**Supplemental Report to the Supreme Court of Texas**
**On Proposed Revisions to Texas Rule of Civil Procedure 145,**
**Affidavits of Indigency**

**Submitted by the Texas Access to Justice Commission**
**January 21, 2015**

## Introduction

On May 6, 2013, the Texas Access to Justice Commission ("Commission") submitted proposed revisions to Texas Rule of Civil Procedure 145 ("Rule 145")[1], which governs affidavits of indigency. TRCP 145[2] is an extremely important rule for access to justice purposes because it serves as the gateway for the poor, who cannot afford court costs, to gain entry to the courts. Each time TRCP 145 is applied incorrectly, it effectively denies the poor a way to resolve critical and potentially urgent legal matters, such as child custody or possession disputes. Filing fees and court costs can reach hundreds, even thousands, of dollars, way beyond the means of low-income individuals.

At the time we submitted the proposed revisions to TRCP 145, the Commission had received numerous reports from legal aid attorneys, judges, clerks, court personnel, and law librarians of problems faced by parties who file an affidavit of indigency, including counties that:

- Automatically contest every affidavit of indigency filed, even when the party is receiving means-tested public benefits;
- Delay the filing of a case when it is accompanied by an affidavit of indigency;
- Contest affidavits of indigency accompanied by an IOLTA Certificate[3], which have been uncontestable under TRCP 145 since 2005;
- Assess costs after final orders are rendered and the case is concluded when there has been no successful contest to the affidavit of indigency;
- Determine indigence inconsistently within the same court, county, and across the state;
- Conduct contest hearings before a staff attorney rather than before a judge; and
- Adopt policies and practices that discourage parties from filing affidavits of indigency.

## New Abuses of TRCP 145

Over the past eighteen months, the Commission has received reports of new abuses regarding the application of TRCP 145 and continued reports of problems addressed in our original report. Many of these reports came from the Poverty Law Section of the State Bar of Texas, which formed a committee to seek and document input from legal aid providers on their experiences with TRCP 145 in the field.

[1] Proposed revision to Tex. R. Civ. Pro 145. See Exhibit A.
[2] Current Tex. R. Civ. Pro 145. See Exhibit B.
[3] In 2005, TRCP 145 was modified to include a provision that an affidavit of indigency accompanied by a certificate stating that a party represented by an attorney providing services through a legal aid program funded by the Interest on Lawyers Trust Accounts program may not be contested ("IOLTA certificate").

We have summarized these concerns in Exhibit B[4] and provided the more detailed individual reports in Exhibit C[5].

A synopsis of the newly reported concerns includes counties that:

- Deny affidavits of indigency of public benefit recipients without holding a hearing;
- Require pro se filers to pay an additional $50 in court costs;
- Deny affidavits of indigency based on substantive case reasons rather than making a determination based on whether the litigant is poor;
- Require payment for service of process, a cost clearly covered under TRCP 145;
- Require protective order applicants to pay court costs if their application is denied even when an affidavit of indigency has been filed and despite provisions that fees cannot be charged per Section 81.002 of the Texas Family Code[6];
- Require payment for a social study, a cost covered under TRCP 145 per *In re Villanueva,* 292 S.W.3d 236 (Tex. App. Texarkana 2009);
- Require payment of ad litem fees, even when the ad litem has been appointed on the court's own motion and not at the request of either party, a cost covered per *In re Villanueva*, 292 S.W.3d 236 (Tex. App. Texarkana 2009). Some counties strike pleadings if the fee not paid.;
- Require payment for an interpreter, a cost covered under Title VI of the Civil Rights Act of 1964 per the United States Department of Justice[7];
- Refuse to print an e-filed petition to create a citation that can be sent to the sheriff or constable for service of process unless petitioner pays a per page fee;
- Require payment of a $2 per transaction e-filing fee even though Section 72.031 of the Texas Government Code expressly allows this fee to be waived for indigent filers;
- Require an affidavit of indigency to be filed each time a pleading or document is e-filed;
- Automatically contest affidavits of indigency filed in probate court on an administration of the estate or a Muniment of Title when a house is a part of the estate; and
- Require payment for a mediator under local rules that mandate mediation in all contested cases prior to final order or hearing, effectively halting resolution of important issues for the poor, such as child custody and support.

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[4] *See* Exhibit C.

[5] *See* Exhibit D.

[6] Tex. Fam. Code §81.002. NO FEE FOR APPLICANT. An applicant for a protective order or an attorney representing an applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk of the court or a sheriff, constable, or other public official or employee in connection with the filing, serving, or entering of a protective order or for any other service described by this subsection, including:

(1) a fee to dismiss, modify, or withdraw a protective order;
(2) a fee for certifying copies;
(3) a fee for comparing copies to originals;
(4) a court reporter fee;
(5) a judicial fund fee;
(6) a fee for any other service related to a protective order; or
(7) a fee to transfer a protective order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 3, eff. Sept. 1, 1997.

[7] *See* Exhibit E.

**Recommendation**

The Commission urges the Court to adopt the proposed changes to TRCP 145 submitted on May 6, 2013. The proposed rule will provide much needed clarification on issues that underlie the problems arising from the current rule. The proposed rule:

- More clearly defines who qualifies under an affidavit of indigency and how the rule should be applied to determine who is indigent. The changes reduce the burden on courts in reviewing these affidavits, yet results in an individualized review of each affidavit that will provide a more uniform application of the rule across courts and counties in our state;
- Provides much greater guidance on what costs are covered by the affidavit, which is currently the source of much confusion. This uncertainty creates a breach in the administration of justice and raises additional policy issues. When a court incorrectly determines that a cost is not covered by an affidavit of indigency, the cost must be paid by the poor litigant or be paid by the legal aid office representing that litigant. For those who cannot pay the cost, litigants are often unable to move their case forward to resolution. The case either languishes unresolved or is ultimately dismissed for want of prosecution. In some situations, courts have struck pleadings when a litigant cannot pay the cost. For those represented by a legal aid organization with a litigation fund – and not all legal aid organizations have one, the cost is paid out of funds that could be used to help more people, raising policy issues regarding effective use of resources; and
- Delineates when an affidavit may be contested, when it is uncontestable, and how a contest is properly handled. The clarification regarding contests will be invaluable to the courts and to those making the determination on whether a contest is appropriate and eliminate the automatic contests seen in many counties, including some of the largest in our state.

Ultimately, the proposed rule will increase the public's trust in our court system by reducing the current uneven, and seemingly arbitrary, application of the existing TRCP 145.

**Amicus Curiae Brief Regarding TRCP 145**

The Commission also calls the Court's attention to the petition for review in *Campbell, Coleman, Robertson et. al. v. Wilder*[8], in which the Commission filed an amicus curiae brief. We support the petition because Respondent, the Tarrant County District Clerk, has been wrongly charging court costs to poor litigants despite their affidavits of indigency having been determined valid as a matter of law. Respondent began charging costs during the period of time that the Commission was drafting the proposed revisions to TRCP 145, and his practice was the impetus for including language prohibiting this action in the proposed rule. While we are asking the Court to adopt the proposed rule to stop this and other abuses, the proposed changes will not address the underlying procedural and policy issues regarding affidavits of indigency and TRCP 145 outlined in our brief. It is important that those issues be resolved by the Court to fully ensure access for the poor under TRCP 145.

**Conclusion**

There are serious problems stemming from the existing language and interpretation of TRCP 145 that have an immense impact on poor Texans. Our country was founded on the rule of law, yet each day these issues remain unresolved, many poor are barred from court and unable to have their voice heard

[8] Wilder v. Campbell, 430 S.W.3rd 474, (Tex. App. – Ft. Worth 2014, pet. filed). *See* Exhibit F.

or their legal matters resolved in court. Others pay fees that by law they should not have to pay, and worse, may result in their inability to pay for their basic necessities. Either way, it sends a clear message that justice is not for all.

Legal aid providers have extremely limited resources and it is important that their time be spent efficiently and effectively. Legal aid staff spend a significant amount of time and effort addressing the issues that arise from the inappropriate application of TRCP 145 – time that could be spent assisting additional clients. These issues also create unnecessary hurdles for pro bono attorneys, who may think twice about accepting another case.

Many of these problems can be solved by adopting the proposed revisions to TRCP 145 submitted by the Commission in May 2013. Additional barriers to justice arising from important policy and procedural issues not addressed by the proposed rule could be settled by the Court in *Campbell v. Wilder*.

**Proposed Revision to Texas Rule of Civil Procedure 145**

**Rule 145. Affidavit of Inability to Pay Costs**

(a) *Establishing Inability to Pay Costs by Affidavit.* A party who is unable to afford the costs of a case may proceed without advance payment of costs if the party files with the clerk of the court an affidavit of inability to pay costs in compliance with this rule and the affidavit is:

(1) not contestable,
(2) not contested, or
(3) contested, but the contest is not sustained by a written order that complies with section (f)(5).

Upon the filing of the affidavit, whether or not a contest is filed as allowed in this rule, the clerk must docket the case, issue citations and notices and provide without payment such other customary services as are provided to any party.

(b) *Definition of Party Unable to Afford Costs.* "A party who is unable to afford costs" for the purposes of this rule is a person to whom at least one of the following applies:

(1) Party Receiving Government Entitlement. A party who is currently receiving benefits from a means-tested government entitlement program.

(2) Party Receiving Free Legal Services. A party who is currently receiving free legal services in this case through one of the following providers and has been determined to be eligible under that provider's financial guidelines:
   (A) a provider funded in part by the Texas Access to Justice Foundation;
   (B) a provider funded in part by the Legal Services Corporation; or
   (C) a Texas nonprofit that provides civil legal services to low-income people living at or below 200% of the federal poverty guidelines as published annually by the Unites States Department of Health and Human Services.

(3) Party Financially Eligible for Free Legal Services. A party who applied for free legal services through a provider listed in (b)(2) and was determined to be financially eligible but was declined representation .

(4) Party Income At or Below 200% of the Federal Poverty Guidelines. A party whose household income is at or below 200% of the federal poverty guidelines as published annually by the United States Department of Health and Human Services, and whose available assets, such as cash or certificates of deposit, but excluding their homestead and property exempt under Chapter 42 of the Texas Property Code, does not exceed $2,000.

(5) Other Parties. Any other party found to be unable to pay costs upon a review of the contents and attachments of the affidavit, or upon a review of a totality of the evidence, by the court at a contest hearing or at the final hearing.

(c) *Contents of Affidavit.* The affidavit of inability to pay costs must identify the party filing the affidavit and contain the following statements: "I am unable to pay court costs. I verify that the statements made in this affidavit are true and correct." The affidavit must be sworn before a notary public or other officer authorized to administer oaths, or be signed under penalty of perjury pursuant to Texas Civil Practices and Remedies Code Section 132.001.

(1) The affidavit must also state:

(A) the affiant's current street address or other address where the court can contact the affiant;

(B) whether the affiant is currently receiving benefits from a means-tested government entitlement program, and if so the specific type of benefit received;

(C) whether the affiant is currently receiving free legal services in this case through one of the providers listed above in section (b)(2);

(D) whether the affiant has applied for free legal services through a provider listed above in section (b)(2) and was determined to be financially eligible but was declined representation;

(E) the nature and amount of the affiant's current employment income, government-entitlement cash income, and other income;

(F) the income of the affiant's spouse, if known, and whether that income is available to the affiant;

(G) the real and personal property owned by the affiant, excluding the affiant's homestead;

(H) the cash the affiant holds and amounts on deposit that the affiant may withdraw;

(I) the affiant's other assets;

(J) the number, ages and relationship to the affiant of any dependents and whether they are residing in the affiant's household;

(K) the nature and the amount of the affiant's debts;

(L) the nature and amount of the affiant's monthly expenses; and

(M) whether an attorney is providing free legal services in this case to the affiant without a contingency fee.

(2) Affiant's Privacy Maintained. An affiant shall not be required to disclose personally identifying information about the affiant or the affiant's family members in the affidavit or in the attached proof or confirmation as set forth in (d). Such information includes, but is not limited to, a social security number, driver's license number, date of birth, home address, bank account numbers, or public benefit account numbers.

(d) *Affidavits Not Contestable.* An affidavit accompanied by one of the following may not be contested.

(1) proof that the party is a current recipient of a means-tested government entitlement program;

(2) confirmation that the party is currently receiving free legal services in this case through a provider listed above in section (b)(2) and has been deemed eligible under that provider's income guidelines. The confirmation must be signed by the legal service provider or a pro bono attorney rendering legal services through the legal service provider; or

(3) confirmation that the party applied for free legal services through a provider listed above in section (b)(2) and was determined to be eligible but was declined representation. The confirmation must be signed by the legal service provider or a pro bono attorney rendering legal services through the legal service provider.

(e) *Clerk to Provide Affidavit.* The clerk must provide, without charge, the affidavit of indigency form promulgated by the Supreme Court of Texas, or any successor form promulgated for the same purpose, to any person who states that he or she is unable to pay costs.

(f) *Contests.*

(1) Effect of No Contest. Unless a contest is timely filed, the affidavit's allegations will be deemed true and the affiant will be allowed to proceed without payment of costs.

(2) Filing a Contest. The clerk or any party may challenge an affidavit for good cause, unless the affidavit is not contestable under section (d), by filing a written contest.

(A) *Good Faith Required*. Every contest must be filed in good faith and include the following sworn certification, which is subject to TRCP 13: "I certify that this contest is filed in good faith and that I have reason to believe that the affidavit of inability to pay costs filed in this case is not supported by evidence or fails to establish, on its face, that the affiant is unable to pay costs."

(B) *Specificity Required*. Every contest must state specific facts as to why the affidavit is alleged to be insufficient.

(C) *Time for Filing*. A contest filed by the clerk of the court must be filed within 10 days of the date the affidavit was filed. A contest filed by an opposing party must be filed within 10 days of the date that the opposing party filed an answer or entered an appearance.

(3) Notice and Hearing

(A) *Notice and Hearing*. Notice of a contest hearing must include the specific grounds of the contest and be served on the affiant not less than 10 days before the date of the contest hearing. If a contest is properly filed, the court must consider the contest at the next hearing in the case that occurs after the 10 day notice period. The filing of a contest shall not be the basis for continuing a hearing in the case, but if needed, the court may continue a final hearing until after the 10 day notice period.

(B) *No Appearance by Contestant.* If the contestant does not appear at the contest hearing, the statements in the affidavit shall be deemed true and the affiant will be allowed to proceed without payment of costs.

(4) Burden of Proof. If a contest is filed, the affiant must prove by a preponderance of the evidence that the affiant is unable to afford costs.

(A) *Incarcerated Party*. If the affiant is incarcerated at the time the contest hearing is held, the affidavit must be considered as evidence and is sufficient to meet the affiant's burden to present evidence without the affiant attending the hearing.

(B) *Recipient of Government Entitlement Program*. If an affiant files an affidavit stating that the affiant is a current recipient of a means-tested government entitlement program and fails to attach proof, the only issue that may be contested is whether the affiant is actually receiving the entitlement. If the affiant is unable to provide such proof, the affiant may provide other evidence of inability to pay costs at the contest hearing.

(5) Decision

(A) *Whole Record Considered*. If a contest is properly filed, the court shall consider the record as a whole to determine whether the party who filed the affidavit is able or unable to afford costs.

(B) *Procedural Defects*. A contest shall not be sustained due to a procedural defect, including an affiant's failure to provide information on each of the items listed above in section (c), unless the affiant is first provided notice of the specific defect and a reasonable opportunity to correct the defect by affidavit or testimony.

(C) *Findings*. The court shall sign a written order in accordance with this rule at the conclusion of a contest hearing. An order sustaining a contest must include specific reasons why the party must pay costs under section (g)(1)(B)-(E). .

(D) *Time for Written Decision*. Unless the court signs an order sustaining the contest within five days of the date that the hearing was held, the affidavit's allegations will be deemed true, and the affiant will be allowed to proceed without payment of costs.

(g) Costs.

(1) Payment of Costs

(A) If the court finds that the affiant is unable to afford costs, or the affiant is unable to pay costs as otherwise provided under this rule, the affiant has no costs to pay and may not be ordered to pay costs during the course of the case or after the case is concluded, except as allowable under (g)(2) .

(B) If the court finds that the affiant is able to afford costs but special circumstances exist that make full payment of costs unreasonably burdensome, the court may allow the affiant to pay partial costs.

(C) If the court finds that the affiant is able to afford costs and no special circumstances exist, the affiant must pay the costs of the case.

(D) If the court finds that another party in the case can pay the costs of the case, the court may order that party to pay them.

(E) The court may allow payment of costs to be made in installments but may not delay the case solely because the party has been allowed to pay in installments. A party who is current on his or her payment plan may not be penalized in any way. If a payment plan is past due at final hearing, the court may delay the final hearing until the account is current or paid in full, provided that the delay will not cause undue harm to the parties involved.

(2) Later Ability to Pay Costs

(A) If, during the course of the case, an affiant who has proceeded without paying costs becomes able to pay some or all of the costs, the court may in the final order, and consistent with the guidance in this rule, require the affiant to pay costs to the extent of the affiant's ability to pay.

(B) If an affiant's case results in a monetary award and the court finds sufficient evidence that the award is collectible and sufficient to reimburse costs, the court may order the affiant to pay some or all of the costs of the case.

(3) Reimbursement of Costs. The clerk shall not seek reimbursement of costs from a party who filed an affidavit of inability to pay costs unless a contest was properly filed and sustained by a written order in compliance with this rule.

(4) Award of Costs in Final Judgment. A final judgment may not contain a provision requiring an affiant to pay costs unless a contest on the affiant's affidavit was sustained or the affiant has become able to pay costs pursuant to section (g)(2). Any such provision shall be void and unenforceable.

(5) Attorney's Fees and Costs. Nothing herein will prejudice any existing right to recover attorney's fees, expenses or costs from any other party.

(h) *Additional Definitions*.

(1) Costs. "*Costs"* means any fees relating to the case in which the affidavit of inability to pay costs is filed that can be taxed in the bill of costs as set forth in the Texas Rules of Civil Procedure, including:

(A) filing fees;

(B) fees for issuance of legal process, income withholding for support orders, and official notices;

(C) fees for service and return of service of process, including the execution of process from another county in which an affidavit of inability to pay costs has been filed as set forth in TCRP 126 and service by publication;

(D) charges for one certified copy of final judgments, orders, and decrees; and

(E) fees awarded to court-appointed officers and professionals in that case.

(2) Means-Tested Government Entitlement Program. A "*means-tested government entitlement program*" is any public benefit program in which the recipient must meet specific financial eligibility guidelines to obtain the benefit. It includes, but is not limited to, programs such as Aid to the Aged Blind and Disabled ("AABD"), Child Care Assistance under Child Care and Development Block Grant, Children's Health Insurance Program ("CHIPs"), Community Care through the Texas Department of Aging and Disability Services, County/City assistance or general assistance programs, County health care programs, emergency and disaster assistance programs such as relief through the Federal Emergency Management Agency ("FEMA"), low-income energy assistance programs, Medicaid, Medicare's Extra Help program (low income subsidy program for prescription drugs), public or subsidized housing, Supplemental Nutritional Assistance Program ("SNAP", a.k.a. "Food Stamps"), Supplemental Security Income ("SSI"), Temporary Assistance to Needy Families ("TANF") and its Emergency Assistance program, Women Infant Children program ("WIC"), or Needs-based Veteran's Administration pension.

(3) Current Recipient. A "*current recipient*" is a party who is receiving a monetary, health care, or other benefit from a means-tested government entitlement program or who has been certified by such a program that the party is eligible to receive the benefit.

(4) Proof. "*Proof*" that a party is a current recipient of a means-tested government entitlement program may be provided by:

(A) a certification letter or notice of eligibility letter from the agency providing the benefit;

(B) a screenshot of the party's current benefits obtained by logging onto www.yourtexasbenefits.com, its successor, or other state or federal website stating the party's current benefits;

(C) a lease showing subsidized rent;

(D) personal knowledge by a witness who is familiar with the affiants' financial condition; or

(E) any other reliable information that can assist the court in determining credibility of the affiant and their financial condition.

(5) Household. Includes only those persons related to the affiant by blood or by law for whom the affiant has a legal responsibility to support.

(6) Income. Total earned income before taxes plus total unearned income of all resident members of the household to the extent that such income is available to the household.

(A) Earned Income. Money from work or employment.

(B) Unearned Income. Money not from work or employment, such as alimony, child support, or social security.

(7) Available. Income or assets to which the affiant has actual and legal access without requiring the consent or cooperation of another person over whom the affiant does not have actual or legal control. A victim of domestic violence shall not be considered to have access to any income or assets of the alleged perpetrator that would require contact with the perpetrator, even if the perpetrator is a spouse or member of the affiant's household.

**RULE 145. AFFIDAVIT OF INDIGENCY**

(a) Affidavit. In lieu of paying or giving security for costs of an original action, a party who is unable to afford costs must file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. Upon the filing of the affidavit, the clerk must docket the action, issue citation and provide such other customary services as are provided any party.

(b) Contents of the Affidavit. The affidavit must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, et.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn before a notary public or other officer authorized to administer oaths. If the party is represented by an attorney on a contingent fee basis, due to the party's indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party.

(c) IOLTA Certificate. If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA-funded program screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.

(d) Contest. The defendent or the clerk may contest an affidavit that is not accompanied by an IOLTA certificate by filing a written contest giving notice to all parties and, in an appeal under Texas Government Code, Section 28.052, notice to both the small claims court and the county clerk. A party's affidavit of inability that attests to receipt of government entitlement based on indigency may be contested only with respect to the veracity of the attestation. Temporary hearings will not be continued pending the filing of the contest. If the court finds at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement based on indigency) is able to afford costs, the party must pay the costs of the action. Reasons for such a finding must be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in monetary award, and the court finds sufficient evidence monetary award to reimburse costs, the party must pay the costs of the action.

If the court finds that another party to the suit can pay the costs of the action, the other party must pay the costs of the action.

(e) Attorney's Fees and Costs. Nothing herein will prejudice any existing right to recover attorney's fees, expenses or costs from any other party.

## Summary of New and Continuing Problems with Rule 145

| Problem Type | Counties Where Occuring |
|---|---|
| **Newly Reported Problems:** | |
| When PO denied, require the applicant to pay court costs even if affidavit of indigency filed and despite Texas Family Code provisions that fees cannot be charged | Tarrant, Hale, Swisher, Castro, Floyd, Motley, Lamb |
| Require payment for service of process | Tarrant |
| Require payment for a social study, a cost covered under TRCP 145 per *In re Villanueva,* 292 S.W.3d 236 (Tex. App. Texarkana 2009) | Guadalupe |
| Require payment for an interpreter, a cost covered under Title VI of the Civil Rights Act of 1964 per the United States Department of Justice | Guadalupe, Val Verde |
| Deny affidavits of indigency of public benefit recipients | Harris, Ft. Bend, Cameron |
| Refuse to print an e-filed petition to create a citation that can be sent to the sheriff for service of process unless petitioner pays a per page fee | Bexar, Dallas, Bandera |
| Require payment of $2 per transaction e-filing fee | Harris, Comal |
| Require an affidavit of indigency to be filed each time a pleading or document is e-filed | Bexar |
| Automatically contest affidavits of indigency filed in probate court on an administration of the estate or muniments of title when a house is a part of the estate | El Paso |
| Require payment of ad litem fees, even when not requested by parties but appointed on court's own motion, a cost covered per *In re Villanueva* , 292 S.W.3d 236 (Tex. App. Texarkana 2009). Some counties strike pleadings if cost not paid | Harris, Ft. Bend, Webb, Hale, Swisher, Castro, Floyd, Motley, Lamb, Gregg, Upshur, Harrison |
| Require pro se filers to pay an additional $50 in court costs | Coryell |
| JP courts denying pauper's oath on appeal because they should "just move out" or "just pay the rent" or other substantive case reasons rather than making a determination based on whether the litigant is poor. | Hidalgo, Cameron |
| Require payment for mediator under local rules mandating mediation in all contested cases prior to final order or hearing, effectively halting resolution of important issues such as divorce and child custody for the poor | Coryell, Gregg, Upshur |
| **Continuing Unresolved Problems Since Original Report to the Court:** | |
| Automatically contest every affidavit of indigency filed, even when the party is receiving means-tested public benefits | Bexar, Harris, Ft. Bend, El Paso, Hildago, Val Verde |
| Delay the filing of a case or proceedings in a case when it is accompanied by an affidavit of indigency | Harris, Cameron, Jasper, Newton, Maverick, Val Verde |
| Contest affidavits of indigency accompanied by an IOLTA Certificate | Harris |
| Assess costs after final orders are rendered and the case is concluded when there has been no successful contest to the affidavit of indigency | Hale, Swisher, Castro, Motley, Lamb |
| Conduct contest hearings in hall before a staff attorney rather than before a judge | Bexar |
| Require payment for certified copies of court orders | Bexar, Cameron, San Patricio, Kleberg, Victoria, Hale, Swisher, Castro, Motley, Lamb |

## Poverty

| | Problem | | | | Resolution | | |
|---|---|---|---|---|---|---|---|
| **Date of Report** | **Types of Problem** | | **County** | **Pro Se/ Represented** | **Resolved?** | **Efforts to Resolve** | **Organization Reporting Issue** |
| 03/31/14 | Delay of services during contest | District Court Family Law division will routinely set hearings challenging the pauper's oath affidavit before any subsequent actions on the petition is taken (such as issuing a citation for service ). This increases the overall timeframe it takes to finalize a divorce case and sometimes creates additional hurdles for clients residing in shelters that lack transportation. | Harris | Pro se and Represented | Unresolved | Active communications w/ the Courts but neither party will undertake any actions to fix the situation or minimize its impact. | TAJF |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 06/01/13 | E-filing | District Clerk was requiring $2.00 fee to e-file. | Comal | Represented | Unsure if resolved | I sent a letter where I included my standard language regarding Rule 145 and district clerk's obligation to provide customary services, a cite from In re Villanueva, 292 S.W.3d 236 (Tex. App.-Texarkana, 2009, no pet.) concerning what customary services include, and the Texas Supreme Court order issued on December 11, 2012, mandating electronic filing in civil cases. I included a copy of the order. They accepted my filing. Did not reference the law that was passed in 2013 requiring waiver of the fee as it had just been passed. | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 06/23/14 | Payment required for copies court orders | Cameron County District Clerk charges for copies and certification of orders and other necessary case documents even though AOI on file. Problem has been going on since 2012, most recent incident that we know about with extensive detail occurred on 6/23/2014. County has a written policy based legal memo drafted by county attorney that states: "I have reviewed the attached materials, researched for Attorney General's Opinions that might shed light on the issue, and consulted with the Assistant General counsel for Court Administration and have concluded that there is no specific, controlling legal authority that the County must provide copies free of charge. In the absence of such authority we may not provide such free of charge. The IOLTA certificate being attached to the affidavit of indigency does not change this conclusion." (This research memo was done in response to letter from TRLA demanding they provide free copies.) Policy varies day to day depending on what clerk you talk to when. Sometimes they give TRLA discount. They have told staff copies are free for veterans. | Cameron | Represented | Unresolved | Letters to clerk in 2012, written response from clerk in 2012 (see details of problem). Continued communication. Last communication in June 2014 with Ed Sandoval, attorney at Cameron County DA's office, who said they'd discussed it internally but can't do anything. | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 06/30/14 | Payment required for customary services | Went to file a petition, get a TRO, and then have both served on the defendant who was an out of state resident. The defendant had to be served through the Secretary of State. We filed aff inability and IOLTA cert. Clerk indicated we needed to pay a fee for service because the SoS would charge us. I explained to her this had never happened before and to just send to them and if they needed a fee they could contact me. She very unwillingly did so (I think because I am an attorney and insisted I've done this before). Sure enough, I got a letter from the SoS indicating we needed to pay a service fee. I spoke to a staff person at the SoS and sent a letter attaching the aff of inability and the IOLTA cert. and they indicated it should be enough to waive a fee. | Cameron | Pro se and Represented | Resolved for this case only | Insisted District Clerk should send without fee. Follow up advocacy with Secretary of State | Texas RioGrande Legal Aid |
| 06/30/14 | E-filing | Some of our pro bono volunteers have reported that the clerk will not print out the e-filed petition to create a citation that can be sent to the Sheriff. They charge $1.00 a page printing fee that they say is not covered by the AIP. To get around this our volunteers have to either mail in a paper copy of the file-marked petition or print it themselves and take it to the clerk in person. This makes getting someone served so much slower. | Dallas | Represented | Unresolved | | Dallas Volunteer Attorney Program |
| 07/14/14 | E-filing | When efiling petition, district clerk requires you to pay for them to print copies to attach to citation or for you to mail in or bring by service copies. | Bexar | Represented | Unresolved | Letter to District Clerk and General Administrative Counsel for the Civil District Courts and spoke with latter in fall of 2013. Also requested TX. Supreme Court address in efiling rules. No changes have been made. | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 07/01/14 | Fees for Social Study, interpreter | My indigent client and the pro se opponent are both ordered to pay 1/2 of a social study. | Guadalupe | Pro se and Represented | Unresolved | | Texas RioGrande Legal Aid |
| 07/14/14 | E-filing | District clerk is requiring payment of $2.00 fee per e-filing transaction - stating only government agencies can get it waived, overlooking TEX. GOVT. CODE §72.031 (f) waiver of the $2.00 counties are authorized to charge for electronic filing transactions under TEX. GOVT. CODE §72.031(c) for indigent filers. | Harris | Represented | Unresolved | Emails and phone calls with multiple staff at district clerk office - difficult to accomplisth with recent change of contact Information | Cathedral Justice Project |
| 07/14/14 | Requiring order to proceed | In the last two years I handled several cases in district court in Maverick County where the clerks would refuse to process requests for citation until a proposed order approving 145 affidavit was submitted. Local attorneys would submit the proposed order. I finally wrote a letter to the judge explaining that an approval order was not authorized and that seemed to resolve the issue but I have not filed anything since last year. | Maverick | Pro se and Represented | Unsure if resolved | Wrote letter to judge | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 07/14/14 | Improper procedures for contest (including refusing to docket filing) | We filed a R145 affidavit for a client who did not meet the IOLTA 125% of poverty level guideline but did qualify for legal aid under LSC guidelines. When we filed an interlocutory appeal two years into the litigation, the other side filed a contest under Rule 145 to our original affidavit as well as a motion to dismiss under CPRC 13.001 (which does not have a deadline even though it obviously is intended to be brought when a suit is brought). The court held a hearing to consider the other side's motion and contest and ultimately upheld their contest but denied the motion to dismiss. The court made it clear on the record was that her concern was her court reporter not getting paid for transcripts. | El Paso | Represented | Unsure if resolved | Contested Hearing of Contest filed well into litigation | Texas RioGrande Legal Aid |
| 07/14/14 | Contest of all affidavits and statements of inability to pay | The clerk files contests to every 145 affidavit unaccompanied by an IOLTA certificate. The contest requires it to be heard at the first hearing. Anecdotally, I have not heard of a judge granting the contest, but it frightens pro se litigants when they get the contest; they do not know what to do next. | Val Verde | Pro se and Represented | Unresolved | | Texas RioGrande Legal Aid |
| 07/14/14 | E-filing | Required to attach the 145 affidavit as an attachment every time we filed a document in a case, otherwise the document would not be accepted for efiling. Not sure if still the case under e-filing. | Bexar | Represented | Unsure if resolved | | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 07/14/14 | Contest of all affidavits and statements of inability to pay | Probate Court judges are opposing affidavits of inability to pay in probate cases including administrations and muniments of title. One of the judges said that even though the applicant is poor, "the estate" is not poor, so we must pay court costs. We have fought this on several occasions and the judge says the law is not clear on this issue. Filings have been both with and without IOLTA certificates but the judge has told me in chambers that "it's not fair for them to get a free house and not pay court costs." He suggested that my client "get a loan on the house" to pay court costs. I told him I'd instruct my client not to pay court costs and appeal his decision if he denied the affidavit (that one was with an IOLTA). Judge eventually held two additional hearings regarding the affidavit where he, on the second hearing, granted the affidavit. We have not been contested on a small estate affidavit yet but I'm expecting those to be contested as well. | El Paso | Represented | Unresolved | Letters to the judges, legal brief on the issue submitted, copies of the TPC rules provided to the judges. | Texas RioGrande Legal Aid |
| 07/14/14 | E-filing | District clerk is requiring payment of $2.00 fee per e-filing transaction despite TEX. GOVT. CODE §72.031 (f), . This issue was addressed in June 2013 (see previous entry) and appeared to have been resolved but has been resurfaced. | Comal | Represented | Unresolved | | Texas RioGrande Legal Aid |
| 07/17/14 | Improper procedures for contest (including refusing to docket filing) | Court denied AOI filed by pro se litigant without holding hearing or clerk or defendant filing contest. Court order stated that he DOES claim to receive gov benefits but that his attestation is invalid. | Cameron | Pro Se | Unresolved | Filed motion to reconsider -still pending | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/08/14 | Requiring order to proceed | Filings are not processed by District Clerk until an individual gets their Affidavit of Inability to Pay approved by a district court judge. Lone Star Legal Aid talked to the District Clerk about this last year and we were able to get our filings processed. At that time, the District Clerk told me they were following policy set by their judges. Newton County used to have the same procedure (and may still) because they have the same circuit judges. It looks like nothing has changed since our conversations with the District Clerk and the District Court Coordinator. A pro se lady called me from the court coordinator's office today while she was having to wait for a judge to return from lunch so the judge could approve her Affidavit of Inability to Pay so she could file her petition. The District Clerk would not process her Petition to Modify unless the judge signed his approval to the Affidavit of Inability to Pay | Jasper, possibly Newton | Pro se and Represented | Unresolved | Met with District clerk and District Court Coordinator. | Lone Star Legal Aid |
| 08/13/14 | E-filing | Bandera County charging $2.00 fee. At first it appeared to be e-filing convenience fee then was told it was a copy fee - clerk must print out a copy of the document filed and put on court file. Letter sent to District Clerk and was told no fees for Legal Aid, just write in the notes. | Bandera | Represented | Unresolved | Unresolved except for legal aid. Letter sent to District Clerk and was told no fees for Legal Aid, just write in the notes, however no indication that problem is resolved for everyone else. | Texas RioGrande Legal Aid |
| 08/14/14 | Payment required for customary services | Filed some service by publication divorces and pauper's oaths, and the County still requires clients to pay ad litem fees. Haven't really fought tooth and nail on this issue, but included provisions that any ad litem be paid by Harris County in my proposed orders but the Judges just write their own order. Assume this is the same for pro se litigants seeking a divorce with service by publication | Harris | Pro se and Represented | Unresolved | Proposed orders for ad litem fees to be paid by county treasury but judges revise the order | South Texas College of Law |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/14/14 | Payment required for customary services | A pro se litigants who files a divorce case with a waiver is charged $50 more than a non-pro se litigant who files a divorce case with a waiver. | Coryell | Pro se and Represented | Unresolved | None | Legal Assistance Attorney III Corps Consolidated Legal Services, Fort Hood, Texas |
| 08/18/14 | Payment required for customary services | In Webb County,in divorce cases where both parties are indigent and one requests an ad litem, the court requires each of the parties to pay half of the ad litem fees even though both are indigent. Judge has asked me to take this issue up on appeal because he doesn't think he has authority to have the court pay for it or not pay the ad litem. I have argued that we don't care where the money comes from but the law is clear that it does NOT come from our indigent clients (not in those words exactly). The judge seemed to think his hands were tied because some provisions of the family code said that an ad litem can not work for free and another said the court or county can't pay for the ad litem and TCRP 145 says indigent litigants can't pay. | Webb | Pro se and Represented | Unresolved | Raised issue with judge, who said to take it up on appeal | Texas RioGrande Legal Aid |
| 08/18/14 | Payment required for customary services | Had to pay interpreter | Val Verde | Represented | Unresolved | Case was not a good one to fight the issue on and interpreter ended up being a good contact for future cases | Texas RioGrande Legal Aid |
| 08/18/14 | Requiring order to proceed | TRLA has had repeated problems with orders etc. being required to proceed when Paupers is filed. | Val Verde | Represented | Unresolved | Have talked to clerk and presented issue to judges | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/18/14 | Payment required for copies court orders | San Patricio county clerk charges for certified copies, as do district clerks in Cameron, Kleberg, Bexar and Victoria | San Patricio, Cameron, Kleberg, Bexar, and Victoria Counties | Pro se and Represented | Unresolved | | Texas RioGrande Legal Aid |
| 08/18/14 | Payment required for customary services | Both parties being ordered to pay half ad litem fees - extremely high fees even when AOI on file. If you raise an objection, you end up having a pauper's oath hearing, regardless of whether we filed an IOLTA or not. In one hearing for reallocation court reduced to 25% even though AOI was not contested. Amicus was appointed before party was even served. Pleadings are struck if don't pay. Ends up being paid out of litigation funds. Amicus are influenced by whether they are paid or not and impacts their reports to the court on the case. | Harris, Fort Bend | Pro se and Represented | Unresolved | Contested in Court (not taken on appeal), The judges here will often appoint the amicus without a motion being put in front of them. In my cases, when the judge attempts to do that a hearing, we do object and attempt to stop the appointment. If the other party files the motion, then we ask that they pay all the fees. If we file the motion, which does happen on occasion, we ensure that we have litigation funds set aside for the appointment prior to the motion being filed. | Lone Star Legal Aid |
| 08/19/14 | Payment required for customary services | Indigent Litigants required to pay ad litem Fees | Hale, Swisher, Castro, Floyd, Motley, Lamb | Represented | Unresolved | Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. | Legal Aid of Northwest Texas |
| 08/19/14 | Collection Efforts Post Judgment | Indigent Litigants being ordered to pay costs. Judge hand writes in the provisions on order | Hale, Swisher, Castro, Floyd, Motley, Lamb | Represented | Unresolved | Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. | Legal Aid of Northwest Texas |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/19/14 | Payment required for copies court orders | We are being charged for certified copies of orders | Hale, Swisher, Castro, Floyd, Motley, Lamb | Represented | Unresolved | Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. | Legal Aid of Northwest Texas |
| 08/19/14 | Questionnaires/ screening beyound scope of rules | District clerk requires additional documentation of income and assets beyond what is required by Rule 145 and will not send out notices as required under the rule until all the documents are submitted | Hale, Swisher, Castro, Floyd, Motley, Lamb | Represented | Unresolved | Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. | Legal Aid of Northwest Texas |
| 08/19/14 | Improper procedures for contest (including refusing to docket filing) | If judge decides not to grant protective order, judge orders petitioner to pay court costs despite Family Code provision otherwise | Hale, Swisher, Castro, Floyd, Motley, Lamb | Represented | Unresolved | Discussed problem with district clerk, attempted to prepare orders not ordering indigent litigant pay fees but judge hand writes provisions in. | Legal Aid of Northwest Texas |
| 08/19/14 | Improper procedures for contest (including refusing to docket filing) | Problems with all the JP courts in Hidalgo and Cameron County denying pauper's oath on appeal because they should "just move out" or "just pay the rent" or other substantive case reasons rather than making a determination based on whether the litigant is poor. We have had to file challenges to county court at various times. | Hidalgo, Cameron | Pro se and Represented | Unresolved | Have appealed decisions. Plan to try to meet with him. | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/19/14 | Contest of all affidavits and statements of inability to pay | JP Judge challenges every Affidaivt on Indigency, even when folks have zero income and are on public housing. In recent case, client's only income at the time of paupers was $175/month with 5 kids, public housing with utility allowance, and $900 in food stamps. Would help if JP rules said cannot challenge with IOLTA certificate. | Hidalgo | Pro se and Represented | Unresolved | Attempted judicial education during hearing on contest; plan to meet with JP | Texas RioGrande Legal Aid |
| 08/19/14 | Contest of all affidavits and statements of inability to pay | County attorney contests all Affidavits on Indigency, but will pass hearing if Lone Star involved and have filed an IOLTA certificate. I've seen examples where the judges will deny a pauper's oath despite the fact that food stamps and SSI is clearly on the affidavit. | Harris, Fort Bend | Pro se and Represented | Unresolved | Have not taken on appeal. | Lone Star Legal Aid |
| 08/20/14 | Improper procedures for contest (including refusing to docket filing) | Attorney for Civil District Court contests most affidavits on indigency. While they say they check for public benefit statements or IOLTA statements, often they don't catch them. Litigants are given very short notice of hearing and it is not uncommon for them to get notice after hearing. There is no easy way for litigants to provide documentation of public benefits or other requested information as the office does not answer phone nor return messages. Contest hearings are held in hallway - no judge presiding. The Attorney for Civil District Court reviews what documentation is provided by litigant and if over 125% denies, even if litigant explains was unemployed for long period of time. The are not told have a right to go before the | Bexar | Pro se and Represented | Unresolved | TRLA has repeatedly negotiated with General Administrative Counsel for the Civil District Courts - district Clerk refuses to engage. TRLa has prepared handout clerks could give AOI filers explaining what doucmentation should be submitted to avoid having to attend hearing. Expressed concern that case is not heard by judge who orders denial. | Texas RioGrande Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/20/14 | Improper procedures for contest (including refusing to docket filing) | Judge ordering indigent litigant on means tested public benefit to pay fees even though no allegation of fraud or that did not receive benefit. (See201403723 - CHATHAM, VERA ANNETTE vs. CHATHAM, ROBERT EARL (Court 246 Harris County) | Harris | Pro se and Represented | Unresolved | Have not yet appealed/mandamused. | Lone Star Legal Aid |
| 08/20/14 | Payment required for copies court orders | District Clerk charging for certified copies of protective orders despite provisions in Family Code regarding how a person could not be charged fees in connection with a protective order and Affidavit of Indigency on file. Addressed matter with Tom Wilder, District Clerk. Said it was their policy to charge and would not accept copies brought by attorney because they wanted exact copies of the mark through changes. | Tarrant | Pro se and Represented | Unresolved | Spoke with District Clerk and showed law that can't be charged copies Also had the Assistant DA speak with them. | Texas A&M Law Clinic |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/22/14 | Payment required for customary services | Client ordered in July 2014 to pay 1/3 of the deposit for an amicus attorney in a custody suit after a hearing limited to the parties' ability to pay for the amicus attorney's services. In this case I attempted to have the judge tax the cost against the other party, but the court "split the difference" between no payment and the usual half payment by each party for the amicus, resulting in the order that the client pay 1/3. Gregg County's family district judge has shown some discretion in the appointment of an amicus, depending on parties' ability to pay and other factors, and some attorneys in the region do accept appointments on a pro bono basis, but we anticipate having to challenge these fees again in the future. Currently mediations are mandatory in contested matters which require more than 2 hours of court time, so payment of a mediation fee is also something we expect to challenge when this becomes an issue in one of our cases going forward. | Gregg | Pro se and Represented | Unresolved | Parties reached an agreement on custody so need for Amicus to proceed | Lone Star Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 08/22/14 | Payment required for customary services | Pro bono client of Lone Star Legal Aid (LSLA) who was represented by a volunteer attorney was ordered to pay a mediation fee of $750, and LSLA also was "found" in an order appointing amicus attorney to be "responsible" for paying the amicus attorney a fee of $750. LSLA management ultimately decided to approve $500 for the mediator, who agreed to accept the reduced fee. LSLA declined to pay any fee to the amicus attorney, because LSLA was not a party to the matter. This case settled prior to the mediation, and ultimately no costs were paid by LSLA or the client. This district judge currently orders the appointment of an amicus in any contested custody matter, and orders both pro se IFP parties and LSLA clients to pay these fees. If a case does not settle after the amicus makes a recommendation, the court then orders the parties to mediation, ordering each party to pay an equal share of the mediation expense. We anticipate challenging this issue when we next have an appropriate staff attorney case in that county | Upshur | Pro se and Represented | Unresolved | Case settled prior to mediation and no fees were paid by client or Lone Star Legal Aid. | Lone Star Legal Aid |
| 08/22/14 | Payment required for customary services | Family district judge recently appointed an amicus attorney in a divorce for an Lone Star Legal Aid client with contested custody, and although he did not order the client to pay any deposit to the amicus, he did reserve the right to tax costs at the conclusion of the suit. | Harrison | Represented | Unresolved | Payment to be addressed at conclusion of the suit. | Lone Star Legal Aid |

| Date of Report | Types of Problem | | County | Pro Se/ Represented | Resolved? | Efforts to Resolve | Organization Reporting Issue |
|---|---|---|---|---|---|---|---|
| 09/18/14 | Payment required for customary services | Court/County charging for paying notice to creditors (which is actually sent out by attorney), fees for letters of testamentary in probate/letters of administration. Stated that she had problems last year with Bell County waiving fees for our clients for these documents. Pro bono attorney was representing indigent client. Pro bono coordinator notes that Pro Bono attorneys can be reluctant to take a case because they don't want to upset local court personnel by pressing their client's indigency rights. | Bell | Represented | Unsure if resolved | Unknown | Lone Star Legal Aid |
| 09/22/14 | Payment required for customary services | Received bill for service by Guadalupe County Sheriff Department when Affidavit on Indigency filed | Guadalupe | Represented | Unsure if resolved | MCR suggested phone call and sent sample letter. | Texas RioGrande Legal Aid |

**Thomas A. WILDER, District Clerk, Appellant**

**v.**

**Odell CAMPBELL, Thomas Ray Robertson, Shawnta Renea Coleman, Scott Wiernik, Tairhonda McAfee, Marybeth Lynn Jewell, and Diana J. Najera, Appellees.**

**No. 02–13–00146–CV.**

Court of Appeals of Texas, Fort Worth.

April 3, 2014.

**Background:** After district court clerk issued bill of costs to indigent litigants to prior divorce proceedings, litigants filed petitions against clerk seeking to enjoin him from assessing costs against them and other similarly-situated litigants. The 17th District Court, Tarrant County, Melody Wilkinson, J., consolidated petitions and entered interlocutory order temporarily enjoining clerk from attempting to collect costs from indigent litigants. Clerk filed notice of accelerated appeal.

**Holding:** The Court of Appeals, Lee Gabriel, J., held that courts that rendered litigants' divorce decrees were only courts that had authority to enjoin clerk from assessing costs.

Judgment vacated and case dismissed.

Gardner, J., filed dissenting opinion.

**1. Injunction ⚿1092**

Temporary injunction is warranted if movant shows: (1) cause of action against defendant, (2) probable right to relief sought, and (3) probable, imminent, and irreparable injury in the interim.

**2. Appeal and Error ⚿954(1)**

Court of Appeals reviews order granting temporary injunction under abuse-of-discretion standard, which mandates reversal only if trial court acted without reference to any guiding rules or principles.

**3. Appeal and Error ⚿874(2)**

Court of Appeals' scope of review of order granting temporary injunction is limited to the validity of order granting temporary injunction; therefore, Court is not to determine merits of movant's underlying claims.

**4. Courts ⚿480(3)**

Family district courts that rendered indigent litigants' divorce decrees were only courts that had authority to enjoin district court clerk from assessing costs against litigants as provided for in divorce decrees, even though judgments in divorce proceedings were final for appellate purposes; in order to grant requested relief, trial court would have to regulate processes by which clerk collected costs from litigants under family district courts' final divorce decrees. V.T.C.A., Family Code §§ 6.708(a), 106.001; V.T.C.A., Civil Practice & Remedies Code § 65.023(b).

**5. Courts ⚿480(3)**

Statutory provision controlling venue and jurisdiction for suit requesting injunction to stay execution of facially-valid judgment is mandatory, requiring injunction suit to be returnable to and tried in court rendering judgment, if attack is made by party to judgment and if, in order to grant relief, it is necessary to regulate processes issued under judgment. V.T.C.A., Civil Practice & Remedies Code § 65.023(b).

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Joe Shannon, Jr., Criminal District Attorney, Charles M. Mallin, Chief of the Appellate Section, Christopher W. Ponder, Assistant Criminal District Attorney for

Tarrant County, Fort Worth, for Appellant.

Lee A. Difilippo, Austin, Linda H. Gregory, Thomas J. Stutz, Legal Aid of Northwest Texas, Fort Worth, for Appellees.

PANEL: LIVINGSTON, C.J.; GARDNER and GABRIEL, JJ.

## OPINION

LEE GABRIEL, Justice.

Appellant Thomas A. Wilder, the district clerk of Tarrant County (the clerk), appeals from the trial court's temporary injunction barring him from collecting court costs from indigent parties "unless there were specific findings expressly stated in a final judgment or order providing that the indigent party's action resulted in monetary award and that the monetary award was sufficient to reimburse costs." We vacate the trial court's temporary injunction and dismiss the case.

## I. BACKGROUND

### A. Factual Background

Appellees [1] were divorce petitioners in actions filed in five of the seven family district courts in Tarrant County. Each Appellee filed an affidavit of indigency, which was either uncontested or the subject of a withdrawn or denied contest; thus, each Appellee was entitled to proceed in the divorce actions without payment of costs. See Tex.R. Civ. P. 145. After the respective family district court entered a final divorce decree, the clerk issued a bill of costs to each Appellee. When Appellees questioned the bills based on their status as indigents, the clerk relied on language included in each final divorce decree that each party would bear their own costs.[2] Indeed, each final divorce decree recited either (1) "costs of Court are to be borne by the party who incurred them" or (2) "[t]he Husband will pay for his court costs [and] the Wife will pay for her court costs." The final divorce decrees show that Appellees [3] agreed to the substance of all terms, including the costs language. However, none of the final divorce decrees at issue included specific findings that the litigants were "able to afford costs" after previously being found indigent. Tex.R. Civ. P. 145(d).

Relying on the costs language in the final divorce decrees, the clerk issued the bills of costs to Appellees. *See* Tex. Fam. Code Ann. § 6.708(a) (West Supp.2013), § 106.001 (West 2014). Although the final divorce decrees at issue were signed between November 24, 2008 and August 8, 2012, the clerk issued the bills of costs during the three-month period of May 7 to August 10, 2012. The clerk also issued certifications of default payment in each case and threatened to issue execution for the costs. *See* Tex.R. Civ. P. 129, 149.

1. Appellees are Diana J. Najera, Scott Wiernik, Tairhonda McAfee, Marybeth Lynn Jewell, Odell Campbell, Shawnta Renea Coleman, and Thomas Ray Robertson. Appellees are separated into two groups—one group containing four appellees, the other group containing three appellees—and each group is represented by its own counsel. We will treat these groups as one party; thus, any argument raised by one group of appellees will be considered to have been raised by both.

2. The dissenting opinion states that the costs assessments were in "form[ ]" divorce decrees and were "boilerplate adjudications of costs." However, only two of the seven decrees at issue are on a form, and both of these decrees were signed by the petitioner and included an acknowledgement that the petitioner "agrees to the terms of this decree."

3. The final divorce decree involving Wiernik does not include a page signed by the litigants.

None of the appellees had appealed from the final divorce decrees.

### B. Procedural Background

In February 2013 and at least six months after the clerk issued the disputed bills of costs, Appellees filed two petitions against the clerk in civil district court seeking to enjoin him from assessing costs against Appellees and other, similarly situated litigants.[4] After the two sitting judges recused themselves, the regional presiding judge assigned a senior district judge to hear one of the petitions.[5] *See* Tex.R. Civ. P. 18b. The assigned judge consolidated the petitions on the parties' agreed motion. *See* Tex.R. Civ. P. 174(a).

On April 15, 2013, the trial court held an evidentiary hearing on the requests for a temporary injunction. That same day, the trial court [6] entered an order temporarily enjoining the clerk from attempting to collect costs from indigent litigants:

> 1. [Appellees] have demonstrated a probable right to prevail on the trial of this cause on their claims that:
>
> a. [The clerk] has a policy, practice, and procedure that his office will seek to collect costs against parties who have filed an affidavit on indigency under Tex.R. Civ. P. 145 where the affidavit was not contested, where the contest was denied, or where the contest was withdrawn based on judgments or final orders in which there was no specific finding expressly stated in the judgment or final order that the indigent party's action resulted in a monetary award, and no specific finding expressly stated in the judgment or final order that there was sufficient monetary award to reimburse costs;
>
> b. The collection of costs policy, practice and procedure of [the clerk] described above violated Tex.R. Civ. P. 145;
>
> 2. [The clerk] intends to continue enforcing the collection of costs policy, practice, and procedure described above against [Appellees];
>
> 3. If [the clerk] carries out that intention, he will thereby tend to make ineffectual a judgment in favor of these [Appellees], in that [the clerk] has threatened to issue an execution for costs to levy upon [a] sufficient amount of [Appellees'] property to satisfy the alleged debts; and
>
> 4. Unless [the clerk] is enjoined from carrying out the collection of costs policy, practice, and procedure described above, [Appellees] will suffer irreparable harm without any adequate remedy at law, including but not limited to the fact that the applicable trial courts no longer have plenary power and all appeal deadlines had passed prior to the first collection letter being sent.

The trial court further set a trial date and ordered that the temporary injunction would remain in effect until it entered a final order. *See* Tex.R. Civ. P. 683. The clerk filed a notice of accelerated appeal

**4.** One petition was styled "Petition for Writ of Mandamus, Application for Temporary Restraining Order, Petition for Writ of Temporary and Permanent Injunction, and Petition for Declaratory Judgment," while the other was styled "Original Petition for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction, Permanent Injunction, and Writ of Mandamus."

**5.** The record does not include an assignment order for the other petition in which the trial court also recused itself.

**6.** For the remainder of this opinion, "the trial court" will refer to the court issuing the preliminary injunction against the clerk. "Family district court" will refer to the court entering the final divorce decree at issue.

from the trial court's interlocutory order granting the temporary injunction. *See* Tex. Civ. Prac. & Rem.Code Ann. § 51.014(a)(4) (West Supp.2013); Tex. R.App. P. 28.1(a).

In three issues, the clerk asserts that the trial court erred because (1) any injunction was required to be tried in the court that rendered the judgment—here, the respective family district court; (2) Appellees failed to certify a class, which is a prerequisite for the trial court to enjoin the clerk as to similarly-situated persons; and (3) Appellees had an adequate remedy at law—a motion to re-tax costs filed in the family district court that entered the final divorce decree.[7] The clerk does not argue that the required findings of rule 145(d) that Appellees were "able to afford costs" were made or that Appellees were not, in fact, indigent.[8] Tex.R. Civ. P. 145(d); *see also* Tex.R. Civ. P. 141 (allowing court, "for good cause," to adjudge costs other than "as provided by law or these rules").

## II. STANDARD AND SCOPE OF REVIEW

**[1]** A temporary injunction is warranted if the movant shows (1) a cause of action against the defendant, (2) a probable right to the relief sought, and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex.2002) (op. on reh'g). In short, the purpose of a temporary injunction is to preserve the status quo pending trial. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex.1993).

**[2, 3]** We review an order granting a temporary injunction under an abuse-of-discretion standard, which mandates reversal only if the trial court acted without reference to any guiding rules or principles. *In re Nitla S.A. de C.V.*, 92 S.W.3d 419, 422 (Tex.2002) (orig. proceeding); *Burgess v. Denton Cnty.*, 359 S.W.3d 351, 356–57 (Tex.App.-Fort Worth 2012, no pet.). Our scope of review is limited to the validity of the order granting the temporary injunction. *Burgess*, 359 S.W.3d at 356. Therefore, we are not to determine the merits of the movant's underlying claims. *Davis v. Huey*, 571 S.W.2d 859, 861–62 (Tex.1978).

The clerk argues in his first issue, however, that the trial court did not have jurisdiction to enter the temporary injunction because it did not enter the judgments sought to be executed. Whether the trial court has subject-matter jurisdiction is an issue of law that we review de novo.

## III. TRIAL COURT'S JURISDICTION TO ENTER TEMPORARY INJUNCTION

**[4]** To support its jurisdictional argument, the clerk relies on section 65.023(b), which provides that "[a] writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered." Tex. Civ. Prac. & Rem.Code Ann. § 65.023(b) (West 2008). Because this provision controls venue and jurisdiction for a suit requesting an injunction to stay execution of a facial-

7. In his brief and at oral argument, the clerk asserted that if Appellees filed motions to re-tax costs in the appropriate family district court, such motions would be timely filed.

8. Rule 145(d) provides that a litigant's indigency status may be withdrawn if the litigant's circumstances change:

> If the court finds at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement based on indigency) is able to afford costs, the party must pay the costs of the action. Reasons for such a finding must be contained in an order.

Tex.R. Civ. P. 145(d).

ly-valid judgment, the clerk asserts that the trial court did not have subject-matter jurisdiction to temporarily enjoin the clerk's efforts to collect costs from Appellees. *See McVeigh v. Lerner,* 849 S.W.2d 911, 914 (Tex.App.-Houston [1st Dist.] 1993, writ denied).

Appellees stated at oral argument that the strongest case supporting their argument that the trial court had jurisdiction to enter the injunction is *Carey v. Looney,* 113 Tex. 93, 251 S.W. 1040 (1923). The supreme court in *Carey* interpreted the predecessor statute to section 65.023(b) and held that injunctions may, in some instances, be issued by a court that did not enter the complained-of judgment:

> [I]f the court in which the injunction suit is brought has general jurisdiction over the subject-matter, and the relief may be granted, independently of the matters adjudicated in the suit whose judgment or processes thereunder are sought to be restrained, the statute has no application.

*Id.* at 1041. Appellees assert that because the trial court had general jurisdiction over their request for a declaratory judgment against the clerk, the trial court could issue the injunction. However, *Carey* is not as broad as Appellees urge. The supreme court specifically stated that the predecessor statute to section 65.023(b) mandated that an injunctive request had to be filed in the court that issued the judgment "[i]f, in order to grant the relief, it is necessary to set aside or modify the judgment, *or to regulate the processes issued thereunder,* and the attack is made by a party to the judgment." *Id.* (emphasis added). Here, the trial court, in order to grant the requested relief, would clearly have to "regulate the processes" by which the clerk collects the costs from parties to the judgments—Appellees—under the family district courts' final divorce decrees.

**[5]** Appellees further argue that because they did not appeal from their final divorce decrees,[9] section 65.023(b) is inapplicable. But as the supreme court has made clear, section 65.023(b) is "mandatory, requiring the injunction suit to be returnable to and tried in the court rendering the judgment, if the attack is made by a party to the judgment and if, in order to grant the relief, it is *necessary to regulate the processes issued under the judgment.*" *Evans v. Pringle,* 643 S.W.2d 116, 118 (Tex.1982) (emphasis added). In *Evans,* two criminal defendants failed to appear for trial, and the criminal trial court with jurisdiction over the defendants' indictments entered judgments of forfeiture against the defendants' sureties. *Id.* at 117. The sureties appealed the forfeiture judgments, and the court of criminal appeals affirmed. *Id.* The appropriate clerk then attempted to execute on the forfeiture judgments to collect post-judgment interest even though the forfeiture judgments did not provide for post-judgment interest. *Id.* The sureties brought a civil action seeking to enjoin the sheriff from levying on their property to satisfy the writs of execution. *Id.* The supreme court held that the sureties were required, under the predecessor statute to section 65.023(b), to seek relief in the criminal court that rendered the judgment that was the subject of the sheriff's collection efforts. *Id.* at 118.

Appellees attempt to distinguish *Evans* and point to our later decision in *Hughes v. Morgan,* 816 S.W.2d 557 (Tex.App.-Fort

**9.** Indeed, Appellees clearly state that they "are not challenging the individual court judgments" and that even if they wanted to appeal the clerk's attempts to execute on his bills of costs, "that opportunity was foreclosed due to the loss of plenary power by the trial court."

Worth 1991, writ denied), to support their argument that section 65.023(b) does not apply once a judgment is final for appellate purposes. In *Hughes,* a criminal district court entered a default judgment against a bond surety in a bond-forfeiture proceeding. *Id.* at 558. The surety appealed the judgment and filed a supersedeas bond. *Id.* After the clerk attempted to disqualify the surety from acting in that capacity in other cases based on the default judgment, a civil district court enjoined the enforcement of the judgment. *Id.* We applied section 65.023(b) and held that the civil district court did not have jurisdiction "to affect a judgment on appeal from another court." *Id.* at 559. Although the judgment in *Hughes* was appealed, the judgment in *Evans* was not on appeal and, in fact, the appellate timetable had expired. The dispositive issue in both *Evans* and *Hughes* was the power of one court to enjoin the enforcement of the judgment of another court. *Evans,* 643 S.W.2d at 118; *Hughes,* 816 S.W.2d at 559. Indeed, *Hughes* expressly relied on *Evans* and held that

> the provisions of [section 65.023(b) ] are mandatory and an injunction suit is returnable to and must be tried 'in the court rendering the judgment, if the attack is made by [a] party to the judgment and if, in order to grant the relief, it is necessary to regulate the processes issued under the judgment.'

*Hughes,* 816 S.W.2d at 559 (quoting *Evans,* 643 S.W.2d at 118). Thus, *Evans* mandates that the trial court that renders the judgment is the only court that may enjoin its execution or regulate the judgment's processes even if plenary power is absent.[10] *Evans,* 643 S.W.2d at 117–18. We sustain the clerk's first issue.

Before concluding, we emphasize that courts are to be open to all, "including those who cannot afford the costs of admission." *Higgins v. Randall Cnty. Sheriff's Office,* 257 S.W.3d 684, 686 (Tex.2008) (citing open-courts provision of Texas Constitution). Our decision today does not retreat from this tenet or minimize its importance. Indeed, courts should tread lightly in this arena and carefully interpret the rules and statutes regarding indigency status and the award of costs. Our ultimate holding under section 65.023(b) is merely one of jurisdiction and venue, not access: the trial court did not have jurisdiction to enjoin the processes by which the family district courts' final divorce decrees were executed by the clerk.

The dissenting opinion's efforts to protect indigent parties' access to the courts and discourage the clerk's costs-collection efforts from indigent litigants are laudable, and we do not necessarily disagree. However, we are limited by the scope and standard of our review of the trial court's injunction—which expressly prohibit a determination of the merits of the dispute—and by our inability to address issues that are not properly before us based on the trial court's lack of subject-matter jurisdiction. In short, we cannot address the propriety of the clerk's admitted policy of attempting to collect costs from indigent parties in the absence of the trial court's specific findings under rule 145(d). Accordingly, the dissenting opinion's discussion of the propriety of the clerk's policy is beyond the scope of our review given the procedural posture of this accelerated appeal. Any protracted discussion of

**10.** Appellees argue that section 65.023(b) is "limited to efforts to stay proceedings in a suit or execution on a judgment," neither of which is present in this case. But the action sought to be enjoined—the collection of costs provided in the judgment—is squarely within the purview of section 65.023(b), i.e., execution on a judgment.

each divorce decree, each costs award, the rules applicable to indigent parties, and the propriety of the clerk's execution on judgments involving indigent parties would be premature, advisory, and not necessary to the disposition of this appeal. *See* Tex.R.App. P. 47.1; *Nat'l Collegiate Athletic Ass'n v. Jones,* 1 S.W.3d 83, 86 (Tex.1999); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 444 (Tex.1993). Therefore, we are not ignoring case law applicable to indigent litigants as the dissent suggests. We are simply deciding the preliminary and operative question of whether the trial court had jurisdiction over the subject matter of Appellees' petitions. *See Rusk State Hosp. v. Black,* 392 S.W.3d 88, 95 (Tex. 2012) (noting if court does not have jurisdiction, its opinion addressing any issues other than jurisdiction is advisory); *Sw. Bell Tel., L.P. v. Ballenger Constr. Co.,* 230 S.W.3d 489, 491–92 (Tex.App.-Corpus Christi 2007, no pet.) (recognizing trial court's jurisdiction over case or controversy must first be addressed before merits of appeal are reached to avoid appellate court rendering advisory opinion). We hold it did not under section 65.023(b).

## IV. CONCLUSION

Because the trial court did not have subject-matter jurisdiction to enjoin the clerk's efforts to execute on judgments entered by family district courts, we vacate the trial court's order granting Appellees a temporary injunction and dismiss the case. *See* Tex.R.App. P. 43.2(e), 43.3. Based on this conclusion, we do not need to address the clerk's remaining issues. *See* Tex.R.App. P. 47.1.

GARDNER, J., filed a dissenting opinion.

ANNE GARDNER, Justice, dissenting.

I respectfully dissent. The trial court had jurisdiction to grant the temporary injunction against the district clerk to stay his attempts to tax and collect court costs from Appellees and other persons similarly situated. It is undisputed, and the majority acknowledges, that each Appellee filed an affidavit of indigence with their petitions, that all of their affidavits were uncontested, and that Appellees were thus entitled to proceed in their divorce actions without payment of costs pursuant to rule 145.[1]

Texas Rule of Civil Procedure 145, which prescribes the procedure to be followed for indigent parties to be able to proceed in the trial courts without payment of costs, was adopted "to protect the weak against the strong, and to make sure that no man should be denied a forum in which to adjudicate his rights merely because he is too poor to pay the court costs." *Pinchback v. Hockless,* 139 Tex. 536, 538, 164 S.W.2d 19, 19–20 (1942).

Legal aid and pro bono programs are able to help only an estimated twenty percent of the six million Texans who qualify for legal aid and pro bono services in civil matters.[2] In particular, the vast majority

1. In one of these cases, the district clerk initially contested the affidavit of indigence but withdrew the contest before a hearing took place.

2. "Significant decreases in funding to legal aid programs from reduced [IOLTA] revenue and federal funding cuts, combined with one of the highest poverty rates in the nation," means "fewer legal aid lawyers to help the growing number[ ] of [indigent persons needing legal] assistance." Texas Access to Justice Commission, *A Report to the Supreme Court Advisory Committee from the Texas Access to Justice Commission on the Court's Uniform Forms Task Force,* at 3 (Apr. 6, 2012) (footnote omitted), *available at* http://www.supreme.courts.state.tx.us/rules/pdf/SCAC_

of pro se petitioners are in family law cases.[3] In response to the problems regarding rule 145, including the one presented by this case, the Texas Access to Justice Commission has proposed substantially revising current rule 145. The Commission presented its proposed revisions, which specifically address the issue in this case among other problems, at the Supreme Court Advisory Committee's meeting on September 28, 2013, and the proposal is pending before the supreme court.[4]

In the meantime, months, and in some cases, years after their divorce decrees were final and no longer appealable, the district clerk's office has sent Appellees cost bills retroactively charging them for court costs, stamped in red as "past due," with the amount paid shown as "$0.00," and demanding full payment ($308.00 in Appellee Coleman's case) within ten days, in most cases followed by a "Clerk's Certification of Payment Default" threatening levies on Appellees' property for failure to make payment "immediately." [5]

The temporary injunction of which the district clerk complains by this appeal orders him to refrain from carrying out the policy and practice he acknowledges he instituted beginning in November 2010, seeking to collect court costs he determined were owed by pro se petitioners in divorce cases such as Appellees, notwithstanding their uncontested affidavits of indigence and notwithstanding that none of the final divorce decrees contained findings that Appellees' actions had resulted in monetary awards sufficient under rule 145(d) for reimbursement to the county for costs.

## JURISDICTION

The majority accepts the district clerk's preliminary argument that the trial court in this case lacked jurisdiction to issue the temporary injunction because it was not the court that rendered the divorce judgments, as required by civil practice and remedies code section 65.023(b). *See* Tex. Civ. Prac. & Rem.Code Ann. § 65.023(b) (West 2008) (providing that "[a] writ of injunction granted to stay . . . execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered.").

I cannot agree. It has long been the rule that a plaintiff's good faith allegations are used to determine the trial court's jurisdiction. *See Frost Nat'l Bank v. Fernandez,* 315 S.W.3d 494, 502–03 (Tex. 2010), *cert. denied,* —— U.S. ——, 131 S.Ct. 1017, 178 L.Ed.2d 829 (2011), (citing *Brannon v. Pac. Emp'rs Ins. Co.,* 148 Tex. 289, 294, 224 S.W.2d 466, 469 (1949)). Appellees' pleadings do not seek to stay execution on the judgments, attack the divorce judgments, question their validity, or

Access_to_Justice_report_040612.pdf (last visited Mar. 27, 2014).

3. Brief for Appellees Odell Campbell, et al. at TAB A, *Wilder v. Campbell, et al.,* No. 02–13–00146–CV, 2013 WL 3892969 (Tex.App.-Fort Worth filed June 27, 2013). Over 57,000 family law petitioners proceeded pro se in 2013. *See* Office of Court Administration, *Annual Report for the Texas Judiciary, Fiscal Year 2013,* at 46, 48, http://www.txcourts.gov/pubs/AR2013/AR13.pdf (last visited Mar. 27, 2014).

4. The transcript from the September 28, 2013 session of the Supreme Court Advisory Committee is available at http://www.supreme.courts.state.tx.us/rules/scac/2013/transcripts/sc09282013.pdf (last visited on Mar. 27, 2014).

5. Upon filing their petitions and affidavits of indigence, at least one of the indigent Appellees acting pro se had received receipts from the filing clerk showing that the total amount of their filing and service fees was "received" ($308.00 in Appellee Coleman's case) and "charged to PAUPER'S AFFIDAVIT."

present defenses that should have been adjudicated therein. Instead, Appellees allege that the district clerk has failed to perform his own nondiscretionary, ministerial duty to correctly tax costs in Appellees' divorce cases. Under rule 145(d), absent a contest to an affidavit of indigence, the indigent party may be held liable for costs in one more circumstance, that is: "If the party's action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party must pay the costs of the action." Tex.R. Civ. P. 145(d). Appellees assert that they owe no costs because their affidavits of indigence were uncontested and because their divorce decrees contain no finding that they received a "sufficient monetary award to reimburse costs" as required by rule 145(d). Appellees thus assert that the district clerk improperly taxed and is improperly attempting to collect any court costs from Appellees and other similarly situated parties, in violation of rule 145(d).

A century-old line of cases establishes that section 65.023(b) (including its predecessors) only applies to a suit seeking an injunction "attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered, and which should have been adjudicated therein." *Kruegel v. Rawlins,* 121 S.W. 216, 217 (Dallas 1909), *writ ref'd,* 103 Tex. 86, 124 S.W. 419 (1910) (holding that injunction imposed by one court that did not attack validity of judgment of another court but merely sought to enjoin the clerk's execution on the judgment at the instance of one not entitled to have it enforced was not barred by statute); *see Zuniga v. Wooster Ladder Co.,* 119 S.W.3d 856, 860–61 (Tex.App.-San Antonio 2003, no pet.) (op. on reh'g) (holding injunction to prevent "misuse" of judgment of another court by execution against nonparty not barred by statute); *see also Shor v. Pelican Oil & Gas Mgmt., LLC,* 405 S.W.3d 737, 747–48 (Tex.App.-Houston [1st Dist.] 2013, no pet.) (holding statute did not defeat jurisdiction where applicants did not attack the merits of the judgment, did not question the validity of that judgment, and did not present defenses to that judgment that should have been adjudicated in the underlying proceeding).

Section 65.023(b) does not defeat jurisdiction here. It must be emphasized that Appellees do not attack the validity of the divorce judgments. Specifically, they do not complain of the language of the judgments upon which the district clerk relies that Appellees shall bear their own costs or pay their own costs. Appellees rely upon their uncontested affidavits of indigence to urge that there are no costs to be charged to them. As the trial judge succinctly stated at the conclusion of the hearing on the temporary injunction:

> THE COURT: The court costs will be paid—or "the wife will pay for her court costs" does not create court costs in view of a 145 affidavit because there are no court costs. And she will pay for her court costs that doesn't create court costs where none exist. And none exist because of 145.
>
> MR. PONDER: Well, Your Honor, I—
>
> THE COURT: So that doesn't—you know, that doesn't—not only does it not create court costs, we don't know how much, if any, and there's not any.

*Carey v. Looney,* 113 Tex. 93, 251 S.W. 1040 (1923), relied upon by Appellees and cited by the majority, long ago stated the test as to when the predecessor statute to section 65.023(b) does not apply. A portion of the test is quoted by the majority, but the rest of the statement of the test supports Appellees' position that the trial court has jurisdiction:

> On the other hand, if the court in which the injunction suit is brought has general jurisdiction over the subject-matter, and the relief may be granted *independently of the matters adjudicated in the suit whose judgment or processes thereunder are sought to be restrained, the statute has no application.*

*Id.* at 96, 251 S.W. at 1041 (emphasis added).

The majority focuses on the term "processes thereunder" in the above quote, reasoning that, to grant the relief requested by Appellees, the trial court "would clearly have to 'regulate the processes' " of taxing and collecting costs from Appellees under the judgments, thus defeating its jurisdiction. But *Carey* did not hold that the statute would defeat jurisdiction as to any and every injunction suit seeking to "regulate the processes" under a judgment obtained in a different court. *Id.* Rather, the opinion in *Carey* said that the statute would not prevent injunctive relief if the relief sought could be granted "*independently of the matters adjudicated in the suit*" under which the judgment or processes thereunder were sought to be restrained. *Id.* The injunctive relief granted against the district clerk here restrains only his taxing and collection of costs, independently of any matters adjudicated by the divorce decrees.

The principal cases relied on by the district clerk and the majority are *Evans v. Pringle,* 643 S.W.2d 116 (Tex.1982), and this court's decision in *Hughes v. Morgan,* 816 S.W.2d 557 (Tex.App.-Fort Worth 1991, writ denied), for the proposition that one court lacks power to enjoin enforcement of another court's judgment. Those cases are distinguishable because each involved an injunction that was *dependent* on the merits adjudicated (albeit by default) by a sister court's judgment. *See Evans,* 643 S.W.2d at 117–18 (holding predecessor statute to section 65.023(b) precluded injunction to stay writ of execution to collect post-judgment interest on the *amount* of a sister court's judgment); *Hughes,* 816 S.W.2d at 559 (setting aside temporary injunction that stayed *enforcement of the judgment* of another court while it was on appeal). Those cases provide no guidance here. Section 65.023(b) did not deprive the trial court of jurisdiction to grant the temporary injunction against the district clerk's nondiscretionary ministerial public duties of taxing and collecting court costs, which was independent of the validity or merits of the judgments of the divorce cases.

The divorce decrees assessed costs by boilerplate language in the decrees, which are judgment forms ordering either that costs of court "are to be borne by the party who incurred them," or that "[t]he Husband will pay for his court costs; the Wife will pay for her court costs." [6] At its core, the opinion of the majority accepts the district clerk's stated justification for taxing costs against Appellees that this language in the judgments trumps rule 145. But rule 145 expressly states that uncontested affidavits of indigence serve "*[i]n lieu of* paying or giving security for

**6.** Two of the judgments state on their face that they are copyrighted forms provided by "Texas Partnership for Legal Access." These do-it-yourself forms are available by link from http://www.txcourts.gov/pubs/pubs-home.asp to http://texaslawhelp.org/ (last visited on Mar. 27, 2014). Previous forms that were online when these Appellees filed contained the language used in their decrees, and are still available on some websites. *See* http://txdivorce.org/wp-content/uploads/2013/07/Div_No_Kids_Petition_Final–1.pdf. Two appear to be completely pro se and used forms but it seems unclear where these forms were obtained. The other three judgments appear to be standard forms utilized by Legal Aid of NorthWest Texas, which provided representation to those petitioners in their divorce cases.

costs of an original action." Tex.R. Civ. P. 145(a) (emphasis added). There is no conflict. The judgments do not determine the amount of costs owed; the district clerk does that, as further discussed below. Because Appellees' uncontested affidavits of indigence serve "in lieu of" payment of costs, and because the divorce decrees do not contain the findings required by rule 145(d) that Appellees received "sufficient monetary award[s] to reimburse costs," the district clerk's nondiscretionary ministerial duty required that he tax no amount of costs against Appellees.

Appellees' pro bono counsel from the Texas Advocacy Project argued Appellees' position at the temporary injunction hearing, making clear that Appellees are not attacking the judgments but, rather, are complaining of the district clerk's taxing any costs against them under rule 145:

> MS. DIFILIPPO: Yes. Please, Your Honor.
>
> We are not seeking the injunction on a permanent judgment order. In fact, if I understand Mr. Ponder's argument, we are seeking an injunction against the district clerk for not properly performing a nondiscretionary ministerial duty. So it had nothing to do with the seven named plaintiffs in their underlying proceedings and the judgment that came out of those underlying proceedings. That is not at all what our argument is.
>
> . . . .
>
> —we are not—Let me reiterate that, we are not disputing the language in the divorce decrees that say he should pay his cost and she should pay her cost, which is what we believe the district clerk is relying on to send the bills out to indigent litigants. That is not our contention. We are not disputing that judgment. It has nothing to do with that. It's compelling enforcement of a nondiscretionary ministerial public duty.

## APPELLEES' INDIGENCE IS CONCLUSIVE

The supreme court has held that uncontested affidavits of indigence *conclusively* confer indigent status. Put simply, under rule 145, "[a]n uncontested affidavit of inability to pay is conclusive as a matter of law." *Equitable Gen. Ins. Co. v. Yates*, 684 S.W.2d 669, 671 (Tex.1984). In *Yates*, the supreme court made clear that rule 145 is more than a procedural vehicle to allow an indigent litigant to proceed without payment of costs. The rule is a testament to the judiciary's strong commitment that indigent litigants are guaranteed a forum that is not to be blocked by financial burdens that would defeat that right. *See id.* In *Yates*, the trial court conditioned the grant of a new trial to an employee in a worker's compensation case on payment to the carrier for its attorney's fees in preparing and presenting its response. *Id.* at 670. Supported by an uncontested affidavit of indigence, Yates responded that he was unable to pay that amount. *Id.* Holding that Yates's uncontested affidavit of indigence was conclusive as a matter of law, the supreme court ruled that the trial court abused its discretion by denying him a new trial. *Id.* at 671. Recognizing that attorney's fees are not technically "costs," the supreme court looked to the spirit and purpose of rule 145, to guarantee open courts for those unable to pay costs, and rejected the condition imposed by the trial court that the indigent employee must pay the carrier's attorney's fees before being allowed to continue his suit:

> Although we recognize the general rule that attorney's fees are not costs, the assessed fees in the present case will be considered in light of Rule 145 and the rule's intended purpose to guarantee a forum to those unable to pay court costs.

> Accordingly, the trial court abused its discretion by imposing such a monetary condition in the face of an uncontested affidavit of inability to pay.

*Id.* (citations omitted).

*Yates,* in essence, held that a rule 145 uncontested affidavit of indigence trumped a trial court's express ruling imposing a monetary condition on the plaintiff's ability to continue his suit. The same reasoning must apply that a rule 145 uncontested affidavit of indigence trumps a district clerk's attempt to retroactively tax costs against an indigent party. The only exception is set forth in rule 145(d), mentioned above, which allows costs to be assessed despite an uncontested affidavit when a "party's action results in [a] monetary award . . . sufficient . . . to reimburse costs," and the rule further requires that the trial court must expressly so find. Tex.R. Civ. P. 145(d). There is no such finding in Appellees' divorce judgments.

As stated in *Yates,* the intended purpose of rule 145 is "to guarantee a forum to those unable to pay court costs." 684 S.W.2d at 671. Rule 145 is the key to the courthouse without which indigent parties are denied entry. Allowing a district clerk to tax costs against indigent litigants in divorce cases despite uncontested affidavits of indigence, renders the guarantee of a forum under rule 145 illusory and locks the courthouse door for thousands of indigent parties in Texas who need it most.[7] Statistics from the Office of Court Administration (OCA) show that 4,011 family law cases were filed in Tarrant County by pro se petitioners in fiscal year 2013[8] but no figures are available from OCA as to how many of those petitioners were indigent.

The district clerk cites no case law or statutory support for an exception allowing a district clerk or trial court to override rule 145 in divorce cases, and there is case law firmly enforcing the policies and provisions of rule 145 and *Yates* in the family law context.[9] *See, e.g., In re Villanueva,* 292 S.W.3d 236, 246 (Tex.App.-Texarkana 2009, orig. proceeding) (holding trial court abused its discretion by ordering Villanueva to pay advance costs and fees for attorney ad litem and social study administrator because, based on her uncontested affidavit of indigence, she was indigent as a matter of law and such orders effectively denied her a forum in which to dissolve her marriage and resolve custody issues, and "[t]hough undoubtedly driven by its duty to determine the best interest of the children, the trial court exercised its discretion in a manner inconsistent with the conclusive effect as to indigence provided by Rule 145 of the Texas Rules of Civil Procedure"); *Shirley v. Montgomery,* 768 S.W.2d 430, 434 (Tex.App.-Houston [14th Dist.] 1989, orig. proceeding) (holding trial court abused its discretion by striking wife's pleadings and prohibiting her from introducing any evidence at trial as sanctions for failing to pay $15,000 to guardian ad litem in light of evidence of wife's finan-

**7.** *See generally* Texas Access to Justice Commission, *supra* note 2.

**8.** Office of Court Administration, *District Courts, Summary of Other Civil and Family Case Activity, September 1, 2012 to August 31, 2013,* at 7 http://www.courts.state.tx.us/pubs/AR2013/dc/10–OtherCivilAndFamilyActivityByCounty.pdf (last visited Mar. 27, 2014).

**9.** The district clerk apparently chose pro se, indigent petitioners in divorce cases from which to attempt to collect costs on the theory that trial courts in dissolution of marriage or SAPCR cases have discretion to assess costs other than as provided in the civil rules, citing family code sections 6.708(a) and 106.001. Tex. Fam.Code Ann. §§ 6.708(a) (West Supp. 2013), 106.001 (West 2014). But neither those sections nor the cases cited speak to a trial court's ability to assess costs against an indigent party.

cial inability to pay the ad litem's fee and that it was in the best interest of children for parent to have access to and availability of a forum); *Cook v. Jones,* 521 S.W.2d 335, 338 (Tex.Civ.App.-Dallas 1975, writ ref'd n.r.e.) (holding rule 145 uncontested affidavit of indigence relieved wife of obligation to pay sheriff's office for substituted service by publication so as to allow her meaningful access to the court, citing rule 145's purpose of allowing access to a forum for indigent litigants).

These cases illustrate the courts' continued commitment to the purpose and policy embodied in rule 145. Taxing of court costs in family cases, as in any other civil case, against a party deemed indigent as a matter of law under rule 145, absent any contest or findings as required by rule 145(d), flies in the face of the rule, the policy and purpose of guaranteeing access to a forum by indigent litigants, and "[t]he concept that courts should be open to all, including those who cannot afford the costs of admission, [as] firmly embedded in Texas jurisprudence." *Higgins v. Randall Cnty. Sheriff's Office,* 257 S.W.3d 684, 686 (Tex.2008); *see* Tex. Const. art. I, § 13.

I appreciate the district clerk's many responsibilities in managing his office with filings in what he estimates as over 59,000 cases over the past year for the many civil, criminal, and family district courts in this county and the need to collect costs to keep the judicial system open and running, especially through difficult financial times. His concern here is with a perceived conflict between the divorce decrees' assessments of court costs versus rule 145. But Appellees do not challenge those boilerplate adjudications of costs that are routinely assessed in thousands upon thousands of judgments of every type. The point is that the divorce decrees do not determine the *amount* of costs to be borne by Appellees.

"[T]he court's role is to adjudicate which party or parties is to bear the costs of court, 'not to determine the correctness of specific items." *Madison v. Williamson,* 241 S.W.3d 145, 158 (Tex.App.-Houston [1st Dist.] 2007, pet. denied). As a result, a judgment may state that costs are assessed against a certain party, but it should not state the amount taxed as costs. *Id.*; *see also Williams v. Colthurst,* 253 S.W.3d 353, 363 (Tex.App.-Eastland 2008, no pet.). Conversely, the taxing of costs is not an adjudication by the court. *Reaugh v. McCollum Exploration Co.,* 140 Tex. 322, 325, 167 S.W.2d 727, 728 (1943). Tabulating the specific item amounts to be taxed as costs is a " 'ministerial duty performed by the clerk.' " *Wright v. Pino,* 163 S.W.3d 259, 261 (Tex.App.-Fort Worth 2005, no pet.) (quoting *Pitts v. Dallas Cnty. Bail Bond Bd.,* 23 S.W.3d 407, 417 (Tex.App.-Amarillo 2000, pet. denied) (op. on reh'g)). It is the ministerial duty of the clerk that is at issue here, and I agree with Appellees and the trial court that the proper amount to be taxed to Appellees was no court costs, or "$0.00."

## NO ADEQUATE LEGAL REMEDY

The district clerk further argues that the temporary injunction was not appropriate because a motion to retax costs is an "adequate remedy at law" to correct the amount of costs he has now taxed to them under the judgments and should be filed by each Appellee in each court in which the costs accrued. *See Wood v. Wood,* 159 Tex. 350, 357–58, 320 S.W.2d 807, 812–13 (1959); *Reaugh,* 140 Tex. at 325, 167 S.W.2d at 728 (holding an error in taxing costs by the clerk may be corrected by the court upon motion of the injured party even after the case has been finally disposed of on appeal unless the right to retax costs has been lost in some man-

ner).[10]

While a motion to retax costs may be an available remedy, I disagree that individual motions to retax filed by each Appellee and others similarly situated in the various family district courts constitute an *adequate* legal remedy here. *See Repka v. Am. Nat'l Ins. Co.,* 143 Tex. 542, 547, 186 S.W.2d 977, 980 (1945) (noting fact that complainant may have a remedy at law is not conclusive that such remedy is adequate and does not foreclose his right to equitable relief). As the district clerk acknowledges in his brief, for a remedy to be "adequate," it must be one that is complete, practical, and efficient to the prompt administration of justice as is equitable relief.

The number of individual motions to retax in each court for these and other similarly situated indigent litigants from whom the district clerk plans to extract costs could add up to thousands of such motions that would overwhelm the family law courts as well as the overworked and understaffed legal aid offices and volunteer pro bono attorneys. As previously noted, statistics published by OCA for Tarrant County show over 4,000 petitioners in family law cases who were pro se in the fiscal year ending August 31, 2013,[11] with similar numbers for at least the two prior years,[12] totaling more than twelve thousand potential motions to retax costs for those years alone that could conceivably be filed by pro se litigants who are indigent, and that number does not include indigent petitioners represented by legal aid or pro bono lawyers.

A party can restrain the unlawful act of a public official when the act would cause irreparable injury or when that remedy is necessary to prevent a multiplicity of suits. *Tex. State Bd. of Exam'rs in Optometry v. Carp,* 162 Tex. 1, 5, 343 S.W.2d 242, 245 (1961); *Dallas Cnty. v. Sweitzer,* 881 S.W.2d 757, 769 (Tex.App.-Dallas 1994, writ denied) (op. on reh'g) (holding injunction proper against district clerk of Dallas County to prevent collection of various fees not authorized by law); *Garcia v. Angelini,* 412 S.W.2d 949, 951 (Tex.Civ. App.-Eastland 1967, no writ). The district clerk's proposal for filing individual motions to retax costs in each of these and other similar cases would undoubtedly create a multitude of proceedings.

It is firmly established that equity will assume jurisdiction for the purpose of preventing a multiplicity of suits, the principle being that the necessity of a multiplicity of suits in itself constitutes the inadequacy of a remedy at law, which confers equitable jurisdiction. *Repka,* 143 Tex. at 546, 186 S.W.2d at 979. In *Repka,* the court further stated, as particularly pertinent to this case:

> It would be a paradox to say that equity jurisdiction can be exercised to prevent a multiplicity of suits and at the same

**10.** The district clerk acknowledges that there is "no impediment" to each party filing a motion to retax costs in the court that rendered their divorce judgments because the timeliness of a motion to retax costs is linked to the time a demand is made for payment of costs, which he concedes was well after the divorce decrees were rendered and became final and plenary power had expired as to each of these Appellees.

**11.** Office of Court Administration, *supra* note 8.

**12.** Office of Court Administration, *District Courts, Summary of Other Civil and Family Case Activity, September 1, 2011 to August 31, 2012,* at 7 http://www.courts.state.tx.us/pubs/AR2012/dc/10–OtherCivilAndFamilyActivityByCounty.pdf (last visited Mar. 27, 2014); Office of Court Administration, *District Courts, Summary of Other Civil and Family Case Activity, September 1, 2010 to August 31, 2011,* at 7 http://www.courts.state.tx.us/pubs/AR2011/dc/10–OtherCivilAndFamilyActivityByCounty.pdf (last visited Mar. 27, 2014).

> time say that a legal remedy is complete and adequate, although it leads to such multiplicity. To our minds, if a remedy at law, though otherwise complete and adequate, leads to a multiplicity of suits, that very fact prevents it from being complete and adequate.

*Id.* at 547–48, 186 S.W.2d at 980 (quoting *Rogers v. Daniel Oil & Royalty Co.,* 130 Tex. 386, 395, 110 S.W.2d 891, 896 (1937)).

This would apply to motions to retax as to these seven Appellees as well as to hundreds, if not thousands, of other similarly situated litigants. And as to Appellees' standing to maintain this consolidated suit on behalf of "others similarly situated," I agree with Appellees that they have standing to temporarily restrain the allegedly unauthorized action of the district clerk in systematically carrying out a policy and practice that he proposes to direct against all indigent petitioners who have filed uncontested affidavits of indigence, and that this remedy, due to the nature of the wrong to be addressed, will necessarily inure to the benefit of all similarly situated litigants by restraining his action, rather than forcing them to file motions and imposing that burden on the family courts' dockets.

In *Sweitzer,* the trial court granted an injunction against the district clerk of Dallas County in a suit challenging the legality of various types of fees that he had charged to the plaintiffs that they believed were not authorized by law. 881 S.W.2d at 761. Significantly, the plaintiffs sought the injunction on behalf of all litigants in Dallas County who paid similar fees, as well as for themselves. *Id.* at 769. The appellate court upheld the injunction, holding that "[a] party suing for all persons adversely affected by enforcement of a statute has standing to sue for an injunction" and that this claim gave plaintiff a "sufficient justiciable interest to maintain an action to enjoin the County from collecting fees not authorized by law." *Id.* I would hold that, under *Sweitzer,* Appellees have standing and a justiciable interest to maintain this suit and to enjoin the district clerk from taxing and collecting costs not authorized by law.

I would affirm the temporary injunction on behalf of Appellees and all persons similarly situated with respect to the district clerk's policy and practice. I would hold that the 17th District Court has jurisdiction over Appellees' suit; that Appellees have standing and a justiciable interest in maintaining their action for themselves and all persons similarly affected; and that Appellees have demonstrated a probable right to recover and probable irreparable harm, with no adequate remedy at law. Because the majority does not so hold, I respectfully dissent.


**Michael CADE and Billie Cade, Appellants and Appellees.**

**v.**

**Barbara D. COSGROVE, Individually, and as the Trustee of the Charles and Barbara Cosgrove Family Revocable Living Trust, Appellee and Appellant.**

**No. 02–11–00424–CV.**

Court of Appeals of Texas, Fort Worth.

April 3, 2014.

**Background:** Grantors brought action against grantees after grantees refused to execute correction deed after grantors conveyed property under deed that conveyed mineral estate in contravention of sales