**[Ex 2-3g] 2006-10-11 791070b October 11 2006 Texas Senate Hearing on Jurisprudence**

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Your attorney that look I have all these statements that were made in public. I mean you know you I've got the following witnesses that'll testify to there that one we go in and file a complaint if these statements were actually and like I said I'm not prepared to question you on the specifics you know I mean you're up here testifying before this committee and you know I believe what you're telling me I'm not prepared to debate the specifics but on the on on your testimony but if these statements were made publicly then obviously you have witnesses sir when it's actually in the transcript of the case you don't need witnesses okay all right all right okay let's stop there then why don't you if I may we tried to recuse the judge with the statement where in my mind whether I was a party or not if I would have observed a statement where a judge is threatening to take the monies out of the trust of a young man and pay it to his former law firm without a trial and then say we'll try this case in the next century that was the heart of the recusal and the man who heard the recusal appointed by mr. Herman's judge Herman's predecessor instead of someone out of County who didn't have a relationship with the judge said effectively he was just kidding but he wasn't he took the money now who was judge Herman's predecessor King Stephen King King but okay if you have it in a trash here's my point is when you follow the system and you try to get the judge recused who's clearly biased and it doesn't play because the system's broken can you appreciate the notion how discouraging it would be to go one step further which costs you a lot of money and a lot of time when it doesn't even work at the recusal level can you appreciate when you think the system's broken that maybe you just have to go through and have your trial and and deal with the appellate courts that's that's that was our reaction we very well may pursue a complaint before the Judicial Conduct Commission but you can appreciate the mindset that when the system doesn't work when a colleague of the judge hears a recusal hearing anything short of murder that judge is not going to be recused and I've seen it time and time and time again and even when we asked we tried to recuse him twice the second time judge Scanlon heard the recusal and there was a litany of other claims that demonstrated the bias of the judge and judge Scanlon we in writing asked him to recuse himself it was our right to do so he refused to recuse himself he denied the recusal and interestingly enough I talked about the small circle of friends within 10 days he was the visiting judge filling in for Judge Wood in Judge Wood's court an appointment which generated money for him it's a small circle of friends is my message mr. Alpert and I understand what you just said but put yourself in my shoes um you know let's say I'm a poor boy can't afford the representation that you have the the you know I just hire a lawyer off the street and and and not privy to what you know about recusals and and or your lawyer that knows that knows the probate law backwards and forwards and and and and I just you know just plain Texas citizen hire a plain lawyer and he or she does not know the merits of the case and you know basically paying what what whatever he or she can pay but you do have a transcript and you do have remarks that that are in that transcript and I as a layperson would say look I don't have any more money what you know is it gonna is it gonna be you know favorable to me to go forward I as a layperson would probably hey we have the we have the transcript not knowing your attorneys interpretation of what you just told me right now that hey let's go I mean I don't have any more money let's go and try our chance you see what you see what I'm coming sir but let me tell you that some of the other suggestions that I have relate to the Supreme Court establishing standards of removal because I believe the standards of removal have more discretion with the CJC than we realize when I see a circumstance where I've looked at the results of other complaints the results that I've seen in this seven or eight years very few removals I've seen judges removed from a case but not removed from the bench yet their conduct justified removal from the bench I saw the recent one I mentioned a public reprimand and in the scope of a judge's life maybe that impacts his career maybe it impacts an election but I don't think it's quite as significant as removing a judge who clearly exercises bias who issues rulings that have nothing to do with the law prevents evidence from going into a case necessary for a defendant to defend himself and where a judge such as Judge Wood literally becomes an advocate we had circumstances where the judge was directing the other side as to how to do things on the record it's wrong he's supposed to be an independent fact-finder he's supposed to represent the interests of the state of Texas in in applying the law in a balanced manner but you see from a party's perspective if you're not likely going to get relief because the system is not responsive then you're the answer to your question is would that be another bad investment of time and money mr. Alford and I understood your answer and I appreciate it but understand this it is significant the my constituent living over on Avenue K she's on Social Security you know she's on you know she has a small estate and you know she she feels this as passionate as you did when you read your testimony and she doesn't know that you know well if we go forward are we going to get we're going to get a fair chance she just wants to go for it because she's passionate because she feels she's right and that's what I'm talking about and you know not not knowing what you you know the lawyers that deal in this thing on it on a daily basis that that that my little old constituent over here hires a lawyer he might not be the best male or female in in this specific line of work as far as probate and guardianship and all that but at least that person feels that he or she is right and they have a transcript on public testimony given by a judge in their case go forward to see let the chips fall where they may they because they feel it's it's significant to them I think you've touched upon a good idea I think that that person if they fill out the form and go in or not likely going to get very far but maybe we should give an avenue where somebody living on Avenue K or someone who has more significant assets at play can go and have their their claim evaluated and possibly assisted to go before the CJC I can tell you the probability of just simply taking the testimony and tendering it and complaining narratively to the CJC is not going to get you very far well but here here she doesn't know you know you know that but here she might not know let's give him some help well are we gonna get your testimony yes I have a few more suggestions and then frankly I think I think you're right I think if those people have the opportunity to have you know a group look at it who is learned about the subject and get some help I think they should go a whole lot of people don't get help that deserve it I just I just wanted to assure you I don't want you to leave here thinking we're not hearing you if I had been through what you have been through I'd feel exactly as you do and I think we'd all be kidding ourselves to think the system isn't broken in fact badly broken I've followed that case of the Denton County judge judge Wendell he absolutely should have been removed from the bench if what he's been accused of publicly is what in fact he's guilty of and it's a trap it's a travesty that all he got was a public reprimand I agree with you that is that is like publicly reprimanding a legislator it would have 24 hours effect it probably at best and and so I am the good news is as you come forward and you've spent your time here today we've got a very honorable chairman who's straight as an arrow and he'll take all this testimony along with the rest of us as a group and and especially appreciating the fact that you've made time for specific recommendations of change and and I can assure you that some some positive movement will take place as a result of your time here today I thank you so much I think that one of the big problems is discretion and in a small circle of friends discretion can be abused I don't know if it's being abused at CJC I've had no relationship with CJC but I agree this judge and Denton should have been removed I believe that somebody should tell CJC this is where the lines are they cross these different lines they're gone there's a lot of people out there that that will honor the position with with duty and with integrity and to have to deal with all the massive nations that different people who are probate judges or for that matter any type of of a jurist abuse they should be gone there's many qualified people there to do that job and we rely on them the other suggestions that I have that although the first Court of Appeals has held this to be the case it should be clarified by statute that a guardian trustee or receiver an appointee has judicial immunity only for judicial functions and the appointee should not have judicial immunity for fiduciary functions the answer is really simple this isn't patronage it's a job do your job mr. appointee take care of the ward take care of the trustees interests communicate with them and I ask you one simple question whose money is it anyway is it the judges is that the appointees no it's the wards and and the people that have been designated by the ward to receive that money upon his demise or in the case of a trust I had big plans for my son's trust I believe that all three and a half million dollars is probably gone now and it's gonna be a multimillion-dollar fight to get it back but we're fighting for right and I hope the legislature can help us make it easier for people to understand that all they have to do is follow the law and do their duty I have a few more suggestions and I'll wrap up an appointee should not be discharged by a judge and subsequently reappointed without agreement of all beneficiaries or a guardian in the case of a minor I suggest that if a beneficiary or a guardian in the case of a minor and a grant or unanimously agree to remove a trustee the probate court must honor a request and permit a new appointment as provided in the vacancy section of the governing trust instrument the version of Texas property code 112.054 which became effective on 1106 should be amended to require that the judge take the actions petitioned to for by the beneficiaries if the request is one being made by or agreed to by all beneficiaries again whose money is it anyway in the case of a minor beneficiary the request should be sufficient if made by a guardian of the minor there should be no discretion left to the judge when beneficiaries are in agreement in my case the beneficiaries have been opposed to this litigation from day one trustee pursuing an agenda to enrich himself and little did I know at that time trying to strike a deal with internal revenue and ultimately striking a deal with internal revenue to try and get a bunch of money from them because he figured that if they put forth the claim I'd look at the cost of defense versus the cost of settlement and unless it was dealing with issues of integrity I would have settled and he would have gotten 15% of that with a cap of up to seven and a half million dollars he was using the litigation to generate information that he didn't have to give to internal revenue who would be paying him for that information as submitted it's mind-boggling to me we've talked about recusal so I won't I won't reiterate that bonds Texas government code two five point one oh three four requires the judge of a statutory probate court in Harris County to execute a bond but it is unclear for what that bond will be responsible including whether it will extend the trust being impacted by the court that provision requires $100,000 bond but it appears that the courts in Harris County put up a million dollar bond it also appears that the amount is different around the state in addition probate code 36 makes the judge's bond liable if the judge fails to use reasonable diligence in the performance of his duty in supervising personal representatives that could should extend to all court appointees the judge has a job it's simple do your job this may already be the case upon court review but to avoid challenges should be made clear by statute the government code and or probate code and or trust code should be amended to make consistent the amount of the bond and to clarify that the bond applies to all matters before the statutory truth before the statutory probate court I will distribute the unabridged portion of my speech I abridged it a little bit as we were going forward believe it or not trying to shrink it a little bit but I'll distribute that and I would appreciate it if it would be made part of the record it will be other questions Thank You mr. let me ask you I noticed all this is in Harris County but from your witness card you apparently don't live in Houston any longer did you did you used to live in Houston I lived in Houston for 20 years I say this case started in 1999 and to be very frank with you I moved to Arizona and one of the reasons why I moved to Arizona really compelling reason is I felt a very heavy weight when I saw what this judge was doing it became very clear to us in December 1999 when this judge permitted this alleged trustee to lie to him and take $138,000 of my children's money never tell us where it went and then take 70% of those proceeds it became clear as my attorney and I communicated that this judge had an agenda although I was subject to this court because I lived here during that period of time I needed a mental break it was overwhelming to my family what was going on so we moved to Arizona does your son want to make it make any remarks give me a statement I think all I need to say is that the entire statement has my blessings and to maybe emphasize you I'm sorry it's Roman Alpert representing myself new and improved version to tell you that the entire statement has my blessings and maybe to emphasize to you that my brother's guardian and I from the moment I turned 18 and my mother before then were against the litigation and to thank you for listening thank you for thank you for appearing both of you thank you appreciate it is 13 minutes to 12 and our next witness is judge Mike Wood of Harris County judge I'm going to give you the option we've you have any idea about how long you're gonna speak okay let's let's go ahead then you would identify yourself and who you represent and proceed with your testimony I am judge Mike Wood I am the judge of Harris County probate court number two and that is the court in which I think all three cases have been mentioned to you today is our pending and I'm not going to talk about him at all because it would be improper for me to do so I was outside I didn't listen to anything said because it'd be improper for me to hear an expert take communication by a party to a case so I was waiting outside I've been the judge of probate court number two for 13 years I've been a lawyer for 33 years I guess and I am now on the executive committee of the National College of probate judges which is a group that is dedicated to improving the probate and guardianship law around the country I want to give you a little bit of background about the size of the probate business if you will in Harris County it's bigger than most other places in the world there are four probate courts in Harris County each of us have a staff of ten people to assist us in doing our job 30% of the cases filed in Harris County are filed in probate court number two and also 30% court one court three and four only get 20% because they do the mental health docket right now I have about 2,700 cases pending in my court that's 1,200 guardianships some of which go on for years and years some of which are fairly short I have 1,500 estates decedents of states pending at any given time some of them last 90 days and are closed some of them last years but they probably roll over enough that they're probably 4,000 new probate cases each year so that gives you an idea of the size of the business years ago and a couple years after I was appointed 95 I had the staff total the assets and the inventories that were filed for my approval for one quarter and then they did it again five years later both times it was about three quarters of a billion dollars that's just the assets and the inventories not necessarily the states that I was really supervising there most of them are independent of states but my court court one are probably among the busiest probate courts in the nation as far as an amount of business that we handle the number of cases we handle the job of a probate court in Texas law is fairly simple we supervise the administration of decedents of states and guardianships 98% of what I do 95% is assist parties and uncontested cases to comply with a probate code and incidentally I want to compliment the legislature I don't know there any of you were here when the probate code was originally passed but it is the among the best in the nation it is a very good comprehensive detailed code it allows citizens to freely dispose of their property without court interference at a very low cost the filing fee for a probate case in Harris County is about $250 less than $250 and it can be opened and closed in 90 days if it's not a taxable estate tax return the attorney's fees shouldn't be too much I heard recently that to file a will for probate in California cost $46,000 and took a year and a half minimum and the attorney's fees were another $10,000 during that that's a just a will not a contested case just surely surely you misspoke $46,000 to to file a will for probate you remember proposition 13 senator or no increase in property taxes so everything is pay-as-you-go out there so they have to pay for everything with filing fees so it's ridiculous that's just ridiculous just to file an equivalent of a minimum title they really don't have but to get a $10,000 $100,000 CD passed down the next person beneficiary cost $10,000 filing fee this is outrageous so it's very expensive in other places the other thing the Texas probate code does is provide a comprehensive supervision of guardians and administrators that we appoint among the best in the country there's some states where the the first inventory is not filed for a year and there's never an accounting file I couldn't live in a world where I was appointing somebody given the power over someone else's property and I couldn't even tell what they're doing we make a lot of appointments and I want to just run down the list of all the different kinds of people we appoint just so the committee would be familiar with it judge if I if I could what I'd like to do I've tried all morning to keep people kind of on on okay on message and what our charge is and what we're interested in hearing from you and everybody else that appears before us today is examine and make recommendations to improve court oversight of fiduciaries appointed to make financial and personal decisions for wards as well as those appointed to administer in a state or trust so if you've got suggestions or recommendations for the consideration by this committee in that area that's that's what we want to hear we don't in hearing who all you appoint okay we supervise very well now the there are issues concerning who I select and who I appoint it's my choice who I appoint and I right now I have almost 200 people on the list of appointees some I appoint in very simple cases some I appoint more complicated cases and there's really no way for anybody to supervise that above me except an appellate court and the Judicial Conduct Commission and that's working quite well if I do something wrong in the appointment of a guardian or an administrator then somebody objects to it and I overrule the objection they can appeal it but they think I'm really doing bad and it's not a case that they're involved in they can file a complaint with the Conduct Commission and they'll look into it I don't know what additional supervision there could be I've heard suggestions well maybe we ought to have an ombudsman to look at the inventories that you approve or the accountings that you approve and see if they're okay who's gonna pay the ombudsman if I have an estate that's been pending for ten years and somebody's complaining about the accountings have been filed for ten years who's gonna pay the fees for that person to come in and and look at everything and see if it's okay I have a staff attorney who reviews every attorneys fee application before I look at it I reckon I've written guidelines as Judge Herman does I provide there can be no block billings you're familiar with block billing it's got the date and it's got a paragraph and then $1,250 I don't allow that it's got to have a date the thing that was done the amount of time that it took to do it and the amount of fee so I can very easily go down and review the fees for individual things decide whether they're reasonable necessary which I'm charged to do let me ask you if I may judge Herman suggested changing section 666 to include this one sentence in calculating reasonable attorneys fees the court shall award fees only for the performance of legal services is that a proposed improvement in your judgment no I don't think so I don't approve attorneys fees except for attorneys work that's why I have to have it individualized so I can tell if an attorney takes the ward to the doctor that they can charge a fee for that time but it's not going to be $250 an hour their attorneys fee if they if and I tell people that want to get into the business of being a guardian you need to have a staff that you can charge out at $40 and $50 an hour for the bottom line stuff it's people get to probate court not really planning to you have a big estate a guy that's an independent oil man becomes incapacitated I had to appoint a trust officer from a bank to be the guardian it took him three years and hundreds of thousands of dollars in fees to reduce that man's estate to cash so he could be he could survive on it because we couldn't as guardian operate the oil business if people plan the probate code allows them to avoid the fees I also don't agree with the idea that we should have a hearing on every fee application for over $5,000 the fee application has to be verified in my case it has to be detailed what is that what are they going to do at the hearing if they said a hearing if I said a hearing on every fee application over $5,000 I'd have to have a day a week doing nothing but having lawyers come in and say what read the fee application to me I've already reviewed it and it's verified so there's really nothing now if somebody objects to a fee we have a hearing okay let me let me ask you this because I think you've I think you've answered the question in a way that you agree with this proposal but you said you didn't agree with the proposal I don't agree with it because I'm not sure what the definition of legal services is if a lawyer has it clearly not going to the bank and closing an account that well except that if you're a guardian and you're a lawyer and you go to the bank to close the account and open a guardian account you have to do it if a paralegal shows up they won't do it you have to be there and then the bank says well I need to see the whole file I need to send the file to my legal staff in Columbus Ohio or we can't this letters of guardianship are not enough so you're there three hours or so debating with increasingly high levels of people in the bank just to close the account as guardian and open a guardianship account so that's why I'm concerned about saying only legal services I'm not sure exactly what that is I look at everything that's on the bill and I decide well why you know we would ask him why is this five hours for this and that's what my discretion is all about and if I'm abusing my discretion there are ways to take care of that I'm concerned about legislation that tries to define what's appropriate and what's not appropriate because then you get a longer and longer definition and you have more and more cases interpreting the definition the one thing I'll say about contested cases there's always a winner and a loser and I have the benefit that the legislature doesn't necessarily have that I can't hear a case unless everybody is present before me I can't consider anything unless everybody's here that's why I wasn't here before when they were speaking as long as parties have money there are lawyers who will take the money to fight the fight I try to limit it as much as possible when people are coming in mom's becoming capacitated and they're fighting over who's going to be the guardian of her mom I point out to them right at the beginning I have the discretion whether or not to pay your attorney's fees out of mom's money for you to fight over who gets to be guardian over mom's money and I'm disinclined to do that so understand that your fight over this is gonna be it's your nickel and you know what I've only tried less than five contested guardianship cases over just that issue

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