**[Ex 2-3l] 2006-10-11 Robert Alpert Texas Senate Hearing on Jurisprudence**

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Chair calls Robert Alpert. Morning. Welcome.

May I have my son sit up here as well? These trusts relate to him. You bet. Uh, he needs to fill out a card as well.

Good morning, Mr. Chairman, members of the committee. My name is Robert Alpert. I have long taught my sons that you can be part of a solution or you can be part of a problem.

I'm hoping that we and this committee will be part of a solution. I, I've been involved in a situation involving three trusts I formed for my children for now seven and a half years. This, uh, case was tried.

I ended in June of 05 and a year later we finally got a judgment. I'd like to tell you some of the facts, not because I'm merely trying to take your time and tell you a story, but because the facts of this case, the abuses within this case bring rise to the recommendations that I will provide as related to modifications and legislation. Imagine what it is like to work for over 30 years and create trust for your children to pay for their education and contribute to their financial security.

Imagine the orchestration of a scheme by your former lawyer to make himself trustee of the trusts, to steal money from those trusts and execute a plan to enrich himself at the expense of your children. The beneficiaries, your children are not consulted formally oppose the litigation initiated by the trustee and relieve the alleged trustee of any conceivable duty to prosecute his claims. Yet the trustee ignores your children while he executes his scheme.

Who under the law can one rely on to stop such an injustice since it involves trusts. If a lawsuit is filed in probate court, you would expect to be able to rely on a probate judge to enforce the law to protect the interests of the beneficiaries. Imagine that the very judge you rely on turns out to have an agenda of his own to enrich his friends and former law firm by authorizing the distribution of several million dollars from these trusts to them.

Imagine a judge, um, who ignores the wishes and interests of the beneficiaries ignores the facts when evidence of the scheme undertaken by your former lawyer and ignores the findings of the jury, which after six years of litigation conclude the lawyer has breached his fiduciary duty. Imagine a judge then prolonging the agony and refusing to enter a judgment for yet another year. A judgment that when finally signed is inconsistent with the jury findings.

Imagine, I'm sorry. Uh, and the judge discharges the tr the alleged trustee and then releases the trustee for all the blatantly illegal actions he has taken. And then in violation of both the trust instrument and the law, the judge reappoints the same person he's discharged.

The very person the jury determined had breached his fiduciary duties. Judges should not be able to abuse their judicial power to enrich their friends. Judges should not violate the code of judicial conduct all with impunity.

All judges in Texas must recognize and honor their duty to serve. And adjudicate matters in accordance with the laws of the great state of Texas. They must not be allowed to arbitrarily give away to strangers the financial resources that were to be preserved for loved ones.

The discretion of abusive probate judges must be contained by legislation and the rights of beneficiaries to challenge an abusive judge must be expanded and protected. I fully realize the committee does not have a mandate to punish judges. This is not my purpose in coming here today.

My purpose and goal is to help the legislature understand certain abuses in the probate system and encourage legislation to stop the abuses. Today you will hear of a pattern of conduct in several cases presided over by judge Michael Wood of Harris County probate court number two. You will hear how judge Wood has exploited the assets of families for the benefit of his friends.

My purpose for being here is to encourage the change, to avoid the possibility of such devastating conduct in the future. What I'm about to describe happened to my family. It could happen to your family.

It has no doubt happened to the families of some of your constituents. In fact, it happens to families with more frequencies than most people realize. Many of those families are powerless to even complain.

They should not be faced with this problem. The law should have protected my family. It should protect all families, but it doesn't.

I hope this committee will take the steps to change that. In 1994 I hired Mark R Riley, a CPA and attorney as in house counsel and corporate counsel. This man became a trusted officer in my private investment company.

During his period of employment, my father became very, very ill and ultimately died in the summer of 1997. I like many of you was very, very close to my father and his loss was devastating to me. During this period of time, I relied on Riley to oversee my passive business investments.

In addition, Riley worked to facilitate the instructions of independent trustees of three trusts that I had formed for my two sons. Since 1990 I made annual gifts to two of my son's trusts in cooperation with the trustees. I loaned large sums of money to the trust within guidelines provided by my accountants so that each trust could make investments and accelerate its growth.

As a result of the loans, the trust accumulated net assets of three and a half million dollars prior to litigation commenced by Riley in the spring of 1999. During the summer of 1998 I became very concerned about Riley's personal and professional conduct and in September of the same year I determined that it was in my family's best interest to terminate his employment. In the spring of 1999 Riley filed a lawsuit against me asserting that he was trustee of my three children's trusts.

I didn't appoint him. He claimed that I had breached a fiduciary duty to the trust. Nevermind that no lawyer to whom I have ever spoken.

Thanks. A grantor owes a continuing duty to trust formed. Of course my family and I were shocked that Riley had initiated this campaign against me.

Okay. In subsequent months I learned Riley's motivation when he attempted to shake me down asking for a payment to him, not the trust of $300,000 to end the litigation. Of course it would have been much more cost effective to simply pay him the money and let him go away.

But I was not prepared to demonstrate to my sons that that kind of conduct was acceptable. So I elected to defend the lawsuits. Little did I know that Riley's plan was so elaborate that it would make Andrew fast out blush.

In the subsequent four years I learned the following. Prior to working for my company, Riley had developed a plan to change his identity and move abroad if he could accomplish his goal of embezzling $10 million from his former employer. That was learned through Riley's own handwritten notes, which were discovered after he was no longer my employee.

Riley was fired by that employer. Riley intercepted $138,000 federal income tax refund, which represented money I had advanced at Riley's direction to one of the trust to pay taxes he advised were due when they were not. Riley then sought a refund of the funds paid and had them directed to him.

The funds were never repaid to me. They did not even remain in the trust to which I advanced. Instead, 70% of the refund was used by Riley to serve his own interests in a hearing in October, 1999 before judge would Riley lied three times through his lawyer, Darlene Payne Smith saying he had not received the check.

He had in fact received it and cashed it and another hearing in December. Riley and Payne Smith misled the court by failing to disclose that they had already removed 70% of the proceeds, including money paid to Payne Smith's law firm. They said the money was in an appropriate trust account.

That's not true. Amazingly, judge would ultimately even awarded Riley a judgment against me to reimburse Riley for the amounts he used from my funds to pay his lawyers to sue me. I received none of the money back and the trust which borrowed the money from me ended up with a debt to me.

It couldn't repay because Riley and his lawyers rather than the trust ended up with the money all which judge would's blessing discovery. Discovery confirmed the most significant of the transactions which Riley complained about in the lawsuit were transactions that he personally and personally designed and executed in my absence. This facts fact was reconfirmed through subsequent testimony of third party witnesses during the trial trial yet in the face of overwhelming evidence to the contrary, judge would determined that Riley was the trustee, that he should have no responsibility for the actions he took while claiming to be trustee and that he should remain as trustee despite my family's understandable desire repeatedly expressed to rid themselves of Riley and his interference in their financial affairs.

The most shocking evidence is yet to come. We discovered in the same timeframe that Riley filed his lawsuits against me. He entered negotiations with the internal revenue to become an anonymous confidential paid informant.

This is the stuff of which they write books. He was to be paid as both a lawyer and receive a fee of up to seven and a half million dollars if the allegations he put forth were true. Riley used his position of confidence as my personal lawyer and as the alleged trustee of my children's trust in an effort to gain a substantial financial reward for himself.

The allegations put forth by Riley were not truthful. Obviously this conduct was a breach of his fiduciary duty to the children's trust. It was also a breach of his attorney client duties to me and my companies.

The internal revenue service criminal division investigated me in the trust for four years and closed the file in August 2004 with any without any action against me. The internal revenue civil division also investigated and ultimately accepted all of the tax returns as filed without change, which affirmed that his allegations were without merit. Although Riley denied under oath that he had backdated documents used to appoint himself as trustee of my three children's trusts, his legal assistant confirmed the backdating in a deposition.

This single fact when combined with the deceptions described above would clearly convince any reasonable fact finder that Riley was unfit to serve as trustee. Nonetheless, judge would did not allow the jury to hear and decide the contested issue concerning Riley's backdating and if he was properly appointed the trustee. But not withstanding the judge withholding essential evidence from the jury, the jury determined that Riley had breached his fiduciary duties and yet the judge reversed it.

Following Riley's employment with my company became with another involved with another Houston entrepreneur and sure enough, Riley then executed another scheme to extract money from that person. Being a probate judge of Harris County is a prestigious public position, but it comes with a weighty responsibility. The code of judicial conduct in the state of Texas is comprised of eight cannons, a copy of which I will provide with my written presentation after the hearing.

I believe judge would ignored his duties and responsibilities as described in the code of judicial conduct by pursuing an agenda to enrich his former law firm and appointee friends at the expense of my family. I believe it has happened to other families to whom it has been even more devastating. The law should be changed to protect from such abuses.

The underlying premise of Riley's lawsuit was that a grantor of a trust has a fiduciary duty to that trust. Every lawyer with whom I've spoken on this subject has indicated that a grantor does not have a fiduciary duty to a trust. A responsible judge who is respecting the judicial cannons would have dismissed Riley's case in the early days of litigation when all interested parties besides Riley opposed, formally opposed the litigation.

Riley, however, retained the law firm most likely to succeed in Harris County probate court number two. It quickly became apparent that judge would wanted to provide an opportunity for his law, a former law firm whose senior partner Frank Harmon has been one of his closest friends for decades. Mr Harmon has been involved in the election of more than 20 judges in Texas and it's considered the Harris County judicial King maker.

Mr Harmon's wife is federal judge Melinda Harmon who previously has been recused when presiding over matters related to judge, I'm sorry, to, to Mike Wood, the same law firm and the same lawyer, Darlene Payne Smith. This is the lawyer who lied to the judge in October and December 1999 as I described earlier, is even representing judge Woods bonding company in a separate case about a witness about which a witness will will testify. Uh, to clarify, it's related to a Miss Norman's client, Mr Wattling.

I believe judge would violated the cannons by exercising a blatant pattern of bias. An example was evidenced in a hearing on March 11th, 2004 when my counsel stated he wanted to take the deposition of an important witness who had personal knowledge of Riley's scheme. Judge Woods said, do you referring to grantors counsel, really want to take his deposition if it means they referring to the plaintiff's lawyers get their P fees paid in full and I start paying the attorney fees for their new lawyer if they still want to withdraw.

I think that's what's going to happen. I'm going to pay them all their back fees and pay their new lawyer fees out of the trust until this thing is tried in the next century sometime. During six long years I watched in disappointment how judge would started as a fact finder, became a biased jurist and ultimately became an unvarnished advocate for the client of his former firm in his effort to enrich them.

I believe judge would violated the judicial cannons by authorizing payments to friends and cronies of approximately $2 million for my children's trusts. Okay. On January 7, 2005 judge would awarded James Raymond who claimed to be one of judge was closest personal friends, $120,000 after refusing my children's counsel and opportunity to adequately question Mr. Raymond's invoices as to their reasonableness and necessity in total frustration.

Following the hearing, I approached the bench and I asked judge would in the presence of numerous witnesses, sir, don't you have any more friends you'd like to enrich at my children's expense? And the judge said, I think I can find a few. I believe judge word ignored the laws of the state of Texas to achieve his personal objectives, but the law should have made that impossible. He's going to give it to him.

The law should protect my family and any other families from such violations. The law should prevent a judge from achieving his personal objectives at the expense of the people who have come before him, many of whom are much more vulnerable. Texas law as now written, however has left my family with an of only one hope of undoing the harm caused along and costly appeal, which will be fought by Riley with my children's remaining trust assets because Riley was reappointed by judge would as trustee.

On the other hand, during that appeal I am faced with the prospect of having to post a bond for millions of dollars to prevent Riley seizure of assets, including the home in which my 81 year old mother lives and the home in which my minor son and his mother live. Lest you think I'm overreacting, let me assure you that Riley has already initiated legal proceedings in the states where these homes are located. I don't know how much of my children's three and a half million dollars remains, if any, because Riley in further breach of his duties and his lawyers continue to refuse to tell the beneficiaries the location and balance of their, balance of the assets in their trust and have offered no distributions to the beneficiaries as required by the governing trust instruments.

I believe judge would violated judicial cannons by, by having ex party communications with his point appointees and his former law firm, which represented Riley. It was very evident in court when judge would made various comments, a substance of which he could only have known through ex party communication since there was no testimony in court nor filings made with such information. The judicial cannons impose the responsibility of a judge to perform his duties of judicial office impartially and diligently.

It is the judge's responsibility to use his best efforts to properly apply the law and as a result have confidence in the correctness of his rulings. During the trial, judge would said the odds of this case surviving an appeal are nil. So we're going to be back again.

I'm just hoping and praying for reversal and render instead of a reversal and remand. Then later he said, right, I'm sure that I've made so many mistakes in this. You're going to have to ask for relief from the briefing limits.

Judge would made these statements following his decision to improperly incorporate in the summary judgments. He previously entered against me in the jury instruction. This blatant effort to taint the jury combined with several dozen other errors by judge would during the trial virtually assured that the Alpert family would not achieve resolution and would likely have to retry the case all over again.

Long after judge would's friends had completely depleted the three and a half million dollars set aside for my children's future financial security. While hearing a post trial motion, judge would stated the following to my children's council. My children's council said with regard to that, under property code section one 14.064 it states that it's not a prevailing party statute that attorney fees are be awarded.

Attorney fees under that section is not dependent on the finding that the intervenors substantially prevailed or that they prevailed at all. And that's out of also hacker senior versus hacker one five three S period W period three D one three eight Texas appellate court, San Antonio. And the judge said, well, you understand that isn't law in this court because that's San Antonio.

Yeah. Last I heard San Antonio was part of the great state of Texas. Such statements confirmed judge would was serving his will and personal objectives rather than applying the law in this case.

It seems rather inappropriate that judge would would suggest that a ruling from a appellate court in San Antonio would not be the law in his court. In January, 2000 judge would appointed Karen Gerstner as receiver and trustee of my children's trusts. This is the ruling that Mr Herman judge Herman referred to earlier.

Ms Gerstner failed to manage the assets of the trust, lost $600,000 by ignoring the stock portfolio, invested cash in a money market fund earning only one and a half percent and charged the trust in excess of $300,000 for her purported services including legal fees. Ms Gerstner did not manage or benefit the trust other than hiring an accountant to file tax returns. Ms Gerstner even failed to hire a third party professional money manager.

She merely parked the assets in violation of the trust instrument. Ms Gerstner never was in contact with the beneficiaries. Ms Gerstner merely took the money provided by judge woods patronage.

Okay. My children sued Ms Gerstner in district court, but due to what I believe were the behind the scene manipulations by judge woods wife who was present, who is a Harris County district judge. The case was mysteriously transferred to judge Mike wood without either plaintiff or the defendant making such a request.

In January, 2005 judge would granted his appointee judicial immunity in a clear effort to hide his failure to exercise oversight of his appointee. This summer, the first court of appeals completely reversed judge was ruling related to Ms Gerstner's judicial immunity for fiduciary functions. I know it's hard to believe, but this story is much longer and the abuses my family has suffered are even deeper than described.

The bad news is that it is unclear when, if ever my family will recover from its encounter with the trustee from hell. The good news is that this should be a wake up call to the Texas legislature. And if the Texas legislature takes responsibility to Texas, Texas litigants seriously, this need not continue to happen to other families.

The proposed legislation that I, that I wanted to put forth may require a little bit of a off the cuff preamble. You've heard comments earlier that there are 17 statutory probate judges in the state of Texas. It's a small circle of friends.

They get together at conferences. They very, very, very rarely recuse each other. We had two initiatives of recusal.

Um, one after judge would said we'd try this case in the next century. Sure sounded biased to me. Judge McCullough said in that hearing that he didn't think he was serious, that he was just trying to move the case along.

A short time later, judge would paid out over a half a million dollars of my children's money to his former law firm. This is all without a judgment. This is all without a trial.

That was shocking. We felt it was inappropriate for judge McCullough to hear the recusal since the there, there are two or four judges in Harris County who are friends. So we asked judge McCullough to recuse himself.

He kept us waiting in the courtroom a number of hours and came back and then decided he could be fair, made the comments that I described and then judge would did what I described as well. The 14th Court of Appeals in the Motley case recently came out and ruled correctly. So I believe that if a judge is under recu, laboring under recusal and another judge is going to hear that case and it is requested that he recuse himself, that he also is laboring under recusal and cannot hear the case.

But the bigger problem is it's a small circle of friends there needs to be a much broader base of judges to hear recusals in the probate court who's not in that small circle of friends that can simply judge the issues and the issues generally are that of bias and any of us can judge bias and certainly any seasoned jurist could judge bias, but they're not given the opportunity because these probate judges are protecting each other. It's no ifs, ands or buts about it. I can show this committee case after case after case where that's the case.

My suggestions are as follows. There is at least the very public perception that the probate courts in Harris County are unfair and even corrupt with judge Mike Wood of Harris County probate court number two being the post poster boy of judicial misconduct. There are only four courts and the manner in which these cases are assigned to those courts at this time allows an attorney to basically select the court to which the case is assigned.

I'm told this happens on a regular basis so that a particular lawyer who is viewed with particular favor by a court ensures that the cases land in that judge's court. What that means is that right or wrong that attorney and his client win. This is the definition of a broken system.

The committee should authorize hearings to review the allegations concerning abuses so that is in position to make appropriate recommendations to the Texas Supreme Court concerning how to best address the loss of count of confidence in the Harris County probate courts. One of the major problems is that recusal process is completely ineffective. I understand that the recusal rules 18a and 18b have been the subject of a Supreme Court advisory committee since at least January of 1997.

That is right. January 1997 and all the while the recusal system is completely unable to address the loss of confidence in the Harris County probate courts.

**This file is longer than 30 minutes.**

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