

Family Form Foes Fight Fiercely

By Claude Ducloux, HILL DUCLoux, CARNES & DE LA GARZA

As a board-certified bar groupie who, by virtue of some mental defect, has spent enough hours on committees, task forces, panels, boards, and commissions to qualify for a DSM-IV mental illness classification, I have seen legal trends come and go, wheels re-invented, lawyers concerned and outraged, and passion change to ennui almost overnight. A board of directors which attaches urgency to one issue will later abandon it when a member or two of the board rolls off. What is always amazing to me is the inevitable feeling, once the storm has passed, of wonder of what the big fuss was about. Perhaps I'm jaded, because the storm is here, but I'm already getting that, "jeez... get over it" feeling. But if you

are sensitive to this issue, stop reading now, because I like you, and of course, my opinions do not reflect yours, and therefore, I am wrong. Clearly wrong. You'd be stupid to keep reading.

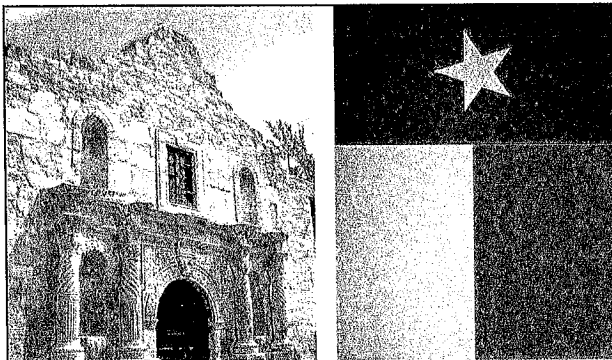
In case your practice blessedly keeps you out of family law (mine does not), there has been a growing percentage of people who can't afford to hire lawyers for divorces, not only in Texas, but all over the country. Many states have provided standard forms authored by bar associations which allow simple divorces to be filed *pro se*, and the judges have appreciated these useful tools. Thus, a task force to develop our divorce form was created through the Texas Access to Justice Commission. Well. There was less excitement and panic aboard the Titanic when it hit the iceberg a 100 years ago

than has been generated in the wake of the threat to promulgate these ill-conceived forms. The destruction caused by the party-waddling alone caused Fruit of the Loom stock to shoot up ten points.

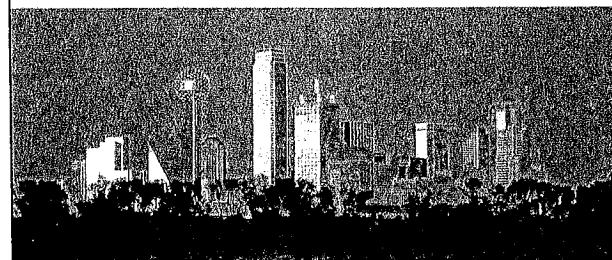
First, a bit of background: Unquestionably, those of us who have broad civil practices have seen the cost of legal services rise outside the management of large portions of the population. We need to be devising ways to deliver legal services more cheaply, efficiently, and more quickly. Because I practice in multiple counties, I have suffered often through dockets with *pro se* litigants, and thus, I have long been a proponent of standardized forms, blessed by the Courts, as a way to streamline review and make legal services accessible to those

without means. In Travis County, we are told that 50% of the divorces are *pro se*. And that's in a county with the most lawyers per capita in Texas. Because of this, Travis County has a lawyer to assist these folks complete the process. But in other counties, I have heard judges simply say, "I can't grant this divorce, because this decree form is incorrect." When the petitioner asks why, the Judge correctly instructs that he or she cannot give legal advice, and they need to consult a lawyer. No help is available, and no reasons are given. All too often, the local bar wants it that way: "Don't you dare help out, because you're taking business away from me." Really? I assume that income stream supplements your niche in estate planning for panhandlers.

This year, there have been



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several contentious meetings during which the stakeholders stated their concerns over this tempestuous conflict. In fairness, I went online, and have read well over 100 pages of reports, opinions, letters, charts, and arguments. While I risk being dismissive in trying to characterize the panoply of comments, here goes: The comments went from extremely intelligent and thoughtful (they have errors; who will update them? you cannot ever create a one-size-fits-all form), to the "how dare they let people do their own legal work!" A sampling includes:

■ It is Orwellian to allow *pro se* access to the courts. (huh?)

■ You're heading us toward a collective legal system. (i.e. A system devoid of thought or concern; like being in the Tea Party).

■ Hey, the courts aren't overwhelmed by divorces. (No, just by indigents who need them).

■ True access to justice begins and ends with expert legal help. (Thus proving this lawyer has never been to a *pro bono* clinic, or even to a typical family law docket.)

■ There is nothing that prevents rich people from using these forms. (Yes, and nothing prevents them from taking out their own tonsils. I doubt they will.)

Other commentators brought up certain legal mistakes in the *pro se* forms. In fairness, most of these "mistakes" were simply the result of "dumbed-down" instructions, which failed to instruct the user on nuances of the law. For example, an instruction advising that "if neither party lives in this county, you shouldn't file here" was challenged as flawed. Technically correct, and yet overwhelmingly irrelevant in 99.9% of the cases. Most of the objections were, in fact, technically correct, but I'm still convinced, as Jerry Frank Jones stated in his letter to the task force: The sky is NOT falling. These forms will undoubtedly help judges statewide. Every trial judge still has the right and duty to say to the litigant, "You didn't do this right [or] can't use these forms in your case. Get help."

Finally, one commentator summed up the sub rosa patina of threat which these forms pose to the rights of family lawyers to make a livelihood. "That," proclaimed the messenger, "is NOT the rightful goal of the Access to Justice Commission." And you Probate lawyers: what are you lookin' at? You're next! (*cue the scary music*). Mercy. Since I believe that our mission as lawyers is to provide folks access to justice and solutions

as quickly and economically as possible, losing business doesn't worry me.

But I can envision other professions having the same reaction. I'm sure that chefs who had a monopoly on cooking would oppose any cookbook instructing non-professionals how to make food:

CHEF: Senator, I am here on behalf of the Professional Chefs of Texas, Protesting the publication of the State Recipe book.

SENATOR: Huh? Why?

CHEF: The danger, sir. You're inviting people to use knives, sharp things! Ever see what happens when you misuse a zester? Not even to mention heat. We estimate 100,000 kitchen accidents the first year. You want that on your conscience? And the recipes are flawed.

SENATOR: What's wrong with the recipes?

CHEF: Look at the meatloaf recipe on page 39.

SENATOR: Okay... what's wrong with it?

CHEF: Where's the cumin?

SENATOR: Next witness, please.

Okay, let's admit it. Clearly, people will make mistakes using *pro se* forms, and family law is complicated, especially when children are involved. But no

one suggested that we will slow down the rate of these filings, absent barring *pro se*'s from the Courthouse. Our collective failure to provide assistance and solutions will be remembered as a low point in our profession. And this is, after all, America. By that I mean, someone will come up with the solution which works.

You can help, or you can get out of Legal Zoom's way.

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