Interim Report

TO THE EIGHTY-NINTH TEXAS LEGISLATURE

HOUSE COMMITTEE ON JUDICIARY AND CIVIL JURISPRUDENCE

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HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2024

A REPORT TO THE
HOUSE OF REPRESENTATIVES
89TH TEXAS LEGISLATURE

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Committee On
Judiciary & Civil Jurisprudence

January 10, 2025

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The Honorable Dade Phelan
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Judiciary & Civil Jurisprudence of the Eighty-eighth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-ninth Legislature.

Respectfully submitted,

Jeff Leach, Chair

Julie Johnson, Vice Chair

Yvonne Davis

Joe Moody

Andrew Murr

Mike Schofield

Cody Vasut

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Lulu Flores

Julie Johnson
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Members: Yvonne Davis, Joe Moody, Andrew Murr, Mike Schofield, Cody Vasut, Shelby Slawson, Lulu Flores

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Introduction

On February 8, 2023, Speaker Dade Phelan appointed nine members to the House Committee on Judiciary & Civil Jurisprudence. The Committee members included the following: Jeff Leach, Chair; Julie Johnson, Vice Chair; Yvonne Davis; Joe Moody; Andrew Murr; Mike Schofield; Cody Vasut; Shelby Slawson; and Lulu Flores.

Pursuant to House Rule 3, Section 20, the Committee was given jurisdiction over all matters pertaining to the following:
(1) fines and penalties arising under civil law;
(2) civil law, including rights, duties, remedies, and procedures thereunder, and including probate and guardianship matters;
(3) civil procedure in the courts of Texas;
(4) administrative law and the adjudication of rights by administrative agencies;
(5) permission to sue the state;
(6) uniform state laws;
(7) creating, changing, or otherwise affecting courts of judicial districts of the state;
(8) establishing districts for the election of judicial officers;
(9) courts and court procedures except where jurisdiction is specifically granted to some other standing committee; and
(10) the following state agencies: the Supreme Court, the courts of appeals, the Court of Criminal Appeals, the State Commission on Judicial Conduct, the Office of Court Administration of the Texas Judicial System, the State Law Library, the Texas Judicial Council, the Judicial Branch Certification Commission, the Office of the Attorney General, the Board of Law Examiners, the State Bar of Texas, and the State Office of Administrative Hearings.

During the 88th Legislative Session, 284 bills total were referred to the Committee. 219 bills were considered in a public hearing; of these, 193 bills were voted out of the Committee. In total, 76 bills were signed into law. During the First Called, Second Called, Third Called, and Fourth Called Special Sessions, no bills were referred to the Committee.

Following the Legislative Session, Speaker Phelan assigned one interim charge to the Committee. The Committee held two hearings on September 17 and October 2, 2024 to hear invited testimony on the assigned interim charge, as well as on four additional subjects under the Committee's jurisdiction.

Interim Study Charges

CHARGE 1 Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 88th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

- HB 19, relating to the creation of a specialty trial court to hear certain cases; authorizing fees;
- HB 841, relating to certain judicial statistics and related information gathered by the Texas Judicial Council; and
- HB 2384, relating to court administration, including the knowledge, efficiency, training, and transparency requirements for candidates for or holders of judicial offices.

SUBJECT 1 Examine proposals to increase judicial compensation.

SUBJECT 2 Review proposed modifications allowing paraprofessionals to provide limited legal services.

SUBJECT 3 Review the current use and misuse of the Texas Citizens Participation Act.

SUBJECT 4 Discuss the use of civil nondisclosure agreements in settlements involving the sexual abuse of a child.

Charge 1A: State of the Judiciary

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 88th Legislature.

Background

Under the House Rules, the Committee was given jurisdiction over the following state agencies: the Supreme Court, the Courts of Appeals, the Court of Criminal Appeals, the State Commission on Judicial Conduct, the Office of Court Administration of the Texas Judicial System, the State Law Library, the Texas Judicial Council, the Judicial Branch Certification Commission, the Office of the Attorney General, the Board of Law Examiners, the State Bar of Texas, and the State Office of Administrative Hearings[1].

Summary of Committee Action

On September 17, 2024, the Committee met in a public hearing at the Capitol to consider Charge 1, which included an update on the Texas Judiciary and the Supreme Court of Texas. The following witnesses were invited testimony:

Nathan Hecht, Supreme Court of Texas

Summary of Testimony

Chief Justice Nathan Hecht, Supreme Court of Texas

Chief Justice Hecht provided an update on the state of the judiciary to the Committee, covering a wide range of issues.

Judicial Compensation

Over the last several legislative sessions, Texas has not yet been able to solve the issue of increasing judicial compensation. The base pay of a district judge is $140,000 and has not increased since 2013. In comparison, the average starting salary of a first year lawyer in Texas is around $235,000.

It is worth as well to compare to federal judges. Texas district judges' base pay is about 70% of a federal district judge's salary, roughly $60,000-$70,000 less. The federal government has switched to an automatic cost-of-living adjustment (COLA) for federal judges. And Texas should look into following suit. Such a raise would strengthen the judiciary as a whole.

Overall, the Chief Justice argued strenuously on behalf of Texas judges for an increase of their compensation.

Case Backlog

The COVID-19 pandemic was very challenging to the courts, but they have ultimately caught up. Criminal courts have been clearing the backlog with an over 100% clearance rate. Civil courts are

only slightly behind at 90% clearance rates, as resources were devoted first to criminal cases.

New Business Court

Texas' new business court judges are working very hard and take their positions seriously. They are dedicated to the rule of law and committed to contributing to a strong judiciary in Texas. They recently underwent training and are figuring out the logistics in setting up a new court. All are determined to do it right.

Criticisms of the judicial selection process, while they may be real among critics, should be subdued for the integrity of the system. Otherwise, it undermines the job that the judges are doing. It is critically important that we reaffirm the independence of the judiciary and iterate that judges are not going to decide cases differently because they were appointed by a specific governor or elected under a specific party.

Public Trust in the Judiciary

Unfortunately, the judiciary is facing, alongside a number of institutions, lower confidence among the public as part of popular sentiment. Surveys indicate public confidence and trust is the currency of the judiciary. Popular perception of all of the courts in the country is down. While state courts are ahead of federal courts with regard to public trust – for the first time in a long time – satisfaction is in the mid-to-high 50% range. A survey from one year ago saw that less than half of the respondents said they were going to be treated fairly in the court system.

Collateral damage most likely stems from social media about cases, as well as political leaders' pointed comments about judges and the courts. Judges in turn will have to work harder to help convince and regain the trust of the public. Good recruitment and fair compensation would also increase a favorable public perception. However, these are indeed mostly unfairly directed. Nearly all of the 3,220 judges in Texas are no cause for concern.

Harris County Judges

Despite multiples concerns about the actions of certain Harris County judges, the criminal courts at law in Harris County are doing much better. With regard to enacting future changes, training and a stronger monitoring system among the judges in the county would help. Not to be pointed, but the issues in Harris County are exclusively in Harris County and are limited to only a handful of judges.

Online Court Proceedings

While not every court utilizes remote court proceedings, they have certainly helped in certain proceedings, particularly in family court cases. Remote court proceedings are less expensive, eliminate travel considerations, and eliminate child care concerns. Consequently, participation has gone up, which we are pleased to see.

Bail

State courts are grappling with the issue of bail all over the country. That being said, SB 6 has put Texas in a much better place. Judges and magistrates now get actual data on the accused to use in setting pretrial conditions. OCA has received 44,000 reports and is currently in the process of receiving more data. There are still some decisions ahead, but we have made good progress in

addressing many of these issues.

Data Collection

Texas needs a uniform case management system. In the past, the judiciary has resisted the gathering of data due to concerns that it would be unfairly used to attack judges. While the source of those concerns are understandable, at this point in our history the need for data outweighs them. The gathering of data will ultimately show the great work that the courts are doing.

Access to Justice

The Supreme Court is still very much involved in improving access to justice for low-income Texans. The Court takes this very seriously and continues to work hard on it. It has been particularly difficult attracting new lawyers into legal aid offices. The Court is continuing to examine incentives to get new lawyers at the start of their careers into these offices. Suggestions have included waiving the bar exam for a year to work in a legal aid office, as well as programs to reduce law school debt. Overall, the Court is continuing to work on this issue and is grateful for the Legislature's support.

Artificial Intelligence

One of the big issues currently facing the judiciary is Artificial Intelligence (AI). It has received a lot of notoriety and criticism for brief writing, which is inappropriate in a court proceeding. However, one thing AI does very well is summarize. The Court deals with a lot of records and testimony in the courts, and is looking to see how it can be implemented to help with summaries. There is a of course a strong emphasis on judges still making decisions themselves. Businesses are ahead of the judiciary in using AI, and the Court wants to make sure they are as up-to-date on the issue as much as possible.

Charge 1B: Monitoring of HB 2384

Conduct active oversight of all associated rulemaking and governmental actions taken to ensure the intended legislative outcome of all legislation, including HB 2384, relating to court administration, including the knowledge, efficiency, training, and transparency requirements for candidates for or holders of judicial office.

Background

Recent suggestions have been made for Texas to increase the transparency required of judicial candidates, as well as to increase judicial training requirements. HB 2384 sought to addresses both issues by establishing additional ballot application requirements for judicial candidates, creating additional judicial education requirements, and requiring new reporting of court performance measures[2].

HB 2384 saw overwhelming support in the Legislature. During the 88th Session, the bill was passed 8-0 out of Committee[3]. It went on to pass the House 146-2[4], and pass the Senate 30-1[5].

Summary of Committee Action

On September 17, 2024, the Committee met in a public hearing at the Capitol to consider Charge 1, which included the implementation of HB 2384.

The following witnesses were invited testimony:

Megan LaVoie, Office of Court Administration

Lisa Kaufman, Texas Civil Justice League

Summary of Testimony

Megan LaVoie, Administrative Director, Office of Court Administration

HB 2384 made significant changes to court administration by increasing the knowledge, training, and transparency requirements for candidates and judicial officeholders.

The bill instructed the Secretary of State to amend the application for judicial candidates to include substantial new requirements improving judicial candidate transparency. These requirements apply to candidates for the Supreme Court, the Court of Criminal Appeals, the courts of appeals, district judges, and statutory county court judges.

These new requirements include:

- State bar number
- Disclosure of sanction(s) or censure by the State Commission on Judicial Conduct or a review tribunal
- Disciplinary sanction(s) imposed by state bar

- Disciplinary sanction(s) imposed by entity in another state responsible for attorney discipline
- Statement describing the nature of legal practice and specialization for past five years
- Disclosure of conviction(s) of Class A and B misdemeanors for past 10 years

Additional appellate requirements include:

- Appellate court brief(s) filed for past five years
- Oral argument(s) presented before appellate court for past five years

HB 2384 also substantially changed how court activity will be reported. Traditionally, the Office of Court Administration (OCA) collects the aggregate clearance rate of cases for district courts. This was amended in three primary ways:

1. Extended reported performances measures to be by each court and no longer at the aggregate level.
2. Along with district courts, added statutory country, probate, and constitutional county courts.
3. Added two additional performance measures, including average time of a case from filing to disposition, and the age of the court's active pending caseload.

Performance measures will be reported annually, by county and district clerks, to OCA. The first reporting period is March 2024 through August 2024. This abbreviated reporting period allows the Texas Judicial Council to adopt rules on the performance measures and allow time for case management vendors to make modifications to the case management systems. Subsequent reports will be by fiscal year. OCA expects the first reports to be reported by November 1 and to publish in early 2025.

OCA will use these new reports to identify courts that may need additional assistance. The initial performance measure is a 90% clearance rate for all case types, including criminal, civil, family, and juvenile. It is also the intent of OCA to expand these standards as we move forward.

The age of the active pending caseload is a brand new reporting requirement and none of the case management systems were programmed to collect this information. It will be important to allow programming changes to be reviewed for accuracy by the clerks and judges before these other two reporting requirements become part of the standards.

Lastly, one of the final provisions of the bill was the creation of a specialty certification for judicial administration. The Supreme Court created a task force to recommend rules establishing the certification. The Court is currently reviewing the task force's work. Some of the items recommended by the task force include:

- Advanced Training
- OCA Court Performance Standards
- Essays
- Mentoring
- Criminal Dockets and Jail Management
- Feedback and Peer Review

- Feedback from Self-Represented Court Users
- Education and CLE
- Timeliness
- Judicial Conduct
- Public Trust and Confidence, Access and Fairness, Transparency

Lisa Kaufman, General Counsel, Texas Civil Justice League

The Texas Civil Justice League (TCJL) worked alongside Chairman Leach and the Committee to pass HB 2384 during the 88th Legislative Session. The impetus of the bill was to increase the qualifications and training for judges, as well as to provide voters with more information about their elected judges through public transparency on the ballot. As HB 2384 continues to be implemented, TCJL has additional suggestions in further perfecting the legislation for the 89th Legislative Session.

Under the current law, the judges file their applications with their respective political parties. TCJL does not suggest that this change, but that it moves from the political parties to the Secretary of State in a timely manner, so that the information can be accessed and utilized by the public. It is TCJL's suggestion to require by statute that the parties must provide the information to the Secretary of State in a timely manner, meaning before the primaries. Unfortunately, we were not able to get the information prior to the 2024 primaries.

Additionally, the bill provides for the regional presiding officers to establish a mentorship program for judges. TCJL supports this idea, but argues that legislation needs to authorize a way to fund that program. The Texas Board of Legal Specialization is also working on the certification for judicial administration. While it was given an authorization for an appropriation, no appropriation was made last session. TCJL suggests this appropriation be made next session.

Lastly, TCJL supports OCA in the use of the new data metrics in creating better efficiency within the judicial system.

Recommendations

Timely Reporting

It is critically important that voters have access to a judicial candidate's information before elections, including primary elections. The Legislature should thus require political parties to provide the Secretary of State this necessary information in a timely manner so that voters have access to it to make informed decisions. HB 2384 was passed to increase transparency, and the Committee continues to strongly support that goal.

Additional Funding

The Legislature should make additional appropriations for the judicial mentorship program, as well as the specialty certification in judicial administration. Both serve important roles in encouraging a robust judicial education system, ultimately benefitting both the judiciary and the State.

Charge 1C: Monitoring of HB 841

Conduct active oversight of all associated rulemaking and governmental actions taken to ensure the intended legislative outcome of all legislation, including HB 841, relating to certain judicial statistics and related information gathered by the Texas Judicial Council.

Background

Improving data collection from Texas courts has been a priority for both the Committee and the Texas Judicial Council. Indeed, the Texas Judicial Council in its 2022 Data Committee Report issued a recommendation to the Legislature to provide funding for the judiciary to collect case-level data[6].

HB 841 sought to improve data collection by statutorily requiring case-level information on the amount and character of the business transacted by courts to be reported[7]. It received very broad support in both chambers. The bill was passed out of Committee 9-0[8]. It went on to pass the House 133-13[9], and pass the Senate 30-1[10].

Additionally, the Legislature passed a $4 million appropriation for fiscal year 2024 and $2 million for fiscal year 2025[11], which was the anticipated cost provided by the Office of Court Administration. This is due to the fact that HB 841 would require a replacement of the current Court Activity Reporting Database, which only allows aggregate data collection, and instead have a vendor-hosted cloud-based system allowing courts to report new case-level data[12].

Summary of Committee Action

On September 17, 2024, the Committee met in a public hearing at the Capitol to consider Charge 1, which included the implementation of HB 841.

The following witnesses were invited testimony:

Luis Soberon, Texas 2036

Megan LaVoie, Office of Court Administration

Summary of Testimony

Luis Soberon, Senior Policy Advisor, Texas 2036

The Committee should be credited for consistently prioritizing the need for better judicial data. Not only were significant judicial data bills passed last session, but the Legislature succeeded in giving the Office of Court Administration (OCA) the resources to bring on a system to collect case-level data.

Currently, OCA's IT system is set up to collect aggregate-level reporting from counties. This obscures from what is happening in larger counties, as well as from what is happening in rural

counties where jurisdictions of district courts are complex and overlapping.

Looking ahead, it is important to have continued funding support for data and IT needs at OCA, specifically as they benefit the collection of better court data. One of the items in particular is for additional regional data coordinators. These would help the roughly 2,300 entities reporting to OCA comply with new forthcoming data reporting guidelines and requirements.

It is important to be mindful of how this new collection effort will interface with other kinds of data. In a criminal case, for example, collecting a defendant's State Identification Number (SID) will lead to a more sophisticated analysis on different criminal justice events for that individual outside of just that case. Similarly, if you collect more detailed information on attorneys, you might be able to do better analyses of not just how courts are performing, but how the whole legal system is performing. Are there legal deserts? Are there parts of the state that are underserved?

Lastly, case-level data will be stymied and stuck at the trial level unless we do something about the Texas Appellate Management and eFiling System (TAMES), the state's case management system. It is a legacy system that has suffered ransomware attacks and is not able to be updated with new features to specifically collect new data elements. If we want a system that follows from trial events to the appellate, we are going to need a new appellate case management system.

Megan LaVoie, Administrative Director, Office of Court Administration

Along with the passage of HB 841, the Office of Court Administration (OCA) obtained funding for a new system that could collect case-level data. After a competitive bidding process and months-long contract negotiations, OCA has contracted with Tyler Technologies to use their case analytics platform to capture this information.

Case-level data provides critical insight on trends, policy issues, judicial needs, and court efficiency. OCA is starting with criminal data elements. Several stakeholder groups and the Texas Judicial Council have also approved the criminal data elements.

Lastly, since reporting practices across the state are not uniform, OCA will be requesting from the Legislature the necessary funding for eleven regional coordinators, coinciding with the eleven administration judicial regions, to work with the clerks, judges, and case management system vendors in their regions on better data collection.

Recommendations

Funding for Regional Data Coordinators

The Committee recommends to the Legislature that the necessary appropriations are made for the creation of 11 Regional Data Coordinator positions that will coincide with the 11 Administrative Judicial Regions. This is the same recommendation issued by the Texas Judicial Council. The Committee looks forward to seeing continued progress in judicial data collection.

Charge 1D: Monitoring of HB 19

Conduct active oversight of all associated rulemaking and governmental actions taken to ensure the intended legislative outcome of all legislation, including HB 19, relating to the creation of a specialty trial court to hear certain cases; authorizing fees.

Background

During the 88th Session, the Legislature created Texas' first Business Court. In doing so, Texas became the 30th state to have its own specialized court to handle complex business litigation[13]. The passage of HB 19 marked the culmination of previous legislative efforts in establishing business courts within Texas' judicial system. Indeed, since 2007, the Legislature has seen a number of filed bills creating multiple versions of a business court system[14].

Following the legislative session, HB 19 went into effect on September 1, 2024. Before and after that date, the Office of Court Administration (OCA) operated in its administrative capacity in setting up the new courts. Governor Abbott as well fulfilled his duties by appointing ten judges to the courts[15].

During the first 90 days of the Business Court's existence, from September 1 to November 30 of this year, 50 cases were filed, of which 17 are removals of cases filed in district courts filed prior to September 1 of this year[16]. This means that 33 cases were timely filed in the first 90 days. Additionally, five of the judges have issued six opinions total[17].

Summary of Committee Action

On September 17, 2024, the Committee met in a public hearing at the Capitol to consider Charge 1, which included the implementation of HB 19.

The following witnesses were invited testimony:

Judge Grant Dorfman, Texas Business Court of the Eleventh Division

Megan LaVoie, Office of Court Administration

Tom Phillips, Self

Mike Tankersley, Texas Business Law Foundation

Lee Parsley, Texans for Lawsuit Reform

Summary of Testimony

Judge Grant Dorfman, Texas Business Court of the Eleventh Division

The Texas Business Court is grateful for the opportunity to establish an attractive forum for the

efficient and streamlined resolution of business disputes. The businesses courts were officially open for business on September 1 of this year, but there was at least a month prior in which the court was getting set up.

With the Office of Court Administration's (OCA's) help, the Court has been able to:

- obtain office and court space
- interview and hire a statewide pool of court reporters
- hire an Austin-based court clerk to accept e-filings
- interview and hire court managers and staff attorneys
- prepare local and administrative rules for the court

In their travels across the state, the business court judges have witnessed a lot of excitement. There has been a lot of enthusiasm about the possibilities the Court presents.

The cases seen by the Court are the types of cases we anticipated seeing: large transactions, real estate fraud, construction, and corporate governance issues.

Texas is the 30th state to open a business court. The judges have been in communication with the chief judge of North Carolina's business court, who shared his experience and operations, as well as a voluminous set of local rules. Texas hopes to provide its practitioners with a much more condensed, workable set of guidance to how to practice in the business courts. The judges have also looked at Georgia, New York, and other jurisdictions for additional examples in order to take the best practices from these courts.

The Court is grateful for the authority to publish legal opinions, as well as being given a staff attorney to assist in writing those opinions. They certainly anticipate that much of the Court's early work will be addressing preliminary jurisdictional questions.

The subject of judicial pay has been a challenge. Business court judges have signaled that they would like to be paid the same as any other state district court judge. The intention of the Legislature was to pay a level that would equalize them with state district court judges. However, they are instead paid the base salary of a district court judge, but without the typical county supplement that a district court judge receives. In Harris County, for example, the supplement is roughly an additional $18,000 per year. Additionally, the judges have no campaign accounts to draw from, as they are appointed by the governor.

Terms have been statutorily set at two years, subject to reappointment by the governor for additional two year terms. Some cases, certainly trials, may last longer than two years. We hope and expect that judges achieve reappointments for good behavior, hard work, and delivering fair and impartial justice. There is and should be an institutional focus for these courts. High turnover is something that should be avoided.

Megan LaVoie, Administrative Director, Office of Court Administration

A statewide court has not been implemented in Texas in more than 60 years. Over the past year, the Office of Court Administration (OCA) has not only implemented the new Business Court, but

also the new 15th Court of Appeals.

The Business Court has 11 divisions consistent with the administrative judicial regions. *(See Appendix A)*. Five of the divisions became operational on September 1 of this year. If reauthorized by this upcoming Legislature and funded, the remaining six divisions could become operational in 2026.

OCA's priority tasks for fiscal year 2024 have been the following:

- Find suitable and secure chamber and courtroom spaces.
- Focus on operational procurement.
- Conduct court fees research and issue recommendations to the Supreme Court.
- Work with counties in each division to establish procedures for handling transfers and removals from the Business Court, jury summons, and courtroom reservations for jury trials.
- Complete staff onboarding and training.

With regard to court locations, the bill outlined several provisions governing where the Business Court can have proceedings. Judges can choose where their chambers are located and where jury trials could be held. OCA's understanding of the intent was for the state to lease chamber space and county facilities, coordinate with local county officials and courts for nonexclusive use of existing courtrooms, and for the Business Court to hold routine proceedings much like the child support courts do currently, as well as for jury trials when needed. The strategy to secure courtroom space was to first engage with counties. It was quickly made known that urban areas do not have office space and courtroom space. Indeed, many of these counties need additional courts of their own. OCA also met with law schools to see if there was interest in hosting a business court on their campuses. They also made a visit to North Carolina, the only other state that has two business courts located on campus – one at Wake Forest University and one at Elon University. OCA's third option was to work with the Texas Facilities Commission on securing chamber and courtroom space and commercial office space.

Texas A&M School of Law will be hosting the Fort Worth division. There is also a county location; Judge Dorfman's court is located in the 1st and 14th Courts of Appeals in Houston. In Austin, the Clements Building will host the Austin judges, as well as the clerk's office. In Dallas County, Collin County, and Bexar County, there are three commercial office spaces that will host the chambers and hearing rooms.

In developing the fee schedule for the Business Court, OCA looked at other states to determine what the likely caseload would be. Last fall, a check box within the e-filing system was also instituted, where litigants would have to designate if their case was over $1 million. These two approaches helped determine which cases would be eligible for the Business Court. The Court ultimately settled on a $2,500 filing fee, as well as a state consolidated filing fee, which goes to support basic civil legal services, the e-Filing system, and judicial education.

Judges have been working on hiring their staff. Each judge has a court manager and a staff attorney. On August 31, the Business Court had four employees. As of the day of this hearing, they have 15, and by October 17, they will have 19 staff total.

Lastly, the Business Court is administratively attached to OCA, so a Legislative Appropriation Request has been already submitted to support the Business Court for the next biennium. This appropriation would go to support court security, court reporters, and law clerks.

Tom Phillips, retired Chief Justice of the Supreme Court of Texas

Mr. Phillips is currently an attorney at Baker Botts and has looked extensively at the constitutionality of the Business Court. It is his belief that they are indeed constitutional.

As the bill was being drafted, two year terms were deemed necessary due to Article 16, Section 30 of the Texas Constitution, which states: "The duration of all offices not fixed by the Constitution shall never exceed two years"[18]. All of the judges mentioned in the Constitution are referred to as officers or offices. If a judge is in the middle of a trial when his or her term expires, there is a right to holdover on a gubernational appointment until the end of the next legislative session.

The length of service of our current judges has been generally decreasing over the last forty years. This is primarily due to political shifts and party sweeps, as well as salaries not keeping pace with the legal market or judicial market. As a result, there is pressure on good judges because they have other alternatives. These business court judges will be particularly susceptible to short tenures if compensation is not increased.

Mike Tankersley, Founding Director, Texas Business Law Foundation

Eighteen months ago, the Legislature worked to pass this significant piece of legislation after numerous drafts and multiple amendments. The Executive branch did what it needed to do as well in the appointment of the judges. The Texas Business Law Foundation (TBLF) is pleased with the first group of judges appointed.

Going forward, the Court is going to require fine tuning. The number of judges, the amount of jurisdiction, and the term of their office all need to develop over time.

It is important also to the operation of the Court that the issue of subject matter jurisdiction gets decided with finality early in the proceeding so it does not hang over the proceeding for years. How that gets achieved may happen by local rules, by Supreme Court rules, or even statutory adjusting. TBLF is going to be looking into that.

The constitutionality question is not going to get decided in a definitive way until the Supreme Court has an opportunity to rule on it. It would not be surprising to see at somewhere in the first twenty cases that someone will try to argue the constitutionality. TBLF is prepared from an amicus standpoint to support.

Details of the Business Court's existence is going to need to be attended to. It is now part of the judicial system. There was no full scrubbing of statutory and caselaw base of the judicial system to see that everywhere there was a reference to a district court doing something or having an authority. Should the Business Court be in there, as well? Most of those would not be controversial,

but TBLF is working its way through the statutes. Is the Business Court part of the Supreme Court Advisory Committee? What about the Judicial Council? These questions will need to get answered soon.

It is TBLF's recommendation that the Business Court have its own advisory committee. Nearly all of the successful business court operations in other states have an advisory committee.

TBLF intends to continue working on a comprehensive bill for the next legislative session that has very broad support in the business and legal community and hopefully will receive similarly good reception.

Lee Parsley, President and General Counsel, Texans for Lawsuit Reform

Texans for Lawsuit Reform (TLR) hopes that corporate entities will come to Texas, incorporate here, headquarter here, hire employees here, and succeed here.

TLR expressed enthusiasm to see the response of the corporate community to the Business Court. It has generated more excitement than was ever anticipated.

Going forward, TLR believes the Legislature must take the following four actions:

- Amend Chapter 659 of the Government Code to correct the compensation issue.
- Work on the retirement system so that Texas attracts the best and the brightest, which could include retired district judges who are discouraged from coming to the Business Court because of the retirement system.
- Advocate for 6 year terms for the business court judges and for a constitutional amendment to achieve that. The Constitution did indeed limit judge to 2 year terms, but it needs to be amended.
- Remove the provisions that automatically sunset the business courts in east and west Texas.

TLR would also like to see:

- The Legislature address concerns that the supplemental jurisdiction provision is going to cause cases to unnecessarily fragment.
- The Court should hear large commercial transactions involving loans. Big bank loans were exempted, as well as large insurance coverage disputes.
- The bill would be improved by plainly stating that corporations can choose a business court in their contracts and by-laws.

Recommendations

Fix Base Salary for Business Court Judges

The Legislature should correct the unforeseen compensation issue by having business court judges' salaries equal to that of district court judges. Our hardworking business court judges deserve no less.

Continued Monitoring

The Committee recommends that further monitoring of the new Business Court continue. Suggestions with regard to expansions and additional proposals by stakeholders are worthy of serious consideration. We look forward to further discussions and continued work on such an important development in the Texas judicial system.

Subject 1: Judicial Compensation

Examine proposals to increase judicial compensation.

Background

Numerous calls over numerous legislative sessions have been made to increase the judicial pay of Texas judges. Indeed, many have expressed concerns that the issue is now reaching emergency status. Texas' Judicial Compensation Commission has reported that there have only been 3 pay increases since 1999[19]. However, this was not always the case. Texas saw 5 regular pay increases during the 1990s, from 1991 to 1999; following that, one in 2005, one in 2013, and one in 2019[20].

In 2019, the Legislature passed HB 2384, which established a tiered pay structure based on a judge's tenure[21]. The base salary of $140,000, however, was not raised. Texas has not seen a base salary raise for the judiciary since 2013 – over ten years[22]. This had led to serious issues involving the recruitment of qualified candidates, as well as their retention.

Summary of Committee Action

On October 2, 2024, the Committee met in a public hearing at the Capitol to consider Subject 1.

The following witnesses were invited testimony:

Justice Brett Busby, Supreme Court of Texas

Presiding Judge Susan Brown, 11th Administrative Judicial Region of Texas

Megan LaVoie, Office of Court Administration

Shack Nail, Employees Retirement System of Texas

Summary of Testimony

Justice Brett Busby, Supreme Court of Texas

Justice Busby serves on the Supreme Court of Texas and also serves as court liaison from the Court to the Judicial Section of the State Bar of Texas. In this capacity, he has worked with judges across the state on the judicial compensation issue and is able to speak on behalf of those judges, as well.

It has been over a decade since the base pay for district judges was raised. Currently, Texas ranks 49th among the states and territories for base pay amount, just behind Guam. In the 1980s and 1990s, Texas used to give a raise for judges every session, but we have only had two in the last 20 years.

Last session, the Committee was very active on this issue. The Texas House voted unanimously for Chairman Leach's bill authorizing a 22.5% raise. The House also approved Representative

Schofield's bill for a cost of living adjustment (COLA) for judges in future sessions. And the Senate approved a third tier to help with retention of judges with 12 and more years of service. Ultimately though, other state employees received a 10% raise, but the judiciary did not. There has also been quite a bit of inflation since then. Since the last time the base pay was raised over a decade ago, a 30% raise is needed just to keep pace with inflation.

The Legislature established a Judicial Compensation Commission to take a comprehensive and impartial look at this issue. The Commission has had their hearings and will be recommending a 30% raise, as well as a COLA for future sessions, and a third tier. On behalf of the judiciary, Justice Busby asked for the Committee to support these recommendations.

Apart from inflation, why is a raise urgently needed? A constitutional amendment in 2021 raised qualifications for judges. And the Legislature created several new benches just last session, including the new Business Court and the new 15th Court of Appeals. But it is very hard to recruit and retain new qualified judges when they are facing rising threats to their security and when the starting salary is not competitive with what they would make in other public sector legal positions – assistant district attorneys and even court reporters are making now more than many judges. The judges also have no reason to hope that their pay would even remain flat in real terms if you account for inflation. There have certainly been cases where people have decided not to run for these reasons. We are having trouble getting applications for benches and getting people in competitive counties to run, on both sides of the aisle. There is no elected official that has more power over one's life, liberty, and property than a judge. It is vital to our system then that we have qualified and impartial judges who can afford to stay, gain experience, and continue serving the people of Texas fairly for years to come.

The pension has been used to provide some help to the salary for recruitment and retention. But SB 1245 last session cut the average monthly pension for a new judge by two-thirds, from $7,000/month to only $2,300/month, according to an actuarial report provided to ERS. Part of the reason for that is because most judges are on a second career. This is something they go into after they have been in practice for a while so that they have the necessary experience. So they have less time to pay into the pension than many other state employees. The Court certainly appreciates the change from a defined benefit plan to a defined contribution plan to make the model actuarily sound. But they hope to work with the Legislature to raise the amount that judges can contribute to the pension and also to raise the state match to a figure closer to what first responders receive. This would help make the pension more competitive and an additional recruitment tool.

Thanks to Chief Justice Hecht's leadership, the judges in all 254 counties were able to and did work hard during the COVID-19 pandemic to keep their dockets moving. Texas is in a much better position than most states which have had quite a backlog coming out of the pandemic. Our clearance rates, thanks to the data bills the Legislature passed, are above 100% in criminal cases and above 90% in civil cases. Our hardworking Texas judges deserve a raise, and the judiciary appreciates the Committee's support for that.

Finally, the Senate and the House have legitimate concerns involving the job performance of a few judges. There are various options for handling those situations. One of those is to have the Supreme Court exercise additional administrative oversight to addresses those concerns directly within the

judicial branch. The Court looks forward to working with both chambers to address this issue and come to a solution.

Presiding Judge Susan Brown, Eleventh Administrative Judicial Region of Texas

Judge Susan Brown is the Presiding Judge for the 11th Administrative Judicial Region. In her region, Judge Brown's counties includes Harris, Fort Bend, Matagorda, Wharton, Brazoria, and Galveston. In addition, she has 2 business courts, 5 children's courts, and 9 child support courts within her region. She is also the chair-elect of the Association of Retired Judges. By background, Judge Brown spent twenty years on the criminal bench in Harris County, retiring in 2018. She was then appointed by Governor Abbott in March 2018 to the Presiding Judge position.

Since September of 2022, the number of active cases in criminal courts in Harris County has decreased by 62%, from 35,000 cases to 22,000 cases. Pending family cases decreased by 20% and civil cases by 4%. The clearance rate for criminal cases in the month of August of 2024 was an average of 139%, meaning that courts disposed of one-third more than the cases that were filed. There were 38 jury trials, and 2,000 cases were disposed of by plea agreement. The average clearance rate from March to August of 2024 was 119%. We also had three new criminal courts come online on October 1 of this year. These new judges will contribute to a significant decrease in docket numbers. For example, the three courts from last October with over 1,200 pending cases currently have an average pending caseload of 500.

Judge Brown addressed the concerns that Harris County judges are not on their benches, are not trying cases, and do not deserve a pay raise. Since around the middle of July, she has sat in a criminal court in Harris County covering for a judge. She attested that the judges are indeed there, and they are on their benches. There have been many times in the last two and a half months, for example, where she has tried to call lawyers to trial and have found out they are in trial in other courts. Not in other counties, but in other courts. Indeed, cases being tried every day in Harris County. When asked about the specific judges, Judge Brown shared that since the last legislative session, one of the judges has been replaced on the bench by a new judge who has been working diligently. Another one of the judges lost their primary and will not return in January. She also affirmed that the leadership in Harris County's criminal courts are keyed in on getting everybody's dockets in shape, getting rid of the backlog, and absolutely understand that this is a necessity. It is her belief that the primary has cleaned up some of those judges who had the reputation of not coming to work, and we are going to see that continue. She continues to works with the judges who came into those courts with high dockets to work on lowering their dockets and mentoring them along the way. And to add, the Texas Association of District Judges has had good meetings since the summer over this issue.

When discussing judicial compensation, it is important to emphasize raising the base pay. Base pay is the driver of judicial compensation. In 2019, we went to a tiered system, but the base pay stayed at $140,000. There are many people who are connected to that base pay. It drives the salary for visiting judges, and it determines the salaries of associate judges in the children's courts and IV-D courts. It also drives the salary of the eleven presiding judges. And realistically, as we move forward, attorneys are considering what base pay is when they decide whether to apply for a run for a bench. In many of Judge Brown's counties, the low base pay is deterring candidates from

seeking election. For example, in Galveston County this year, we saw one bench open due to a judge retiring. Only one person has decided to run for that bench, from both sides of the aisle; that person is walking onto the bench without any competition in a primary or general election. In both Harris and Fort Bend Counties, neither party has been able to fill the ballot. Currently in Harris County, there are four open benches – three of them are new courts, and one resulting from a judge's recent tragic passing in a car accident. But there are not enough applicants to currently fill those benches. These are some of the reasons that a pay raise is so important in attracting new, qualified candidates.

It is important also to discuss a benefit increase for the retired judges in JRS-1 and JRS-2. The retired judges were very grateful for the support of the Legislature in the last session. Next session, it is their intent to put forth the same request and ask that the retired judges' benefits be made equal to that of an eight year judge. Now that our fund is actuarily sound, this seems to be the perfect time to make those changes in the benefits and make those adjustments.

Megan LaVoie, Administrative Director, Office of Court Administration

The top factor that influences judges to leave the bench is voluntary retirement (91%), but salary at 26% is also a contributing factor. In comparison to other states, you can see from October 2013 (the last time the base pay was raised) to July 2024, there are only two states that have not received an increase to their base pay: Texas and Nevada. Other states have seen a substantial increase: Pennsylvania (27%), Illinois (33%), New York (39%), California (32%), and Florida (between 35-60%), with the average increase being over $40,000 over that time period. (*See Appendix B*).

It is also important to compare judicial compensation to attorney salaries. The Texas Workforce Commission does do a survey published online. An experienced Texas lawyer is defined as the top two-thirds of lawyers in our state, with the average salary just over $222,000. The average Texas lawyer salary is $177,000. The base pay for a district judge is $140,000. The courts of appeals base pay is $154,000. The highest appellate courts is $168,000. (*See Appendix B*).

The Judicial Compensation Commission report will be published later this fall and will include their recommendations. They have recommended a 30% increase to the base pay of a district judge. The report will also include a chart showing inflation. This 30% is just to keep up with inflation.

Additionally, the National Center for State Courts have state compensation rankings done every six months. Right now, Texas district judges rank 49th out of our 50 states. It is worth mentioning that this ranking uses the average salary for Texas ($154,000) because they were asked to use the average salary. Accordingly, they used the average salary after a judge has been on the bench for four years and has met the first tier. However, if they were to have used the base pay ($140,000), Texas would be ranked dead last.

When asked about delinking legislators' pensions from the judicial base pay, Ms. LaVoie said it would require legislation to link it to what it is now. It would require legislation to keep it at $140,000, and there were several bills that did that last session.

Shack Nail, Senior Policy Advisor, Employees Retirement System of Texas

Mr. Nail served as a resource for the potential impact of a judicial compensation increase on the pension plans administered by the Employees Retirement System (ERS). The most recent actuarial evaluation was completed in August 2023, for both the ERS main plan and JRS-2. ERS is in the process of doing an updated evaluation for both of these plans. This will be available in early December 2024. Following that, effective February 28, 2025, ERS will do a six month study to further update that.

As of now, ERS of course does not have any specifics to provide to the Committee. But what they do have is that most of the impact will be on JRS-2. What an increase will do will increase the unfunded liability of the plan. And obviously, it will depend on the amount of the compensation increase, the timing of it, etc. But where the additional cost would come in JRS-2 is the unfunded liability. This could be addressed by the Legislature with a one-time appropriation or it could be amortized over the life of the plan.

The elected class participates in the main ERS plan. Under current law, if there are any changes to the base salary, then that would impact future legislative retirement calculations, as well calculations for retired legislators.

The final subject worth mentioning is that JRS-1 is a pay-as-you-go plan. It does not participate in any of the trusts. Any increase in salaries potentially would affect the annuity of JRS-1 judges, which are paid out of GR.

When asked about the impact on legislatives pensions, Mr. Nail agreed that you can craft it in such a way to avoid increasing those pensions. There are various ways to do that.

Recommendations

Increase Base Salary

Properly funding a robust judiciary is absolutely critical to the success of the state. Texas is now facing a crisis with judicial compensation that is affecting both the recruitment and retention of qualified judicial candidates. The Committee recommends that the Legislature prioritize proper judicial compensation by raising the base pay of $140,000.

Establish a Cost of Living Adjustment

Inflation has been felt by most Texans, and judges are no exception. The Legislature needs to ensure that Texas judges are afforded regular cost of living adjustments. This will keep compensation levels not just fair, but also competitive with other states.

De-Link Legislative Pensions from Judicial Salaries

Throughout these discussions on judicial compensation, it has never been the intent of the Committee to increase legislative pensions. The Legislature should examine ways to delink judicial base pay from legislative retirement accounts.

Subject 2: Paraprofessionals Providing Legal Services

Review proposed modifications allowing paraprofessionals to provide limited legal services.

Background

The Supreme Court of Texas and the Access to Justice Commission have long championed efforts to increase accessibility to legal services for all Texans, regardless of income. Most recently, the Supreme Court issued preliminary rules allowing licensed paraprofessionals and licensed court-access assistants to provided limited legal services in order to increase access to justice for low-income Texans[23].

In October of 2022, the Court first requested the Access to Justice Commission to examine the issue and propose modifications that would ultimately allow non-lawyers to provide limited legal services[24]. The Commission then created the Working Group on Access to Legal Services, which met in a series of meetings in 2023, submitting its final report in December of 2023[25]. After this roughly two year process, the Court then issued their preliminary rules in August of 2024.

Summary of Committee Action

On October 2, 2024, the Committee met in a public hearing at the Capitol to consider Subject 2.

The following witnesses were invited testimony:

Justice Brett Busby, Supreme Court of Texas

Lisa Hobbs, Texas Access to Justice Commission

David Fritsche, Texas Apartment Association

Steve Bresnen, Self

Summary of Testimony

Justice Brett Busby, Supreme Court of Texas

The Supreme Court has recently issued preliminary rules governing licensed legal paraprofessionals and court access assistants. For decades, the Texas Supreme Court has championed efforts to combat a growing justice gap between the demand for basic civil legal services by low-income Texans and the limited supply of services that are offered by those who hold a license to practice law. Both the Supreme Court and the State Bar have encouraged lawyers to volunteer their time to help these Texans. The Legislature as well has responded to the need with multimillion dollar appropriations to help fund legal aid programs. But these bipartisan efforts, as important and valuable as they are, have not remotely kept pace with demand.

In recent years, the justice gap has grown to become a chasm. Even with funding and volunteers,

92% of the basic civil needs of low-income Texans are now going unmet. What makes it feel especially real are hearing the stories of people out on the front line representing these individuals day in and day out as pro bono volunteers or in legal aid. It is absolutely unacceptable that our legal system is failing millions of our constituents. As Chief Justice Hecht has put it, "Justice for only those who can afford it is neither justice for all nor justice at all."

So how do we earn back Texans' trust and confidence in our system of peaceful dispute resolution that will give them a fair shake? We must think beyond our traditional funding and volunteer efforts to explore innovative structural changes that will help bridge this new chasm with providers. For the last 20 years, the Court has been asking the Legislature for money, asking Congress for money, and asking lawyers to shoulder this burden pro bono, and that is what is meeting 8% of the need.

The Court spent two years studying one such change: licensing qualified paraprofessionals and court access assistants to provide very basic civil legal services. This program, which has worked well for decades in England and Canada, has been adopted in 7 other states and is currently being studied by 12 more. Think of them as nurse practitioners or physician assistants for the legal field. Utah and Arizona have been the leaders on this issue in the United States; their programs have been going on for a few years now and have received extremely high ratings from the clients they have served.

The Court went through a working group process that spent almost two years looking at this issue. During that process, they looked at what are the areas people are representing themselves. From data provided by the Office of Court Administration, they saw four areas where most Texans are showing up self-representing:

- Family law
- Landlord/tenant
- Consumer debt
- Probate

They then reached out to the sections of the bar who practice in those areas to help figure out what are the routine kinds of legal issues that someone who is properly qualified and has passed an examination can do without having to have a J.D. and be licensed. Overall, this was a very inclusive and open process. They received a lot of feedback during the working group and have received a number of comments since. The Court very much appreciates those.

The working group came up with a limited license in three areas, plus in justice of the peace court representation. The license would be to practice only a certain type of law; you would only be licensed for example on consumer debt law, or probate, or family law. And even within that license, it is limited to certain simple tasks that the bar has helped us identify that individuals can handle with the proper training and experience in those areas. The other limit is not only by subject matter, but by income. The only people who can take advantage of this program are people up to 200% of the federal poverty level. Millions of Texans are at that level and cannot afford to hire lawyers. To be clear, they are not trying to take money away or clients away from anyone who is representing these individuals currently. These are people who cannot afford basic legal representation.

Additionally, there are qualification and experience requirements that individuals have to have to sit for the exam. There will also be an examination to be sure they demonstrate competence before they receive a license.

The Court has not regulated specifically how paraprofessionals can be paid, so there are different options. They can be employed by legal organizations and paid hourly. Or they can take limited fees from their clients. The court access assistants are going to be paid by legal aid organizations and under the supervision of legal aid organizations. This program helps stretch the funding provided by the Legislature for basic civil legal services further since the legal aid programs will be able to use these licensed paraprofessionals and court access assistants making less money than lawyers while providing more services. You would be able to hire a couple of additional paraprofessionals more than you would a lawyer. This helps stretch the appropriated dollars to ultimately help more Texans.

The Access to Justice Commission unanimously recommended the adoption of the paraprofessional licensing program, and the Court has unanimously issued preliminary rules to put it into an effect. The Court is taking public comments until November 1 of this year. The State Bar has also agreed to help administer this program. The Court appreciate their willingness to step up and do that.

It is important to address a couple of objections that the Court has heard so far. One is that these individuals are not lawyers who are licensed to provide these services. We are sorely in need of bridging the justice gap, and the paraprofessional program has worked very well in other states. But more importantly, if paraprofessionals cannot help these Texans, their alternative is not a lawyer. Their alternative is trying to navigate a legal system that was not designed for them without any help at all.

Another objection has been to question whether the Court has this authority to license these providers. Page seven of the working group report provides more detail[26]. This is something they have looked at carefully. The Court's authority is both inherent and expressed. The Constitution vests the Court with control of the Judicial branch, regulation of judicial affairs, and direction of the administration of justice in the judicial department. This authority is also assisted by statute, which recognizes the Court's jurisdiction over rules governing admission to practice and the issuance of licenses to practice law, specifically, Section 81.102A of the Government Code, which authorizes members of the state bar to practice law[27]. The rules expressly require that paraprofessionals and court access assistants will be enrolled as members of the state bar. Section 81.102B goes on to enumerate some circumstances under which people who are not members of the state bar may also practice law[28]. This nonexclusive list does not purport to limit the practice of law by members of the state bar.

They have also heard some concerns about licensed paraprofessionals as well as licensed court access assistants under the supervision of legal aid organizations representing individuals in eviction cases in justice courts. But a statute that the Legislature passed – Section 24.011 of the Property Code[29] and the current justice court rules already allow individuals to be represented by authorized agents who need not be licensed attorneys in justice courts. So they view the rule as well within the scope of the statute.

Finally, they have heard some concerns that limiting these services for licensed paraprofessionals and court access assistants only to low-income Texans is anti-competitive and that all Texans should be able to benefit from these high-quality and low-cost legal services. The Court's response is that they are is focused on the justice gap, so that is where they have placed these rules with the income limits. That being said, the Court welcomes the Legislature's input on this issue.

The Court appreciates the Committee's interest in the justice chasm and the efforts to bridge it. There is no single issue that is more important to the civil jurisprudence of our state, and the Court looks forward to continuing dialogue with the Legislature on this and other ideas for addressing it.

Lisa Hobbs, Texas Access to Justice Commission

Ms. Hobbs is a Commissioner on the Access to Justice Commission and served as one of the three co-chairs for the working group that studied this issue, along with fellow co-chairs Kennon Wooten and former Justice Michael Massengale. She provided more details on the process itself that the working group underwent.

The working group indeed studied this issue for over two years. The members included judges, professors, legal aid providers, attorneys, and public members from across the state. In addition to that, the group broke up into three subcommittees. Ms. Wooten led the Scope of Practice Subcommittee, Ms. Hobbs led the Paraprofessional Licensing Subcommittee, and Mr. Massengale led the Non-Attorney Ownership Subcommittee. Within these subcommittees, they pulled in more individuals from outside the working group. Ms. Hobbs, for example, pulled in experts from the Board of Law Examiners, the Texas Board of Legal Specialization, professors, etc. There were five 3 to 4 hour working group member meetings. In total, there were 34 subcommittee meetings over the period of year. These are all recorded and available online in the interest of transparency. In the end, they engaged with any bar committee, any section, and any individual who was positive or critical about the proposals. They received feedback about things that were missed, and they are certainly open to continue receiving more comments and support them. The group is especially grateful to the National Center for State Courts, who provided a staff to help with research, formal studies, and focus groups. They are also grateful for the State Bar and for the Supreme Court for their passion for bridging the justice gap.

David Fritsch, Texas Apartment Association

Mr. Fritsch has been a licensed attorney since 1986 and a large part of his practice is landlord/tenant law. He spoke on behalf of the Texas Apartment Association (TAA), which is a trade association that has 9,000 members and represents 2.6 million rental housing units. Mr. Fritsch has been appointed on multiple occasions by the Supreme Court to task forces drafting proposed rules of the Texas Rules of Civil Procedure, with an emphasis on landlord/tenant law. He also serves on the task force drafting landlord/tenant forms for persons who represent themselves in justice court in evictions and all aspects of landlord/tenant law.

TAA appreciates and commends the Supreme Court's interest in ensuring low-income Texans have access to justice, access to the courts, and are appropriately represented. It is a critical part of

our legal process that we all take an interest in. Having said that, TAA disagrees with the direction of the Supreme Court's proposed rules.

As was mentioned before, there is already a set of rules for eviction court, both in the statute and in the Rules of Procedure, to allow persons who are not licensed to represent in justice court, specifically under Section 24.011 of the Property Code. The first iteration of this section of the Property Code goes back to the 69th Legislative Session. Section 24.011A states: "In eviction suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys."[30] This is in the statute already. Additionally, in the Rules of Civil Procedure, the Supreme Court promulgated Rule 500.4, which is expressly applicable to justice courts and carries forward the statutory authorization of Section 24.011 of the Property Code. The rule says that an individual can appear either in-person or through any authorized agent in an eviction case[31]. The Rules regarding justice court also specifically set forth that in justice court, in any case, an individual may be represented by themselves or assisted by a family member or individual who is not compensated[32]. This rule is actually broader than the paraprofessional rules being proposed.

Obviously the intent of the rules from the Supreme Court and the Legislature is to simplify the process in justice court regarding evictions and other landlord/tenant matters such as security deposits, deduction cases, repair and remedy cases, and other statutory causes of action. But TAA believes that the rules being proposed are inconsistent with the explicit statutory authorization that is already in the Property Code that the Legislature has already promulgated and passed. It essentially establishes a new licensure category for non-lawyer legal professionals. It establishes a community justice worker paraprofessional representative category. It limits access to assistance based upon a potentially arbitrary income standard.

The rule also provides exclusive legal services for only one side of the docket, not both sides of the docket. It is important to remember that a lot of rental properties are owned by individuals and by mom-and-pops, as opposed to merely large multi-state corporations. These are people who had their 401Ks liquidated into real property. They also faced challenging situations during the COVID-19 pandemic, when rules made it difficult for them to deal with situations in which they were not receiving paid rent. There is always two sides to the docket in these types of situations. Limiting access to legal services based upon whether somebody is a plaintiff or a defendant in a civil matter, or whether their income meets some predetermined standard or threshold, runs counter to ensuring that everyone – all Texans – have equal access to justice, regardless of their party, status, or income.

It is TAA's belief that with regard to the licensure of non attorneys and the qualifications to provide legal services, those aspects should be left to the Legislature. We should also have a very wide net of stakeholders, beyond who was involved in the working group. Lastly, any statutory recommendations should be based on Texas data, as opposed to national data.

TAA's comments are not intended any way meant to dismiss the justice gap cited by the Court, but to ensure that access to justice through a comprehensive, all-inclusive approach to addressing these issues should be a legislative priority, as opposed to a rulemaking priority. TAA believes that if the solution to the justice gap means redefining who can practice law, what legal services

can be offered, and who may access those legal services, then the Legislature should play a role in that process.

Steve Bresnen, Self

According to Mr. Bresnen, the Court is not authorized to allow paraprofessionals to practice law.

Article 2, Section 1 of the Texas Constitution states: "The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, *except in the instances herein expressly permitted*"[33] (emphasis added).

If there were no exceptions to this provision, the Supreme Court would have inherent authority to govern the practice of law. But there are. In Article 5, Section 31, the Constitution states: "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"[34] (emphasis added).

This means that the Legislature has ultimate authority over judicial administration. If the Legislature had been silent about who can practice law, the Court could exercise inherent authority to adopt the paraprofessional proposals. But the Legislature has spoken. The Court previously cited Section 81.102(a) of the Government Code. But by all of the rules of statutory construction, this list is an exhaustive list, not an inexhaustive list. To quote a Latin phase, *expressio unius est exclusio alterius*, which translates, "the express mention of one thing excludes all others". The Court only has the authority to authorize limited practice of law in the three circumstances, an express conflict between the rules as proposed and state statute. Additionally, Section 74.024 (a), (c), and (d) of the Government Code, the Court Administration Act, does not mention paraprofessional or the licensing of non-attorneys in that list[35].

Recommendations

Continued Monitoring

In November of 2024, the Supreme Court indefinitely delayed the effective date of the proposed rules governing paraprofessionals and court-access assistants[36]. The Committee recommends that the Legislature examine this issue further and prioritize similar access to justice legislation. It is critical that Texas continues exploring ways to ensure that all Texans have access to quality civil legal services and the ability to successfully navigate the civil justice system.

Subject 3: Texas Citizens Participation Act

Review the current use and misuse of the Texas Citizens Participation Act.

Background

The Texas Citizens Participation Act (TCPA) was passed by the Legislature in 2011. Its intent was to prevent frivolous lawsuits from stifling free speech. This type of lawsuit, meant to silence or intimidate an individual, is also known as a Strategic Lawsuit Against Public Participation (SLAPP). The TCPA, in turn, created a expedited motion to dismiss if the lawsuit is based on or is in response to an individual's free speech[37]. Texas is one of 33 states that has passed anti-SLAPP legislation[38].

During the 86th Session in 2019, the Legislature passed HB 2730, which narrowed the scope of the original statute and curtailed its application. Indeed, Texas' civil litigation landscape saw unanticipated applications of the statute, including in family law, trade secrets disputes, probate, and State Bar disciplinary actions[39]. HB 2730 sought to address this issue and was ultimately passed.

Additional concerns however have been raised about defendants continuing to strategically delay legal proceedings. As a response, during the 88th Session in 2023, SB 896 was filed. The bill prohibited the stay of pretrial proceedings on interlocutory appeal where the lower court's finding was because the motion to dismiss was not timely filed, was frivolous or filed solely to delay proceedings, or the lawsuit involved falls within one of the categories expressly exempted from the TCPA. Ultimately, SB 896 was passed by the Senate and the Committee, but failed to get to the House floor[40].

Summary of Committee Action

On October 2, 2024, the Committee met in a public hearing at the Capitol to consider Subject 3.

The following witnesses were invited testimony:

Steve Bresnen, Self

Thomas Leatherbury, Self

Lee Parsley, Texans for Lawsuit Reform

Randal Mathis, Self

Summary of Testimony

Steve Bresnen, Self

Mr. Bresnen was one of three authors of a law review article published in St. Mary's University

Law, along with Amy Bresnen and Lisa Kaufman[41]. The article goes into detail on how the application of the Texas Citizens Participation Act (TCPA) was narrowed during the 86th Legislative Session in 2019. It was during this session that Mr. Bresnen represented the Texas Trial Lawyers Association, the Texas Family Law Foundation, and AT&T, working on the revisions to the TCPA that were eventually adopted.

Anti-SLAPP laws were designed to level the playing field. However, Mr. Bresnen argued that the TCPA began to devour a lot of civil litigation. In one year, before the 2019 bill was passed, 99,300 documents filed in the courts had a reference to the TPCA. From 2011 to 2019, there were 407 appellate cases involving the law. These cases are still in the system because the 2019 bill applied prospectively from September 1, 2019. At one time, the Fifth Court of Appeals reported that 40% of their docket was TCPA cases.

In the 2019 bill, the definitions were greatly narrowed. The definition of *public concern*, which is well known in First Amendment jurisprudence, was changed. Other substantive changes were to exempt a number of cases and claims from the application of the TCPA: trade secret cases, misappropriation of corporate opportunities, non-disparagement agreements, covenants not to compete, family law, the DTPA, medical peer review, eviction, bar discipline, whistleblower, common law fraud, misrepresentations, etc.

Thomas Leatherbury, Self

Mr. Leatherbury has defended individuals, publishers, and broadcasters in defamation and other tort lawsuits since 1980. Currently, he is a Clinical Professor of Law and Director of the First Amendment Clinic at SMU Dedman School of Law and has a solo practice in Dallas.

There are real benefits and protections that the TCPA statute brings to a wide variety of speakers exercising their First Amendment rights. Since 2011, the statute has struck the right balance between litigants' constitutional rights – providing for early dismissal of groundless lawsuits that attack speakers exercising their First Amendment rights while allowing potentially meritorious cases to move forward. Mr. Leatherbury has been involved in approximately 20 cases where a defendant has filed a TCPA motion to dismiss. The statutory right to file a prompt motion to dismiss, the statutory entitlement to a discovery stay, and the right to an expedited interlocutory appeal are procedures that are fundamental to protecting the substantive First Amendment rights at issue.

The discovery stay during the appeal of a denial of a TCPA motion to dismiss is essential to carry out the purpose of the statute – to dismiss groundless lawsuits. It is also essential to conserve the resources of the courts and the parties. The right to appeal is hollow if a client is simultaneously required to respond to discovery requests, produce internal documents, sit for lengthy depositions, file motions for protective orders, and file or respond to petitions for writ of mandamus on discovery issues. The elimination of the discovery stay would multiply unnecessary and wasteful litigation. As former Chief Justice Wallace Jefferson stated in a 2023 letter, "it would create a two-tier system in which parties would be forced to litigate their cases simultaneously in the trial and appellate courts." And if the appeals court reverses the trial court's denial of the TCPA motion, as often happens, the parties will have been put through the personal strain and potentially enormous

expense of time-consuming discovery and the trial court will have wasted its precious resources in presiding over and resolving discovery and other issues during the appeal. Maintaining the discovery stay is consistent with tort reform – it prevents needless discovery in groundless lawsuits. The discovery stay is essential to carry out the purpose of the statute because our hard-working trial judges, most of whom have no law clerks to assist them with research, sometimes get it wrong.

The Institute for Free Speech, a key advocate for First Amendment freedoms, published a blog piece with its findings that, between 2012 and 2024, Texas trial courts got key TCPA issues wrong much of the time – trial courts erred in finding a TCPA motion frivolous 88% of the time; they erred 53% of the time when they found that a TCPA motion was not timely filed; and they were wrong 63% of the time when they found that one of the TCPA exemptions applied[42]. The point of this is not to be overly critical of our trial judges, but to emphasize how the right to interlocutory appeal – with the discovery stay in place – is vital to carry out the purpose of the statute and to avoid the self-censorship and the chilling effect that defamation litigation has on defendants who ultimately win their cases.

Mr. Leatherbury discussed two of his cases where the trial court and the intermediate appellate court got it wrong, and the Supreme Court had to correct those errors and dismiss groundless defamation claims. The first involved Kevin Krause, the longtime federal courts reporter for *The Dallas Morning News*. Mr. Krause obtained a copy of a federal search warrant connected to an investigation of a compounding pharmacy that made the bulk of its money from insurance claims filed with the company that covered members of the military. After conducting a lot of research, Mr. Krause wrote and published a series of articles about this pharmacy and its owners, and the pharmacy and its owners sued for defamation. The Parker County trial court denied their motion to dismiss, the Fort Worth Court of Appeals affirmed that denial. The Supreme Court took the case and unanimously dismissed the defamation complaint on the grounds of truth and privilege. At least one of the defamation plaintiffs was convicted on federal felony criminal charges. The second example involved Valerie Reddell, a respected East Texas journalist, who wrote a story about a local assistant district attorney who had mocked an innocent defendant in open court. The assistant district attorney sued for defamation, and Ms. Reddell and the *Polk County Enterprise* filed motions to dismiss. The trial court denied the motions to dismiss. The Beaumont Court of Appeals did not even hear argument and affirmed the denial. Again, the Supreme Court took the case and unanimously reversed, dismissing the plaintiff's claim. In these cases and countless others brought by free speech bullies, the discovery stay conserved the resources of the parties and the courts, allowed the defendants to exercise their statutory right to appeal, and carried out the purpose of the statute – to get rid of baseless lawsuits more quickly. And the discovery stay doesn't just protect the media. It has protected churches, pastors, East Texas Right to Life, and other speakers across the ideological spectrum – just like the First Amendment is intended to.

Moreover, remedies already exist to address frivolous TCPA motions to dismiss and appeals. First, the TCPA provides for the discretionary recovery of attorney's fees and costs if the non-movant proves the motion to dismiss was frivolous or solely filed with the intent to delay. Second, Texas Rule of Appellate Procedure 45 provides for the award of damages when frivolous appeals are filed. Any statute has the potential for misuse in the hands of bad lawyers or unscrupulous litigants. You can cherry pick those cases and make them into poster children. But respectfully,

those who advocate for major changes in the TCPA do not have the broader, systemic perspective of how the TCPA works well in the vast majority of cases involving attacks on speakers who exercise their First Amendment rights. It is critically important to preserve the TCPA's procedural and substantive First Amendment protections, including the discovery stay.

Lastly, there is a current inability of attorneys who represent clients pro bono to recover attorney's fees when their clients' TCPA motions to dismiss are granted. The TCPA currently requires the losing plaintiff or non-movant to pay the attorney's fees that have been "incurred" by a successful TCPA movant. This does not include pro bono attorneys or other attorneys who do not charge an hourly rate. It is a one-word fix in the statute – striking the word *incurred* would enable pro bono attorneys to recover fees. Incentivizing more attorneys to represent TCPA defendants by providing for an award of reasonable and necessary fees when a TCPA motion is granted is completely consistent with the TCPA's purpose to protect First Amendment rights.

Lee Parsley, President and General Counsel, Texans for Lawsuit Reform

The TCPA statute was introduced multiple times in previous sessions before passing in 2011, and concerns were raised about the broadness of the bill.

It began to eat civil litigation in Texas because it applied to everything. However, in 2019, the Legislature was successful in making it less broad, and this was certainly an improvement.

To quote a 2019 Texas Tech law review article from the primary sponsor of this statute:

> Courts, scholars, and free speech advocates have dubbed meritless lawsuits targeting the legitimate exercise of the rights to engage in truthful speech, lawful petitioning, and legal association as "Strategic Lawsuits Against Public Participation" (SLAPP suits). A SLAPP suit is the offensive use of a legal proceeding to prevent, or retaliate against, persons lawfully exercising First Amendment rights.
>
> SLAPP suits seek to prevent the named defendant from exercising a lawful right, such as testifying at a city council meeting, complaining to a medical board about a doctor, investigating fraud in our education system, or participating in a political campaign. They chill First Amendment activities by subjecting citizens who exercise constitutional rights to the intimidation and expense of defending a lawsuit that lacks merit. While meritorious lawsuits are intended to right a legal wrong, the primary motivation behind a SLAPP suit is to stop lawful speech in a strategy to win a political or social battle."[43]

Mr. Parsley's response was that it matters what the plaintiff is suing you about. A SLAPP suit is a lawsuit to shut you up. The idea is to sue you until you cannot defend yourself anymore to shut you up, because you cannot afford to pay a lawyer and go defend yourself in court. So you quit protesting.

TLR supports the idea of an anti-SLAPP lawsuit. Exercising your First Amendment rights should be protected. But what happens is that you can file this motion in *any* lawsuit. And even if it is frivolous, you have an absolute uncontestable right to pursue an appeal immediately. So you shut down discovery in a lawsuit, and now you have appealed. And while it is on appeal, the entire

lawsuit is shut down – nothing more happens. And it may be on appeal for a year and a half to three years. It also does not matter if you file the motion months out of time. There is a deadline in the statute, but it does not matter. You file your motion, it is overruled because you are out of time, you file your notice of appeal, you are on appeal, and years later it may come back.

SB 896, which was filed last legislative session, addressed the issue of an interlocutory appeal. If the trial court says the motion to dismiss was frivolous, was not timely, or it falls under one of the exemptions that came into the law in 2019, you still get the stay, but you only get the stay for 60 days on appeal, and then it expires. And during that 60 day period, the defendant who filed the motion to dismiss gets to say to the court of appeals, "I need you to continue to stay this case". If the court of appeals does not extend the stay, you get to go forward in the trial court. This is a very fair compromise between First Amendment rights and the right to go forward and have a legal wrong addressed in our courts. Both rights are contained in our statute, and right now we are only protecting one of those rights.

Randal Mathis, Self

Mr. Mathis is an attorney in Dallas and was introduced to the TCPA issue inadvertently. In 2016, he was hired to represent a wealthy widow in Dallas who had turned over the entirety of the estate to her son to manage. The relationship soured, a lawsuit was filed, it was referred to arbitration, and Mr. Mathis was hired to try the arbitration. It turned out that his client's assets had been moved and transferred among more than 300 LLCs, trusts, and various business entities. Additionally, the arbitration clause that was involved in some of the paperwork was extremely onerous. Indeed, so onerous that the American Arbitration Association (AAA) did not have any arbitrators on their approved list that even remotely met the qualifications of expertise that were required. And so the AAA recruited and found three people who met the criteria. The arbitration commenced.

It was neither fast nor inexpensive but in 2017, Mr. Mathis and his client won. There was a massive, sweeping arbitration opinion, which was confirmed by the probate court. The case then went to the court of appeals, where it was affirmed. The case then went to the Supreme Court, where it was affirmed. The problem however was that there was so much real estate, LLCs, and laundering of the assets that other litigation had to ensue in counties and jurisdictions where the assets were located, in order to enforce the judgment.

A TCPA motion was filed, despite the case having nothing to do with free speech. The case dealt with theft, fraud, and misappropriation of property. Mr. Mathis' client responded to the motion, the motion was found to be frivolous, and was denied. It was assumed that the case was done. But not so. For the last six years, the chief case has stalled while the opposing side has filed numerous anti-SLAPP motions in an attempt to delay. Mr. Mathis' client has won them all, but winning in this context does not make a difference. There is no such thing as an expedited anti-SLAPP appeal in the state of Texas.

It never occurred to the authors of the bill that somebody could abuse the TCPA like this.

Recommendations

Ongoing Discussions with Stakeholders

Going forward, it is not the intent of the Committee, nor the Legislature, to do away with the TCPA statute. Preserving and strengthening the statute is absolutely critical in protecting Texans' First Amendment rights. Rather, the Committee looks forward to collaborating with stakeholders to discus and fix the problems that continue.

Subject 4: NDAs in Child Sexual Abuse Settlements

Discuss the use of civil nondisclosure agreements in settlements involving the sexual abuse of a child.

Background

Statistics show that 1 in 10 children will be sexually abused before their 18th birthday[44]. Indeed, the issue of child sexual abuse has received significant attention following a number of public scandals involving churches, camps, schools, and other organizations. In Texas, the recent Gateway Church scandal surrounding Pastor Robert Morris and his 12 year old victim brought the issue to the forefront for many Texans[45].

Recent calls have been made for legislation aimed at better protecting children and preventing future abuse. Specifically, the prevalence of nondisclosure agreements in abuse settlements has been cited as an area whereby Texas can improve child safety and encourage victims' healing by prohibiting such agreements.

Summary of Committee Action

On October 2, 2024, the Committee met in a public hearing at the Capitol to consider Subject 4.

The following witnesses were invited testimony:

Elizabeth Phillips, Self

Cindy Clemishire, Self

Kathryn Robb, Children's Justice Campaign, Enough Abuse

Jennifer Allmon, Texas Conference of Catholic Bishops

Christina Green, Children's Advocacy Center of Texas

Summary of Testimony

Elizabeth Phillips, Self

Ms. Phillips serves as the Executive Director for the Phillips Foundation. She shared the tragic story of her brother Trey, who was abused at Kanakuk Ministries, a summer camp. He was groomed and abused from the ages of 7 to 17 by a serial sex offender. He was then forced by Texas' civil statute of limitations to file his civil case against Kanakuk at the age of 23. This stressful and re-traumatizing process ended with a settlement involving a restrictive nondisclosure agreement (NDA). Tragically, the family learned more about the extent of his abuse after his death than during his life. He hesitated to tell his story, even in confidential therapeutic settings, for fear that Kanakuk would come after him. Days before his death, he confided that Kanakuk would

always control him and he would never be free. He died by suicide in 2019. Even more unfortunate is the fact that the NDA is still enforceable even in his death, according to the probate attorney of his estate.

Countless Kanakuk victims have been suffering in silence from the NDAs demanded behind closed doors, with attorneys intimidating victims in depositions. For Ms. Phillips' brother, this led to a breakdown. Separate from her brother's case, Kanakuk sanctioned a Texas John Doe, whose parents refused to sign an NDA clause on behalf of their minor son, costing them an additional $40,000 in legal fees. Other parents inadvertently silenced their children when they signed a settlement agreement with Kanakuk on behalf of their minor child, not realizing they had signed away their sons' voices. When survivors coalesced, 30,000 signatures were collected, petitioning Kanakuk to release the NDAs. When reading some of the NDAs victims are under, they are atrociously detailed and have everything to do with protecting an organization's reputation over the interest of an abused child and his long-term healing. It is no exaggeration to claim this is a matter of life and death.

We know what childhood sexual abuse does to a person's life. We also know healing can happen by sharing one's story in safe places and finding support and solidarity in the midst of navigating unfathomable pain. When you take someone's voice away, especially a child's, you take away their most linear path to healing. Sexual abuse happens in secrecy and shame. We need to take the furtherance of those shadows off the table in the civil courts of Texas. This should be a welcomed measure of justice.

Tennessee made itself safer in 2018, when they passed a bill eradicating the misuse of NDAs in civil child sexual abuse cases. 17 other states have clarified the NDA issue for their courts as well. In addition, the federal passage of the Speak Out Act in 2022, which eradicated the weaponization of NDAs against survivors of sexual harassment in the workplace, had overwhelming bipartisan support. Surely then, it is also time to extend the same protection to children. It is no doubt an issue of public safety and concern.

Texas should join the list of states banning this usage in child sexual abuse cases. NDAs are for trade secrets, not trauma secrets.

Cindy Clemishire, Self

Ms. Clemishire first publicly shared her story in June of 2024, as it was revealed that she was the 12 year old victim of Robert Morris, the pastor of Gateway Church. Her abuse occurred over the course of four years, starting on Christmas night of 1982. Immediately after the first instance, Mr. Morris told her, "You can never tell anyone because it will ruin everything". As a 12 year old girl, she did not understand what that meant. She did not want to ruin anything, as this was a close family friend and was considered a spiritual leader as a traveling evangelist. The abuse continued over the course of 4 years, until she finally told a mutual family friend when she was 17 years old. The friend in turn had her tell her parents. In the 1980s, things like this were not discussed, so the thought of pursuing legal action was not discussed. Mr. Morris went on to live his life, supposedly with only a temporary step down from ministry. He continued to build a ministry and a life, writing books, growing his platform, and building substantial wealth. Ms. Clemishire meanwhile, while

grateful for her children, friends, and support system, faced serious hardships during her adult life, incurring tens of thousands of dollars in counseling fees and other costs.

It took 20 years until Ms. Clemishire fully understood the term *abuse*, because what she experienced was not aggressive and her abuser was a family friend. Despite the statute of limitations having been expired, she was 37 years old when she had her attorney reach out to try and receive $50,000 for counseling. At that time, she was revictimized by being told she was the one to blame, that she at 12 years old pursued a married man with children. In turn, they offered $25,000, as long as she signed an NDA. She refused to sign and did not accept the offer. Ms. Clemishire maintains that the biggest reason she is able to share her story today is because she did not sign the NDA that her abuser asked her to sign.

There are an estimated 42 million adult victims of childhood sexual abuse living in the United States. Allowing people to speak freely of their experiences is critical in exposing abuse and preventing future abuse.

Kathryn Robb, National Director, Children's Justice Campaign, Enough Abuse

Ms. Robb is the National Director of the Children's Justice Campaign at Enough Abuse. She herself is also a survivor of childhood sexual abuse by a family member, but spoke in her role as an 22-year expert on child protection legislation.

We are living in an epidemic of childhood sexual abuse. The research says somewhere between 1 in 9 or 1 in 11 children will be sexually assaulted before they are 18 years old. All children are affected, regardless of their race, culture, religion, or parents' political background. It destroys lives and in the process, it affects our educational system, our social services system, our medical system, our mental health system, our penal system, and law enforcement. It has a financial burden on taxpayers and certainly the state of Texas.

Historically, NDAs have been used to protect businesses, employment trade secrets, confidential lists, etc. And that makes sense; that is sound public policy. They are not meant to cover up wrongs and crimes, especially against children. That was never the intent.

Typically, NDAs are a clause within a settlement agreement that prevent both parties from speaking. Some will say you can speak to your spouse and limit the prohibition on disclosing. Some will also say you cannot speak about the amount of the settlement. They vary per NDA. But essentially, they tell the survivor they cannot talk about this. And this is dangerous because if they are silenced, we do not know when an organization has failed and continues to have terrible practices, procedures, training, etc. The connection between NDAs and putting future children in danger cannot be overstated.

It is also important to note as well that many survivors cannot emotionally withstand a trial. They may not even be able to get through discovery and depositions. This is why we see a lot of survivors saying settlements might be the best route. Victims are often desperate to get this behind them – desperate to find a new day.

Presently, we have 17 states and Congress that have passed laws prohibiting the use of NDAs over all sexual abuse cases, but primarily for sexual harassment. We are seeing more states entertain narrowly drawn bills ending NDAs for childhood sexual abuse, because it is really such a horrendous wrong and crime. They silence victims, but they also endanger children because they shield sexual predators. They cover up prosecutable crimes, mostly felonies, against children. They conceal negligent acts and practices by institutions and organizations, and they retraumatize victims. Overall, when that happens, it prevents victims from fully healing and having a healthy life. We know that it takes decades for survivors to come forward. Many take this ugly secret to their grave.

Ms. Robb closed by sharing the horrific story of her son's abuse at the hands of an ER doctor. The relief he felt after finally confiding in her further illustrates how inappropriate NDAs are for child sexual abuse claims. It is bad policy, and the Legislature has the authority to change this law so we can protect our children.

Jennifer Allmon, Executive Director, Texas Conference of Catholic Bishops

Ms. Allmon is the Executive Director of the Texas Catholic Conference of Bishops.

The Texas Catholic bishops are committed to eradicating the evil of sexual abuse in our society and promoting healing among those who have been injured by this crime. Over the past two decades, the reforms within the Catholic Church have strengthened communities in which the Church is present. Their programs normalize transparency and reporting, and their efforts are built on the research of experts and professionals in what is proven to keep children safe and prevent abuse. In brief, having adults educated in safe environment standards means every educated adult can be an advocate for children. More education means there are more individuals who can identify the signs of predatory behavior, which includes grooming done by a predator before abuse ever happens. Checking the criminal background records of everyone who has access to children provides insights into a person's past behavior, which can signal potentially abusive behavior.

Texans are well-served by laws which encourage safe environment programs, including reporting, and education in all institutions in which children and vulnerable adults are present. While good reform has happened, much more needs to be done, especially in regard to supporting survivors and healing from the trauma of abuse. The Catholic Church's publication of the names of clergy and religious who have been credibly accused of sexual abuse of a minor is an important step in transparency for survivors and their loved ones. This transparency can bring about healing for survivors and transformation for our society by encouraging reporting and better transparency for victims to be aware.

These principles of transparency and survivor-centricity are also seen in the bishops' approach to NDAs. The disclosure or nondisclosure of information in civil settlement agreements involving sexual abuse claims should recognize the value of transparency, and at the same time respect the survivor's right to privacy. Catholic dioceses do not enter into NDAs which bind the parties to confidentiality, unless the victim/survivor requests confidentiality specifically to protect their identify. In those cases, they allow them to place a confidentiality waiver in the final settlement after it is negotiated. The Church does not demand confidentiality in their agreements, and they

specifically protect their right to publish the names of the credible accusations on their website for continued transparency.

If legislation is considered next session, the Church would support legislation which prohibits or limits NDAs in child sexual abuse cases, especially if it follows the standard where the party paying the settlement may not request or demand confidentiality of the victim receiving the settlement. It is the Church's belief that following this approach is survivor-centric and helps to empower survivors to decide who tells their story and how their story is told.

Additionally, in 2019, the Legislature passed HB 4345, which provided immunity from civil liability related to defamation for charitable organizations who, while acting in good faith, disclosed information they reasonably believed to be true about allegations within their organization. This was an important step forward in encouraging charitable organizations, especially churches, to tell. It promotes a just society by providing civil liability protection to charitable organizations who assist society by making these necessary disclosures. It is important to maintain this protection so that charitable organizations can continue to disclose credible allegations of abuse without being vulnerable to lawsuits by abusers for doing so. It is the responsibility of our government and the duty of our legislators to encourage proactive measures to stop bad actors and provide equal opportunity for all organizations – public and private – with the ability to prevent abuse and encourage healing.

Christina Green, Chief Advancement and External Relations Officer, Children's Advocacy Centers of Texas

Ms. Green is the Chief Advancement and External Relations Officer at the Children's Advocacy Centers of Texas (CACTX). CACTX is the membership association all 70 children's advocacy centers (CACs) in the state. CACs are codified in the Family Code and are statutorily required to facilitate joint investigations in crimes against children. They provide core services that include forensic interviews, forensic medical exams, counseling and mental health services, comprehensive case management, case coordination with investigatory partners and prosecution, law enforcement, and the Department of Family Protective Services (DFPS), and regular case review of those partners. CACTX serves over 60,000 new children every year, with a majority of these cases being child sexual abuse cases.

Child sexual abuse is a crime of secrecy, and the dynamics are very important to better understand where improvements need to be made to make sure that Texas is the safest and best state for children to be children. Up until the last two years, Texas did not have statewide prevalence data for child sexual abuse. CACTX worked with the Department of State Health Services (DSHS) and the Centers for Disease Control and Prevention (CDC) to gain that information. Nationally, it is 1 in 10 children. In Texas, it is 1 in 6 children before their 18th birthday will be sexually abused at the hands of an adult or another minor[46]. And in the majority of those cases, up to 98% of the 60,000 annual cases, the perpetrator is someone the child knows, trusts, and likely loves: family members, coaches, pastors, teachers. All of these perpetrators are in places where we should be keeping children safe.

We do not know the prevalence of NDAs because people cannot talk about them. So in order to

make sure that we are not reinforcing the crime of secrecy in stunting healing or preventing and disrupting the investigation of these cases, we need to continue addressing this issue. But we also need to make sure the abuse is being reported. Because if it is not reported, then it cannot be investigated, and we cannot hold these perpetrators accountable. 3 out of every 5 victims will not tell the abuse. There is a gap in cases we are not seeing because they are not getting reported. It is the bravery and courage of survivors coming forward that encourages others to come forward, and they cannot do that under an NDA.

The worst thing that can happen is if a survivor speaks out, and there is no one to catch them. In Texas, we have invested in the children's advocacy center model, where the case is mandated to come to a CAC. CACTX makes sure they facilitate a joint investigation with law enforcement, prosecution, and DFPS so that no one is slipping through the cracks. Information is shared so that alleged perpetrators are held accountable and are put on registry lists. But again, for this process to work, we need to make sure that the case is called in, reported, and investigated. This multidisciplinary process runs on exposing that secrecy.

CACTX makes sure that when a child comes into a CAC, they know what they are there for. They take them into the forensic interview room with a forensic interviewer, show them where the microphone is and where the camera is, and let them know who is watching the interview. This is because from the start, they want the child to know where their story is going to be told, how it is going to be used, and ultimately that it is a safe place to tell their story. When the child moves to recovery services and mental health therapy, which is provided free of charge, they process through this trauma. Trauma-focused cognitive behavioral therapy is the gold standard in these cases. A large part of that modality of mental health therapy is the child reprocessing their story in a way that gives them ownership of it so that it is not controlling them. All of these reasons are how the child gets safety, justice, and healing – from the investigation through therapy.

We cannot hold these offenders accountable unless the child and family are engaged in the process. CACTX's comprehensive case management keeps them engaged in that process from start to finish so that their investigatory partners have the information they need to hold these perpetrators accountable. If we have silenced victims and potentially covered up crimes, then we are reinforcing the secrecy. And we know that these perpetrators very rarely have only one victim. They are going to victimize multiple children and likely revictimize their original victims, so we have to make sure the state is holding them accountable and reinforcing this public safety dynamic. Additionally, if we are keeping these cases silenced, we are not empowering parents and communities to protect their children if they do not know who their perpetrators are. Secrets are toxic in these cases.

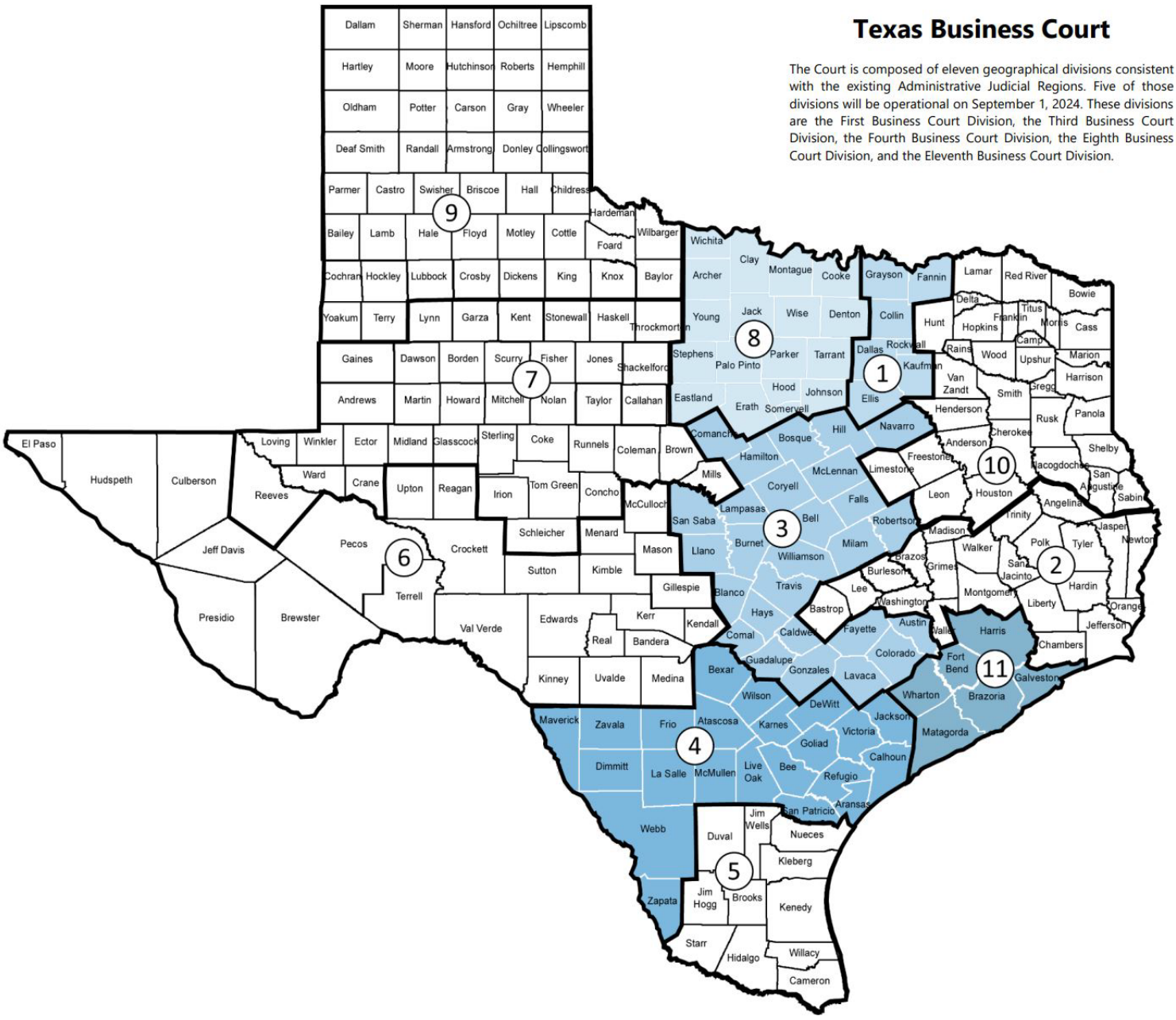
The Legislature has chosen time and time again to prioritize victims of child sexual abuse. This is seen in Texas' mandatory reporting statutes and their requirements. We have also established and enshrined CACs in processing child sexual abuse cases, and we are a leader in the nation in that response. CACTX hopes to continue to partner with the Legislature to grow in this response, to make sure that they are reaching every single child, and to ensure that this response is consistent and standardized from El Paso to Beaumont.

Recommendations

Prohibit NDAs in Child Sexual Abuse Settlements

Ultimately, the Legislature must empower abuse victims and provide them the full support of the state while they seek justice. The use of NDAs in child sexual abuse settlements is neither appropriate nor harmless. The Committee recommends the Legislature prohibit the use of NDAs in these specific settlements. We must continue to take the necessary steps in protecting Texas children and not allowing them to be silenced.

Appendix A


Texas Business Court
The Court is composed of eleven geographical divisions consistent with the existing Administrative Judicial Regions. Five of those divisions will be operational on September 1, 2024. These divisions are the First Business Court Division, the Third Business Court Division, the Fourth Business Court Division, the Eighth Business Court Division, and the Eleventh Business Court Division.
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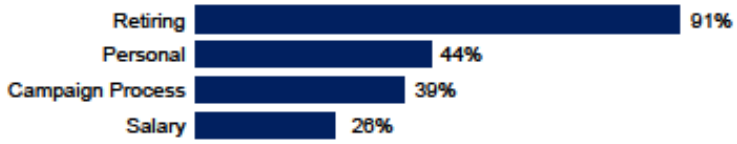
Appendix B

Texas Judicial Compensation and Turnover

Top 4 Factors that Influenced Judge's Decision to Leave Bench



Citation: Office of Court Administration Survey of Judges Who Voluntarily Left State Judicial Office, 2022-2023 Biennium

Comparison to Other States

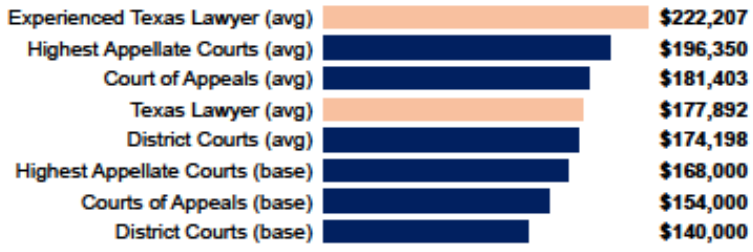
Percentage Change in State Salaries from October 2013 to July 2024	
California	32%
Texas (base salary)	**0%**
Florida	35-60%
New York	39%
Pennsylvania	27%
Illinois	33%

	General Jurisdiction
Number of States	50
# States with Increase	48
% States with Increase	96%
Avg $ Increase	$40,228
Avg % Increase	29%

Texas is one of two states that has not increased the base pay of judges since 2013. The average increase seen across the 48 other states was 29%.

Citation: National Center for State Courts Judicial Salary Survey, July 2024

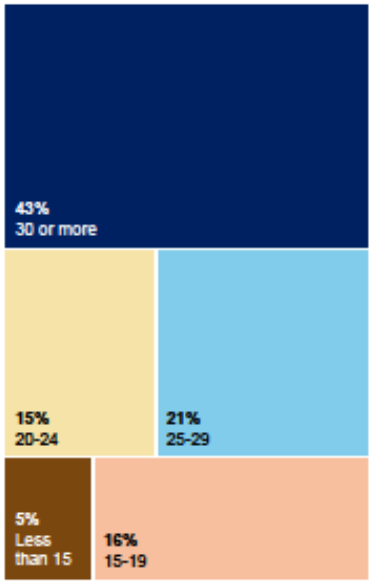
Comparison to Texas Attorneys



The base salary for all state judges is less than the average salary for lawyers statewide in 2023 and significantly less than the average salary for an experienced lawyer. All judicial salaries fall below the average salary of an experienced lawyer. A judge is required to have eight years of experience as an attorney.

Citation: Texas Workforce Commission Annual Wage Data, 2023

Average Attorney Experience of a District Court Judge



District Courts (avg. 29)

The average length of licensure for a district judge is 29 years and 43% have more than 30 years of experience. While experienced judges represent a wealth of knowledge, the disproportion represents a reality that many experienced judges will retire in the near future.

Citation: Office of Court Administration Judge Profile, Sept 2024

2024 Judicial Compensation Commission Recommendation

Judge	30%
Supreme Court Justice	0-4: $218,400 4-8: $240,240 8+: $262,080
Court of Criminal Appeals Judge	0-4: $200,200 4-8: $220,220 8+: $240,240
District Judge	0-4: $182,000 4-8: $200,200 8+: $218,400

October 2024

Endnotes

[1] https://www.house.texas.gov/pdfs/resources/House-Rules.pdf
[2] https://hro.house.texas.gov/pdf/ba88R/HB2384.PDF
[3] https://tlis/tlisdocs/88R/BillText/CommitteeReportPDF/HB02384H.PDF
[4] https://journals.house.texas.gov/hjrnl/88r/pdf/88RDAY43FINAL.PDF#page=15
[5] https://journals.senate.texas.gov/sjrnl/88r/pdf/88RSJ05-17-F1.PDF#page=6
[6] https://www.txcourts.gov/media/1455004/2022_data-report-recommendations.pdf
[7] https://hro.house.texas.gov/pdf/ba88R/HB0841.PDF
[8] https://tlis/tlisdocs/88R/BillText/CommitteeReportPDF/HB00841H.PDF
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