IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12- 9192

ORDER APPROVING UNIFORM FORMS — DIVORCE SET ONE

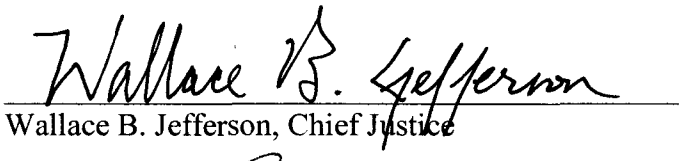
ORDERED that:

1. The following set of uniform forms, Divorce Set One, is approved for use in uncontested divorces that do not involve children or real property. Use of the approved forms is not required. However, a trial court must not refuse to accept any of the approved forms simply because the applicant used forms or is not represented by counsel. If the approved forms are used, the court should attempt to rule on the case without regard to non-substantive defects.

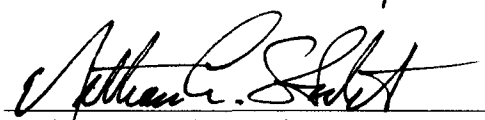
2. The Clerk is directed to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

3. These forms may be changed in response to comments received on or before February 1, 2013. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

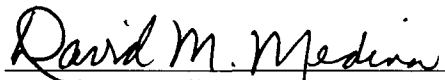
Dated: November 13, 2012.



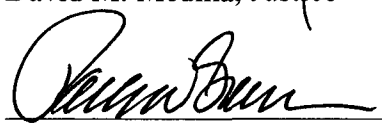
Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice



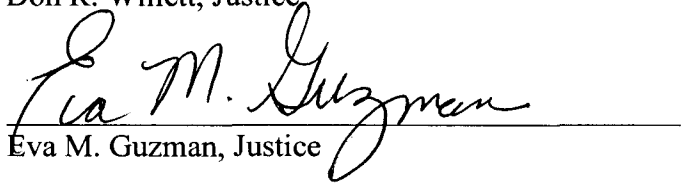
David M. Medina, Justice



Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice



Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

PER CURIAM

JUSTICE LEHRMANN filed a dissenting statement, in which JUSTICE JOHNSON joined in part.

JUSTICE JOHNSON filed a statement dissenting in part, in which JUSTICE WILLETT joined.

This Order promulgates a set of uniform forms — Divorce Set One, for uncontested divorces that do not involve children or real property — for pro se litigants. The Court, after careful consideration, is confident that these forms will be a useful tool in addressing the burgeoning population of litigants who cannot afford representation and are unable to obtain representation through a legal service provider.

On March 15, 2011, in Misc. Docket No. 11-9046, the Court, "concerned about the accessibility of the court system to Texans who are unable to afford legal representation," appointed the Uniform Forms Task Force ("Task Force") to address "the need for statewide standardized forms for pleadings frequently used by pro se litigants."[1] The Task Force was charged with "develop[ing] proposed models of uniform pleading and order forms to be evaluated and approved by the Court for statewide use."[2] The Task Force was also instructed to "consult with and seek input from stakeholders," including the Texas Access to Justice Commission and legal services providers.[3] The Task Force began meeting in March 2011 and, after reviewing data from various sources on the legal

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[1] *See* Misc. Docket No. 11-9046.

[2] *Id.*

[3] *Id.*

needs of pro se litigants, focused its efforts on drafting a set of forms for uncontested divorces with no children and no real property.

In August 2011, the Family Law Section of the State Bar objected to the work of the Task Force, citing concerns about "fundamental legal issues that average laypersons will not be able to resolve by themselves."[4] On September 2, 2011, members of the Family Law Section, the Task Force, and the Texas Access to Justice Commission met to discuss the concerns. The meeting did not resolve the conflict, and the Family Law Section continued to oppose the forms effort. In early January 2012, the president of the State Bar of Texas sent a letter to the Court stating that the "Executive Committee of the State Bar of Texas . . . after much respectful discussion and consideration voted to request that the Supreme Court of Texas suspend the work of its Uniform Forms Task Force."[5] The Court responded with a letter that requested the State Bar's input on the forms, but declined to stop the work of the Task Force.[6] The State Bar then appointed its own Task Force, Solutions 2012, to investigate the forms issue and other issues regarding indigent pro se litigants.[7]

The Task Force, meanwhile, continued its work and on January 11, 2012, forwarded a set of forms termed the "Divorce No Children, No Property kit" to the Court for approval. The kit

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[4] Email from Family Law Chair Tom Ausley to Family Law Section, dated Aug. 8, 2011.

[5] Letter from State Bar of Texas President Bob Black to the Supreme Court of Texas, dated January 5, 2012.

[6] Letter from Chief Justice Jefferson to Bob Black, dated January 25, 2012.

[7] Letter from Bob Black to the Supreme Court of Texas, dated January 30, 2012.

included instructions, an original petition for divorce, an affidavit of indigency, a waiver of service, an answer, a notice of change of address, a certificate of last known mailing address, a military status affidavit, and a final decree of divorce. After receiving the Task Force's proposal, the Court referred the forms to the Supreme Court Advisory Committee for review at its April 13-14, 2012 meeting. The Chair of the Committee referred study of the forms to a subcommittee that reviewed the forms in advance of the meeting. The Court utilized the April Committee meeting as an opportunity for the three groups at odds over the forms to present their views: the Family Law Section of the State Bar, the Solutions 2012 Task Force, and the Access to Justice Commission. Each group, along with the Committee subcommittee, submitted a report on the forms[8] and spoke at the meeting. The reports contained both substantive critiques of the forms and critiques of the policy underlying the forms effort. The full Committee discussed those critiques and raised several independent issues concerning the forms. The Committee also allowed time for members of the public to comment on the forms during the meeting.

Following the April Committee meeting, the Court undertook its own review of the forms and the feedback received from the various stakeholders. The Court studied each report and reviewed the transcript of the Committee meeting, analyzing in detail every substantive critique

[8] Family Law Section of the State Bar of Texas Response to the Report of the Uniform Forms Task Force, dated April 10, 2012; Solutions 2012 Final Report, dated April 13, 2012; Report to the Supreme Court Advisory Committee from the Texas Access to Justice Commission on the Court Uniform Forms Task Force, dated April 6, 2012; Report of the Rules 15-165a Subcommittee of the Texas Supreme Court Advisory Committee on Proposed Divorce-Related Forms, dated April 11, 2012.

lodged against the forms. The Court then revised the forms, aiming to eliminate inconsistencies and simplify the forms as much as possible.

The Court also discussed at length the policy issues implicated by the forms. While it is clear that forms will not work in every circumstance, the Court firmly believes that forms are an integral part of any effort to aid indigent litigants. This belief is bolstered by the fact that 48 states have implemented some type of standardized family law forms.[9] The Court notes the efforts of both the State Bar and the Family Law Section in proposing other solutions to the issues facing indigent pro se litigants, including improving the methods used to match those litigants with pro bono attorneys. While the Court recognizes that obtaining legal representation, pro bono or otherwise, for every pro se litigant would be ideal, the resources needed to meet the demand are simply not available. Nearly 58,000 family law cases were filed pro se in Texas in the 2011 fiscal year, more than one-fifth of total family law case filings.[10] Even if every one of the 4400 members of the Family Law Section[11] were to take on one of these cases pro bono annually, tens of thousands of litigants would remain unserved each year.

The Court is deeply committed to improving access to justice in Texas. Impediments threaten the integrity of the rule of law. Recognizing this, the Legislature has provided critical

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[9] http://www.texasatj.org/files/file/2StatesFormResearch.pdf.

[10] http://www.texasatj.org/files/file/3ProSeStatisticsSummary.pdf (data derived from statistics of the Office of Court Administration and does not include Title IV-D child support cases).

[11] http://www.sbotfam.org/section.html

support for basic legal services, and the State Bar of Texas has generously provided resources and strongly encouraged Texas lawyers in their professional responsibility to provide legal representation to those who cannot afford it. With all this effort, however, millions of Texans who need legal assistance cannot obtain it. No effort to meet this challenge can be rejected.

The Court encourages members of the State Bar and the public to provide constructive, substantive feedback on the forms during the comment period. The Court commends the Family Law Section and the State Bar for their recent initiatives to assist the ever-growing number of litigants who are unable to obtain afford legal representation and expects that the forms promulgated by this Order will become part of a greater solution, one reached through the concerted efforts of the Court, the State Bar, and the Access to Justice Commission.

JUSTICE LEHRMANN, joined in part by JUSTICE JOHNSON, dissenting.

Ensuring that the poor are not denied access to our system of justice is an undeniably laudable goal, and this Court has worked tirelessly to further that end. In developing the forms it approves today, the Court has made great efforts to ensure that the voices of all interested parties have been heard. Although I greatly respect the Court's efforts in this endeavor, I cannot endorse the forms the Court proposes to issue in their present form.

Two aspects of the forms cause me great concern. I address each in turn.

I.

First, the forms expressly state that they are "[a]pproved by the Supreme Court of Texas." Divorce Set 1, Uncontested, No Minor Children, No Real Property. I believe that the Court's express endorsement will inadvertently increase the amount of pro se litigation in our family courts among parties with the means and the need to retain counsel. As the instructions the Court provides acknowledge, "[i]t is always best to hire a lawyer." Divorce Set 1, Uncontested, No Minor Children, No Real Property, Instructions. I fear that the Court's endorsement of the forms may falsely assure potential litigants that the forms will serve their best interests. But the forms' target audience will likely not have the benefit of the Court's observation that "it is clear that forms will not work in every circumstance." MISC. DOCKET 12-_____ at 6. The Court's instructions aim to prevent the forms' use in situations where they clearly should not be used—for example, where there are children or real property or one of the spouses is in bankruptcy. But ending a marriage is an emotional, often devastating process, and there are many other instances where a party may not be in a position to assess the long-range, practical implications of a divorce. In some cases, one spouse may simply be unaware of community property acquired by the other spouse that would otherwise be weighed in arriving at a just and fair division of the couple's property. *See, e.g., Schlueter v. Schlueter*, 975 S.W.2d 584, 586 (Tex. 1998). In others, one spouse may be subject to manipulation by the other due to emotional or physical abuse and consequently may be all too prepared to make

financial concessions he or she will later regret.[1] I am concerned that the Court's explicit stamp of approval will lull people who could and should receive the benefit of experienced counsel into believing that the form will adequately protect their interests. In light of the serious interests at stake and the possibility that unsophisticated litigants will be misled, I dissent.

II.

My other concern about the forms is more tangible. Specifically, the Final Decree for Divorce form awards "all of [husband's or wife's] employment benefit, including retirement, pension, profit-sharing, and stock option plans that are in [that spouse's] name alone, along with all individual retirement accounts, such as IRA's, that are in [that spouse's name]" to that spouse. The Court has undoubtedly included this provision because, to the extent a divorce decree divides pension benefits, it cannot be enforced unless it meets the highly technical, specific requirements of a Qualified Domestic Relations Order (QDRO). *See* 29 U.S.C.§§ 1056(d)(3)(B)(I), 1144(a); *Barnett v. Barnett*, 67 S.W.3d 107, 119–20 (Tex. 2001). While the forms warn parties not to use them if they want to divide retirement or employment benefits, many spouses may be prepared to forego a claim to these benefits because they undervalue an asset that seems to be relatively insignificant, or because of an unjustified sense that, "if she earns it, she owns it." But it seems particularly likely that in the cases in which these forms will be used—where there is no real property—pension benefits will be

[1] The forms seem to invite their use in these situations; the Original Petition for Divorce form contemplates its use in situations where a spouse is seeking a protective order or where an order is already in place. Original Petition for Divorce form at 2-3.

the most significant asset in the community estate. Thus, I think it is likely that the Court's approval of this model decree will result in property divisions that violate the mandate that community property be divided "in a manner that [is] just and right." TEX. FAM. CODE § 7.001; *see Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976) (recognizing that "pension benefits earned by either spouse during the marital relationship are part of the community estate and thus subject to division upon dissolution of the marriage"). In my view, the Court should either instruct potential litigants that the forms should not be used if either spouse has pension or other retirement benefits, or provide for a fifty/fifty division of those benefits that were accumulated during the marriage.[2]

III.

As I noted, I applaud the Court's efforts to improve the delivery of legal services to the less fortunate among us. I believe, however, that the forms the Court has approved will, however unintentionally, disserve the community the Court aims to assist. Accordingly, I respectfully dissent.

JUSTICE JOHNSON, joined by JUSTICE WILLETT, dissenting in part.

I join today's Order Approving Uniform Forms-Divorce Set One, except for two parts of the forms to which I object as I set out below. I dissent from the Court's order to the extent it includes those parts.

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[2] It is not necessary that the forms themselves meet all the requirements of a QDRO, since a QDRO is required only for enforcement. It is possible (and common) for a spouse to secure a QDRO years after the initial decree is rendered. *See, e.g., Reiss v. Reiss*, 118 S.W.3d 439 (Tex. 2003).

First, I do not agree that the Final Decree form should only provide for each spouse to be awarded all "employment benefits, including retirement, pension, profit-sharing, and stock option plans" standing solely in that spouse's name, even with the warnings included. In my view the form should at a minimum provide an option allowing the trial court to divide such employment benefits equally between the spouses to the extent the benefits were earned during the marriage.

Second, the forms now are annotated as having been approved by the Supreme Court of Texas. I would annotate the forms simply as being promulgated by or approved by the Uniform Forms Task Force of the Supreme Court of Texas. My concern is that by annotating the forms as being approved by the Court, the Court has effectively committed itself to maintain the forms. The Court's actions to increase access to justice are exemplary, and I have always joined and continue to join them wholeheartedly. But the Court has enough to do with its limited resources without maintaining divorce forms when members of the Task Force have indicated no reticence regarding the task of maintaining and updating forms. I would let them do so and continue acknowledging the Task Force as the promulgating entity.

I join those parts of Justice Lehrmann's dissent that expand on and are consistent with the objections I express above.