

## **Protective Order Bill – Family Code 85.006**

See Accompanying Bill Analysis for Narrative Explanation.

The proposed legislation was previously introduced as H.B. 556 in the 2019 legislative session. It was amended and voted favorably out of the Juvenile Justice and Family Issues Committee, as substituted. There was no House vote on the bill.

The proposed legislation was previously submitted to all Committees and Sections of the State Bar of Texas in June 2018. The Family Law Section was allowed to carry the proposed legislation as a State Bar sponsored bill.

The proposed legislation has been submitted to all sections and committees of the State bar of Texas as required by §8.01.06(D) of the Legislative Policy of the State Bar of Texas. If comments are received, I will forward them to the State Bar.

Respectfully submitted,

Family Law Section, State Bar of Texas

By: /s/ Jack W. Marr

Its: Co-Chair Legislative Committee

## **Analysis of Protective Order Bill – Family Code 85.006**

This bill amends Family Code 85.006(a) to provide that a default protective order may be rendered if the defaulting respondent was served with notice of the hearing and proof of service was filed with the court before the time the hearing was scheduled.

This amendment is necessary because the 1<sup>st</sup> Houston Court of Appeals opinion in Lancaster v. Lancaster, 2015 LEXIS 12987, 2015 WL 9480098. The court of appeals vacated a default protective order because the return of service had not been on file with the court 10 days prior to the hearing, as require by Tex. R. Civ. P., Rule 107(h).

The Fort Worth Court of Appeals declined to follow Lancaster, in Johnson v. Simmons, 597 S.W. 3d 538 (Tex. App. [2<sup>nd</sup> Dist.] 2020, no pet.). The Fort Worth Court of Appeals found that Tex. R. Civ. P. 107(h) was not intended to apply to protective order proceedings under the Texas Family Code.

This bill resolves the conflict in favor of the underlying Family Code policy of expeditious resolution of family violence claims.