

**STATE BAR *of* TEXAS**

---

**REPORT OF THE  
COURT ADMINISTRATION  
TASK FORCE**

---

**— OCTOBER 2008 —**

This publication was developed by the Court Administration Task Force, a diverse group of stakeholders, appointed by Gib Walton, 2007-2008 State Bar of Texas President. The recommendations presented in this report represent a consensus of the members of the Court Administration Task Force and do not necessarily represent the opinions of the State Bar, its Board of Directors, members or volunteers. Further, the inclusion of a comment about any past or potential legislation in this report does not indicate that the State Bar is taking a legislative position. The State Bar's Legislative Policy Committee has the sole discretion to review legislation and to make recommendations to the State Bar Board of Directors regarding any position that might be taken. This publication is intended for educational and informational purposes only.



## EXECUTIVE SUMMARY

*The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.*

Alexander Hamilton  
New York Delegate  
The Federalist, No. 17

This Report addresses the complexity, shared local and state responsibility, and decentralization in the Texas court system. The Texas Constitution and statutes establish a four-tiered system of state courts: district courts, constitutional county courts, statutory county courts, and justice of the peace courts. Each court was intended to have its own jurisdiction, consistent between the counties, generally based upon the severity of the civil or criminal issues in question. The system, however, actually presents a patchwork array of courts with significant overlapping jurisdiction that differs from county to county. A court in one county may have completely different jurisdiction from the identically named court in the next county. To understand a particular court’s jurisdiction, no less than six sources must be consulted. First, one must look to the Texas Constitution, then to the general statutory provision for all courts on a particular level, then to the specific statutory provision that authorizes the individual court, then to statutes creating other courts in the county which may affect the jurisdiction of the court in question, then to statutes dealing with specific subject matters (e.g., the Texas Family Code), and finally to local rules that may specify a subject matter preference for particular courts (e.g., child protection cases). If this exercise can frustrate a licensed Texas attorney, surely the average Texan is bewildered. Putting it in Hamiltonian terms, it is doubtful that this court system succeeds in “impressing upon the minds of [Texans] affection, esteem, and reverence towards the [State’s] government.”

Throughout Texas history, there have been multiple attempts by the Texas Supreme Court, the Legislature, and other interested groups to address the structural problems that have plagued Texas courts almost from their inception.<sup>1</sup> None of the proposals has ever gotten far. The most recent attempt occurred in the spring of 2007 during the 80th Legislative Session when Sen. Robert Duncan, R-Lubbock, introduced S.B. 1204. After significant controversy, the bill was revised based on input from, among others, the Texas Trial Lawyers Association, the Texas Association of Defense Counsel, the American Board of Trial Advocates, Texans for Lawsuit Reform, trial and appellate judges from across the state, and a group of experienced trial lawyers and judges put together by the Litigation Section of the State Bar of Texas. S.B.

---

<sup>1</sup> See e.g., C. Raymond Justice, *The Texas Judicial System: Historical Development and Efforts Towards Court Modernization*, 14 S. TEX. L.J. 295, 314 (1973); Thomas M. Reavley, *Court Improvement: The Texas Scene*, 4 TEX. TECH. L. REV. 269, 269-270 (1973).

---

1204 became C.S.S.B. 1204 and was widely regarded as the Legislature’s first real attempt to tackle some of the more daunting and perplexing problems of our court system. It failed, however, to pass the House.

Not wanting to lose the momentum for potential positive reform, and recognizing the State Bar’s unique ability and obligation to contribute to this type of legislation, 2007-08 State Bar President Gib Walton appointed the Court Administration Task Force in the fall of 2007. The Task Force was charged with studying issues relating generally to the administration of the courts of Texas and specifically those raised during the 2007 Texas Legislative Session, including but not limited to S.B. 1204 and C.S.S.B. 1204. Fifty members strong, the Task Force was a diverse group of lawyers, judges, law professors, lay persons, and legislators representing key constituencies and stakeholders in the administration of our Texas courts.<sup>2</sup> Martha Dickie, 2006-07 President of the State Bar of Texas, and the Honorable Ken Wise, Judge of the 152nd District Court of Harris County, served as co-chairs. Alex Albright, of the University of Texas School of Law, served as reporter.

The Task Force was divided into three subcommittees that were assigned the following issues:

- Issues relating to restructuring the trial courts. Chair, Richard C. Hile, Austin; Reporter, Gerald Powell, Waco.
- Issues relating to the appellate courts, the jury and arbitration. Chair, Tom A. Cunningham, Houston; Reporter, Lisa Hobbs, Austin.
- Issues relating to additional resources and the establishment of specialized courts. Chair, Carl Reynolds, Austin; Reporter, Alex Albright, Austin.

The Task Force sought to identify problems in the current court system and to propose long-term and short-term solutions to those problems. From October 2007 to June 2008 it held six meetings, both as subcommittees and as the full committee. The Task Force not only reviewed existing

---

2 Members of the Task Force are: Professor Alex Albright (Austin), John C. Ale (Houston), Daniel W. Bishop (Austin), Jeff Boyd (Austin), Jerry Bullard (Grapevine), J.A. “Tony” Canales (Corpus Christi), David Chamberlain (Austin), Judge F. Alfonso Charles (Longview), Tom Cunningham (Houston), Alistair Dawson (Houston), Martha Dickie (Austin), Judge John K. Dietz (Austin), Senator Robert Duncan (Lubbock), Harper Estes (Midland), Judge David Evans (Fort Worth), Dr. Lloyd M. Garland (Lubbock), Representative Dan Gattis (Georgetown), Dicky Grigg (Austin), Deborah Hankinson (Dallas), Jay Harvey (Austin), Richard Hile (Austin), Lisa Hobbs (Austin), Judge Martha Jamison (Houston), Lamont Jefferson (San Antonio), Joy Latrelle (Lubbock), Justice of the Peace Tom Lawrence (Humble), Alice McAfee (Austin), David R. McClure (El Paso), Steve McConnico (Austin), Justice Harriet O’Neill (Austin), Jay Old (Beaumont), Justice Patrick Pirtle (Amarillo), Lilly Plummer (Odessa), Professor Gerald Powell (Waco), Mickey Redwine (Ben Wheeler), Judge Rose Reyna (Edinburg), Carl Reynolds (Austin), J. Hamilton Rial (Austin), Thomas Riney (Amarillo), Eduardo Rodriguez (Brownsville), Scott Rozzell (Houston), Judge Craig Smith (Dallas), Steve Suttle (Abilene), Richard Trabulsi (Houston), Gib Walton (Houston), Pat Long Weaver (Midland), Judge Ken Wise (Houston), Dan Worthington (McAllen), Justice Linda Yanez (Edinburg), Larry York (Austin).

---

legal and empirical research on the structure of the court system, but also conducted four separate surveys of judges and lawyers about the operation of the Texas courts.<sup>3</sup> This Report represents a consensus of the members of the Task Force. Four minority reports were received and are included.<sup>4</sup>

This Report begins to chart a course toward a simpler and more comprehensible civil court system for Texas. The Task Force does not propose a unified and centralized system of state courts. Shared local/state governance of the mechanics of justice is firmly embedded in the Texas Constitution and generally carried forward in the “Philosophy of Texas State Government”: “Decisions affecting individual Texans, in most instances, are best made by those individuals, their families, and the local government closest to their communities.”<sup>5</sup> The Task Force was challenged to honor that philosophy by providing flexibility and resources for the trial courts of the state while also increasing the simplicity and efficiency of the system for its users.

Task Force deliberations can be synthesized into four “Core Principles”—efficiency, simplicity, flexibility, and excellence—around which this Report is organized. Each Core Principle contains a number of related recommendations (some of which are broken down into more specific recommendations). Each recommendation is discussed at length, and is followed by an Action Plan of specific proposals to assist the Legislature, the Texas Supreme Court, and other interested parties in achieving positive reform. All of the changes proposed in this Report seek to promote the efficient resolution of disputes; organize courts in a straight-forward and comprehensible manner; provide a flexible allocation of resources to address the greatest needs; and enhance the excellence of our Texas courts.

### Task Force Recommendations

- I. **Efficiency:** Justice is lost with the passage of time; court administration should be focused on the reduction of delay.
- II. **Simplicity:** The subject matter jurisdiction of all Texas courts should be apparent to lawyers and litigants, and overlapping jurisdiction generally should be avoided. Texas should move towards a three-tiered trial court system composed of district courts, county courts at law and justice courts. Cases should be decided within their appropriate court of appeals district whenever possible.

---

3 See *infra* App. 1 (Trial Court Survey Results), App. 2 (Justice of the Peace Survey Results), App. 3 (Appellate Survey Results), App. 4 (Complex Case Survey Results).

4 See *infra* Minority Reports. (A - Ale Report on Arbitration; B - Charles Report on Trial Court Jurisdiction; C - Reynolds Report on Presiding Judge Selection and D - Trabulsi Report on Arbitration;).

5 INSTRUCTIONS FOR PREPARING AND SUBMITTING AGENCY STRATEGIC PLANS, FISCAL YEARS 2009-2113, Governor’s Office of Budget, Planning & Policy and the Legislative Budget Bd. (March 2008), at App. A, 37.

1. *Three-tiered system.* The Legislature should move towards a three-tiered jurisdictional trial court structure with minimal overlapping jurisdiction.
2. *District Courts and County Courts at Law.* The Legislature should simplify and standardize the subject matter jurisdiction of the district courts and county courts at law.
  - A. The Legislature should amend Chapter 24 of the Texas Government Code to establish \$10,000.01 as the minimum jurisdictional amount for district courts.
  - B. All district courts should have the same general jurisdiction to hear any civil, criminal, family, or juvenile case. The specialization of courts should be accomplished at the local level by local rules of administration, rather than by statute.
  - C. The Legislature should amend Chapter 25 of the Texas Government Code to establish that all county courts at law have the same maximum jurisdictional amount in controversy of \$200,000.00 and create uniform definitions of criminal cases and proceedings, family law cases and proceedings, juvenile cases and proceedings, and mental health cases and proceedings that may be assigned to county courts at law.
  - D. The Legislature should convert to district courts all county courts at law that elect to keep their maximum jurisdictional amount in controversy in excess of \$200,000.00.
  - E. The Legislature should fund additional courts and capital improvements and additions where needed.
3. *Justice of the Peace and Small Claims Courts.* The Legislature should simplify the distinction between justice of the peace and small claims courts.
  - A. The Legislature should repeal Texas Government Code, Chapter 28, Small Claims Courts, and authorize the Texas Supreme Court to promulgate new rules for justice courts to exercise jurisdiction over small claims.
  - B. Pending repeal of Chapter 28, the Legislature should amend Section 28.053, Texas Government Code, to allow an appeal from a county court to the court of appeals if the case originates in the small claims court.
4. *Subordinate Judicial Officers.* The Legislature should amend Chapter 54, Texas Government Code, to establish uniform administrative, trial and appellate provisions for all subordinate judicial officers – masters, magistrates, referees and associate judges.

5. *Courts of Appeals Districts.* The Legislature should address jurisdictional overlaps in the court of appeals districts gradually, in cooperation with the courts themselves, while maintaining the number of courts and diverse geographical coverage of each district.
6. *Maintaining Simplicity.* The Legislature should commit to maintaining a simplified structure of the Texas courts by adopting rules that require the Office of Court Administration to conduct a comprehensive analysis regarding the need for any proposed court.

III. **Flexibility:** Flexibility is key to the efficient administration of the judicial system. Courts should be empowered to resolve cases without unnecessary delay, and resources should be available to respond as the needs of particular courts and counties change with population growth, litigation trends, and specific case filings. These needs should be locally and regionally determined, largely funded by the State, and allocated through the judicial system.

1. *Flexible Resources.* The Legislature should provide additional funding to support trial courts, especially those hearing cases requiring special judicial attention.
  - A. The Legislature should provide for additional resources for specific cases requiring special judicial attention, for court system enhancements, and for child protection cases.
  - B. The Legislature should provide funding for legal and judicial personnel to support trial judges.
2. *In-County Transfers.* All courts should be able to transfer cases to other courts in the county with the consent of the parties and the affected courts.
  - A. The Legislature should amend Chapter 25 of the Texas Government Code to allow district courts, county courts at law, constitutional county courts, statutory probate courts and justice courts to transfer cases to another court in the county with consent of the parties and courts.
  - B. The Legislature should amend the Texas Government Code to allow justice courts to adopt local rules and amend the Texas Civil Practices & Remedies Code and the Texas Code of Criminal Procedure to allow justice courts to transfer civil and criminal cases within the county.
3. *Regional Administration.* The Texas Supreme Court should select the regional presiding judges with significant local input.

4. *Appellate Docket Equalization.* The appellate court system should continue to have flexible tools at its disposal to ensure that cases are handled fairly and efficiently.

IV. **Excellence:** It is fundamental that the Texas court system remain an excellent method of dispute resolution. Providing juries and judges with more tools to assist them in performing their jobs will ensure informed decisions. Maximizing jury comprehension should lead to greater accuracy and fairness in jury verdicts. Greater resources and educational opportunities for judges should also enhance judicial decision-making.

1. *Juror Comprehension.* Trial procedures should facilitate the jury's comprehension of the evidence so that it can render an informed and fair verdict. Court personnel should do all they reasonably can to improve citizens' experience with jury service.
  - A. The Texas Rules of Civil Procedure should expressly allow, in appropriate cases, juror note-taking, written questions from the jury, and interim statements by counsel.
  - B. Counties should be encouraged to adopt electronic jury assembly procedures when possible and to adopt other procedures to make jury service more convenient and efficient.
2. *Judicial Education.* Judges should receive the education, as well as other resources (discussed above), they need for the types of cases they will encounter.
3. *Arbitration.* The Legislature should amend the Texas Arbitration Act and other statutes to address concerns raised by the growing use of arbitration.
  - A. The Legislature should amend the Texas Arbitration Act to protect against inadequate disclosure and unfair methods of negotiating arbitration clauses.
  - B. The Legislature should amend the Texas Arbitration Act to provide additional procedural protections to litigants participating in arbitration hearings.
  - C. The Legislature should amend the Texas Arbitration Act to provide for additional, although limited, judicial review of arbitration awards.