there is no other access to medical care within a 15-20 mile radius. I believe we need to offer the same type of assistance to lawyers. I know plenty of lawyers, who would not mind going into to practice in low-income areas, to handle not just family law cases but all areas of practice for low-income litigants if there was a loan repayment plan that would completely eliminate some or if not all of their law school debt. We need more attorneys who practice law in these areas. Litigants need access to attorneys that charge \$75-\$100/per hour in fees not \$250-\$400. They also need access to experienced lawyers that can handle the complex family law issues. Law school debt has reached a point that people are paying off \$100-\$200K in loans. For a lawyer in solo practice, who often deal with low-income litigants, it becomes a choice as to whether to forgo a fee or forgo your loan payments. I think if some form of a loan repayment program, similar to the model used in the medical profession, is developed that more attorneys would join the ranks of those who serve low- income clients. This benefit should be given the lawyers that are not just practicing in a governmental, legal aid or other non-profit environment but those that have a private practice as well.

The forms are not the issues. Family law is complex. Most of the times, the family dynamic is so fractured that you need a legal degree just to untangle all the twists and turns. With low income clients, you often deal with men and women that are married to other people, have children by other people and have complex issues regarding children more than the standard divorce-no children and no property divorce. The forms should not be used for enforcements, modifications or complex custody battles that need a guiding hand.

Fran - March 16, 2012 2:21 PM

I have only done family law mediations for the past 5 years.

I worked at Houston Volunteer Lawyers during law school and after I graduated from law school for several years. I am very committed to pro bono service. In private practice, I have reduced my fees and/or not charged for my services when a client could not pay.

Some people at mediation do not understand Texas family law. They have read incorrect information on the internet or received inaccurate information from their friends/family. I often discuss with them life after divorce and what it will be like co-parenting with their ex-spouse.

Sometimes the parties are very emotional and have been unable to talk to one another in a civil, calm manner. They have been unable to discuss how to divide their property and how to set up visitation of their minor children.

Many couples would not be divorcing if they were not having money troubles. But they have lived way beyond their means (shopping, eating out, taking trips) and the credit cards are all max'd out. They are in houses and vehicles they cannot afford. There is no money left to hire an attorney.

I agree that something needs to be done. The family law system needs help. The Harris County courts are overwhelmed. But if the forms are not filled in properly then a bigger problem could occur in the future.

I certainly don't want to see a child harmed (or even killed) if it could have been prevented. Abusers often intimidate the weaker party into signing a document in order to escape abuse.

Leta Parks and Norma Trusch's comments are appreciated.

The Texas Attorney General's office cannot handle any more cases. All the non-profit agencies in Harris county are overwhelmed. The Houston Volunteer Lawyer Booth in the Harris County Family Court building where they answer questions is helpful, but it's not enough. Sending people to the Harris County Law Library is not working. The people show up with the forms copied and want someone to help them fill it out. They have no idea what they are doing. There needs to be more money spent on low-income programs.

Hopefully you have been talking to people that routinely help low-income people. They have more needs that just being handed forms - some cannot read, some cannot read English and some have physical and mental disabilities.

Legal Zoom is horrible. Their forms are not appropriate for Texas. So far I've not seen a good set of forms for the State of Texas.

Several years ago I tried selling customized "Do It Yourself kits" that I prepared for each couple in Harris County. It was not successful.

Why?

- (1) People said they had an agreement but when we met and talked they were not in agreement and I refused to proceed.
- (2) People had complex assets and debts & I was not comfortable moving forward - I told them they did not have a simple divorce & they needed to consult attorneys.
- (3) People met with me and I prepared the divorce petition & I told them how to file it at the courthouse. I never heard from them again.
- (4) People thought I charged too much for my kits.
(I charged \$175 for a kit with no kids, no assets - except vehicles)
- (5) People had purchased a kit on-line and wanted me to "fix" it for free.

- (6) People showed up and talked -- but did not bring any money to pay.
- (7) People made appointments -- but never showed up.

Jim Keene - March 16, 2012 10:28 AM

Adequately fund legal aid so that truly indigent folks can get help. To folks that aren't indigent, let them either figure it out themselves or hire an attorney.

The Texas Family Law Practice Manual is already available at the law library for anyone who wants to take the time to look at it.

Frankly, I'm tired of the Legislature and the Texas Supreme Court trying to put lawyers out of business. Unless a lawyer wants to either work in or for corporate America, that is exactly what is happening. It is time for the State Bar of Texas to start standing up for lawyers.

Jim Locke - March 15, 2012 3:32 PM

The comments listing the innumerable difficulties of pro se divorce are all correct. However, as a judge with general jurisdiction I can tell you with certainty that many people are filing, and completing, pro se divorces with forms of varying quality. There may or may not be children, but dividing retirement accounts is seldom a problem; there is no property. The only way to avoid having these poor people file pro se is to provide much broader access to attorneys at little or no expense. That is not an easy problem, but the absence of good forms is in no way preferable to outdated or poorly written commercial forms.

Ron Hendricks - March 15, 2012 2:09 PM

I am a thirty-six year experienced attorney who has been practicing Family Law since 1986. All of my clients, whether men or women, come to me with varying degrees of emotional or psychological stress. While I am not a counsellor or psychiatrist, I have 66 plus years of common sense as well as life experience from which to draw to aid the client as they deal with these issues, if nothing more than to strongly urge them to seek counselling. That you cannot get from a fill-in-the-box form. As one has said, we Family Lawyers are more than attorneys; we are, in some sense, life coaches. Again, what box do you check off on a Pro Se Divorce form for that?

To suggest that I oppose these Pro Se forms because it will hurt my bottom line is an insult to me and most of my colleagues. We have all had fee cases turn into pro bono cases because our clients could not continue to pay for our legal services. We continued to provide the best legal service that we could to them BECAUSE THEY NEEDED THEM. If money were truly the issue, I would be more like the Arizona lawyer who made a living just fixing these Pro Se form divorces in his state. Tell me, is that justice? "Do it right the first time" is not a concept that fits well with these scenarios.

Being a retired Naval Officer, I remember from my days in the Fleet the doctrine of the Five Ps ... Proper Planning Prevents Poor Performance. In the military, missions and battles are planned very carefully and in advance because lives are at stake. The planning is usually done by experts in the required fields. Once the Battle Plan is formulated and thoroughly discussed and even tested, it is then implemented. Since the devil is in the details, to push a plan without proper thought wastes time, assets, and lives.

In our case, where is the necessity for the rush to promulgate forms for a constituency whose size and make-up we are unsure. Proceeding without any really good data to support this radical path cannot be justified by "California does it" or "37 other states do it." If any of you have had to deal with these types of forms, you know just how unenforceable they can be.

Therefore, let me say that we are rushing to provide forms that will do far more harm than good. We are, in effect, violating the Doctrine of the Five Ps. There are many ways to assist the truly poor; this is not one of them.

Aaron Jonas - March 15, 2012 1:01 PM

I agree with those who oppose the forms for all the reasons stated. I would like to add the following: There are a variety of resources and means to accomplish a divorce. In my 21 years as an attorney, money issues usually boil down to choice and priority. When I see a pro bono client come through the door with an iPhone and a car newer than mine, it is clear what their choice and priorities are.

Fred Krasny - March 15, 2012 12:50 PM

I was an Assistant Attorney General, Child Support Division, for 6 years, family law attorney at Lone Star Legal Aid for 15 1/2 years, have been in private practice for 3+ years and am involved with Fort Bend Lawyers Care, which provides free legal services to indigent community. Maybe my perspective will add something to the discussion.

I'm certainly not against helping those in need, but is providing forms going to do the job?

Family law is difficult enough for experienced attorneys. None of us have avoided making mistakes/misreading/misunderstanding the law. Family law attorneys have to know--at least--besides family law, something about business, bankruptcy, real estate, criminal, immigration, government entitlements law, rules of evidence and rules of civil procedure.

We explain things to our clients, but even with one on one review of the law to their case, is anyone really sure their client gets it all? How many clients really understand possession orders and child support until it is explained at least once and often more times? So what happens when a pro se tries to get the same knowledge from a form book?

Providing forms sends a totally unprepared person into a world that they are not going to understand, no matter their educational level. Every one who practices family law has dealt with an attorney who has no family law experience. If they often don't understand, with the ability to use a document assembly program and read the law, how will a pro se person with fill-in-the-blanks forms?

Of course, its not just filling in blanks on a form. How to get service, do an inventory, do a withholding order, deed of trust, divide a retirement account? What happens when a pro se files, the other spouse/parent hires an attorney?

If pro se forms are so great, why don't we have them for debtors being sued by credit card companies, homeowners being sued by their HOA, contractors suing for work they done, auto accident cases?

It doesn't matter if a person is rich or poor, sophisticated or not, educated or not, been divorced or already been to the AG or not. In my experience dealing with the population forms are meant for, forms are not going to alleviate the problem, only make it worse. Nothing will do the job of an attorney. Where the legal assistance comes from is a different issue. We certainly have a problem, but providing pro se forms is not going to solve it.

Gary L. Nickelson - *March 15, 2012 10:31 AM*

I am a Family lawyer from Fort Worth, Texas and my firm takes pro bono cases from Legal Aid of Northwest Texas. I do not believe that the Supreme Court of Texas Task Force on Uniform Forms is really set up to help indigent litigants. The Task force is set up to promulgate "one size fits all" forms so that all people, not just indigent litigants, can successfully do their own divorce without the help of lawyers. That goal is simply unattainable, each divorce case has different facts to which you must then apply our Texas Community property law to reach a "just and right" division as called for in the Texas Family Code. Right now, without these newly Supreme Court endorsed forms we family lawyers deal with litigants who have done their own divorce using forms that are out in the marketplace. They then come to us because they cannot enforce the papers that the Court entered because, of course, they are flawed. In some cases we can be of absolutely no help, it is too late to fix what they have done. I am currently trying to fix a form divorce "Final Judgement of Dissolution of Marriage With Minor Child" that does not set an amount of child support or Order anyone to pay Child Support, waives the other parties' rights to the pension of the other party (of course only the Husband had a pension), there is no description of any of the assets that are purporting to be divided, no possession and access schedule for the parents to see their child, no division of any parental rights to the child, no listing of the debts they are 'equitably splitting'.....quite literally the Judge said "You should send this paperwork to the Supreme Court, because this is the Poster Child for not letting non-lawyers use forms for getting a divorce". This post divorce litigation is going to be lengthy, costly and only partially effective, as some things cannot be rectified 2 1/2 years later. This is why the so called Self Represented Litigant has no business doing their own divorce by a form. Secondly the Supreme Court's task force forms are just as flawed as the ones I just described. Only these will have the Supreme Court's SEAL OF APPROVAL! I suggest that the Supreme Court hear de novo any case where a Self Represented Litigant is unhappy with their use of the Supreme Court's Forms! Now, let's get to the real issue at hand; how do we assist indigent litigants? In the area of Family law I think it could be done on a State wide basis by the Lawyers of Texas. I tried to find out from the Fort Worth office of Legal Aid of Northwest Texas exactly how many family law cases involving indigents that they were unable to handle.....they would not give me a number or would they meet with me. I believe they were afraid to give me the numbers because I was perceived to be the "enemy". They were really distrustful of my motives. First, we need real numbers of what the needs are....how many indigent litigants need services? We have 85,000 attorneys in Texas so we have lots of capacity. You need some malpractice umbrella for the attorneys who take these cases, if they don't have insurance. If you choose not to take a case you pay a fee into a fund that can go to support this volunteer attorney effort. The fee needs to be high so people will take the cases like \$500-\$1,000 if you decline to take a case. This would also raise a lot of money that could be used to implement this volunteer attorney system. If Tom Vick can get 450+ family lawyers to go to Eldorado on a Thursday to represent children for free and be oversubscribed then we can do this job as well. But it takes all lawyers of this State. No one is excluded, if you have a law license you take a case or pay. This will be unpopular, but highly effective in solving the problem. Many of us did Federal Criminal indigent appointments in our youth with little

experience only because we had a law license. All of this could be done by the State Bar of Texas who could set up Family Law Clinics to gather cases or let the Legal Aid Corporation hand them out, but they have to see us as partners not the enemy. The money raised needs to be overseen by the Bar and non-lawyers. We do not need anymore run away Access to Justice type groups who decide what the rest of us need without any experience in the field or input from those with experience. I am proud of our State Bar President, Bob Black and the State Bar Board for standing up to our imperious Supreme Court and for the Work of Solutions 2012. Gary

Andrew D Leonie - March 15, 2012 10:30 AM

I am a 35 year lawyer, long time member of the Family Law Section, and former IV-D family law Associate Judge in Dallas. I have served on the State Bar Committee on Legal Services to the Poor in Civil Matters. I have had significant experience working with pro se litigants. I understand and sympathize with the impetus to simplify and increase access to justice for litigants.

However I oppose the scope of the SCT's attempt to provide family law forms for pro se litigants for the following reasons:

1. As much as we have tried to standardize such litigation the inescapable truth is that one size does not fit all.
2. Forms beyond the very simplest acquired or provided to pro se litigants cannot be matched to the litigant's cause without exercising legal judgment, and it is an injustice to require pro se litigants who are incapable of such to make such decisions.
3. The use of most of these types of forms creates an undue burden on Judges who are called upon to navigate the fine line between impartiality and legal advice or otherwise allow these cases to clog dockets.
4. Other helpful court personnel also are routinely taken advantage of by requests that become requests for legal advice, which they cannot provide.
5. Instead of simplifying the process, pro se litigants become more frustrated with the little bit of information they have, assuming they know all that is necessary but discovering to their dismay, the contrary.

So, what is to be done? First, there should be no rush to a solution that we suspect may not fully fit the problem. Second, we need hard facts on the numbers and types of such cases to be collected by the Office of Court Administration to be solidly analyzed before selecting a solution. Third, other solutions should be considered including the possibility of the appointment of special ad litem attorneys funded by filing fees (as are DRO's) to at least ask the right questions of pro se litigants regarding the facts of their case and clear the form and substance of agreed Orders and Decrees offered to the Courts for entry.

Jennie Beth Fannin - March 15, 2012 10:04 AM

In the county where I practice the clerks will give out simple divorce forms. However, I had a couple come to my office to look over the form they had attempted to fill out. It was a simple petition, no children, no property form. This couple had both children and property. I sent them back to the courthouse to get the proper form where they were told that the clerks only had the

one form to hand out. This brings up many obvious issues. Are the clerks practicing law? Are they to decide which form to hand out if more than one is available? Can you only represent yourself if you have no children or property? (Probably the best thing for both the client and for us attorneys, but seems discriminatory.) I understand the need for low cost representation and do a lot of pro bono or below cost work in this area. I would much rather represent someone from beginning to end, than try to fix a petition or an order that a pro se litigant has tried to take of themselves, then come to me to straighten out.

Lee Mattingly - *March 15, 2012 9:44 AM*

I am a member of the Family Law Section of the State Bar of Texas and my primary practice of law is in the area of Family Law. I pride myself on accepting reduced fee and/or pro bono cases for individuals in the area of family law, when warranted. I have filed appeals in cases where individuals attempted to use forms to complete a divorce and due to their lack of knowledge of the complexities of family law agreed to details impacting the health and safety of their children as well as their ability to provide for themselves in the future. The most unfortunate of these situations occurred when one individual retained an attorney and the other individual was relying on forms gathered up at the courthouse. Forms are not the answer to the problem. Forms can be found at any courthouse or library or bookstore; providing more forms is a rubber stamp that the forms are reliable source of proceeding without consulting with an attorney. Consulting with an attorney should be mandatory for anyone seeking divorce, particularly when a divorce impacts children and/or property. Consulting an attorney should be done in all circumstances, for example: I have had an elderly woman come to me right before signing the final order asking if she was doing the right thing. The woman had been married over twenty years, no property or minor children and this scenario would seem to fit the description of simple divorce...fill out the form. Reality check. The woman had been married over twenty years, she had a terminal illness that prevented her from working, the husband's income was over \$150,000 annually. This woman needed maintenance, which I obtained for her for so long as her illness continued (lifetime). This individual would have become a victim of forms had she not been encouraged to seek the advice of counsel before signing the final agreement. Another set of forms is a disservice to individuals; there is already a remedy for people seeking forms. There is an increasing number of individuals who can afford attorneys seeking out "do it yourself divorce kits" and making a mess out of their divorce. Family law attorneys understand that divorce is an emotional process, people making decisions when they are vulnerable and not equipped to be thinking about anyone's best interest. The very reason people consult with attorneys is to be sure they are informed and making correct decisions. I do not want my occupation to be turned into "an explanation of forms"....and I do not want individuals to suffer due to their lack of information due to their failure to consult with an attorney.

Sarah Springer - *March 15, 2012 9:13 AM*

I have practiced primarily family law for thirty two years and twelve of those I served as a Chancellor in Mississippi which is the family law bench. I became active with pro bono work when I was in law school, and I have always participated in free legal services to the poor throughout my career. I had numerous pro se litigants when I was on the bench, and their pleadings were improperly done and they did not comply with the requirements of the law. There are numerous complex issues in family law and the orders which are entered impact families for many, many years. Rather than provide forms and hope that the pro se litigant can figure it out on his or her own, I see the solution as pro bono services. Not every lawyer participates in pro bono to any great degree (unless they take a case and don't get paid); the Bar needs to give

incentives and recognition to those who render free legal services to the poor through pro bono projects. The public will be better served by lawyers volunteering their time rather than being given a set of forms which will result in a shoddy divorce decree which will haunt them for years.

Charla H. Bradshaw - March 15, 2012 8:58 AM

I have practiced family law for 20 years. I have rarely seen a pro se litigant be successful in a case and I have never seen a pro se order that was in the correct form. When I have seen prove-ups at the courthouse the pro se litigant is often sent away because of a lack of skill to even get through the prove-up. It is an injustice to allow citizens to think they can do their lawsuit on their own and without counsel.

The forms issue raises multiple concerns some of which are: 1) Who will man these forms at the courthouse and the ethical obligations of those attorney(s) would be of concern in that the attorney cannot get around giving advice; 2) who will update the forms and pay for same; 3) each section has their own form books which the law libraries carry, or should, and so why are we creating more forms when these are available in the law libraries if one wanted to do their own documents; 4) clients will not be apprised of their separate and community property rights; 5) there are multiple issues with children that they will not be advised of; 6) even after mediations, there are often motions to enter the orders, giving credence to the fact that orders are not easy and have life long ramifications for the parties.

There are other ways to help those who cannot afford attorneys (e.g. pro bono; legal aid etc.) but sending them to their own demise with a form is not the answer.

Todd W. White - March 15, 2012 7:57 AM

I have practiced family law for over 20 years. I have seen less than five divorces during that time that I would classify as truly "agreed" or that I think would have been appropriate for a pro se litigant to resolve using their own form. Most often, attempts to resolve divorces in such a fashion, especially when children are involved, are disasterous. I urge great caution in this area, especially in cases involving children or even a hint of abuse (either physical or mental).

Peter Bargmann - March 15, 2012 3:02 AM

I guess the Texas Supreme Court wants to deliver "access to justice" to pro se litigants (whether or not they are "too poor to pay an attorney") in divorce cases because the services of members of the Bar are simply too unaffordable or unavailable? In how many forms-driven pro se divorce cases will the petitioning pro se litigant also file an affidavit on indigency because he or she is unable to afford to pay the official fees due? Will the Texas Supreme Court also propose a "one size fits all" affidavit on indigency? Remind members of the Bar again why pro bono services in family law matters, as well as other legal matters, are necessary.

Wendi Lester-Boyd - March 14, 2012 8:43 PM

Providing forms to pro-se litigants without regard to actual financial need is only going to crowd the court's dockets with individuals who, while they have the means to pay for an attorney, are looking to "save a buck". As attorneys we act as facilitators, negotiators, mediators and advisors to our clients, and prevent cases from needlessly going to court. While some parties may be able to make agreements, and try to use the forms, others may end up starting cases on their own which end up contested. The individuals who think they can "do it themselves" will also continue

to crowd the courts when they end up hiring an attorney for enforcements, modifications and other "post divorce issues" which will arise due to improperly drafted order. I think that trying to find a system to assist individuals with true financial need is worthwhile endeavor, but trying to publish forms for use by any Texas resident is only going to create chaos in our courts.

David Loving - March 14, 2012 6:04 PM

The sponsoring of pro-se forms by the Supreme Court of Texas is not a good course of action. It puts the Supreme Court of Texas in the position of assuring that the forms will work to grant appropriate relief, which is impossible. It over burdens Courts and court personnel. It trivializes the pro-se litigant's cause by implying that there are no real legal issues to worry about over and above what are in the forms. It ignores problems the pro-se has with procedure. The decrees might be unenforceable in a pro-se's hands. It gets attorneys off the hook that should be volunteering their time as pro-bono attorneys through their local bar associations and legal aid offices.

Licensed in 1970, I have had experience in family law all my career, and poverty law for about the past 20 years as an attorney with Legal Aid of Northwest Texas. I retired this year.

I am familiar the pro-se family law phenomenon. I assisted the District Judge in my county with his pro-se docket a couple of times each month. I provided no legal advice; made sure the documents were in order and handled the prove-ups at the bench. Name changes, modifications, divorces - and in almost all the cases the pro-se had virtually no idea what he or she was doing.

The forms I saw ran the gamut from internet free forms to paid forms from California. With maybe few exceptions all were inadequate, even, and especially, the check-the-boxes forms issued out of Austin by TEAJ. One size does not fit all. These "forms of action" cannot be matched to the litigant's cause without exercising legal judgment. The pro-se litigants I saw could not do that.

The promotion of these forms unduly burdens courts. They are forced to navigate the fine line between impartiality and legal advice. Dockets are clogged; court coordinators, clerks, bailiffs and court reporters are taken advantage of in many ways. Often they are asked for legal advice which they cannot, by law, give. Litigants are frustrated. They do not know how to present the case at the bench. Some cannot read. Many did not know a decree was necessary.

Promotion of these forms trivializes the pro-se litigant's cause. There is no analysis of issues, some of which the litigant usually knows nothing about. The form is not matched to the litigant's cause, which requires legal skill. The litigant just picks a form.

It is condescending to tell a poor person who needs legal remedies that he can do it himself, when a licensed attorney knows he cannot. The attorneys preparing these forms know that.

For example, many of the child support, conservatorship and possession form orders I have seen are, in my opinion, unenforceable. If a litigant owns interests in real property I have never seen an adequate form to protect the interests. The issue of family violence is prevalent and must be considered when fashioning an appropriate final order in any family law case. None of the forms do. The forms in use now usually award retirement to each party - shorting the homemaker and

unjustly enriching the other working spouse. There may be spousal maintenance issues - and on and on.

Many times the litigants have been through the Attorney General's child support division and already have conservatorship and support orders. They often do not know the relationship to their divorce with kids, that the AG should be a party, that the parent-child issues can be revisited.

The AG's child support division is a good example of providing equal access to the courts. So are the programs that supply lawyers to get protective orders in many district attorneys' offices and legal aid programs.

The forms project gives the appearance of helping the poor pro-se, but it really does not help. Critics could claim that it is just a public relations gambit to convince the public that maybe lawyers are not so bad after all. It is not realistic. Proponents seem to have little exposure to the reality of the pro-se issues as they work through the courts.

The forms do not give pro-se litigants equal access to the courts. It gives them equal access to the District Clerk's office. Almost all pro-ses have no clue what to do next - even if they have written instructions.

What the pro-se litigant needs is an attorney. If the pro-se can afford an attorney but just does not want to pay a fee, then we have an idiot on our hands. If she or he really cannot afford an attorney (a fairly elastic and subjective standard) and the local legal aid office cannot take the case, there should be a well-staffed pool of pro-bono attorneys who step in and do their duty to ensure equal justice in their community. That is equal access.

Providing pro-se litigants forms approved by the Supreme Court of Texas is a good idea on paper, but is not realistic in the real world. Are there forms promulgated by the Supreme Court of Texas for pro-se appeals, including briefs and oral argument and motions for rehearing? I bet not!

Leta Parks - *March 14, 2012 5:43 PM*

I think these forms are absolutely necessary. I recently retired after spending 18 years as an associate judge in a family law court. There already is a flood of pro se litigants and has been for many years. As it currently stands, these people buy inappropriate forms off the internet that are totally useless. They waste their money and the court's time. Many times I wished there had been an approved form that pro se litigants could easily obtain when they want to do their own divorce. The trend toward unrepresented people is here to stay. It is all over the country and it isn't going to increase or decrease because we don't have the correct forms for them. I think it's time Texas lawyers stopped trying to fight the inevitable and help make it easier on the judges who have to hear these cases. Attorneys in Texas claim to be worried about pro se litigants harming themselves by not being represented by counsel. If that is what people want to do they have a right to do it. I think the real motivation is fear of loss of business but even in the best light, is a paternalistic attitude.

Donald Dickson (The Parker Law Firm, Austin) - *March 14, 2012 5:20 PM*

I do not object to the development of these forms.

1. Many people are going to continue to represent themselves whether we develop these forms or not. We may as well give them a uniform set of tools which will be instantly recognizable to the judges, who will know what questions to ask to screen for problems.
2. It seems to me that the development of these forms is a greater threat to paralegals engaged in the unlicensed practice of law than to the practicing Bar. We should relish the opportunity to squelch this form of UPL.
3. I fail to understand all the indignation expressed here about "check-mark justice." Here in Travis County at least, the District Courts themselves offer a set of carbonless forms with dozens of pages of temporary orders that the litigants AND LAWYERS fill out by filling in blanks and checking boxes. We already dispense fill-in-the-blank and check-mark justice, even to those who are represented by counsel.
4. For a brief time, until cooler heads prevailed, I was actually ejected from a Facebook discussion group of Texas family law practitioners, for suggesting - apparently to everyone else's shock, horror and indignation - that the practicing Bar itself bore some responsibility for the increasing demand for non-lawyer alternatives in family law. I have seen lawyers gin up controversy and conflict where they did not previously exist. I have seen lawyers who insisted on dumpster-diving through five year old check registers at \$300 per hour on behalf of clients who just wanted to get their divorce and go hence sine die to begin a new chapter in their lives and the lives of their children. It has been my own experience that family law has become the most uncivil form of civil practice. I've been yelled at, lied to, finger-poked, and hung up on, all by divorce and custody litigators. Small wonder the public seeks alternatives. For the most part they just want to get through their emotionally draining ordeal as rapidly as possible, with their dignity and their finances intact, and preferably without everybody hating everybody else - which is, as often as not, precisely what is in their best interests.

Should we caution the public about the risks of pro se litigation? Of course we should. But we are deluding ourselves and the public if we deny that there are or can be significant benefits to be derived from do-it-yourself conflict resolution between husbands and wives and moms and dads. We ought to do almost anything we can to encourage that and to facilitate that.

Katherine Chapman - *March 14, 2012 3:24 PM*

I have practiced for 35 years and am concerned with individuals acting pro se. My experience is that people say: "Oh, it is a simple divorce. We agree to everything." or "We don't have any property." only to find out six months or six years later that that is not the case. People are desperate to get a divorce or some other matter settled and will ignore issues. I honestly don't see how the State Bar can support non-lawyers doing legal work. At least in my rural area, I have not seen a single person pro se who really protected themselves legally and did any justice for the other party, even though our District Judges are compassionate and try to help the person within the Judge's ability to do so.

Aaron Robb, M.Ed., NCC, LPC-S - *February 29, 2012 11:34 PM*

I provide custody evaluations and parenting facilitation services in the Dallas & Fort Worth area, and in the last 18 months I've had experience with two families who have ended up in significant unnecessary litigation after having used such forms. The issues with both families have been substantially similar, with the mothers agreeing to abandon claims to any marital assets and the

fathers agreeing to allow the mother to determine arrangements for the fathers' parenting time. In both of these cases each parent had a substantially different understanding of what a "reasonable" amount of contact would be with neither being aware of the long-term implications of their agreed property split.

Needless to say, in each case these arrangements broke down. In one, when one parent moved to enforce the terms of their decree they found it was unenforceable and the family had to endure significant distress (both emotional and financial) to craft a new decree. In the other, the father filed to modify in order to obtain clearer parenting time arrangements, and the mother, with the view the father had reneged on their agreement, attempted to reopen the property division as well. Again the family fared badly, as in the end both of them spent significant sums of money in what became a pyrrhic victory for the winner - the amount of money spent on attorneys fees likely eclipsed the amount in question, and the damage to their co-parenting relationship was profound.

These are cases where better forms would not have had a significant impact - these parents needed the advice of skilled family lawyers so that they could be counseled on the full implications of their choices, and so that their wishes could have been executed in appropriate, specific language rather than the boilerplate of a form. These families would have still endured strife, as their conflicts were significant, but they would have at least not had to endure the additional hardship of believing their issues were simple and resolvable through do it yourself forms. The false impressions and inappropriate expectations that such forms crated for them raised the bar on their conflict, and their children were the ultimate victims of these bad situations made worse by simple "solutions" to complex problems.

Bill Harris - February 29, 2012 3:20 PM

I have been following the controversy surrounding the activities of the Supreme Court Advisory Committee in the development of uniform pleading and order forms for use in family law cases. With all due respect to the Chief Justice and Associate Justices of the Supreme Court, and in recognition of the difficult task assigned to this committee, I make the observations and comments that follow.

In a letter to Mr. Bob Black, Chief Justice Jefferson sets out a rationale for the development of these forms as a means to "provide our poorest citizens access to the rule of law." The United States Constitution and the Constitution of the State of Texas guarantees all of the citizens of our state access to the rule of law.

The very essence of the rule of law is to ensure that court proceedings are conducted pursuant to accepted and published rules of procedure and evidence that apply to all parties. The history of this country and our State places so much importance to this basic concept that we require those who represent individuals and make decisions as to the application of rules of procedure and evidence to be highly educated and require them to meet rigorous standards of competence and moral character. We recognize, as a society, that lesser standards for those who represent our citizens will result in a denial of fairness in the adversary civil process and a circumvention of the rule of law. The practice of any area of law involves complexities that are unique to the particular area of practice and are best handled by competent professionals. Contrary to the image that some members of our bar seem to attribute to family law, this area of practice is every bit as complex as the areas of taxation, commercial litigation, personal injury, estate planning

and probate, or any of the other specialized areas of our profession. Recognizing these basic principles, it seems that providing pleading and order forms to persons not educated and trained in these complexities is not only contrary to the goal of promoting justice, it is an invitation to the perpetuation of injustice, as the devil is truly in the details.

While I recognize that the prose of the Chief Justice was well intentioned, words have meaning, and this stated aspiration of providing our poorest citizens "access to the rule of law" appears to have become a catch phrase to justify a program that is fraught with pitfalls and unintended consequences. As a result, I fear this program will disproportionately victimize the abused, intimidated, or less sophisticated party to the litigation, particularly in divorce and family law cases.

Divorce cases are much more personally complex to the litigants than other adversary civil matters, largely because of the intimacy of the litigants and the inescapable emotional factors that exist to a greater or lesser extent in all of these cases. In any divorce proceeding, one of the parties is almost always more dominant than the other. This emotional and psychological dominance, even in the absence of abuse, is a learned and accepted dynamic in the marital relationship that is often reinforced by years of love, trust, dependence, intimidation, self-image, and a myriad of other psychological factors. In a proceeding where the financial future and parent-child relationships of the parties will often be changed drastically, our profession cannot promote or allow the adoption of a "check the box" process as a substitute for advice and counsel in the name of providing our poorest citizens "access to the rule of law." The rule of law is based on fairness as a concept as well as a result. When we, as a profession, fail to recognize the potential for abuse and injustice that is so intrinsic to the divorce process in the absence of competent counseling and advice, we perpetuate and promote the circumvention of the rule of law in the name of simplicity.

Chief Justice Jefferson asserts the proposition that "tens of thousands of Texans are compelled to seek justice in our courts without legal representation." This assertion casts an incredibly broad net over the reality of my experience dealing with pro se litigants. My experience over almost 17 years as a trial judge in a family law preference court is that the majority of pro se litigants act as a choice rather than a "compulsion." More specifically, most of the cases where the person is compelled to seek relief from the court are adequately handled by the protective order unit of the district attorney, legal aid agencies, or voluntary pro bono efforts of local attorneys. Many of the pro se litigants I deal with have the monetary assets and financial ability to hire professional counsel, but choose to look for a "bargain in a process that has been represented to them as being simple. In the great majority of these cases, the parties probably get the "bargain" sought. In a small number of these cases, the result is catastrophic.

As any experienced trial lawyer or trial judge will probably agree, the Texas Rules of Civil Procedure are a complicated, yet remarkably forgiving collection of procedural rules for trained professionals skilled in the application and interpretation of those rules. To the untrained or unskilled person, our rules of civil procedure are an incredibly complex and frustrating maze with many pitfalls. As much as some of the proponents of simplistic pleading and order forms seem to try to avoid, downplay and/or deny it, divorce and other family law matters are controlled by the rules of civil procedure. Experienced lawyers can almost always correct procedural mistakes with careful research and the timely filing of the necessary motions. Additionally, most trial judges are receptive to the correction of procedural mistakes in the

attempt to achieve a just result. Self-represented litigants rarely possess the knowledge and intuitive ability to correct procedural mistakes, and trial judges, in an adversary proceeding, are severely limited as to the sui sponte correction of one party's mistakes, as such activism could prejudice the interests of the other party.

Catastrophic errors in the divorce decree or other final judgment are often not discovered until the affected party attempts to receive a benefit from or enforce a provision of the divorce decree or judgment. Unfortunately, this discovery is often made after the expiration of the court's plenary jurisdiction over the matter. What I consider even more troubling is the fact that forms that are being provided to self-represented litigants by the Texas Partnership for Legal Access, the Travis County Law Library, and possibly other entities that appear to be sanctioned by our courts seem completely oblivious to procedural rules and extensive case law and legal precedent relating to the finality of judgments in civil cases.

A troubling example of this simplistic approach can be found in the forms promulgated by the Travis County Law Library that is linked on the website of Tarrant County and probably other places. One of these forms is titled "Motion for Judgment to Correct Clerical Mistake (Nunc Pro Tunc)." The correction of clerical error by judgment nunc pro tunc is a procedural device that is only appropriate when the written judgment contains errors that contradict the court's rendition. A nunc pro tunc judgment cannot be used to correct judicial error. Since the vast majority of the divorce decrees are signed simultaneously with the rendition of the judgment, errors in the judgment will almost always be judicial error that cannot be corrected outside of the court's plenary jurisdiction by a judgment nunc pro tunc. Indeed, there is a long history of Texas case law and precedent that hold that such an attempt will result in a judgment that is void ab initio. Given this well settled concept, a divorce decree that results in an unfair result in the division of community or separate property assets simply cannot be corrected after the expiration of the court's plenary jurisdiction. Anecdotally, I have been personally required to explain this reality to more self-represented litigants than I really wish to recall. On a personal level, I have found this to be one of the most difficult rulings I have made as a trial judge in family law cases and I am certain that my brethren of the judiciary would concur with my personal distress. What is even more haunting is the knowledge that I have rendered and signed judgments that were unjust and contrary to the rule of law that will never be known to me, but will cause great harm to those who trusted the justice system and relied on the simplistic pleading and order forms approach that is apparently seen as a viable alternative to the more difficult problem of providing competent legal representation to the poor, to the demonstrable injury to the naive, uneducated, abused, intimidated, dominated or otherwise vulnerable citizens of our State.

I could probably bore you with real life examples of grave injustice that I have personal knowledge of, and many more that have been related to me by the skilled, professional and compassionate lawyers that practice family law in my court and throughout the State. That reality is the purpose of the foregoing thoughts. Recent newspaper editorial accounts of the current controversy have keyed on the financial self-interest of family law practitioners in the outcome of this project and the potential for loss of business that might result from the promulgation of these pleading and order forms. I cannot know the complete motivation of either side of the current controversy since it appears that both sides of the issue desire for the same result, but greatly disagree as to what methods will best provide the poorest of our citizens the most effective access to justice in divorce and related cases. I have no financial interest in this matter but a great interest in the promotion of justice and the protection of the integrity of our

courts and the legal profession. I submit to you that anyone involved in the promulgation of "one size fits all" pleading and order forms must accept responsibility for the reality that will result from their use.

This is not a question of providing legal services to the poor, it is a question of level and extent of unintended but known consequences we are willing to accept. It is a question that must be answered by a careful examination of our collective ethics, professional integrity and personal morality.

Thank you for your kind and patient consideration of my thoughts.

Shannon - February 28, 2012 4:21 PM

While I believe that the thought behind the forms was a sincere belief that help would be made available to all needing relief, in reality, these same "forms" will (and are) causing un-repairable damage to thousands of men, women and children of Texas. Yes, a "simple" divorce, where there are NO children, NO property of any kind, and no other issues could be handled in the check the box type of form.

However, when you get to issue with children, property, retirement, debts, spousal support, ABUSE, etc., forms should simply NOT BE ALLOWED, without legal aid of some type.

Example, Mary wants a divorce from her abusive husband. They have kids, whom he has also abused. She has never filed a complaint with the police. She has no money so she goes on the internet and gets the standard "forms", fills them out, gives up support, so he won't be mad, gives him all the property, so he won't be mad, and doesn't check the box giving her the right to determine the primary residence of the children, just so he will sign it and her and the kids can get away from him. Sixty days later he picks up the kids and refuses to return them....she's had no support, she has no money, because he took it, she has nothing and the paper work so nicely provided by the State helped her do so. Are there fill in the blank forms for getting her kids back? For protesting that she was intimidated into giving up everything? What does the Court system do for her now.

While this may be an extreme example, I guarantee you it has happened. Every day these forms are being used to the detriment of the persons using them. At the very least, forms should be limited to those cases where there are no children, no property and no other issues. When the litigant gets to a question that they answer YES to in those areas, it should say STOP, YOU CANNOT USE THIS FORM. Even a limited consultation with an attorney to determine that the forms are filled out completely, correctly and the party has been advised of their legal rights, should be a minimum requirement.

How about providing CLE hours to attorney's who volunteer for Pro Bono work? Has that ever been attempted?

VERA C. BENNETT - February 25, 2012 3:00 PM

So, we hand a pro se litigant a form and lead them to believe they can do it on their own. Maybe they will be successful, maybe they will stumble their way into getting the form filled out without creating any damage to themselves, their spouse and or their children. But, what if they don't? Here is what they are missing:

Legal Advice: A lawyer can explain their options, explain the law to them and guide them substantive and procedural legal process. A clerk, kiosk, Judge or set of forms cannot replace good legal representation.

Legal Counsel: or should I say, Life Skills training. Family lawyer probably spend more time counseling their clients about how to handle themselves, how to be better parents and how to overall be a better person than explaining the law.

This is so important and replacing legal counsel with a set of forms is equivalent to denying equal justice. A lawyer can explain co-parenting, taking the high road, not making disparaging remarks about the other parent, not doing drugs, encouraging better morals to benefit their children, encouraging a meaningful relationship with the other family, and the list goes on and on when considering the best interest of the children. In respect to property, much time is spent explaining the economic outcome, how their life will change, the financial benefit of working together, finding a better job, working toward debt resolution, money management and many other asset affected issues.

If the Pro Se Litigant is considered indigent, the set of forms will not counsel the client about why they are indigent. Some are indigent because of mental or physical disability and other reasons beyond that persons control. And the others who are indigent, need a lawyer who can advise them and counsel them about education, employment, behavioral issues, and other reasons that make the person continue to be indigent.

Believe it or not, we do encourage our clients (indigent and not) to clean up their houses, get off drugs, be more involved with their children, take parenting classes, get counseling, have their paramour stay out of the litigation, get jobs, obtain education, go to church, be nicer to others and a host of other character building advice that forms do not provide.

Other lawyers on this blog have described some of the horrific outcomes from the use of forms. I will not repeat those or add my own stories at this time.

We cannot ignore the big elephant (lack of legal representation for many reasons) in the room just because we want to provide a piece of paper where these people can gain access to the Courts. If more legal aid programs were available, you would see far less self represented litigation. Forms are not Access to Justice and I will not call it that, it is merely Access to the Courts.

The Supreme Court needs a task force to compile a report of what are the effects of a pro se family law case AFTER they leave the Court House.

Zoe Meigs - February 24, 2012 7:46 AM

I am a family law attorney in Fort Worth, Texas. There are several fallacies being perpetuated by the creators and supporters of the Divorce Forms Project of the Supreme Court of Texas and the Texas Access to justice Commission. The first and threshold fallacy is as follows:

Fallacy No. 1.

Difficulty in obtaining a divorce is a denial of Justice.

The Commission that decided Texas needs official divorce forms is called Access to Justice. In

publicizing the need for the forms the Access to Justice Commission has stated that the legal system's failure to make it easy for non-lawyers to represent themselves in family law courts is tantamount to a denial of Justice.

While I support the right to effective assistance of counsel in capital criminal cases, and think that to deny the accused effective assistance of counsel results in a denial of justice, I cannot agree that difficulty ending a marriage quickly and cheaply amounts to a denial of Justice. At most denying an efficient divorce amounts to an inconvenience. Not being able to get a quick, free divorce does not deny a person any fundamental human right. No lives are at stake. It is not an emergency. It is not a crisis.

ATJ and SCOT paint a picture of the awful injustices people suffer in family law courts because they do not know how to use the court system. One example ATJ gives is that a victim of domestic violence may have no way to get out of an abusive relationship if that victim does not have funds to pay an attorney.

That problem, though not completely solved, has been addressed. There are many existing no-cost programs to help domestic violence victims through the court system. District Attorneys take some of the cases and get Protective Orders established. Domestic violence shelters and law clinics provide representation for those in abusive relationships.

Another serious problem in family law cases occurs when parents separate and the parent who does not live in the home with the children does not financially support the children. That problem has already been addressed by existing programs as well. The State provides free legal services to establish a child support order -- that's what the Attorney General of the State of Texas does for thousands of low income parents every day. Free. In my county there is also the Domestic Relations Office -- another free service-- to help enforce child support orders. So what remains in Family Court business now that access to courts for domestic violence and child support matters has already been addressed? Divorce. Plain and simple. ATJ and SCOT have spent precious resources to develop forms to help people split up their families--to get out of marriages.

Is efficiently and cheaply splitting up a married couple such a fundamental right that we need to spend the limited resources available for legal aid to ensure that standardized divorce forms are widely available at no cost? Please, SCOT and ATJ, just tell it like it is: The forms do not provide Justice. The forms provide divorce.

I hope that the Texas Supreme Court Justices and other judges who are promoting the SCOT forms will hold their heads up high, and proudly tell voters and reporters in the next election, "Vote for me. I worked hard to ensure every Texan a free and fast divorce."

Lucinda A. Vickers - February 20, 2012 12:48 AM

I have been an attorney since 1985 and have practiced family law (among other areas of the law) almost the entire time I have been licensed. Most of that time has been in a small town in South Texas. I certainly understand the need that poor litigants have for legal services. I do not think, however, that providing legal forms necessarily is the same thing as providing legal services for the poor. I have sometimes represented poor people as part of my practice, and my experience has been that most of them wouldn't have the vaguest notion how to obtain legal forms in a law library or on the internet. And anyone who uses legal forms, whether rich or poor, has to have

some basic knowledge of the legal system and a certain level of intelligence to fill them out properly, and that's just for the simplest legal issues. I have seen many self-written wills in my practice, and even persons with a high level of education and sophistication can screw those up. I understand that we, as lawyers, are going to have to be part of the solution, but as an attorney with a family, I am entitled to make enough money to pay my bills and support my family. As an attorney is a small community, until recently I was "forced" to take criminal appointments that I did not necessarily want, and I had to accept whatever payment I was given by the county whether I liked it or not. The same was true of juvenile appointments, appointments in Child Protective Services cases, and appointments in mental health commitment cases. I do not know any other profession in which the practitioners of that profession are forced to perform services for persons not of their choosing at a rate of pay not of their choosing. I have provided legal services to as many pro bono clients as I could afford over the years. I just don't see how providing forms helps poor persons get access to legal services. In my experience, legal forms provide people who do not want to pay for lawyers a chance to make their legal problems worse. Giving people legal "information" is not the same as giving people access to legal services. There is a reason that lawyers have to go to school for three years, and even then it takes experience to be a good lawyer. Why does anyone think that there is any way to "skip" the lawyer in the process and come out with a good result? I don't have the answer, but to me the only answer involves finding a way to pay lawyers a decent wage for providing essential legal services to poor people. Texas has done a decent job of providing some legal services in the area of child support through the Attorney General's Office. While it is not a perfect system, it is certainly better than throwing forms at people and patting ourselves on the back for providing legal services to the poor.

Karen Langsley - February 17, 2012 3:29 PM

I am embarrassed by the Family bar's reaction to the proposed forms. Lawyers, as a profession, work against the stereotype that we are merely "sharks" or that we're only out to take peoples' money.

These comments and this concerted effort to defeat pro se litigants' access to the court system - WHEN THEY HAVE NO CHILDREN AND NO PROPERTY AND MERELY WANT TO END THE STATUS OF THEIR MARRIAGE - is completely embarrassing. It feeds into the negative stereotypes that we are combating.

"Indentured servitude?" "The few clients left?" Are you not doing the homework and reading that these forms are only for very limited purposes? Do you not know that forms already exist at TexasLawHelp.org?

Come on, people. We are in a service profession, not an entitlement profession.

I remain embarrassed.

Maben May - February 17, 2012 1:55 PM

I am a father that represented myself in two separate family law issues involving my children. In the past I have testified in Federal Courts for a living and have some level of familiarity with the Rules of Evidence and the Rules of Procedure. Nevertheless, with my knowledge and education I could not successfully navigate the Family Courts until I hired a competent attorney.

When I read that the Texas Supreme Court was promulgating forms to be used by poor litigants in Family Law matters so they could represent themselves I was appalled. If a person of my education and experience needed the assistance of competent legal counsel to navigate the system, I can not imagine the poor, uneducated litigant attempting to navigate this system armed only with forms.

In Family Court my children and my property and all that I hold dear were at risk. When I read someone acknowledge that sending the poor and uneducated into the court with nothing more than forms is like "putting someone to sea in a lifeboat without oars, sail or compass" and proceed to recommend such a course of action it angers me. It leads me to believe that they are looking for a quick and easy fix to cast the poor aside in matters that are as important and dear to them as their homes, their children and all their worldly assets.

It is my understanding that the State Bar of Texas simply asked the Supreme Court of Texas to suspend work on these forms while they looked for better ways to help the poor. It seems to me that the Texas Supreme Court should leave the poor safely on the shore while the State Bar of Texas finds better ways to navigate them through the rough waters of the Family Courts.

Janis Alexander Cross - February 16, 2012 10:32 AM

I practice in the area of family law & I am a member of the Family Law Section. Family law is hard. It is complex. It affects people in very profound ways. When you are practicing family law, you often are dealing with people who are hurt, angry, scared, and uncertain about their futures. The decisions that you are required to make when getting a couple divorced, for instance, may affect their mental and economic health for the remainder of their lives. For these reasons, a legal professional is essential to protect the most vulnerable in our society.

There are some divorces that MIGHT be able to be done with a "fill-in-the-blank" forms, but those would only be if there is no real property, no kids, no retirement, and no debt. Do you know many people who are in this situation? Really?? And, if the forms are readily available to everyone, you're going to get people who DO have property, kids, debt, & retirement trying to do their own divorces. That will result in unfair results and chaos in the system.

As an example, I received a call last fall from a young woman who did her own divorce a year ago. She gave a deed to her husband for her one-half interest in the house and then she moved to Seattle. Her ex quit paying the mortgage last fall and, since she is on the mortgage, the lender began to hound her for payment. His non-payment also adversely affected her credit rating, just as she was attempting to purchase a new home. She caught up the payments, to save her credit rating. Her ex now knows that he doesn't have to pay the mortgage, because she will do it. This man is living free in a house that his ex-wife has no way to sell or evict him from. There's 25 years left on the mortgage. Would you want to be in her shoes? A lawyer would never have allowed this situation to arise. Unfortunately, having used forms from the local law library without receiving any legal advice, this young woman is now in a box with no real way out.

I weekly get calls from people who have done their own pro se divorces and want to undo the damage. - I have seen cases where the party who has possession of the kids is ordered to pay child support to the other parent; cases where the custody is given to the "wrong" parent; cases where step-children are included along with biological children; cases where children are omitted entirely; and the list goes on and on. All of this is going on when there no "official", "sanctioned"

forms available to the public. I can't even imagine what kind of chaos we're going to have once the Supreme Court-approved forms are made available! Justice is NOT being served and it is unconscionable to go forward with a "one form fits all" mentality.

Michelle - February 15, 2012 1:47 AM

This game isn't going to help anyone except take away the few clients that we, as attorneys, have left. Why not close all the law schools down and give the public all the forms so that they can do it all themselves?

Indigent people aren't stopped by the Court or the legal process in getting help on forms or orders, etc. They are stopped by the filing fees and/or service fees that are required.

Instead, why doesn't the Supreme Court set up a fund to place part of our bar dues into an account to help the indigent with filing fees, or how about hiring an attorney, instead of creating forms that will be provided to the public as a whole.

Peter Bargmann - February 14, 2012 10:46 PM

I usually handle one or two pro bono family law matters each year through the Dallas Bar's volunteer lawyer program. OK, indigent pro se litigants can have their forms. But if they foul up on the forms and don't get the relief they intended, I will elect not to represent, pro bono, those who tried doing it themselves but failed.

Cheryl Osterberg - February 14, 2012 12:47 PM

Answering the pleas of the State Bar, lawyers who willingly gave money to Access to Justice now find themselves on the wrong end of Bait and Switch. Things are not as represented. I, for one, thought the money was going to lawyers and clinics who could assist these people. That was certainly implied.

Pity the judges and their staffs who will have to deal with the upcoming floodtide of clueless pro se litigants.

I understand the problems of pro se litigants and assist many with their family law issues. However, turning these people loose with an armload of forms they can't understand or use properly is not the answer.

George Conner - February 13, 2012 12:07 PM

I remember something called the "best interest of children" was important.

When did that take second place to checklist divorce decrees? When two people divorce, checklists and an agreed divorce decree will be entered without a hearing, and no one will look at the children, ever? The Supreme Court offers checklists, so pro se folks can divorce, and no one sees about children? No Judge, no lawyer, no one.

How thoughtful.

George Conner - February 13, 2012 11:58 AM

Some of the poor, who come through my office, are poor because they got pregnant before they finished their education, some are addicted or alcoholics by inherited genes, some will never find

employment because as a young person they got arrested, some are mentally handicapped.

What will a form do for a mentally handicapped person seeking a divorce?

Mark - February 11, 2012 12:53 AM

In Texas, Pro Se litigants still face a significant amount of hurdles as we have one of the most complicated state legal codes. On top of that, there are systemic barriers Pro Se litigants face on a variety of levels.

One of them includes restrictions on even the most basic legal information from the courts. Many court personal have a hard time understanding the difference between "legal information" versus "legal advice" and err on the side of caution - transferring any "pro se" litigant on to another clerk, while saying as little as possible.

Another are key differences in how "pro se" litigants are handled in Texas Rules of Civil Procedure and Texas Rules of Disciplinary Conduct. We have institutional safeguards built into our legal process that works to keep a "pro se" litigant from ever being afforded a level playing field when it comes to litigation against an attorney.

A fundamental prerequisite of affording equal access to justice must also include equal access to [legal] information. Rather that is in the format of a form or other media, that is really immaterial.

I don't think it is any great secret that practicing attorneys have extensive collections of electronic forms covering a wide range of legal needs. Yet some of them are fearful of legal forms being made available to the public?

I have a hard time believing that any indigent "pro se" litigant armed with a legal form is going to consider themselves on par with a practicing attorney. Nor is any legal form going to provide an indigent "pro se" litigant the same level of competent legal representation.

But what it will do is help streamline some of the administration processes for the courts, alleviate some of the court staff burden and provide some very basic tools to the public that affords indigents a modest ability to handle a simple legal task.

Attorneys like to draw on an analogy about how you would not dare attempt to perform brain surgery on yourself and so you turn to a specialist, a neurosurgeon – that is the same reason you need to hire an attorney. But not all legal needs falls into the same spectrum as "brain surgery". In some cases, there are band-aid level legal needs that don't require a neurosurgeon to open the box, pull off the stickies and apply.

The "pro se" indigent should be afforded the basic tools to apply their own legal band-aid. Here is a basic domestic support declaration attachment form from California:
<http://www.courts.ca.gov/documents/fl157.pdf>. I have a hard time believing that Texas could not provide a similar public offering.

Interesting article authored by John L. Kane, US Senior District Judge titled "Access to Justice is Restricted: A Call for Revolution". He tries hard to encourage reform, but is still hesitant to truly

empower indigent litigants with statements like – “My personal opinion is that unbundling legal services is the moral equivalent of putting someone to sea in a lifeboat without oars, sail or compass.”

So, he seems to prescribe against even providing a “lifeboat” and let the indigents drown as it will not put them on par with a practicing attorney. That is not an appropriate solution either.

The fact of the matter is that there are simply not enough free legal resources in Texas and we have a significant amount of indigents who have no legal voice, little or no resources and are drowning in a legal sea that refuses to acknowledge anyone who cannot afford an attorney for representation.

Our indigent waivers under TRCP 145, TRAP 20.1 are invasive and humiliating to those who have any level of dignity left. Whenever affordability of legal services is raised as a public concern, the solution proffered requires the indigent to give up that last bit of humanity in order to have a chance at qualifying for mediocre legal services.

In conclusion, all a form is, in its most basic components, is packaged legal information. If we have already ruled out making legal forms publicly available then it seems that advocating for equitable access to automated dockets, e-filing systems, court websites, automated court forms and instructions is going to be futile.

Given all of these obstacles indigent “pro se” litigants are facing, certainly we can loosen the strangle-hold on legal information.

We should be finding ways to facilitate public access to legal information and not be seeking ways to reinforce policies that continue restricting equitable access.

And I have not even begun to address the outrageous court filing and court document fees that burden practicing attorneys and indigent "pro se" alike....

Patricia Baca - February 10, 2012 3:06 PM

There is a real need to help the poor throughout Texas on a number of issues and on a number of different levels. In tough economic times, it is important to analyze where the greatest needs lie and the best way to accommodate those needs.

The forms promulgated by the Texas Supreme Court are for the use of pro se litigants in divorce cases where there are no children and no real property do not help those in greatest need. With so many families desperately hurting, to expend so much effort to help the poor get out of unhappy marriages seems to be the lowest priority. There are people hurt by unemployment, wrongful foreclosures of their home, child custody and a host of other legal problems that far exceed the needs of the poor to get out of an unhappy marriage.

There is no real need for the Supreme Court to promulgate another set of forms. The poor have access to forms from the internet, office supply stores, libraries and a whole host of other options. There are low cost attorneys that prepare divorce papers for litigants. Despite the efforts to make user friendly fill in the blank forms, people are still having trouble with these forms.

Forms Sanctioned by the Texas Supreme Court will give these forms and air of creditability and lull the unwary litigant into believing that they provide the necessary legal protections. When these forms harm people, the integrity of the Texas Supreme and the entire legal system will be compromised. At the meeting before the Board of the State Bar of Texas earlier this month, judges, attorneys and legal aid people from throughout the state spoke about this issue. While a few voices supported making these forms easily available, the vast majority disagreed with this practice. Judges from Tarrant, Parker, Harris and other counties stood spoke against the forms, either in person or by letter. There was a split in opinion among legal aid attorneys on the efficacy of these forms. There were heart breaking examples given by battered women's advocates of women being harmed by the use of the forms already in existence.

I see little difference between the forms already in existence and the forms promulgated by the Texas Supreme Court.

It should be noted that while the forms promulgated by the Texas Supreme Court do not deal with children or property, the instructions clearly link to a cite that does provide forms for children and property. While these forms state they do not divide retirement, they clearly allocate retirement to the party who earned the retirement. This practice is in clear contrast to what would happen in court and practically ensures that the spouse with the better job receives a more favorable outcome than the spouse that stayed at home or the lower wage earner spouse.

Here are a few real life examples that my colleagues and I have experienced with the pro se forms promulgated by funds from Texas Equal Access to Justice:

Example 1: Wife leaves abusive husband. Wife has not worked. Husband works and has a retirement worth a substantial amount of money. Forms have each party keeping his or her own retirement from his or her respective earnings. Husband receives 100% of his retirement worth tens of thousands of dollars, wife receives nothing.

Example 2: Mother fills in child support but does not put a start date, place of payment or forgets to fill in a number of blanks. Mother may be able to obtain a judgment, but she will not be able to enforce by jail time. Often low income obligors do not have jobs that can be easily wage withheld, such as cash jobs and/or day jobs. Without the threat of jail time, some obligors will never pay.

Example 3: Parties prepare Decree of Divorce but do not check the box about domicile restriction. Mother moves to another state with children to another state. Poor father who does not have the money to hire an attorney in another state can not see his children and has no legal recourse.

I have found dozens of examples in Tarrant cases of people who have trouble because they did not fill out the forms properly. In some instances, they did avail themselves of hotlines and other services. When the other party contests the case, refuses to sign or hires an attorney, the pro se litigant is lost. The pro se party is left to fight without knowledge of the Texas Family Code, Texas Rules of Civil Procedure and Texas Rules of Evidence.

Texas needs to focus on innovative ways to help the poor with mobile legal aid for the poor in outlying counties. Utilizing young attorneys to provide lower cost alternatives is another way

poor litigants can have actual legal representation. The time and efforts need to be focused on cases where children are involved and not focus on the low priority cases with no children.

All the forms in the world do not give an individual "access to justice." Texas Family Law is a complex area of the law that requires knowledge of a wide area of federal and state laws. Sending the poor into court rooms armed only with forms is a simply an invitation for them to fail in the system. Attorneys obtain years of legal training for the specific purpose of providing access to justice.

Norma Trusch - February 10, 2012 2:45 PM

Some states have public defenders in criminal cases. Why not have a system of public attorneys for indigent clients who need divorces? That is certainly preferable to requiring pro bono work for all attorneys, which would be a form of indentured servitude.

Patrick - February 9, 2012 9:50 PM

Other than divorce litigants with no children & no property, the addition of new forms is no solution. For anything more complex, forms are useless without legal advice. In fact, forms with the official imprimatur of the Supreme Court are likely to do more harm than good by lulling people into thinking they can do it themselves.

Katrina Dannhaus Packard - February 7, 2012 12:30 PM

I wanted you to consider if you are going to 'forms' whether they would actually be used by the indigent and needy? I practiced in Houston, Harris County for about 15 years and the last 12 years in a very large rural area serving Fayette, Colorado, Gonzales and Lavaca Counties. The truly indigent and poor haven't a clue how to find forms and usually don't have access to a computer or the knowledge to use it. Many of us (both city and rural) cut our billing rates in half or do work for free for the truly poor and needy. I do have clients come to my office with a 'form' they have obtained on line and they have made a mess of their case. It costs MORE money and more time to 'fix' their screw ups. My experience has been the folks that 'use' or 'want to use' the forms are the wannabe lawyers or the scammers that don't want an attorney involved for fraudulent reasons or because they just don't want to pay someone.

I had the same issue with my family estate. Some nut out of Dallas badmouth's attorneys all the time and convinced my Mother to let him do her Trust, her Will, etc. It's a mess. He charged her about \$3,000.00. I reported him, but don't believe the bar did anything to him.

If you make 'forms' available, I sincerely believe you are playing to those scammers who just don't want to pay an attorney and those that 'think' they can 'help' someone fill out the form and scam them for money.

Why not look at what WE, as attorneys can do in required hours to help the poor or something that requires a licensed attorney to actually 'do the work'. Stick some requirements on us, or find some way to reward those that DO contribute alot of pro bono hours (and not the baby attys in big law firms that get it dumped on them for prestige to the firm). The truly faithful attorneys out there that actually 'care' about what they do and truly try to help families in need. I know a bunch of those kind of attorneys - both in the city and the rural areas.

Just my 2 cents worth.

Norma Gonzales Baker - February 7, 2012 6:31 AM

I will admit, two years ago, I would have thought that legal forms should only be used by lawyers on behalf of their clients. Often I'd say to a client, "Do it yourself? That's just like the dentist telling you, 'here's the tool, pull out your tooth.'"

About the pro se divorce forms, there is no doubt that potential clients (PCs) are very likely to prepare the forms incorrectly and not achieve the result they desire. They should, however, be given the opportunity to try; PCs have the right to act as their own lawyer, even if we as lawyers may feel that we have been trained for years to "fill out the forms correctly" and to negotiate a favorable settlement for a client. If they don't achieve the desired result, we can fix it later. How many times have we had to fix the work of other lawyers?

The reality is that some PCs simply cannot afford us. I was forced to close my practice in 2011 because I was hearing, "Please withdraw from my case; I can no longer afford you," too often. Even if I was licensed the same day as our beloved friend Jack Marr, and I was charging what I considered to be a reasonable fee, my clients simply could not afford me. They chose to buy groceries and medications for their children instead.

Well perhaps I should have marketed my practice to a more affluent clientele. That would have benefited me, but what about the clients who cannot afford me (or you)? Will you (and me) consider lowering your hourly rate so that you can prepare for PCs those perfect documents you know how to prepare and which PCs deserve? Are you willing to pay for their mediations and their jury trials? If you are like me, you are saying, "I'd love to do that, but I can't afford to do so. I have to pay my office rent and my legal assistant. Oh yes, I have to feed my family too."

So where does that leave PCs? Are they not entitled to a divorce as is your wealthy client? Should they live in an unhealthy or abusive marriage just because they cannot afford you (or me)? The answer is clearly no, that's absurd!

Our entire legal system is based on EQUAL ACCESS to justice for all, not justice that only a lawyer can deliver. Some people simply don't have the luxury of competent counsel and we as lawyers have to accept that, unless we as family law practitioners are willing to do something about it. We can't just say no without offering a solution. If you (me) aren't willing to provide the legal services PCs deserve simply because they can't afford our hourly rates, we're looking foolish in the public eye when we're screaming and hollering that PCs shouldn't have access to the justice system. The public already sees us as being greedy money hungry shysters, please let us not confirm their belief.

Please understand that standardized forms promulgated by the State Bar and approved by the Texas Supreme Court will at least give us the ability to help those who genuinely need our help. That wouldn't cost us a penny!