

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \* \* \*

**MEETING OF THE SUPREME COURT ADVISORY COMMITTEE**

APRIL 13, 2012

(FRIDAY AFTERNOON SESSION)

\* \* \* \* \*

[COPY]

Taken before *D'Lois L. Jones*, Certified  
Shorthand Reporter in and for the State of Texas, reported  
by machine shorthand method, on the 13th day of April,  
2012, between the hours of 2:01 p.m. and 5:03 p.m., at the  
State Bar of Texas, 1414 Colorado, Room 101, Austin, Texas  
78701.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX OF VOTES

No votes were taken by the Supreme Court Advisory Committee during this session.

### Documents referenced in this session

- 12-02 Protective Order Kit (2-17-12)
- 12-03 Protective Order Kit Memo from F. Gilstrap (4-6-12)
- 12-04 Divorce Kit - No minor children, no real property
- 12-05 Uniform divorce forms, SCAC subcommittee report (4-11-12)
- 12-06 Report to SCAC of Texas Access to Justice (4-6-12)
- 12-07 Brief of Access to Justice Commission (4-6-12)
- 12-08 Family Law Solutions 2012 Final Report
- 12-09 Family Law Groups' ideas for pro se litigants
- 12-10 Family Law Groups' response to proposed forms (4-10-12)
- 12-11a Letter from Bob Black (1-5-12)
- 12-11b Email from Lewis Kinard (4-3-12)
- 12-11c Email from Patricia Baca (4-11-12)
- 12-11d Letter from Hispanic Bar Association of Austin (4-5-12)
- 12-11e Letter from Hugh Lindsay (4-16-12)
- 12-11f Letter from several judges (4-12-12)
- 12-11g Letter from Timothy Daniels (4-9-12)

**Documents referenced in this session (cont'd.)**

- 1  
2  
3 12-11h Memo from Alicia Keys of AG's office to SCAC  
4 (4-12-12)  
5 12-11i Letter from P. Baca  
6 12-11j Letter from P. Friday  
7 12-11k Letter from Texas Advocacy Project  
8 12-11L Written Statement of R. Shannon  
9 12-12 Forms currently used in Travis County

\*--\*--\*--\*--\*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (The morning session is reflected in the  
2 prior volume. Following a recess from 1:14  
3 p.m. to 2:01 p.m., the meeting continued as  
4 follows.)

5 CHAIRMAN BABCOCK: All right. As everybody  
6 knows maybe, we're going to go now to the forms and talk  
7 about them. At 4:00 o'clock, I'm going to pause in our  
8 discussion and see if there are any members of the public  
9 that wish to speak to us for three to five minutes on the  
10 clock, I'm sorry about that, and then we'll -- we will  
11 recess at 5:00 and start up again in the morning at 9:00  
12 o'clock. So, Richard, I would think that form one would  
13 be the place to start, but you tell me.

14 MR. ORSINGER: Actually, yes, I want -- the  
15 first thing I want to do is reintroduce Laurel Holland.  
16 Is Laurel here? She'll be here in a minute hopefully.  
17 She is a attorney here in Travis County that works with  
18 the law library self-help center, and she works with pro  
19 ses using forms that have been approved for Travis County  
20 use, and she's here if anyone wants to ask questions about  
21 that.

22 The subcommittee report, there is not time  
23 to discuss it per se, so I'm hoping that you have read it  
24 or will read it or that it will come out in individual  
25 discussions. So what we're going to do is reintroduce

1 Stewart Gagnon. Stewart is not only the representative of  
2 the protective order task force, but also this task force  
3 that has produced these family law forms, and we're going  
4 to take the forms up in sequence starting with the  
5 information -- the first form is called. I don't know  
6 that there's a title.

7 MR. GAGNON: Information form.

8 MR. ORSINGER: Information form, and our  
9 thought is Stewart will give you a little bit of  
10 background about this task force and then he'll introduce  
11 each form generally. Laurel, I introduced you in your  
12 absence.

13 MS. HOLLAND: I'm sorry about that.

14 MR. ORSINGER: That's all right. And then  
15 we'll have Stewart kind of give you the overview of the  
16 intended purpose of the form and then we'll open it up to  
17 individual comment on the form, and, Chip, it may sound  
18 like there's some policy issues that are being discussed  
19 with the specific form because actually specific forms do  
20 trigger policy questions. So -- yeah, Lonny.

21 PROFESSOR HOFFMAN: For those of us who  
22 didn't bring the paper and are working off the computer,  
23 can you just say the name of the form so we can try to  
24 find it --

25 MR. GAGNON: Sure.

1 PROFESSOR HOFFMAN: -- on the SCAC website?

2 MR. GAGNON: Sure. Richard asked me first  
3 to give you a brief, I guess, introduction to the task  
4 force. The task force was appointed in March of 2011 by  
5 the Court. Members of the task force who continued to  
6 serve -- we have one member who is a court of appeals  
7 justice who found out that she could not serve, but  
8 included two family court judges, Judge Tracy Gilbert, who  
9 is in Montgomery County. He hears almost all of that  
10 county's now family law cases by agreement by all the  
11 judges. He also has a special self-represented litigants  
12 proceeding every week where he hears a full day of  
13 self-represented litigants proving up uncontested  
14 divorces. Judge Diane Guariglia, who was an associate  
15 judge in Harris County for Judge Roy Moore. We have Casey  
16 Kennedy from the Supreme Court. We have Cristy Keul, who  
17 was with Smith County Bar Association. She runs an  
18 assisted pro se program through their court system there  
19 and assists self-represented litigants in finding --  
20 locating resources like these tools. Judge -- the former  
21 Judge Marilea Lewis, who is a family law lawyer in Dallas  
22 who is also a member of the Solutions 2012 Task Force of  
23 the State Bar and was also one of the signatories of the  
24 family law section's critique of the form kit that you  
25 were given yesterday, as I understand. Karen Miller,

1 Texas Legal Services Center. They're the ones that  
2 publish texaslawhelp.org. Steve Naylor, who is a lawyer  
3 from Fort Worth. He is a member of the family law  
4 council. He is a member of -- also a member of the ad hoc  
5 working group that signed off and critiqued the forms on  
6 behalf of the family law section. Lisa Rush, who is the  
7 Travis County law librarian and has run a self-help center  
8 in Travis County law library. Ed Wells of the Harris  
9 County Office of Court Administration or Court Management.  
10 Sherry Woodfin is a district clerk in San Angelo, and  
11 Michael Wyatt, who is with the office of the county  
12 attorney in El Paso.

13           The task force was designed to have  
14 represented as all of the stakeholders in the issue.  
15 Those stakeholders are not limited to family law lawyers  
16 and family law judges, but all of those stakeholders were  
17 part of a forum in April of 2010 that led to the  
18 recommendation of the -- of the creation of the task  
19 force.

20           Just as a second part, let me tell you that  
21 there is a second part to this equation. That part is a  
22 self-represented litigants committee that is part of the  
23 Texas Access to Justice Commission. That self-represented  
24 litigants committee is broken down into six subcommittees.  
25 Those subcommittees are dealing with matters such as

1 limited scope representation or unbundling for lawyers,  
2 advice booths, so assistance for pro ses, advice for pro  
3 ses, creating individualized or countywide programs to  
4 assist in the representation or the advice of people who  
5 are choosing to represent themselves. That committee is  
6 developing and has been developing a catalog of best case  
7 practices in those areas. We're not -- that committee is  
8 not telling any county exactly how to solve their problem.  
9 We're creating a catalog of what other counties and other  
10 locations throughout the nation have found to be useful in  
11 their circumstances in creating some type of solutions.

12           Most of what you've seen in the part of the  
13 Solutions 2012 report to you as to alternatives of  
14 addressing the issue of self-representing litigants  
15 mirrors the work of the self-represented litigants  
16 committee of the Access to Justice committee. But also,  
17 if you'll read closely the State Bar family law section's  
18 report as it relates to what's wrong with the work done by  
19 the Access to Justice, they object to the work of that  
20 self-represented litigants committee. So on the one hand  
21 you have the State Bar task force saying these are the  
22 things you ought to be doing and the family law section  
23 saying, no, you shouldn't be doing those things, so we're  
24 at sort of a bump in the road right now that we don't know  
25 how to go forward.



1 MR. ORSINGER: Stewart, can I ask a  
2 question?

3 MR. GAGNON: Well, let me just finish. The  
4 initial set of forms that you see is only one component of  
5 any solution to self-represented litigants, and they are  
6 the model that the Court asked us to prepare, and just to  
7 make sure everybody is aware of this, once that model is  
8 approved we're going to examine where else we need to do  
9 or expand this model. So it's not -- it's a work in  
10 progress. Richard.

11 MR. ORSINGER: Are there subcommittees or  
12 other task forces that have undertaken the responsibility  
13 of drafting more family law forms or drafting forms in  
14 nondivorce areas?

15 MR. GAGNON: No. This task force has turned  
16 the page temporarily until we get a resolution from -- an  
17 acceptance from the Supreme Court, and we spent the last  
18 two meetings working on a name change set of forms for  
19 adults and for children that was identified by the courts  
20 as something that would be very helpful for them.

21 MR. ORSINGER: Okay.

22 MR. GAGNON: But we've not done anything  
23 related to expanding the divorce kit or doing anything  
24 outside of the divorce kit. What you see here is the work  
25 product of it. Any questions on that?

1           Then I think the first thing we'll turn to  
2 is the instructions, which is -- has a title on top of it  
3 "Divorce kit, no minor children, no real property."

4           CHAIRMAN BABCOCK: Okay. Comments about  
5 this page, which should be the first page of the package  
6 or the kit as we like to call it.

7           MR. GAGNON: Let me just say, make sure that  
8 when you're looking at it there should be a yellow  
9 highlighted "401(K)," that would indicate to you that's  
10 the current version. We had a four and a half-hour phone  
11 conference with Richard's subcommittees where they  
12 suggested some changes to it, and we adopted those changes  
13 that they suggested. Those changes should be -- if you  
14 have the current should be in yellow highlighted just  
15 showing those changes we made.

16           MS. SENNEFF: Stewart, I didn't copy them in  
17 color.

18           MR. GAGNON: I'm sorry?

19           MS. SENNEFF: I didn't copy them in color,  
20 so unless people printed them out. Where is that?

21           MR. GAGNON: I e-mailed it to Richard.

22           MR. ORSINGER: It doesn't matter so much.  
23 Everybody that got the e-mail copy, which is everyone on  
24 this committee, but you may not know that you got it, is  
25 in color. The printouts that are handed out here today

1 are black and white.

2 MR. GAGNON: Oh, okay.

3 MR. ORSINGER: So why don't you assume that  
4 the form --

5 MR. GAGNON: All right.

6 MR. ORSINGER: -- as adjusted, and if anyone  
7 has a question that he says the form has something that  
8 yours doesn't, raise your hand. That probably means the  
9 change was made after your form was printed.

10 MR. GAGNON: And let me just also say that I  
11 didn't see the family law sections's critique until  
12 yesterday, and so we've not had a chance to address some  
13 of the questions that they've raised that we think are  
14 valid questions.

15 CHAIRMAN BABCOCK: Okay. So we're on page  
16 one.

17 MR. GAGNON: Yeah.

18 CHAIRMAN BABCOCK: Yeah, Justice Gray.

19 HONORABLE TOM GRAY: The title, when it says  
20 "No real property," pro se, most folks they're not going  
21 to know what real property is. To them a car is real  
22 property. "Real estate" may be better than "real  
23 property." "That don't have a house or land," something  
24 other than -- I mean, because to most of these people a  
25 car is real property. But also on this one page, there

1 are three different terms used to discuss some form of  
2 where you live. It says "lived in Texas," "the home state  
3 of" in the box for military families, and the box that  
4 says, "Do not use these forms if," it goes down the third  
5 arrow from the bottom says "residents of Texas." So just  
6 consistency of terminology would be really cool to have,  
7 if you lived in, you're a resident of, home state, and I  
8 don't know if you can, but those are things that I noticed  
9 that caught my attention right off the --

10 MR. GAGNON: My understanding is that in  
11 dealing with military families that home state is a term  
12 of art for military personnel.

13 CHAIRMAN BABCOCK: Richard Munzinger.

14 MR. MUNZINGER: I know that the form has  
15 been admitted -- pardon me, has been admitted here to take  
16 into consideration the question of a retirement plan. If  
17 I were on the Supreme Court I would be very concerned that  
18 I am promulgating a form that would allow someone to  
19 without any legal advice enter a judgment that affects a  
20 party's right to a spouse's pension. That may be one of  
21 their principal assets if they are indigent or close to  
22 indigent. The form is entitled, "No real property," and  
23 then it says, "Don't use this if you've got a 401(k)."  
24 I'm not sure that all of those people who know what a  
25 401(k) is or a retirement plan, and I notice that the

1 committee that criticized these forms made the  
2 recommendation that a person before they use the form  
3 should be required to promise that there is no pension,  
4 for example, as distinct from being told "Don't use it."

5 MR. GAGNON: Well, let me just --

6 MR. MUNZINGER: Let me finish, please.

7 MR. GAGNON: Okay, sorry.

8 MR. MUNZINGER: Just a moment. I am very  
9 concerned that I have a hard time understanding if I  
10 were -- when I did divorce work 25, 30 years ago, to me  
11 trying to figure out who owned what of somebody's pension  
12 was complex, time-consuming, and how do you draft around a  
13 judgment to award it. The Court is saying we want to make  
14 justice accessible to all persons. Is it justice to allow  
15 a pension to be disposed of unknowingly, unwillingly,  
16 without proper information? I question that. I have a  
17 real problem with it, and therefore, I have a real problem  
18 with this form. If the Court wants to do that they  
19 should, but they need in my opinion to be very careful  
20 that all forms of property are identified and all forms of  
21 property the citizens whose rights in this property are  
22 being affected permanently are told that.

23 MR. GAGNON: Let me just clarify that the  
24 form tells you that don't use the form if you want to  
25 divide or receive a portion of your spouse's retirement

1 plan or 401(k). I will tell you that one of the testing  
2 mechanisms we use for these instructions is to share them  
3 with nonlawyers, nonlawyers of all kinds of different  
4 levels of education, and they're really probed, do you  
5 understand what this means, do you understand what that  
6 means, and you'll be surprised the lady at Wendy's, she'll  
7 know if she has a 401(k) plan or not. If she doesn't have  
8 -- if she has one, she'll know it. It shows up on her tax  
9 -- on her paycheck stub and that type of thing. But it  
10 says -- not says if they don't have one, it says if they  
11 have one they don't want to divide -- they want to divide,  
12 don't use this form.

13 CHAIRMAN BABCOCK: Justice Christopher.

14 HONORABLE TRACY CHRISTOPHER: I find the  
15 instructions a little confusing because we're combining a  
16 true agreed uncontested divorce with a default divorce  
17 that we call uncontested, but I don't think --

18 MR. GAGNON: I'm sorry, I'm not --

19 HONORABLE TRACY CHRISTOPHER: -- most people  
20 would understand that. I said I find the instructions  
21 confusing when you combine a true uncontested divorce,  
22 meaning you and your spouse are agreeing on it, versus an  
23 uncontested divorce when the spouse is defaulting, and it  
24 seems to me we should have a separate set of instructions  
25 for those two circumstances because in the one hand when

1 you have a true agreed divorce you don't have to worry  
2 about legal service, it's all going to be just handled,  
3 but when you have the default situation you're going to  
4 have to give more detailed instructions on service, and I  
5 think the way the instructions have been combined to try  
6 to put it all into, you know, these three pages is  
7 confusing.

8                   CHAIRMAN BABCOCK: Okay. Somebody else --  
9 Justice Patterson.

10                   HONORABLE JAN PATTERSON: No.

11                   CHAIRMAN BABCOCK: No, pass. Richard.

12                   MR. ORSINGER: The subcommittee was in favor  
13 four to zero that this committee make a recommendation as  
14 to whether pension plans should or should not be within  
15 the scope of these forms. Now, there are different kinds  
16 of retirement. There's an IRA, which is really basically  
17 just a tax protected savings account, and then there's a  
18 401(k), which is like a savings account. It has an  
19 account balance, and you make deposits, and you can tell  
20 your balance any day, and it's usually through your  
21 employment matching funds and whatnot, and the 401(k) is  
22 just a cash account. It's a qualified plan. It has to  
23 have a Quadro, but it still can be divided simply.

24                   A pension is different. A pension is a  
25 payment that you get from the day that you retire until

1 the day you die, and it's usually a fixed amount with some  
2 sort of adjustment for inflation, and the Texas law on  
3 pension plans is complex. Fundamentally, pensions are  
4 allocated between the separate and community estate,  
5 depending on the percent of the pension that accrued  
6 during the marriage versus the percent of the pension that  
7 accrued before marriage or after divorce; and if you are  
8 divorcing someone who is currently employed, the Texas  
9 Supreme Court has ruled that you can't do a simple time  
10 allocation because that captures into the community  
11 division contributions that are made by post-divorce labor  
12 that are separate property.

13           So we have a special consideration to be  
14 made if the employee has a pension and is employed at the  
15 time of the divorce. We now have to apply the time  
16 allocation times a valuation of the pension plan on the  
17 day of divorce as if the employed spouse could retire,  
18 even if they can't. Now, it's been my personal experience  
19 that most lawyers, family lawyers and even board certified  
20 family lawyers, don't understand how to do that correctly,  
21 and Stewart and I would probably argue with each other  
22 about how to do it, and I have problems with the way the  
23 courts of appeals -- some of them don't agree with each  
24 other. The pension plan is exceptionally complicated  
25 compared to a 401(k) or an IRA, and so the 'subcommittee's



1 attention is on the pension plan, not so much the 401(k).  
2 This kit says, "Don't use this kit if somebody wants some  
3 part of somebody else's pension."

4 MR. GAGNON: Right.

5 MR. ORSINGER: So that means she gets his  
6 401(k), he gets his 401(k), everybody goes down the road,  
7 and everybody is fine. Where it doesn't work so easily is  
8 when there's a defined benefit pension and they don't  
9 understand what's separate and what's community or the  
10 fact that they have to do a bare evaluation on the day of  
11 divorce, and that's hopeless to handle in a form.

12 MR. GAGNON: They don't have to do it if  
13 they agree that he takes his retirement and she takes her  
14 retirement.

15 MR. ORSINGER: But they don't know that his  
16 retirement is community property, so, you know, he says,  
17 "This is my pension, I get it. You get your pension."  
18 His pension is five times as large as her pension. She  
19 doesn't know she has a right. I mean, so at least  
20 anyway --

21 CHAIRMAN BABCOCK: Or maybe he doesn't.

22 MR. ORSINGER: It could be the reverse. It  
23 sure could, especially nowadays.

24 CHAIRMAN BABCOCK: Don't be bad-mouthing the  
25 women.

1 MR. ORSINGER: Yes, but we've got to have a  
2 shorthand here or else we'll multiply everything twice.  
3 All right. So the subcommittee's concern is that this  
4 committee should consider whether we should rule out the  
5 use of the forms when there's a pension involved as  
6 distinguished from a 401(k) or an IRA.

7 CHAIRMAN BABCOCK: Justice Brown.

8 HONORABLE HARVEY BROWN: Well, I guess I was  
9 going to say the same thing, only I wondered if it should  
10 be for 401(k)'s also. In other words, I wondered if you  
11 should just put a period after "401(k)," and I wasn't sure  
12 what your thinking on that was, Stewart.

13 CHAIRMAN BABCOCK: Justice Jennings. You  
14 didn't have your hand up?

15 HONORABLE TERRY JENNINGS: But I do have a  
16 comment.

17 CHAIRMAN BABCOCK: Just got lucky.

18 HONORABLE TERRY JENNINGS: First a point of  
19 order. Are we going to discuss the merits of having forms  
20 and have an up or down vote later on that, or is the idea  
21 to go through the forms first?

22 CHAIRMAN BABCOCK: Let's go through the  
23 forms.

24 HONORABLE TERRY JENNINGS: With that in  
25 mind, just focusing on the front page here, there are some

1 places here where there are warning boxes, and it occurs  
2 to me that maybe some of these issues could be addressed  
3 by having a warning box right up front, because down here  
4 it says at the bottom "Need help? It's always best to  
5 hire an attorney." Maybe that should be placed up front  
6 and center that -- and it's even best to talk to an  
7 attorney to determine whether you need help, because it  
8 occurs to me that, you know, the first thing is your --  
9 "You can use these forms when your case is uncontested,  
10 meaning it is agreed, you and your spouse agree about  
11 every issue in your divorce." Well, it occurs to me that  
12 one of the spouses may not know that they should disagree  
13 about certain issues and that maybe we should be telling  
14 them up front, "Warning, you really need to talk to a  
15 lawyer and you really even need to talk to a lawyer about  
16 whether or not you have issues that you need to disagree  
17 about."

18 MR. GAGNON: You might -- I think that  
19 question may be answered in the subsequent forms  
20 themselves rather than in the instructions.

21 HONORABLE TERRY JENNINGS: Well, that's why  
22 I'm saying --

23 MR. GAGNON: Because if you look at the  
24 boxes of the forms, those repeat themselves.

25 HONORABLE TERRY JENNINGS: Well, that's why

1 I'm saying it should be put up front and center. I'm  
2 assuming a lot of people who are going to be looking at  
3 these forms are not going to be very well educated and  
4 that one of the things that they might need to be aware of  
5 right away is that by using this form they could, in fact,  
6 be jeopardizing some of their rights by not seeking a  
7 lawyer and talking to a lawyer and asking a lawyer about  
8 whether or not they have any issues that they need to  
9 discuss.

10 MR. GAGNON: Well, for example, the original  
11 petition, probably, I think we could all agree that there  
12 is a possibility they may not see the instructions but  
13 they'll clearly see the original petition, they're filling  
14 it out. The warning at the top of the original petition  
15 does just that.

16 HONORABLE TERRY JENNINGS: I understand  
17 that.

18 MR. GAGNON: As does the red box in the  
19 middle.

20 HONORABLE TERRY JENNINGS: I understand  
21 that, but my point is, is that I think a lot of people are  
22 going to be looking at this form and using it, and I think  
23 they need to be told that right at the beginning rather  
24 than either down here at the bottom of the first page or  
25 later. I think they should be informed right up front

1 that they should talk to a lawyer about whether or not  
2 they even have any issues about which they can agree or  
3 disagree.

4 CHAIRMAN BABCOCK: Got it. Peter.

5 MR. KELLY: General comment as we go through  
6 the specifics on the forms, which is we're focusing a lot  
7 on the actual family law proceeding, but we also have to  
8 think about what can come afterwards by operation of  
9 judicial estoppel. If someone checks off they're a  
10 resident of Texas for the purpose of getting this quickie  
11 divorce, they've now attorned to the jurisdiction in  
12 Texas, and they may actually be a Louisianan domiciliary,  
13 so they are -- or they check something they don't have any  
14 property and that there's no property found in the  
15 marriage. That would include a personal injury cause of  
16 action. About 10 years ago there was a whole spade of  
17 articles and cases coming out about judicial estoppel by  
18 operation of bankruptcy petitions, and all the defense  
19 lawyers started coming through bankruptcy petitions of  
20 plaintiffs and asking if there is any bankruptcy filings,  
21 and if there was not a disclosure of the personal injury  
22 cause of action you were then judicially estopped from  
23 pursuing it. There are a lot of questions, a lot of  
24 statements contained in these forms that could have  
25 serious estoppel effects in later proceedings that aren't

1 necessarily relevant to the divorce proceeding but are  
2 relevant to things later on.

3           As a secondary comment, going through these  
4 forms, my wife runs a nonprofit that develops affordable  
5 housing. A major component of what they do is home buyer  
6 counseling, and they routinely deal with members of the  
7 public, roughly the same financial wherewithal that we're  
8 talking about here, and even in the most simple mortgage  
9 application forms they have to have a home buyer counselor  
10 walk them through it step by step. You have to assume  
11 that people that are looking at these that are the  
12 indigent and pro se target audience for this are going to  
13 be essentially functionally illiterate in one or two  
14 different languages and will not be able to understand it.

15           Considering that, last year I think the  
16 number is 20 million people hired a tax preparer to fill  
17 out a 1040EZ, which has just 10 blanks on it. H&R Block  
18 has like 16 to 20 percent of their customers are people  
19 trying to figure out a 1040EZ. If you have someone of  
20 that general ilk trying to fill out a very complicated  
21 form like this, they're going to fall into these traps  
22 that will have serious consequences not just for divorce  
23 but for other proceedings later on, and there's a risk I  
24 think the Supreme Court might have of giving its  
25 imprimatur that somebody might think they are in safe

1 hands by using the Supreme Court form, and not realize  
2 that because of, you know, variations in terminology about  
3 where you live, what is your residence, they could be  
4 falling into a trap. So the Supreme Court has to be  
5 careful they don't give its imprimatur to something that  
6 could lead to waiver of rights later on.

7 CHAIRMAN BABCOCK: Justice Bland.

8 HONORABLE JANE BLAND: I agree with Judge  
9 Jennings that the warning that's contained at the top of  
10 the various pleadings ought to be given in the instruction  
11 booklet. Everybody presumably at some point in their  
12 elementary school career goes through standardized tests,  
13 and everybody is used to getting all the instructions at  
14 the beginning and then open your test booklet, and I'm not  
15 sure once they get to opening their test booklet to fill  
16 out these forms they're going to be in the mode of reading  
17 instructions. I also agree with Judge Jennings that the  
18 "Do not use these forms" should come before when to use  
19 these forms because I think most instruction booklets to  
20 put together something or to -- if you buy a new  
21 appliance, they say -- they first say, "Stop, do not do,"  
22 and they tell you what all the warnings are and then they  
23 instruct you how to put it together, and so I think from a  
24 perspective of trying to inform the reader about the  
25 implications of what they're doing, those should go first.

1 I understand that they're trying to fit it all here on one  
2 page, but to me the way it reads now you may not even go  
3 over here to the right-hand column and read, "Do not use  
4 these forms" if you've gotten through all this stuff on  
5 the lefthand side.

6           And then I had a couple of comments about  
7 the "Stop, do not use these forms" section. One is I  
8 think the family law section pointed out that the "You and  
9 your spouse are not residents of Texas" is inconsistent  
10 with when you could use those forms, so we need to make  
11 that language more consistent and then I think Judge  
12 Jennings and Judge Brown were both talking about the  
13 pension retirement, 401(k) plan. One of the things Judge  
14 Warne pointed out was that people don't understand that  
15 they may have a vested future interest in a pension or  
16 401(k) plan, so I think it might should say, "You or your  
17 spouse has a pension retirement plan or a 401(k) now or in  
18 the future" so that people understand that even if they're  
19 not currently receiving the pension, but if they have an  
20 entitlement to pension benefits that would fall under  
21 this, "Do not use this form."

22           CHAIRMAN BABCOCK: Okay. Frank Gilstrap.

23           MR. GILSTRAP: Along -- I want to endorse  
24 what Justice Gray said. I think the top line needs to say  
25 "No real estate." That communicates a lot better than



1 "real property," whatever that is. Down in the next to  
2 last paragraph it says, "Will there be a fee? Yes. The  
3 fee may be different from county to county and range from  
4 150 to \$300." I don't know what that fee is. I do know  
5 what it is, but they won't. I think you ought to say  
6 "What will it cost?" And I think you ought to use the  
7 term "court costs" or "filing fee," and maybe tell them  
8 what that is. You use the term "filing fee" later in the  
9 paragraph and then over on the affidavit of indigency you  
10 call it "court fees." I'd call it "court costs" all the  
11 way through and tell them what it is.

12           One more thing, "If you have a disabled  
13 child of any age," what if you have a disabled child by a  
14 prior marriage? That's not a problem, is it? I mean,  
15 shouldn't it -- maybe it needs to say, "You and your  
16 husband" or "You and your spouse have a disabled child of  
17 any age," because it's my impression if I have a prior  
18 marriage and a disabled child it won't be affected. Am I  
19 right? I don't know.

20           MR. GAGNON: I understand.

21           CHAIRMAN BABCOCK: Skip.

22           MR. WATSON: One of the things that I  
23 assumed would be in the bold print, first line heading  
24 that isn't would be that this is an agreed divorce kit,  
25 not just a divorce kit, and that I would have to read down

1 to get to "Do not use unless." To me that needs to be up  
2 there with "minor children and real property," just to  
3 make it real clear from the get-go that don't even read  
4 further if this -- you know, if there is a dispute and you  
5 get into it; and something that Judge Christopher said,  
6 now, I'm sure that there's an embarrassingly simple answer  
7 for this, but I need to ask it. I don't understand why we  
8 don't have the capacity if it's truly an agreed divorce,  
9 as opposed to undisputed, that we don't have the capacity  
10 to drop the fiction of an adversarial process, which is a  
11 fiction at that point, and to style the petition,  
12 "Petition for agreed divorce" and have two petitioners  
13 sign it to get rid of the problems that some of us  
14 discussed at lunch about service, et cetera, et cetera;  
15 and I know that you folks who do this all the time that  
16 there's probably a real good reason, probably in the  
17 Family Code, why that doesn't get past go; but to me it  
18 would simplify things greatly for this to be at the start  
19 an agreed divorce kit and nothing else and for the  
20 petition to be a petition for agreed divorce to cut out  
21 service, to cut out the response, and to just have that be  
22 the basis for the offer of proof at court.

23 CHAIRMAN BABCOCK: Okay. Professor Hoffman,  
24 then Richard Munzinger.

25 PROFESSOR HOFFMAN: So as often is the case

1 I find myself in agreement with Tracy Christopher and Jane  
2 Bland.

3 CHAIRMAN BABCOCK: Oh, you suck up.

4 PROFESSOR HOFFMAN: Yeah. So let me just  
5 add onto what they say. I think the problem with this  
6 first page as I see it is it's trying to do too much and  
7 two different things. One is what Tracy Christopher was  
8 talking about in that it tries to do uncontested and  
9 defaults in the same thing. It seems like it ought to be  
10 separated. The other is if you'll notice everything below  
11 the box, the military family's boxes, none of those are  
12 sort of introductory "Can I use this form or not." Those  
13 are all, for example, if I'm an immigrant, that could go  
14 into the questions, as is "Is there a fee?" "Where do I  
15 turn in the form?" So I would take all those last four  
16 points, move them out, and instead sort of rejigger this  
17 form so that it looks cleaner to see. I can use it in  
18 these circumstances and I can't use it in these others.

19 CHAIRMAN BABCOCK: Richard Munzinger.

20 MR. MUNZINGER: If I were a lawyer giving  
21 advice to two people who came to me and asked me to help  
22 them get a divorce, an agreed divorce, and I did not say  
23 to the spouses, "Mr. Smith, you work for American Smelting  
24 & Refining Company."

25 "Yes."

1 "You have a pension."

2 "Yes."

3 "Did you, Mrs. Smith, know that you have a  
4 right to his pension?" If I didn't do that, she could  
5 later arguably sue me for malpractice because I didn't  
6 tell her that, and she ought to win. The Supreme Court,  
7 if it adopts a form that doesn't address in some detail or  
8 at least provide information in some detail to these  
9 indigent spouses, people of limited education, that they  
10 had a right in their husband's or wife's pension plan is  
11 committing malpractice. This needs to be carefully  
12 thought through, and people need to be warned what their  
13 rights are. We've all seen divorces where people come in,  
14 they're emotional, "You can have everything." Okay, fine,  
15 you don't think about it. Later you think about it after  
16 the judgment is entered and you don't have the money, and  
17 here we are putting a set -- we, the Supreme Court, is  
18 putting a set of forms out in this life changing  
19 experience and doing so with, in my personal opinion, a  
20 minimum of advice to the citizens that it's affecting. I  
21 don't think that's good. I don't think it's good law. I  
22 don't think it's good public policy. I don't know how  
23 it's done simply, but the whole focus of this is access to  
24 justice.

25 CHAIRMAN BABCOCK: Gene Storie, before you

1 make your comment, what have you done to your face?

2 MR. STORIE: As usual I am just acting, a  
3 play that I'm in opened yesterday, showing again tonight,  
4 in case anyone wants to come.

5 CHAIRMAN BABCOCK: Where is the play and  
6 what time does it start?

7 MR. STORIE: It's at the Curtain Theater,  
8 8:00 o'clock, "The Alchemist" by Ben Jonson. I have a  
9 small but silly role, so --

10 HONORABLE JAN PATTERSON: But it's all in  
11 preparation to be Santa Claus.

12 MS. BARON: I have seen him perform, and he  
13 is great.

14 CHAIRMAN BABCOCK: Now we're talking. Now  
15 make your comment. After we've --

16 MR. STORIE: My comment, I agree with Skip.  
17 It seems to me if the idea is to have a form for an agreed  
18 process it ought to be right up front that it's agreed and  
19 people should agree and say they're agreeing. I also  
20 suggest maybe a sterner warning in the dark black box of  
21 "These forms are not valid and may not be used if" --  
22 "unless you agree" to all of that stuff or something like  
23 that to really make it obvious that this is not to be  
24 tinkered with, it's only for the proper situation.

25 CHAIRMAN BABCOCK: Gotcha, thank you. Judge

1 Peeples.

2           HONORABLE DAVID PEEPLES: I wanted to make  
3 some observations about the uncontested issue and  
4 retirement plans. I think we need to allow for  
5 flexibility on whether the case is uncontested or  
6 contested. A lot of times when a case is filed, let's  
7 just say the woman is filing it, but she doesn't know  
8 whether it's going to be contested or not. Maybe he's not  
9 even speaking to her, and maybe he has given her assurance  
10 that it will be agreed, but things change and it becomes  
11 contested in large part or maybe on an issue or two; and  
12 sometimes cases start out contested, as we all know, and  
13 they turn out to be settled, so I think to assume that  
14 cases are of some variety from the get-go and they stay  
15 that way is utterly unrealistic, and we need to allow for  
16 that. I would allow the forms to be used if the case  
17 changes and becomes contested or uncontested during the  
18 life of it.

19           On retirement plans, it's been my  
20 observation that this is what usually happens: A lot of  
21 these people are young, they've been married a couple of  
22 years, and they've accumulated hardly anything, and they  
23 don't have children. By definition we're talking about a  
24 case like that, and if they have -- if one of them has a  
25 job that has a defined benefit plan, if they've been

1 married two years, they've got a two-year interest in  
2 something that's not going to be mature until decades  
3 later, and my view has been when I've had something like  
4 that, you know, you ask questions and find out about it.  
5 To me, let's say the husband has a job where he has a  
6 defined benefit plan, to divide up two years' worth and  
7 keep them tied together for something that's going to come  
8 up decades later doesn't make sense.

9                   What is much better is to take the small  
10 cash value of that plan and try to give him his two years  
11 so he can walk away and never have to deal with her again  
12 and vice versa and find some asset that balances that out  
13 that she can get. So, I mean, why keep them tied up on  
14 some fractional, fractional interest if it's a two-year  
15 marriage. Now, if it's 10-year marriage and they've got a  
16 greater interest in the plan, it's much more important.  
17 They're probably going to have children. They're probably  
18 going to have assets, and it's going to be not appropriate  
19 for these forms, so I think to get hung up on hypothetical  
20 issues of lots of interest in a retirement plan in these  
21 divorces we're talking about is just not going to happen  
22 that much. When it does happen it needs to be dealt with,  
23 don't get me wrong, but I don't think the tail ought to  
24 wag the dog here.

25                   CHAIRMAN BABCOCK: Justice Patterson.

1                   HONORABLE JAN PATTERSON: I do agree that  
2 the concept of pension plans and retirement plans is a  
3 very complicated one and perhaps in most instances  
4 requires some legal advice, because very often a lot of  
5 these are military, and that is relatively complicated,  
6 but what distinguishes that prong from the rest of them is  
7 all the other tests except the first one and the pension  
8 plan prong, everything else is objective, you're pregnant,  
9 you have a child, you have a disabled child, you're in  
10 bankruptcy. You know, those are all -- none of those  
11 require legal advice, but pension plans are a whole other  
12 animal, and if this form is to apply to the most simple,  
13 it seems to me that Richard's solution is a good one to  
14 put a period at the end of 401(k), or I'm not sure if that  
15 was your solution, Richard, but "You or you spouse has a  
16 pension, retirement plan, or 401(k)," period, so that this  
17 form does not apply in that circumstance, and it gives  
18 them information to be able to seek advice, and I don't  
19 think that makes it wagging the tail, but I do think that  
20 it is a whole other type of nonobjective criteria in that  
21 list.

22                   CHAIRMAN BABCOCK: The tail can wag; it just  
23 can't wag the dog.

24                   HONORABLE JAN PATTERSON: Whatever, whatever  
25 that is.



1                   CHAIRMAN BABCOCK: Justice Jennings.

2                   HONORABLE TERRY JENNINGS: Well, just to  
3 echo what you said, if this form is going to be used for  
4 agreed cases you have to consider the worst case scenario  
5 of a situation where a man may be abusive to a woman for  
6 years and now he's decided to get rid of her, and he  
7 doesn't tell her what assets he may have, and he may just  
8 put this form in front of her to get her to sign it, so I  
9 do think you need to have those kind of warnings on there.

10                   And one thing I think is kind of on point in  
11 this regard is I think this was the commission's -- from  
12 the commission's report where they talk about the  
13 different states and that there was no harm and so forth  
14 in using the forms. Well, I would encourage the Court and  
15 the committee to look at the comments from the good folks  
16 in Indiana who have a number of comments about litigants  
17 using the wrong form, not understanding their rights,  
18 people tend to use forms without a full understanding of  
19 what they're supposed to be used for, they become  
20 frustrated when they cannot get the relief they were  
21 requesting, litigants are harmed by incomplete forms,  
22 missing important information or issues, and lack of the  
23 understanding of the legal process. "As long as people  
24 are self-represented this is not likely to change." A  
25 clerk wrote, "Litigants misuse the forms sometimes, use

1 them for the wrong reasons or try to modify them to fit a  
2 situation that they aren't designed to address."

3 "There are times when litigants don't read  
4 the directions or understand the implications of court  
5 actions, but that is not the fault of the forms, that is  
6 the fault of society that doesn't have adequate access to  
7 counsel, which is a different issue entirely." And then  
8 they say, "Well, yeah, these are great for judicial  
9 efficiency and court efficiency," but there are inherent  
10 problems in using these forms, and that's why I think you  
11 need to have front and center, "Stop and think about  
12 this," and I think we do have to keep in mind that if  
13 we're going to go to this form and it's going to have  
14 Supreme Court approval you're going to have to be able to  
15 think of and try to warn people about situations in which  
16 they shouldn't be using this form.

17 CHAIRMAN BABCOCK: Marcy, then Justice  
18 Brown, and then Richard.

19 MS. GREER: I had a couple of suggestions  
20 for the front.

21 CHAIRMAN BABCOCK: Speak up, Marcy, can't  
22 hear you down here.

23 MS. GREER: There have been a number of  
24 studies done recently about how our minds are being  
25 retrained to read in an F pattern because we do so much

1 computer work, and the most important information is in  
2 the blind spot, and so I think that there are some ways to  
3 -- and this is scientifically proven. I'm not making it  
4 up. Robert Dubose talks about it. I think if you  
5 reformat it I like the idea of having the black box  
6 disclaimer at the top. I think that would be helpful, and  
7 maybe move some of this around. I do think the  
8 immigration status needs to stay on the front. I think  
9 that's really important, but I think it might be  
10 misleading. I think you need to reiterate that you can  
11 still file for a divorce as long as you satisfy the  
12 six-month residency requirement, just reiterate that part  
13 because somebody might say, "Oh, I'm an immigrant, I can  
14 file here, I don't have to worry about the other pieces of  
15 it."

16           But I think that this is -- like the fee,  
17 for example, that could go on the Q and A or that could go  
18 somewhere else, and then I think there ought to be a  
19 question and answer about pensions to explain to people  
20 that there are -- you know, you may be entitled -- if you  
21 or your spouse has a pension, the other one may be  
22 entitled to it even if he you haven't retired, and maybe  
23 you just deal with that question in Q and A so that they  
24 can understand that there are rights that might be  
25 compromised. I do think it's very difficult to deal with

1 it if there's going to be any kind of division, even if  
2 it's a small amount, and so it probably makes more sense  
3 to leave it like this and say this is not appropriate for  
4 that situation.

5                   CHAIRMAN BABCOCK: Justice Brown, then  
6 Richard, and then Frank.

7                   HONORABLE HARVEY BROWN: My comment was  
8 going to be similar in that this document looks like a  
9 document to me that the lawyers put together, and by that  
10 I mean there's not much white space. There's a whole lot  
11 of small words, and I think it might be helpful to have  
12 somebody who is almost -- you know, there are experts in  
13 warnings and the like. I mean, I wonder if you want color  
14 on this, I wonder if you want some different font sizes,  
15 and I definitely think putting that on the right side is a  
16 problem. I personally think it might be better to have a  
17 second page rather than try to get so much on one page  
18 that people may not read it all. I like most of those  
19 suggestions from Indiana I thought were really good that  
20 Justice Jennings read.

21                   CHAIRMAN BABCOCK: Richard.

22                   HONORABLE TERRY JENNINGS: They weren't  
23 suggestions. They were critiques of their own system.

24                   CHAIRMAN BABCOCK: Critiques.

25                   MR. ORSINGER: Okay. There are four points

1 that were important to the subcommittee that haven't come  
2 up in discussion yet. I'm going to list them and hope we  
3 elicit some comment. By a vote of five to one the  
4 subcommittee recommended any officially approved divorce  
5 forms should be limited to uncontested divorces. That  
6 means that if you are pro se and you're using these forms  
7 and you have a contest, then the court doesn't have to set  
8 your case for hearing or trial; and the reason is because  
9 if we don't preclude in some meaningful way the use of  
10 these forms in a contested divorce then we have one or two  
11 pro ses in a district court with inadequate pleadings not  
12 understanding their subsequent rights and a district judge  
13 trying to supervise all of that, so the committee wasn't  
14 unanimous but there's been no discussion of that yet.  
15 There's some assumptions around this table that these  
16 forms are used only for uncontested purposes; but if you  
17 look at the form pleading it says, "If we can't agree on  
18 the property division, we ask the court to divide the  
19 property in a manner that is just and right." So the  
20 petition assumes that the form will be used for other than  
21 uncontested purposes.

22           Point number two, again, by a five to one  
23 vote the subcommittee felt like a warning is not an  
24 adequate way to keep these forms from being misused and  
25 causing harm; and what we want, what the suggestion was

1 for the majority is an affidavit that says "I do not have  
2 children, I do not have real estate," and all of the  
3 things that are just warnings in here, we require them to  
4 say that under oath, so that they're at least reticent to  
5 lie about it; and if a judge -- if the order that comes  
6 down from the Supreme Court is that you are required to  
7 accept these forms, you, district judge, are mandated to  
8 accept a divorce based on these forms, but if all this  
9 debate is based on the idea that it's only designed for  
10 people without real estate and without kids then we  
11 shouldn't require the district judges to allow the  
12 divorces to go forward when there is real estate and there  
13 are kids; and that's why I think a majority of the  
14 subcommittee felt like we should require them to swear  
15 that they qualify to use the forms and if they don't then  
16 the judge has an out.

17           The third point is there was a three to  
18 three vote on the subcommittee, so we have no majority on  
19 whether there should be any kind of means related  
20 condition to the acceptance of these forms. The suggested  
21 idea was \$50,000. That happens to be the level one, level  
22 two division in our discovery rules. One member wanted to  
23 reduce it to 25. One member was very strongly against any  
24 restriction on the use of the form whatsoever, but if  
25 these forms are for poor people then maybe we should

1 either tell them or make them swear that they don't have  
2 an estate larger than 50,000 or larger than 75,000 or  
3 whatever so that we know when they're misusing it, and the  
4 district judge then presumably would have the right to  
5 refuse to proceed with the case when the forms are being  
6 misused.

7           The fourth point is that even indigent  
8 people have a right to spousal support after the divorce.  
9 We call it spousal maintenance here in Texas, and in fact,  
10 it's the indigent recipients -- or indigency is one of the  
11 criteria for receiving spousal support, and I don't think  
12 there is much explanation of that right in here, and there  
13 are people that are signing waivers --

14           MR. GAGNON: Did you say indigency was a  
15 criteria for seeking spousal support?

16           MR. ORSINGER: Well, you have to be unable  
17 to meet your own reasonable minimum needs out of your  
18 share of the property division or --

19           MR. GAGNON: Case law says indigency isn't a  
20 test.

21           MR. ORSINGER: I know that. You're using  
22 "indigency" in the technical term.

23           MR. GAGNON: Well, I'm just --

24           MR. ORSINGER: Okay, Stewart, I'm not going  
25 to debate how many angels are on the head of a pin. We're

1 talking today about poor people.

2 CHAIRMAN BABCOCK: Why not, that's what we  
3 usually do?

4 MR. ORSINGER: If we had more time we could.

5 HONORABLE JAN PATTERSON: That's what we're  
6 best at.

7 MR. ORSINGER: Stewart's point is, is that  
8 indigency has a definition for purposes of Federal law and  
9 that Texas courts have said that none of those indigence  
10 standards for state benefits or Federal benefits are the  
11 trigger for post-divorce maintenance, but you can't get  
12 maintenance in California just because you're married to  
13 an actor or, you know, an author. I mean, in Texas you  
14 only get post-divorce maintenance if you can't meet your  
15 own minimum reasonable needs out of your share of the  
16 property division and out of your employment  
17 opportunities, so there will be a lot of poor people who  
18 would qualify for spousal maintenance, and these forms  
19 don't do an adequate job or perhaps not even any job at  
20 all of informing people that you have the right to request  
21 it, so maybe you don't want to sign a waiver if you want  
22 post-divorce maintenance or the fact that you do sign a  
23 waiver you may think you have no property but you may end  
24 up with, depending how long you were married, seven years'  
25 worth of post-divorce alimony. That's not in this packet.



1 I want to throw all four of those items out, and I hope  
2 that they attract some discussion.

3 CHAIRMAN BABCOCK: Frank, do you remember  
4 even what you wanted to say?

5 MR. GILSTRAP: I do, I do, and I'll have a  
6 couple more now that Richard has talked. First, on the  
7 question of -- it says "You and your spouse are not  
8 residents of Texas." I thought you had to be a resident  
9 for six months and a resident of the county for 90 days.

10 MR. ORSINGER: Domiciliary for six months,  
11 which is more than residency.

12 MR. GILSTRAP: What's that?

13 MR. ORSINGER: You must be a domiciliary of  
14 Texas, which is more than residency, and the form only  
15 talks about --

16 MR. GILSTRAP: Should we warn them that they  
17 have to be a domicile before they -- for six months before  
18 they file?

19 MR. ORSINGER: They'll understand that real  
20 well.

21 MR. GILSTRAP: Well, I mean, if they're not,  
22 they're not supposed to file.

23 MR. ORSINGER: I know that, but, I mean,  
24 somebody has got to tell them what constitutes a domicile.  
25 I'll bet you if we ask what around the room here nobody

1 would know the definition.

2 MR. GILSTRAP: How about this? How about  
3 this? "You can't file unless you've lived in Texas for  
4 six months and in the county for three months."

5 MR. ORSINGER: You haven't quite got  
6 domicile there.

7 MR. GILSTRAP: But it's a lot closer than  
8 what this is, okay.

9 MR. GAGNON: Because it has to do with  
10 angels on the head of a pin.

11 MR. ORSINGER: No, it has to do with the  
12 intent for this to be your legal home in addition to being  
13 your actual residence.

14 CHAIRMAN BABCOCK: Okay, next.

15 MR. GILSTRAP: But right now, right now this  
16 form is defective because it's telling me that if I just  
17 moved to Texas, I can file, and I don't think you can.

18 Okay. Other things, I was the dissenting  
19 vote on the sworn forms because I don't think that the  
20 affidavit is going to mean anything, people just get it  
21 notarized, but I have had a second thought based upon  
22 something Richard Munzinger said, and that's this: Let's  
23 assume we have this worst case scenario, where, you know,  
24 you know, my -- I trick my wife and she leaves my  
25 million-dollar pension out and I get the million-dollar

1 pension and she doesn't, and yet I've sworn that we don't  
2 have a pension plan. Is that a basis for reopening?

3 MR. ORSINGER: I don't think so. It's a bill  
4 of review question, but the big problem -- and I've been  
5 involved in a lot of them -- is that you have to prove  
6 that you were not negligent, which is going to be hard,  
7 and also, if there was a wrongful act on the other side it  
8 can't constitute intrinsic fraud. It must be extrinsic,  
9 and the classic example of extrinsic fraud is lying about  
10 whether you don't have to file an answer, lying about the  
11 date of trial, something that keeps them from appearing in  
12 court. Intrinsic fraud is lying about the extent of your  
13 estate, the character of property, or the value of assets.  
14 So when you couple the non-negligence burden on bill of  
15 review with the intrinsic fraud exclusion of bill of  
16 review, I feel like these mistakes that are made in this  
17 property division are not fixable on bill of review, but  
18 since I may be advocating the opposite of that, I might  
19 change my mind on further reflection.

20 MR. GAGNON: He'll talk to himself about it.

21 MR. GILSTRAP: If the sworn forms aren't  
22 going to help the problem of the tricking somebody out of  
23 the pension I still don't think we ought to have sworn  
24 forms.

25 Finally, you know, you're saying, well, we

1 need this to show that they're indigent, but that's a  
2 policy issue that really hadn't -- that, you know, I guess  
3 the Court is going to have to decide because there's this  
4 other argument that we need it to at least deal with the  
5 flood of pro se persons, some of -- many -- a significant  
6 number of whom appear to be not indigent, and so, you  
7 know, that's what I have. That's it.

8 CHAIRMAN BABCOCK: All right. Richard.

9 MR. GAGNON: There is a different test  
10 between indigency and poor.

11 MR. GILSTRAP: Oh, okay.

12 MR. GAGNON: And I think that's something  
13 that clearly comes out of 145, that you may qualify for  
14 legal representation because you're poor, but you're not  
15 indigent.

16 MR. GILSTRAP: All right.

17 CHAIRMAN BABCOCK: Munzinger, then Justice  
18 Bland.

19 MR. MUNZINGER: Richard Orsinger invited  
20 comment on the point about residency and domicile. Isn't  
21 it odd that the Supreme Court's proposed form does not  
22 meet the requisites of the law in terms of domicile? This  
23 is an amazing thing to me. It's an amazing thing to me  
24 that the Supreme Court of the State of Texas would publish  
25 a form that allows an indigent person to have a less

1 stringent qualification than the Legislature has provided.  
2 Good gracious. And all in the interest of what? We've  
3 talked before about dumbing down language, and we all want  
4 to do things in language that the citizens can understand,  
5 but never at the expense of law and truth, and here the  
6 Access to Justice is saying, "Well, let's just get this  
7 form out there, even though you're not a domicile." They  
8 don't explain what domicile is. How can we do such a  
9 thing as a court?

10 CHAIRMAN BABCOCK: Justice Bland, your  
11 comment, but before you do could you get on the record as  
12 a supporter of law and truth?

13 HONORABLE JANE BLAND: My comment is about  
14 the suggestion that we have somebody provide an affidavit  
15 in support of the fact that they fall within the  
16 parameters of this petition, and I'm inclined to support  
17 Judge Peebles in that we shouldn't create rules for using  
18 this form that are more onerous for these litigants than  
19 they would be if they were represented by counsel or they  
20 used a private form. In other words, we don't require  
21 litigants represented by counsel to make those kinds of  
22 affirmances to file their lawsuit. We don't require --  
23 we're not requiring people who do private forms to make  
24 those kinds of declarations under oath; and I think the  
25 idea is this is the opening petition; and as Judge Peebles

1 indicated, things can change and we allow free amendment  
2 of pleadings; and if we were going to require picture  
3 perfect pleadings at the outset of every lawsuit, almost  
4 none of them would succeed to final hearing. We try  
5 things by consent, things change, they get amended; and  
6 the real truth is that if they've done this incorrectly  
7 the remedy is that you don't grant the final divorce  
8 unless the evidence at the hearing proves up the basis for  
9 that divorce; but I don't think we can be the pleadings  
10 police. We can warn about the consequences of ineffective  
11 pleading or, even more importantly, wrong facts. I mean,  
12 what we're really getting at is that these people don't  
13 qualify for the kind of divorce that they're seeking. We  
14 want to warn them about that, but it can't be through  
15 policing their pleadings and requiring affidavits and that  
16 kind of thing. I think that would have to be the  
17 Legislature that would require that.

18 CHAIRMAN BABCOCK: Judge Estevez, and then  
19 Richard.

20 HONORABLE ANA ESTEVEZ: One of the concerns  
21 I've had being on the subcommittee from the beginning has  
22 been that we were asked to do these or the whole Access to  
23 Justice system is for indigents. I always wanted to have  
24 this form attached somehow to the affidavit of indigency,  
25 and so since that kept getting struck down saying it

1 wasn't practical, there was no way that we could keep it  
2 outside of that scope, then this is a way I've thought  
3 that we could still keep it to the people that we are  
4 really wanting to use this form and not -- it's not  
5 restricted to people who fall under 11,000 or whatever it  
6 may be per year; but it is a protection for these people,  
7 not something that's necessarily more onerous; and it  
8 doesn't have to be an affidavit. It can be a declaration.  
9 It could be something -- it is something for them to  
10 acknowledge this is what you are saying when you do this,  
11 because you may just lose your pension right in about 10  
12 minutes for the rest of your life that may have been worth  
13 \$3,000 a month for the rest of your life, depending on how  
14 long you were married, and your spouse is going to get  
15 something out of it.

16           I mean, this is a very -- we are really  
17 going to be affecting people, people's lives, if you  
18 promulgate this form and you make it mandatory, and I  
19 don't think you can do enough to give them a warning. I  
20 mean, I think it's great if we want to put it on the left  
21 side and if we want to put it in the front and we want to  
22 just write "stop" right at the very beginning, but I think  
23 adding another one more step where they just actually  
24 swear to it and whether or not they can use it in  
25 bankruptcy court, because I do think it could end up being

1 some other judicial admission, we put them under oath, you  
2 know, at some point. You brought that up. We put every  
3 litigant that comes for the divorce is going to be under  
4 oath when we prove up the divorce. So they're going  
5 through the same thing at that later time anyway. You're  
6 just asking them to fill out another form just to make  
7 them realize before they go to the next step that maybe  
8 this isn't our form and maybe I need something else. And  
9 I think when we get into this step of somewhat practicing  
10 law, that we should do that for that litigant --

11 CHAIRMAN BABCOCK: Munzinger.

12 HONORABLE ANA ESTEVEZ: -- that doesn't have  
13 representation.

14 MR. MUNZINGER: Briefly responding to  
15 Justice Bland's point, when a lawyer files a petition for  
16 divorce the lawyer is an officer of the court who has  
17 taken an oath and who is bound by Rule 11 and is precluded  
18 from making an allegation of domicile that is not true.  
19 So there's -- the lawyer has done the weeding out process.  
20 Now you have someone who is coming in, no weeding out  
21 process, who doesn't know what domicile is, and the  
22 Supreme Court's form doesn't tell them what domicile is  
23 and doesn't require any assurance from the litigant that  
24 domicile is met, but it's a Supreme Court form. That  
25 doesn't make sense to me.



1                   CHAIRMAN BABCOCK: Okay. Orsinger, and then  
2 Stewart.

3                   MR. ORSINGER: There's a disconnect in the  
4 argument that I hope is obvious to everyone, and that is  
5 that the justifications that are advanced for these forms  
6 are that indigent people don't have any real property that  
7 they can harm, but the second anybody tries to implement a  
8 procedure or a safeguard to keep wealthy people from using  
9 these forms, they're knocked down because their idea is  
10 stupid or we're being police or something else. Bottom  
11 line is, let's get honest here, if we're going to justify  
12 these forms by allowing everybody to use them then let's  
13 debate the fact scenario of the people who have been  
14 married 20 years and do have retirement benefits and do  
15 have real property and do have children, and let's quit  
16 trying to defend these forms on the basis they're for poor  
17 people and then take out all of the prohibitions against  
18 people that are not poor using it and potentially damaging  
19 themselves.

20                   CHAIRMAN BABCOCK: Stewart.

21                   MR. GAGNON: I would just observe that maybe  
22 other than Richard I probably don't know two family law  
23 lawyers who when they sit down in an initial consultation  
24 with a client that ask them where they've been domiciled  
25 the last six months. They ask them where they live, and

1 if they've lived there for six months then they're going  
2 to file their divorce and they're going to qualify,  
3 because most people where they live is where they intend  
4 at that time to reside.

5 MR. GILSTRAP: And that's what your petition  
6 says.

7 MR. GAGNON: I mean, you know, that's just a  
8 practical matter. We tried to -- I mean, we can correct  
9 that if you want to correct it, but we tried to make it  
10 applicable to just about everybody. Richard may ask that  
11 question. I don't. And I handle a lot of divorces all  
12 the time.

13 CHAIRMAN BABCOCK: Pete, then Tom.

14 MR. SCHENKKAN: On that question, on both of  
15 the where you live versus domiciled and the fact that  
16 there's going to have to be sworn testimony anyway once we  
17 get to the point of the judge granting the decree, I just  
18 wanted to check, and it's been a long time -- I have  
19 handled some pro bono divorces through Volunteer Legal  
20 Services in Austin, but it's been a number of years, so  
21 I'm working instead not from memory but from page five,  
22 "Are you ready for court?" where there is a block that is  
23 on the right-hand side that it says, "Sample testimony for  
24 divorce without children and without real property," and  
25 it sure looks like what I remember being told by the

1 family law lawyer who I was relying on for advice not to  
2 handle the case wrong was exactly what I needed to make  
3 sure I could lead my client through pretty quickly to get  
4 this divorce. Is this roughly right? Is this in this  
5 block in the right-hand column roughly right in the sense  
6 of sufficient legally? It may sometimes be a mistake to  
7 say it, you know, and it may be that it wouldn't cover a  
8 situation, Richard, where, yes, they've lived in here for  
9 the last six months, but they don't really intend it as  
10 their home, but is this exactly as a practical matter what  
11 you usually do and what the judges at the end of it say  
12 that's good enough to grant it?

13 HONORABLE DAVID PEEPLES: Yes.

14 MR. SCHENKKAN: And if that's the case then  
15 the next question is if there are some people who have a  
16 million-dollar pension that's going to vest in another 10  
17 years, and they want to try to do this anyway, we've put a  
18 big warning somewhere in suitable words -- and I do want  
19 to talk about suitable words for that -- and they want to  
20 go ahead and do it anyway, that's their problem, they have  
21 screwed it up, but I do not think we should stop our  
22 ability to let the people who actually qualify, which is  
23 most of them, from getting this done out of a desire to  
24 protect --

25 THE REPORTER: I can't hear you.

1 MR. SCHENKKAN: I beg your pardon?

2 THE REPORTER: I couldn't hear that last  
3 part.

4 MR. SCHENKKAN: We should design our forms  
5 and instructions that are recommended to the Court such  
6 that they will work for the vast majority of the poor  
7 people who, in fact, have no children born or women not  
8 pregnant between the date of the marriage and the date of  
9 the divorce, no house or other land, and no pension plan.  
10 We should let that be good enough, and if there are some  
11 rich people who make a foolish mistake of using it, that's  
12 their mistake. That's a good illustration of why you  
13 shouldn't do that to save a little money if you're able to  
14 afford the lawyer, and if it happens to one or two of them  
15 and it makes the paper, that will probably discourage the  
16 rest of them. So am I missing something on that? And  
17 maybe this really goes to you, Richard. I know you are  
18 worried about our leading people astray, but it seems to  
19 me that the ones who are led astray by this are ones who  
20 ought to be capable and have enough sense to realize they  
21 need to spend a little of their money to go to you and get  
22 it right.

23 MR. ORSINGER: Yeah, I see your point, and  
24 what I don't see is the reason we shouldn't preclude  
25 people who have wealth from using these forms, because

1 that doesn't stop poor people from using the forms. It  
2 just stops rich people or even moderately rich people, so  
3 what's the harm in saying this form is designed to protect  
4 people that have no property and no kids, and if you go to  
5 court with this form, we're not protecting you, the  
6 Court's not protecting you, no lawyer is protecting you,  
7 so we just tell them that and then hope that they don't  
8 hurt themselves, or do we actually prohibit them from  
9 using it?

10                   And remember, behind all of this is a  
11 court -- is an order we haven't seen the language on  
12 that's going to require trial judges to accept these  
13 forms. I don't know what it's going to say. I don't know  
14 if they're going to maintain the discretion to reject it  
15 if they want to, or I don't know how that will work out,  
16 but it does seem logical to me that if these forms are  
17 designed to handle the vast amount of poor people and are  
18 not giving any protections to people of moderate wealth,  
19 then we ought to preclude that use, we ought to make them  
20 tell the court if they're misapplying the form, and the  
21 court should have the authority to tell them "Go hire a  
22 lawyer," and I haven't heard a good reason why we  
23 shouldn't do that latter part, which is protect the people  
24 that do have property and kids from hurting themselves.

25                   CHAIRMAN BABCOCK: Tom.

1 MR. RINEY: Well, this is just an  
2 observation, and I don't know anything about family law,  
3 and I'm not really advocating this, but if this form is  
4 what it says, that is, if all issues are agreed and if our  
5 goal is to protect people who truly can't afford a lawyer  
6 and they simply need to end the marriage when they have no  
7 children and they have no assets and they have no real  
8 property, why does the judicial system need to be involved  
9 at all? Should we instead recommend to the Legislature  
10 some procedure where instead of when you go the county  
11 clerk's office you get your marriage license here or go to  
12 the window next here and you say, "We have agreed to  
13 everything, we have no children, we have no real property,  
14 and we simply want to pay a fee and end the marriage"?

15 Again, I'm not advocating that, but we have  
16 to look at what our real purpose is, and if our solution  
17 is to give people that can't afford a lawyer a way to end  
18 their marriage under these limited circumstances, why do  
19 we need to go to the complexity of having a form that  
20 protects people who don't fit that situation from hurting  
21 themselves?

22 HONORABLE TOM GRAY: If he's not going to  
23 advocate it, this Tom will. I agree with you.

24 MR. GAGNON: There used to be a judge in  
25 Harris County that advocated you had to have a hearing to

1 get married and fill out a form to get divorced. That's  
2 about what you're saying.

3 CHAIRMAN BABCOCK: Justice Frost. Justice  
4 Frost, did you have your hand up about an hour ago?

5 HONORABLE KEM FROST: Well, when he was  
6 referencing the form on the right side, I thought he was  
7 referring to the sample testimony, the script, that you  
8 may not be to yet. It's on the page that says, "Are you  
9 ready for court?"

10 MR. SCHENKKAN: Yes, that was what I meant.

11 HONORABLE KEM FROST: Okay. The script that  
12 is there does not track the statutory criteria. I think  
13 you need to think about in a default situation whether  
14 this script if it was promulgated by Supreme Court of  
15 Texas would withstand a sufficiency challenge, and if it  
16 wouldn't then I think the script needs some help.

17 CHAIRMAN BABCOCK: Buddy.

18 MR. LOW: Yeah, someone mentioned insurance,  
19 and there are a lot of cases --

20 CHAIRMAN BABCOCK: I thought you're not  
21 allowed to mention insurance.

22 MR. LOW: I thought I had permission of the  
23 Court.

24 HONORABLE DAVID MEDINA: So granted.

25 MR. LOW: And there are a lot of people who

1 the husband has insurance, family plan. He has no  
2 retirement plan or something, and the lady doesn't realize  
3 she's going to lose her insurance. I got involved in a  
4 case like that, and the other lawyer didn't tell his  
5 client about it and got sued for malpractice.

6 MR. GAGNON: Are you talking about health  
7 insurance?

8 MR. LOW: Yes. And so should we have a  
9 column that maybe not as graphic as the warning on  
10 cigarettes --

11 MR. GAGNON: If I could address that.

12 MR. LOW: Well, I hadn't asked it, but go  
13 ahead.

14 MR. GAGNON: If you get divorced -- if he  
15 gets divorced he's going to notify his employer and his  
16 insurance. They are obligated by Federal law to then  
17 notify his former spouse of her rights under COBRA, which  
18 is a continuation of health insurance, and she then has a  
19 right to make that election.

20 MR. LOW: Well, lets's assume they don't  
21 follow through.

22 MR. GAGNON: If they don't follow through  
23 she's continued to be insured under Federal law until  
24 they've given her that 45-day notice.

25 MR. LOW: So that's one of the reasons you



1 don't put on a warning, "By entering into this you may  
2 lose the following," "You may lose if you have a right to  
3 a 401" -- you know, "You may lose your insurance" or  
4 anything. We shouldn't warn them about it and just not  
5 say anything? Okay.

6 MR. GAGNON: That's just not the way the  
7 procedure works.

8 CHAIRMAN BABCOCK: Judge Estevez.

9 HONORABLE ANA ESTEVEZ: I wanted to address  
10 what Tom Riney brought up because it's actually a really  
11 good point, and I spoke with Judge Warne before she left,  
12 and I've also spoken with Judge Peeples, and I don't know  
13 what other judges were on the bench as a district judge,  
14 but we don't have problems with this group of people.  
15 I've never turned -- I can't think of anyone that I've  
16 ever turned away the first time they came that didn't have  
17 children, didn't have retirement, didn't have real  
18 property, didn't have any significant assets. When they  
19 came, they got their divorce. The form, I don't know how  
20 you improve the texaslawhelp.org form when it's such a  
21 simple -- it's a simple divorce. I mean, it's simple.  
22 They can get -- anybody can probably do it. It's probably  
23 as easy as a 1040EZ or easier because you don't have to  
24 say you have any of those things. So this form is not our  
25 problem as far as the judges go, and I've talked to other

1 judges while I've been on the subcommittee trying to find  
2 out, you know, is this the problem that we really need to  
3 address.

4           Now, our problem is going to be when we end  
5 up getting those children that are coming from a different  
6 relationship other than their spouse or just when they're  
7 trying to do the visitation or they're trying to make sure  
8 that their husband never sees the child and the child  
9 support issues and all those other issues. We do have big  
10 issues with pro se litigants, but it's not these. These  
11 are not the ones that are clogging up our court. These  
12 are not the ones that aren't getting a divorce and people  
13 are coming back and saying, "They refused to do my  
14 divorce"; and I think if you ask Judge Peeples, unless  
15 he's changed his mind since our lunch, he'll agree with  
16 me. I don't think he had that many problems, and Judge  
17 Warne also said she didn't have any notable problems with  
18 this group of people. When they don't have the pensions.  
19 I mean, she mentioned the ones where they do have them and  
20 they didn't know.

21           CHAIRMAN BABCOCK: Yeah. Yeah. Professor  
22 Carlson.

23           PROFESSOR CARLSON: Yeah, when I teach  
24 subject matter jurisdiction, you know, one of the things  
25 that we discuss in a class is why is it the justice court,

1 constitutional county court, can't exercise jurisdiction  
2 over certain things like divorce; and, of course, the  
3 answer is, well, there could be complicated property  
4 issues, and we think a judge should be a lawyer before  
5 they're able to adjudicate those types of claims. Now  
6 we're going to entrust litigants who have limited means  
7 and probably limited education, and maybe it's the most  
8 efficient thing to do, I don't know. I keep thinking of  
9 the NASA Space Center a couple of weeks ago, and they sell  
10 T-shirts, "It isn't rocket science. Oh, wait, it is." So  
11 I'm saying is there really such a thing as a simple  
12 divorce? Surely there is. So I can see on the one hand  
13 the need for simplistic, but we have to have some means of  
14 making sure it's not misused or citizens don't waive  
15 rights.

16           I like the "need help" paragraph. I would  
17 like to see that moved up in the form and tell people,  
18 "Even if you intend to use these forms, you should  
19 consider consulting a lawyer and getting, you know, legal  
20 advice on your rights and obligations," something like  
21 that. I like the idea of the agreed divorce kit, and I  
22 like the idea of a joint petition. I don't know, I just  
23 feel maybe paternalistic about the Court giving legal  
24 advice and putting yourself in that position. I would  
25 rather see the parties have sufficient warnings, have an

1 ability to see a lawyer, have -- acknowledge what they  
2 have and what they don't have, and "I understand I may not  
3 have health insurance after I get divorced," all of those  
4 things, and then let it be an agreed judgment.

5 CHAIRMAN BABCOCK: Okay. If everybody will  
6 take their forms and turn to page two, the one that says  
7 "Basic information," now we're going to talk about that.  
8 Anybody have any comments? Lisa. Oh, that's not Lisa,  
9 who is that?

10 MS. HOBBS: Yes, it is Lisa.

11 CHAIRMAN BABCOCK: That is Lisa. Lisa, you  
12 can't hide like that.

13 MS. HOBBS: I'm sorry. We're kind of tight  
14 over here. Has anybody given any thought to the need for  
15 incorporating the civil case filing form? Does that not  
16 apply in family cases or --

17 MR. GAGNON: I'm sorry, I can't hear you.

18 MR. ORSINGER: The civil case filing form,  
19 isn't it required in family law cases, the cover sheet?

20 MS. HOBBS: The civil cover sheet that gets  
21 filed with every new petition now, does not that --

22 MR. GAGNON: That's something the clerk will  
23 give them when they file.

24 MS. HOBBS: Oh, she'll hand it to them and  
25 they'll fill it out right there? Should we say "expect

1 that to happen"?

2 MR. GAGNON: I think we say some point you  
3 have to -- your county may have special forms to fill out.

4 MS. HOBBS: Okay. Well, that's a statewide  
5 form now, so --

6 MR. GAGNON: It is, it is.

7 CHAIRMAN BABCOCK: Do you feel proprietary  
8 about it, Lisa, or something?

9 MR. GAGNON: Let me give you an example.  
10 Some counties --

11 MS. HOBBS: That did not happen under my  
12 watch.

13 MR. GAGNON: Some counties require you to  
14 fill out the BVS form before you file your petition, some  
15 only require you to submit it at the time of your decree.

16 MS. HOBBS: Oh, okay.

17 MR. GAGNON: So we try to cover that in a  
18 general basis.

19 CHAIRMAN BABCOCK: Man, if we all hang  
20 around we're going to know how to file a lawsuit.

21 MR. GAGNON: Well, we could all give you a  
22 pro bono case after this.

23 CHAIRMAN BABCOCK: Okay, basic information.  
24 If it's basic -- Frank.

25 MR. GILSTRAP: First line says, "Use blue

1 ink to fill out the forms." I think in the real world if  
2 these get approved they are going to be on a website  
3 somewhere, and you're going to fill it out online, like  
4 you do the Texas rule -- state commission forms, and if  
5 that's not done officially the people that sell forms are  
6 going to do it; but speaking of computers, this gets to my  
7 second comment, and I remember the first time I bought a  
8 personal computer I opened the manual and they said "Boot  
9 up the computer," and I thought all night about what that  
10 meant rather than read the information I couldn't find.

11                   CHAIRMAN BABCOCK: Because you're easily  
12 amused.

13                   MR. GILSTRAP: In (b) we have something like  
14 this. "After the other spouse, called respondent,  
15 receives a file-stamped copy," and they're not going to  
16 have the slightest idea of what that means; and on the  
17 next page you do tell them that you give your spouse a  
18 copy of the petition that has been stamped by the court.  
19 I think that needs to be up there and says hand your --  
20 "Hand your petition to the clerk and pay your fee and then  
21 they're going to stamp something on it and take it back,"  
22 and I think you need to tell them to preserve that; and at  
23 the beginning of all of this you need to have a paragraph  
24 saying, "Get a file folder and keep important documents in  
25 it, including a file-stamped copy of the form," because

1 some people aren't going to do that.

2 CHAIRMAN BABCOCK: All right. The record  
3 should reflect that Pam went and made a Starbucks run for  
4 only some of us. Gene.

5 MR. STORIE: Does every county run an  
6 uncontested docket?

7 CHAIRMAN BABCOCK: I'm sorry, are you asking  
8 me?

9 MR. STORIE: I'm asking someone who knows.

10 MR. ORSINGER: There was an answer from the  
11 gallery over here is "no." Who said that? Would you  
12 stand up and help us with the question?

13 MS. MILLER: Oh, sure. Not every county  
14 runs an uncontested docket, but when folks have an  
15 uncontested case they can ask the court coordinator how  
16 that's dealt with in that county.

17 HONORABLE JAN PATTERSON: And tell us your  
18 name.

19 MS. MILLER: I'm Karen Miller, and I'm a  
20 member of the Uniform Forms Task Force.

21 CHAIRMAN BABCOCK: Okay. What other  
22 comments about basic information? Justice Christopher.

23 HONORABLE TRACY CHRISTOPHER: Well, I think  
24 the whole giving legal notice and then "What if I can't  
25 find my spouse," that last paragraph, seems out of place.

1 I mean, basically under (b), "Giving legal notice," first  
2 you have by agreement, you handed it to them and they have  
3 agreed to either answer or waive service or you actually  
4 have to serve it. Not just give it to them. So, you  
5 know, it seems to me the way that's written, again, is  
6 confusing; and "What if I can't find my spouse," that's  
7 out of place. That ought to be in a more formal "How do I  
8 serve the other side?"

9 CHAIRMAN BABCOCK: Okay. Yeah, Richard  
10 Munzinger, and then Carl.

11 MR. MUNZINGER: There's nothing on this  
12 basic information asking them what their marital estate  
13 consists of, and yet in the petition and in the  
14 information on the first page they are saying, "I hope I  
15 can agree to divide the marital estate with my spouse, but  
16 if not I ask the court to divide it in accordance with  
17 Texas law," and yet we don't ask them to tell you what the  
18 marital estate consists of, which would alert a judge, by  
19 the way, to the fact that there might be a pension that is  
20 being awarded to somebody unwittingly.

21 CHAIRMAN BABCOCK: Carl.

22 MR. HAMILTON: Paragraph (c)(2), what is a  
23 BVS form?

24 MR. GAGNON: Bureau of Vital Statistics form  
25 that the clerk will give them when they file their



1 petition.

2 MR. HAMILTON: The clerk is going to give  
3 that to them?

4 MR. GAGNON: Yes, sir. And they give it to  
5 the lawyers, too, and you have to turn it in at the time  
6 of your decree.

7 CHAIRMAN BABCOCK: Frank.

8 MR. GILSTRAP: But, Stewart, I think I don't  
9 see why you don't have the civil case filing sheet and the  
10 BVS form, why don't you have it in the kit? I mean, it's  
11 simple, and the people maybe can fill it out ahead of  
12 time.

13 MR. GAGNON: We can do that.

14 CHAIRMAN BABCOCK: Yeah. Judge Peeples.

15 HONORABLE DAVID PEEPLES: This discussion  
16 just reminds me of how we as lawyers take for granted a  
17 lot of terms, and the people that you walk past in the  
18 county courthouses of this state, that are there for the  
19 child support IV-D docket or the child abuse cases or  
20 criminal defendants, they would be a wonderful group to  
21 while they're sitting out in the hallway waiting for their  
22 case to be called, to run these forms by and find out what  
23 they understand and don't understand out of it. We, as  
24 lawyers, we speed right through this and we --

25 MR. GAGNON: Judge, let me just say, that

1 was a major discussion point every time we walked through  
2 any of this stuff, and we actually had the benefit of a  
3 client -- of a member of our task force who kept reminding  
4 us about what Bubba in East Texas would call things, and  
5 one of the -- one of the things is he doesn't understand  
6 what a real estate is, because real estate is the land,  
7 it's not his house. He owns a house. He doesn't own land  
8 someplace. That's why we went to real property, and, I  
9 mean, and I think we could probably go all around on that.  
10 You know, East Texas and West Texas all think differently,  
11 but that was a concern we had when we went through this.

12 HONORABLE DAVID PEEPLES: What I'm basically  
13 saying is at the front end here where you can change every  
14 word that you want to and it's easy to do this would be  
15 the time to field test this with some people, I mean, that  
16 -- I mean, you just cannot exaggerate the low level of  
17 ability with the English language.

18 MR. GAGNON: Well, we have field tested it  
19 on an informal basis. I will tell you that.

20 CHAIRMAN BABCOCK: Okay. Justice Bland.  
21 No, wait a minute. Hold it. Carl, you were next.

22 MR. HAMILTON: If somebody went to Texas Law  
23 Help because they couldn't find their spouse, what are  
24 they going to find?

25 MR. GAGNON: They're going to find

1 information on publication and posting service.

2 MR. HAMILTON: They're going to know how to  
3 do a service by publication by --

4 MR. GAGNON: I don't know.

5 MR. HAMILTON: -- reading something there?

6 MR. GAGNON: If you go to lawhelp.org  
7 they'll walk you through that process.

8 MR. HAMILTON: They're going to end up being  
9 able to serve them by publication?

10 MR. GAGNON: I just had a client -- I just  
11 had a pro bono client do that like a notification.

12 CHAIRMAN BABCOCK: Justice Bland.

13 MS. MILLER: Can I add to that? On  
14 texaslawhelp.org for indigent clients there is a live chat  
15 attorney that's available to walk people through that, so  
16 it is a service that's offered there.

17 CHAIRMAN BABCOCK: Justice Bland.

18 HONORABLE JANE BLAND: Chat's nice.

19 CHAIRMAN BABCOCK: What?

20 HONORABLE JANE BLAND: One of the other  
21 recommendations the Solutions 2012 had was that this part  
22 about giving legal notice needs to take into consideration  
23 somebody subject to a protective order, whether they are  
24 the person filing the divorce or responding to the  
25 divorce, and we don't really talk about how service or how

1 we give petition to the respondent. In the case of waiver  
2 of service or an answer we only talk about the process  
3 server if those other two things are not working, but what  
4 we don't want is somebody that is either subject to a  
5 protective order or has taken out a protective order  
6 giving these papers to their spouse. So we need to either  
7 warn that this is not a set of forms for people subject to  
8 protective order or we need to tell the user that if they  
9 are subject to protective order we need to have a process  
10 server, which we need to think of a more plain English  
11 words for that, effect service.

12 CHAIRMAN BABCOCK: Okay. Justice Gray.

13 HONORABLE TOM GRAY: Under (b)(2), actually  
14 it's the little paragraph under that which starts off, "If  
15 the respondent doesn't file a waiver of service," I can  
16 see a lot of arguments over "You've got to go file this  
17 before we can get this divorce," and I don't think that is  
18 accurate. I think if the sentence simply said, "If a  
19 waiver of service or an answer is not filed" because the  
20 petitioner can get the signed waiver and file it. Isn't  
21 that right, Stewart?

22 MR. GAGNON: Say that one more time.

23 HONORABLE TOM GRAY: If the petitioner gets  
24 the respondent to sign a waiver of service --

25 MR. GAGNON: Right.

1 HONORABLE TOM GRAY: -- the petitioner can  
2 file that with the court.

3 MR. GAGNON: They can. I guess it should be  
4 "If the respondent doesn't sign a waiver of service or  
5 file an answer."

6 CHAIRMAN BABCOCK: Okay. Everybody please  
7 turn to page three. This is called "Divorce in Texas,  
8 Take these steps." It appears to be on this page a  
9 four-step process, but if you go to the next page there  
10 are seven steps. Any comments about steps 1 through 4?

11 MR. GILSTRAP: Yeah.

12 CHAIRMAN BABCOCK: Yeah, Frank.

13 MR. GILSTRAP: Over here we have a long  
14 explanation of legal notice. You use -- on the prior page  
15 you use the term "legal notice." I think when you do it  
16 you need to say, "See page three."

17 MR. GAGNON: Okay.

18 CHAIRMAN BABCOCK: Okay. Who is that?  
19 Pete.

20 MR. SCHENKKAN: Same thing you just flagged,  
21 but it's a little different result. We've got the seven  
22 steps on page two, but there actually are seven steps.  
23 It's just you have to carry over onto page four, and so  
24 you've got four of seven steps on page three and then the  
25 other three on page four, and then a lot of that is

1 parallel in the lefthand side of basic information, so  
2 part of my problem is we seem to be saying large portions  
3 but not exactly the same things about the same seven steps  
4 three times in three pages. I'm doubtful that that's  
5 helpful as a clarity matter. I know this is hard, but it  
6 seems to me we probably ought to take our best shot at  
7 giving the essentials of the seven steps once and not  
8 coming back to the same topic and saying it a different  
9 way the next time.

10           And then I have question about this, which  
11 was prompted by a question someone asked about the what  
12 happens if I can't find my spouse at the bottom of page  
13 two, they're told to go to [texaslawhelp.org](http://texaslawhelp.org). There have  
14 been a lot of references to that. Maybe everyone else in  
15 this room understands who they are. Can someone, if it's  
16 not too embarrassing do it just for me, explain briefly  
17 who [texaslawhelp.org](http://texaslawhelp.org) is and what they do and don't do as  
18 it relates to our task? For instance, would they only be  
19 available online to help you figure out how to do legal  
20 notice and service by posting, or would they be able to  
21 help you with one or more of these other things if you had  
22 a question, "Well, what are all the issues that could be  
23 in my divorce," or if you said, "What could happen if  
24 there's one of us has a retirement plan but we're not yet  
25 retired"? Would you get any help from these folks there?

1 MS. PIERCE: I'm Paula Pierce. Stewart's  
2 pointing at me so I figure that gives me permission to  
3 stand up and speak. I work at Texas Legal Services  
4 Center, and I'm the manager of hotline programs, and one  
5 of the many things we do is the texaslawhelp.org website  
6 resides in our office. To answer your question  
7 succinctly, Pete, we have a program called live help that  
8 if someone is using a form that's on the website and they  
9 run into a problem, they can push a little purple button  
10 and it directs them to a lawyer in our office who is  
11 licensed who will answer their questions about how to fill  
12 out the forms. Yes.

13 MR. SCHENKKAN: And you said Texas Legal  
14 Services, so, again, just kind of refresh our  
15 recollection, who is that, who governs that, and whose  
16 money is it?

17 MS. PIERCE: Okay. Texas Legal Services  
18 Center is a nonprofit law office. We -- y'all probably  
19 don't want the whole history.

20 MR. SCHENKKAN: No.

21 MS. PIERCE: We started about 20 years ago  
22 as a legal support center under the Legal Services  
23 Corporation. In the 1980s that funding was discontinued,  
24 and we continued under IOLTA and BCLS funding, so the  
25 funding for Texas Law Help, the website, comes from right

1 now Basic Civil Legal Services funding from the Texas  
2 Access to Justice Foundation. So we have a number of  
3 other programs, some of which are Federally funded, others  
4 of which are state funded. So --

5 CHAIRMAN BABCOCK: Thank you. Justice Gray,  
6 did you have your hand up? No.

7 HONORABLE TOM GRAY: I did not.

8 CHAIRMAN BABCOCK: You did not. Okay.  
9 Anybody else have got comments on page three, the first  
10 four steps of the seven step program? Yeah. Professor  
11 Hoffman.

12 PROFESSOR HOFFMAN: So as a teacher of civil  
13 procedure I am confused about service and waiver.

14 CHAIRMAN BABCOCK: It's an occupational  
15 hazard, Lonny.

16 PROFESSOR HOFFMAN: Yeah. So I may be  
17 opening my mouth and removing all doubt that I've chosen  
18 the wrong field; however, so I thought when you waived  
19 service you simply said, "You don't have to come after me  
20 and formally give me formal service," but you're not  
21 waiving your right to answer in the case. Right?

22 MR. GAGNON: If you look at the waiver we've  
23 modified based upon our conversations with the  
24 subcommittee, we do just that. We say, "Waive my service  
25 and make an appearance," and further say that "I want to



1 have notice of all the hearings unless I sign an agreed  
2 decree of divorce and then I don't need notice." Right,  
3 Richard?

4 MR. ORSINGER: Right.

5 MR. GAGNON: That's what you asked us to do.

6 MR. ORSINGER: Well, we had a broader  
7 concern that it said "waiver of service" and it was really  
8 a waiver of all your constitutional rights, so the  
9 subcommittee has gone further, and this has been --  
10 Stewart and I haven't been able to talk since he's seen  
11 our proposal, but we did want it to be clear that you  
12 didn't have to waive the right to participate in trial,  
13 but actually the subcommittee would like a list of  
14 constitutional rights you're waiving if you signed a  
15 waiver or at least maybe a check box like maybe you're  
16 waiving the right to a jury trial but you're not waiving  
17 the right to appear and testify on your own behalf.

18 PROFESSOR HOFFMAN: I'm delighted to hear  
19 that apparently I can keep my day job and that it sounds  
20 like you've addressed some of these questions, because at  
21 least the version I see is confusing to me about what  
22 waiver is.

23 MR. ORSINGER: Well, it may still be  
24 confusing. It's just it's a little more obvious you're  
25 giving up all of your rights.

1                   CHAIRMAN BABCOCK:  Keep your day job, and  
2 there might be a part for you in Gene's play.  All right.  
3 Let's go to page four, "Divorce in Texas, Take these  
4 steps," steps 5 through 7, and "do not forget" at the  
5 bottom.  Comments on page four?  Frank.

6                   MR. GILSTRAP:  This applies to the prior  
7 section and this section, some places you say, "You and  
8 your spouse."  Other places you say -- you talk about the  
9 respondent, and I think it would make more sense  
10 everywhere you say "the respondent," for example, back on  
11 page two under (b) you say, "If the respondent doesn't  
12 file a waiver of service."  I would say, "If your spouse  
13 doesn't."  It seems to me you need to be consistent on it.

14                   Secondly, oh, yeah, the last line on page  
15 four, "You can't get married to another person," of course  
16 that's strictly speaking, "until 30 days after the judge  
17 signs your final decree of divorce."  Of course, you  
18 always get married to another person.  I guess you can't  
19 get married to another person other than your spouse.  You  
20 might say, "You can't get married to someone else."

21                   MR. ORSINGER:  By the way, I don't agree  
22 with that, and I don't know whether you think I'm wrong,  
23 Stewart, but I think you can get remarried 30 days after  
24 the oral rendition of a noninterlocutory divorce and you  
25 can get the permission of a district judge to get married

1 quicker than that or if you want to go to Las Vegas you  
2 can get married the same day, so that's really --

3 CHAIRMAN BABCOCK: Now, Richard, is this  
4 voice of experience?

5 MR. ORSINGER: I'm not sure we want to  
6 encourage people to get remarried that quickly --

7 MR. GILSTRAP: I would say "to someone  
8 else."

9 MR. ORSINGER: -- but that's actually  
10 incorrect.

11 CHAIRMAN BABCOCK: Justice Moseley.

12 HONORABLE JAMES MOSELEY: Maybe we should  
13 put these forms online and have a button that says "The  
14 Orsinger footnote" beside each one, just push the button  
15 and up you pop and you can give the explanation.

16 MR. ORSINGER: They'll never be able to  
17 generate a petition.

18 MR. GAGNON: And then we would have an  
19 errata next to it.

20 CHAIRMAN BABCOCK: Frank, were you done?  
21 Sorry.

22 MR. GILSTRAP: I'm done.

23 CHAIRMAN BABCOCK: Okay. Other comments  
24 about page four, steps 5, 6, and 7, and "do not forget"?

25 HONORABLE TOM GRAY: To reiterate what David

1 Peeples said, this is kind of one of those what are you  
2 talking about, and you look at the step 6, item (1), "A  
3 copy of your original petition," so is it the original or  
4 is it a copy? And then down in 4 we say your final --  
5 actually, on step 5 you talk about the final decree of  
6 divorce. Well, we all know what that means, but is there  
7 an interim decree of divorce?

8 MR. LOW: No.

9 MR. GAGNON: The document's entitled  
10 "Original petition for divorce" and the document is  
11 entitled "Final decree of divorce."

12 HONORABLE TOM GRAY: I understand it,  
13 Stewart, but I'm talking about the people that are --

14 CHAIRMAN BABCOCK: That don't understand it.

15 HONORABLE TOM GRAY: I'm just going with  
16 David Peeples' comment that there are a lot of terms used  
17 in this that are second nature to us after the amount of  
18 training that we've had, but are not going to be to the  
19 folks that are reading this.

20 CHAIRMAN BABCOCK: Okay. Any other comments  
21 on page four? Turn to page five. "Are you ready for  
22 court?" Yes, Frank. Frank, you're always the first one.

23 MR. GILSTRAP: Okay. The third one,  
24 "Courtrooms do not allow children," I mean, that's  
25 probably not true, but --

1 MR. GAGNON: It is true.

2 MR. GILSTRAP: It is true, really?

3 MR. GAGNON: Most courthouses now will not  
4 allow you to bring a child, especially into the courtroom,  
5 most less in the courthouse, unless you receive permission  
6 from the court.

7 HONORABLE ANA ESTEVEZ: Well, I'll disagree  
8 with that because I allow children in my courtroom.

9 MR. GAGNON: I'm sorry, I didn't hear that.

10 HONORABLE ANA ESTEVEZ: I allow children in  
11 my courtroom.

12 HONORABLE JANE BLAND: I disagree with that,  
13 too.

14 CHAIRMAN BABCOCK: Yeah, I've taken my kids  
15 to court.

16 MR. GILSTRAP: The next one --

17 MR. ORSINGER: Were they suing you or you  
18 suing them?

19 CHAIRMAN BABCOCK: I was a defendant.

20 HONORABLE ANA ESTEVEZ: Now, if they're  
21 being disruptive, we take them out.

22 MR. GILSTRAP: The next item, "Dress neatly.  
23 Do not wear shorts, tank tops, or hats." That's probably  
24 good advice as far as it goes, although I can only imagine  
25 how people show up to -- in court getting a divorce. I'd

1 make it stronger. I'd tell them, you know, "Dress  
2 neatly," if it were 50 years ago I would say, "Dress like  
3 you're going to church," but probably can't say that.

4 MR. ORSINGER: They have no experience.

5 MR. GAGNON: That would knock out half of  
6 them right there.

7 MR. GILSTRAP: I would say, "Dress neatly  
8 and conservatively," you know, try to make the people  
9 dress up to go to court.

10 MR. GAGNON: Okay. So they're not going to  
11 understand what a final decree of divorce title is, but  
12 they're going to understand what conservatively dressed  
13 is?

14 MR. GILSTRAP: Yeah, I think a lot of people  
15 do. I think a lot of people do.

16 CHAIRMAN BABCOCK: Roger.

17 MR. HUGHES: Maybe it's just my experience  
18 from practicing in South Texas, but I think they need to  
19 be warned to leave their weapons and drugs at home.

20 MR. GAGNON: That may be a good point, that  
21 we need to add that, because most -- not all but most  
22 courthouses now have some form of monitoring that, you  
23 know, you have to go back to the car and put up your mace  
24 or whatever.

25 MR. GILSTRAP: Don't take your children,

1 guns, or dope.

2 MR. HUGHES: I can't tell you how many  
3 people when they throw their wallet in the little cup that  
4 they -- you know, that goes around the security, you know,  
5 that drugs fall out, and we get a lot of people arrested  
6 at the courthouse security.

7 MR. ORSINGER: We should put that in the  
8 form, that they can be arrested.

9 CHAIRMAN BABCOCK: See, that would be good  
10 advice.

11 MR. ORSINGER: If they're using the official  
12 form they can't be arrested.

13 CHAIRMAN BABCOCK: Can't take any  
14 contraband. Okay. Page five, other comments about page  
15 five? Okay. Let's move to page six. "Common questions.  
16 What is a divorce?" Frank, comments on page six. I know  
17 you're going to have your hand up.

18 MR. GILSTRAP: Nope. Nope. Not yet. Not  
19 yet.

20 CHAIRMAN BABCOCK: Not even Frank has a  
21 comment about this page. Somebody does. Lisa.

22 MS. HOBBS: I kind of wonder if the word  
23 "debt" might be not something that the -- somebody with a  
24 fifth grade education would understand, the word "debt."  
25 I mean, we say, "The final decree of divorce is a judge's

1 written order that says who keeps what property and who  
2 pays what bills" maybe, or I don't know. "Debts," I know  
3 it's a broader term than "bills," but I'm not sure  
4 everybody knows what that means.

5 MR. GAGNON: Yeah. Okay.

6 CHAIRMAN BABCOCK: Buddy.

7 MR. LOW: Yeah. "Original petition for  
8 divorce. This is the form one spouse files." Didn't we  
9 discuss that sometimes they may both get together and --

10 MR. GAGNON: The only time the Family Code  
11 allows a joint petition for divorce in the case where they  
12 file a collaborative law agreement. In that case they can  
13 file a joint petition for divorce, but if they don't file  
14 and -- they don't sign and file a collaborative law  
15 agreement then only one person can file a petition.

16 MR. LOW: I merely asked the question out of  
17 ignorance. I didn't know.

18 MR. GAGNON: That's fine. I think Professor  
19 Carlson had that same question, and it's an appropriate  
20 question. They just can't do it.

21 CHAIRMAN BABCOCK: Carl.

22 MR. HAMILTON: This page and other pages  
23 continue to advise them that they can get the divorce  
24 merely if they lived in Texas. I assume we're going to  
25 change that to domicile and --



1 CHAIRMAN BABCOCK: We're going to fix that.

2 MR. GAGNON: I'm going to take that out, and  
3 I'm going to listen to the Court and what the Court wants  
4 me to do on that. Again, I think, just in practical  
5 experience, somebody has lived here, it's a very rare  
6 situation, probably where we won't see once in -- where  
7 somebody lives in Texas for six months but doesn't intend  
8 this to be their residence at this time.

9 MR. LOW: What about military?

10 MR. GAGNON: Intends it to be their  
11 residence, that intentional issue is what creates the  
12 domicile.

13 MR. LOW: Military service in Texas.

14 MR. GAGNON: We deal with military service  
15 separately.

16 MR. LOW: He lives here but he really --

17 MR. GAGNON: That's where somebody can -- is  
18 gone, but this is their home state.

19 MR. LOW: No, I'm talking about he's from  
20 Michigan --

21 MR. GAGNON: Right.

22 MR. LOW: -- but he comes to Texas. He's  
23 here six months and his wife lives back there. Is he --  
24 does he live in Texas?

25 MR. GAGNON: (Nods head.)

1 CHAIRMAN BABCOCK: Judge Christopher.

2 HONORABLE TRACY CHRISTOPHER: If this is  
3 supposed to only be for a no children divorce we shouldn't  
4 be including questions about babies being born and  
5 dividing up children and custody of children. I mean, I  
6 know that you probably have these common questions for all  
7 the forms, but it doesn't belong if we're limiting it to  
8 no children.

9 CHAIRMAN BABCOCK: Yeah, good point. Pete.

10 MR. SCHENKKAN: We've got a section here  
11 about -- on this page about "Do I need a lawyer" and then  
12 we start out with "It's always best to hire a lawyer,  
13 especially if" -- and then we talk about try to speak to a  
14 lawyer. We say something about "Some will only charge you  
15 for part of the case or only represent you" -- we only  
16 talk about paid lawyers. It seems to me if we're going to  
17 put in a section that's common questions and if it's going  
18 to be one of the places where we try to tell people, "You  
19 may really need a lawyer, and you may be at risk of making  
20 a mistake that will be hurtful if you don't go to a  
21 lawyer," we ought not to limit the instruction to hiring.  
22 We ought to also say, "And under some circumstances there  
23 are lawyers who may be able to help you for free, and  
24 here's how you go about finding out if you are in one of  
25 those situations or if you are one of the people who would

1 qualify for that."

2 MR. GAGNON: Let me just -- there's a  
3 sentence at the end of that large paragraph that says, "If  
4 you can't afford to hire a lawyer, contact the State Bar  
5 Lawyer Referral Service. If you or your child are a  
6 victim of domestic violence" -- do you think that ought to  
7 be separated, or do you think that ought to be  
8 highlighted?

9 MR. SCHENKKAN: I think it ought to be  
10 separated, and I'm not sure -- y'all know better than I.  
11 Is the State Bar Lawyer Referral Service the thing that  
12 would tell you about Ms. Holland, or would tell you about  
13 the every other month if they're still doing it in --

14 MR. GAGNON: No, if you contact --

15 THE REPORTER: Wait, wait, wait, wait, wait.

16 CHAIRMAN BABCOCK: Whoa, whoa.

17 MR. GAGNON: I'm sorry.

18 MR. SCHENKKAN: What I'm trying to say is  
19 I'm guessing that there are a lot of other resources that  
20 are available, some of them more appropriate or faster for  
21 getting a person who is trying perhaps properly to do a  
22 pro se uncontested divorce with some help understanding,  
23 "Gosh, I hit this flag, they said I'm all okay, I don't  
24 have children, I don't have real estate, but I don't know  
25 what this stuff is about a retirement plan." And you see

1 what I'm saying? I'm just wondering whether the single  
2 sentence, "If you can't afford a lawyer, call a lawyer  
3 referral service," is the kind of steering that we ought  
4 to be using scarce space on the common questions page for  
5 or whether we need something that has more options or  
6 starts in a different place or something.

7 CHAIRMAN BABCOCK: Justice Jennings, and  
8 then Richard Munzinger.

9 HONORABLE TERRY JENNINGS: Well, I was  
10 thinking that maybe some of these questions should come  
11 further up in the documents because it explains some  
12 things that might save somebody some time, but it occurs  
13 to me that as far as like this "Do you need a lawyer,"  
14 that's something like I would like to see up front at the  
15 very beginning of the document, maybe something like the  
16 stop sign on page three. "Stop and think about this," and  
17 one thing I would also recommend adding in there is  
18 something to the effect that "You don't have to agree to  
19 this divorce, and you have the right to seek counsel."  
20 Again, with the idea that maybe someone might be  
21 despondent or whatever. We all have heard the rule that  
22 you shouldn't make an important decision if you're tired,  
23 sad, or excited about something. The idea is to get  
24 people to stop and think about what they're doing, and one  
25 of things they really need to stop and think about what

1 they're doing is they need to talk to a lawyer.

2 CHAIRMAN BABCOCK: Richard Munzinger.

3 MR. MUNZINGER: Several persons have voiced  
4 a concern that the forms could be misused by a dominant or  
5 deceptive spouse, and if you're going to ask people if  
6 they need a lawyer, it might be a good idea to say, "Do I  
7 need a lawyer or do I know what my property consists of or  
8 what my rights are?" We don't put that in here. It seems  
9 to me you ought to say to them that "If you aren't sure  
10 what your marital estate consists of or what your rights  
11 are, you ought to see lawyer" and then you can tell them  
12 to go get a free lawyer if you can't pay for one, but  
13 again, I'm very concerned -- just by way of example, a  
14 person in El Paso who has a job driving a truck for Cemex  
15 has a darn good job. They get a good hourly wage, and  
16 they have a pension. Does Mrs. Cemex truck driver know  
17 that she has a right in that pension? I really worry  
18 about her. It's not fair.

19 CHAIRMAN BABCOCK: Justice Patterson, then  
20 Carl.

21 HONORABLE JAN PATTERSON: I'd like to see  
22 for the language on the "You want to divide property such  
23 as retirement," I would like to see the language from that  
24 box on the front page, the language used there, "Pension,  
25 retirement plan, or 401(k)," and then just set out "real

1 estate or other property," correctly set out that as a  
2 separate one because I think those two -- that would  
3 highlight the nature of the advice to be given and the  
4 importance of those two as separate considerations.

5 CHAIRMAN BABCOCK: Carl.

6 MR. HAMILTON: I think those definitions  
7 ought to be up at the front instead of way back here.

8 CHAIRMAN BABCOCK: Frank.

9 MR. GILSTRAP: The third section, "Why do I  
10 need to wait until after the baby is born?" I guess that  
11 implies that after the baby is born you're going to be  
12 able to use the form, but the form is for people with no  
13 kids. The next sentence, "Most Texas courts will not  
14 complete a divorce when the wife is pregnant, even if it's  
15 not the husband's baby." Will any do that? I mean, it  
16 sounds like you need to shop around and get the right  
17 court. I mean, shouldn't it say, no -- "A Texas court  
18 will not complete a divorce when the wife is pregnant"?

19 HONORABLE ANA ESTEVEZ: If they do it by  
20 accident, if they lie.

21 MR. ORSINGER: I think the Family Code will  
22 not permit you to grant the divorce without the child  
23 being born, and I think that if there's a judge that's out  
24 there that's doing it they shouldn't be, so this form  
25 probably should say you can't and then just let us know

1 who's doing it.

2 CHAIRMAN BABCOCK: Justice Jennings.

3 HONORABLE TERRY JENNINGS: It talks about  
4 "Do I need a lawyer? If you or your child is a victim of  
5 domestic violence," perhaps there should be something in  
6 here, maybe a little less strong than domestic violence,  
7 that if somebody feels like they're being abused or  
8 something, a reference to a woman's shelter or something  
9 like that.

10 CHAIRMAN BABCOCK: Okay.

11 HONORABLE TERRY JENNINGS: Who -- they might  
12 be able to refer them to a lawyer.

13 CHAIRMAN BABCOCK: Everybody turn to page  
14 seven. "Common questions continued." What comments, if  
15 any, do we have about the "Common questions continued"?  
16 Justice Patterson.

17 HONORABLE JAN PATTERSON: I would like to  
18 reiterate what Marcy said about the density of these  
19 pages, and I can't help but believe -- I know that the  
20 graphics expert on the Supreme Court could apply a hand to  
21 all of this, and I think it would -- it would be a  
22 wonderful document to kind of work on the spacing and the  
23 space on these pages and the "Terms to know" might be a  
24 nice last page, but it's -- but the density of these pages  
25 and the print is just hard for us to follow, much less

1 somebody --

2 CHAIRMAN BABCOCK: Okay, thanks, Jan. Page  
3 seven, any other comments? Going once.

4 All right. We're going to take our  
5 afternoon break. It will be 10 minutes, be back here  
6 promptly at 4:00 o'clock. And we -- okay, there's some  
7 stuff on the table, a one-page document from the Attorney  
8 General, and we will pause to hear from members of the  
9 public, if they choose to talk to us, and we'll be back at  
10 4:00.

11 (Recess from 3:47 p.m. to 3:56 p.m.)

12 CHAIRMAN BABCOCK: We're back on the record  
13 now at almost 4:00, and we're going to take public  
14 comment. A couple of things, the comments should be three  
15 to five minutes. At five minutes I'm going to cut you  
16 off. Sorry, I don't mean to be rude, but I've got my  
17 handy dandy clicker here on my iPhone, so I'm going to use  
18 it.

19 MR. ORSINGER: Can they use the podium,  
20 Chip?

21 CHAIRMAN BABCOCK: Yeah, and secondly, use  
22 the podium, please. There's a microphone there, and  
23 whoever wants to get up, get up and speak, and say your  
24 name and spell it for the court reporter, without  
25 exception, even if your name is Pat Smith, report it



1 because Dee Dee is challenged. Just kidding. Just  
2 kidding. All right. Who wants to go first?

3 MR. ORSINGER: Raise their hand.

4 CHAIRMAN BABCOCK: Who wants to go first?

5 MS. SLOAN: I'll go first.

6 CHAIRMAN BABCOCK: All right, good.

7 MS. SLOAN: Good afternoon, everyone. My  
8 name is Andrea Sloan and I'm A-n-d-r-e-a, S-l-o-a-n. I  
9 don't want to be the first one to screw that up. I'm the  
10 executive director at Texas Advocacy Project. The project  
11 used to be known as Women's Advocacy Project. For those  
12 of you -- I hope everyone in this room is familiar with  
13 the project, but for almost 30 years we have been doing  
14 nothing but family law legal services for indigent men and  
15 women who are victims of family violence, and so I'm very  
16 honored to be able to be here today to share our  
17 perspective about the pro se divorce forms with you all.

18 We serve approximately between five and six  
19 thousand, mostly women, every year, all of whom are  
20 experiencing violence in the home, and many of those women  
21 need access to divorces. Well over 90 percent of them are  
22 food stamp benefit eligible, meaning they are the target  
23 population that we are talking about today. If they do  
24 not have access to the courts and they can't afford  
25 attorneys and I'm sure you all have heard -- I'm sorry I

1 haven't been here all day today, but I'm sure you all have  
2 heard that Legal Aid is overwhelmed, and so it would be  
3 great to have a lawyer for everybody, but we all know we  
4 can't do that, and so the next best thing is to figure out  
5 how these women can meaningfully get to court so that they  
6 can sever these abusive relationships and move on to  
7 safety for themselves. And so I know there's been some  
8 talk about whether or not the forms are going to be  
9 harmful to family violence victims; and I can  
10 unequivocally tell you that what is harmful to a victim of  
11 family violence is not being able to get to court, and for  
12 these simple divorces, no kids, no property; and our  
13 clients, they are poor, but they are smart; and they know  
14 whether or not they have property, and they know whether  
15 or not they have children and all of these issues that  
16 just aren't going to be an issue in these very simple  
17 cases.

18                   So we would just ask that you-all would  
19 seriously consider adopting a form. There are forms out  
20 there now, and what happens for people is they do call and  
21 they get, you know, five or ten minutes of advice from  
22 somewhere, and they Google online, and they try and find a  
23 form, and they find forms that may or may not fit their  
24 particular situations, and we're confident that by the  
25 time all of these revisions are gone through with the

1 forms that these forms will fit their situations and that  
2 they will be a speedier path to them for safety. And I  
3 think that's really actually all I have. Thank you very  
4 much for your time.

5 CHAIRMAN BABCOCK: Thank you very much,  
6 appreciate it. Who's next? Anybody else want to speak?

7 MS. BACA: Good afternoon. My name is  
8 Patricia Baca, B-a-c-a. I'm an attorney licensed to  
9 practice law in Texas. I practice in Fort Worth. I'm  
10 here to talk to you about judicial immunity and the  
11 concept of Civil Gideon, which is a right to  
12 court-appointed counsel in civil cases, which I am not  
13 advocating but I believe we're on a slippery slope to. I  
14 did hand out a portion of Tab A, got left out by mistake.  
15 I did e-mail it to most of you, but it bounced back.

16 But I think it's very clear that when a  
17 court takes on an act that's not a judicial act they do  
18 not have judicial immunity, and I don't even believe this  
19 is a governmental act. It's not an act that is authorized  
20 anywhere in the Constitution. I actually believe it may  
21 even violate the Code of Judicial Conduct because we have  
22 members of judiciary preparing pleadings for people, and  
23 the only time that judiciary is allowed under the Canon of  
24 the State of the Judicial Conduct to prepare pleadings for  
25 people is if they're relatives or if they do it for

1 themselves and they do it free of charge. Now, they're  
2 doing it free of charge here, but they're not preparing  
3 them for relatives. They're preparing them for the entire  
4 State of Texas.

5 I don't even believe that this is an  
6 administrative act, because there are forms available.  
7 There are forms on Texas Law Help that are no better than  
8 the forms promulgated by the Texas Supreme Court, and I  
9 believe that in promulgating these forms without any  
10 authority, I don't believe that there is any judicial  
11 immunity. I don't believe there is any governmental  
12 immunity because they're not acting as governmental  
13 officials because this isn't part of their role. There's  
14 no place in the Constitution. Just like if they got into  
15 an auto accident down the street, if they aren't acting as  
16 government officials they are not protected by judicial  
17 immunity.

18 The second thing that I wanted to address  
19 was the concept of what's happened in other states and  
20 where this is going. Now, on the last tab we see that the  
21 Texas Access for Justice actually has a Civil Gideon  
22 committee, and I believe that this would overwhelm the  
23 taxpayers of the State of Texas. Justice Jefferson and  
24 Justice Hecht have made comments over and over that they  
25 have a duty under the Constitution to give people access

1 to justice, and that means helping them through the court  
2 system by giving them pleadings and by giving them  
3 instructions.

4 I would submit to you that if we give people  
5 this right under the Texas Constitution, which is to have  
6 the Texas Supreme Court help them get through the judicial  
7 process, then what you are doing is you are creating a  
8 right to counsel, because people who cannot read, who  
9 cannot write, who do not speak English, do not have the  
10 capacity to go through the judicial system, I mean, the  
11 ultimate decree is going to have to be in English,  
12 otherwise a judge that does not speak English cannot  
13 enforce it. I mean, can you imagine judges having to  
14 enforce a decree of divorce in Vietnamese, or in Spanish  
15 even for most of us?

16 In the state of Wisconsin in the year 2000  
17 they set up all of these bells and whistles. They set up  
18 forms. They set up kiosks. They set up self-help  
19 hotlines. They have technology. They set up all of these  
20 things, and I said I put that article in my packet. There  
21 is also an article six years later in 2006 showing that  
22 the judiciary in Wisconsin was still overwhelmed with pro  
23 se litigants even after having forms, kiosks, and all the  
24 bells and whistles that the Access for Justice is -- has  
25 proposed, and they had to set up court-appointed attorneys

1 for people in divorces of child custody cases; and when  
2 you create a climate where people start thinking they're  
3 entitled to have the Supreme Court help them with their  
4 divorce then we all know what happens with entitlements.  
5 Once people feel entitled they feel they should always  
6 have it.

7           In the state of California, which has had it  
8 for 1960s, there is a Sergeant Shriver Bill that I have  
9 also attached to my bid -- to my paper, and the Sergeant  
10 Shriver Bill also talks about all the problems they're  
11 having in California with pro se litigants.

12           CHAIRMAN BABCOCK: Ms. Baca, you've got one  
13 minute.

14           MS. BACA: Now, if these forms solved the  
15 problems in California, they would not be moving to Civil  
16 Gideon. If these forms solved the problem in Wisconsin  
17 and Illinois, they would not be talking about Civil  
18 Gideon. These are not the only states. I just picked a  
19 couple of states because I could not possibly research all  
20 37 states, and there are only 37 states that have divorce  
21 forms. 49 states have some sort of forms, but they're not  
22 all divorce forms.

23           I really caution this Court and these  
24 honored justices. You are opening yourself up to a  
25 malpractice claim because this is outside the Texas

1 Constitution, and I warn the taxpayers of the State of  
2 Texas if you give people an entitlement to have the  
3 Supreme Court assist people in a divorce, what you are  
4 doing is you are on the road to having people have to have  
5 court-appointed attorneys in divorces, and what we're  
6 talking about here today is a no children, no property  
7 divorce. People can get protective orders from the DAs in  
8 just about every county, or the county attorneys, in  
9 Texas.

10 CHAIRMAN BABCOCK: Ms. Baca, your five  
11 minutes is up. I know you've got materials that are at  
12 the table --

13 MS. BACA: Yes.

14 CHAIRMAN BABCOCK: -- and your materials  
15 have been posted on the website, and so people can read  
16 it.

17 MS. BACA: Yes, and I believe Exhibit A is  
18 on those.

19 CHAIRMAN BABCOCK: But thank you so much for  
20 coming. Next speaker.

21 MR. SHANNON: Thank you. My name is Richard  
22 Shannon. I'm a 50-year law practitioner. I have been  
23 mediating and handling family law cases for 17 to 18  
24 years, and out of that experience I have become very  
25 concerned with the impact of an adversarial litigation

1 system on families and children. Consequently, in the  
2 fall of 2009 I formed an organization called Enlightened  
3 Family Justice Institute. The Enlightened Family Justice  
4 Institute has a board of directors of five. It's an  
5 interdisciplinary board. I have provided a longer  
6 statement and a shorter statement that should have been  
7 circulated. I don't want to bore you with reading these  
8 statements.

9           As I have observed the deliberations this  
10 afternoon it occurs to me that the pro se litigation and  
11 the pro se litigant that is growing, it's a mushrooming  
12 problem, is not going to go away, and is not going to be  
13 significantly impacted by the decision pro or con with  
14 respect to this agenda item. There are going to be pro se  
15 litigants who do have children, they have real property,  
16 or other significant assets. This entire discussion  
17 assumes that we all have an agreement about what  
18 constitutes justice. When we say equal access to justice,  
19 what is it that we mean? And I would submit that justice  
20 is a deliberative process, and I'm not proposing that we  
21 have a philosophical or academic debate about the concept  
22 justice.

23           In our paper we have put forth a definition  
24 of justice offered by Warren Burger, who was Chief Justice  
25 of the United States Supreme Court, I believe now



1 deceased, that is worthy of consideration. In his  
2 definition of justice he indicates that the purpose of the  
3 profession, judicial and lawyers, is to facilitate the  
4 healing of human conflict, so the vision statement of  
5 Enlightened Family Justice Institute, EFJI, would have the  
6 courts continue to provide the kind of judicial services  
7 they provide and be structured to facilitate the healing  
8 of human conflicts when it comes to family law  
9 proceedings.

10           Now, as a matter of fact, that is not just a  
11 pipe dream. A couple of publications by the Association  
12 of Family and Conciliation Courts has outlined projects  
13 across the United States in which just such things are  
14 happening. Therefore, the conclusion that we offer you  
15 today is this: We offer a middle way. We're not for or  
16 against the adoption or rejection of this amendment. We  
17 simply think it just does not go far enough to address the  
18 core problem for families coming into the court system.  
19 We think the adversarial system is something that we need  
20 to move away from and that what we need to move toward is  
21 a system that offers through problem solving courts a  
22 collaborative and therapeutic approach to solving problems  
23 that families have that bring them into court.

24           CHAIRMAN BABCOCK: Mr. Shannon, you have one  
25 minute.

1 MR. SHANNON: Thank you. The fundamental  
2 problem is families come into court, not because they have  
3 legal issues but because they have relationship issues,  
4 and the courts are not in any way structured at present to  
5 address relationship issues. Now, I'm not proposing that  
6 judges be psychologists, but there are ways to handle  
7 this. So there are a couple of -- there are five  
8 recommendations we offered. The first one is that if  
9 these forms are to be adopted by the Supreme Court, that  
10 minimally a science-based study should be coupled with the  
11 introduction of the forms, and the purpose of the study  
12 would be to measure the positive and negative impacts of  
13 the users of the forms on the bench and bar as well as  
14 families.

15 Second, the forms and instructions if  
16 adopted be introduced through a series of pilot projects  
17 in selective jurisdictions to test the positive and  
18 negative impacts.

19 CHAIRMAN BABCOCK: Mr. Shannon, your five  
20 minutes is up. Sorry.

21 MR. SHANNON: Okay.

22 CHAIRMAN BABCOCK: We're going to post your  
23 material. We'll e-mail it to everybody in the committee,  
24 and I believe it's available in paper form.

25 MR. SHANNON: Right. And I assume there are

1 no questions allowed.

2 CHAIRMAN BABCOCK: No, that's right.

3 MR. SHANNON: Okay. Thank you.

4 CHAIRMAN BABCOCK: Appreciate it.

5 HONORABLE ANDREW HATHCOCK: Good afternoon.

6 My name is Andrew Hathcock, H-a-t-h-c-o-c-k. I am an  
7 associate judge for the civil district courts in Travis  
8 County and have served as associate judge hearing family  
9 law matters for the last 12 years. I've been board  
10 certified in family law since 1990, have been a member of  
11 the State Bar family law section since 1985, and I'm also  
12 a member of the Texas Academy of Family Law Specialists.

13 I handle a family law docket that consists  
14 of between 30 and 40 cases on any given day.  
15 Approximately a third of those involve self-represented  
16 litigants, neither side having a lawyer; and these folks  
17 come to court with a myriad of forms that they have  
18 obtained from various sources, as you've heard others  
19 testify, from the internet, from various advocacy groups,  
20 from commercial vendors; and from the judicial  
21 perspective, I have to closely scrutinize those forms not  
22 only to make sure that they've been filled out properly,  
23 but to make sure that the forms themselves are accurate  
24 and are sufficient; and in my mind the huge advantage of  
25 having a standardized form is it enables judges to focus

1 on the variables without having to read all the  
2 boilerplate, and I think this will contribute to more  
3 efficient administration of justice.

4           Now, I have the utmost respect for people on  
5 both sides of this issue, and I just respectfully disagree  
6 with those who are against this idea, and they've raised a  
7 lot of problems with Texans having access to legal  
8 representation here in their family law matters, and I  
9 don't disagree that those are serious and significant  
10 problems. Forms are not intended to solve all of the  
11 problems, but these are problems that exist today without  
12 standardized forms, and the standardized forms will at  
13 least help address that issue so that when I'm sitting at  
14 the bench working with two self-represented litigants and  
15 I have a courtroom full of people, many of whom have  
16 lawyers and are paying them by the hour to sit there and  
17 wait, I can be much more efficient and accurate in  
18 processing those cases.

19           And the last thing I just wanted to mention  
20 was in Travis County for more than the last 25 years we  
21 have used forms for temporary orders in family law cases,  
22 and they're very comprehensive. They deal with property,  
23 with parent-child issues ranging from conservatorship,  
24 rights, powers, and duties to possession and access,  
25 injunctive relief. These are for use and made available

1 for litigants and lawyers alike. We've used them for a  
2 quarter of a century without any problems or any  
3 complaints, and so I would respectfully submit these for  
4 the committee's consideration as well. Thank you.

5 CHAIRMAN BABCOCK: Thank you very much,  
6 Judge. Okay. Who else? Ms. Holland.

7 MS. HOLLAND: Yes. Hi, my name is Laurel  
8 Holland, H-o-l-l-a-n-d. I am a reference attorney at the  
9 Travis County law library, and I've worked there as a  
10 reference attorney for seven years. Prior to that I  
11 worked at Legal Aid as a family law staff attorney,  
12 representing victims of domestic violence for four years,  
13 and I also worked for the Williamson County Attorney's  
14 office doing protective orders. During my time as a  
15 reference attorney at the law library, we -- well, my job  
16 is to review the forms that people who are representing  
17 themselves who come to the court's uncontested docket and  
18 along with another attorney at our office. When we're not  
19 doing that we have appointments with people who have  
20 agreed or default family law cases, divorces,  
21 modifications, SAPCRs, and we help them fill out the Texas  
22 Law Help forms.

23 I have found that most people find the Texas  
24 Law Help divorce no children forms, which are very similar  
25 to the forms that y'all have reviewed today, easy to fill

1 out and easy to understand. Some people do need help, and  
2 I think it's a great idea to put in the instructions where  
3 people can quickly find access to help in their area, and  
4 I think that Texas Law Help has a link that people can  
5 choose that links them to the resources in their area.  
6 That's my first point.

7           My second point is I appreciate your concern  
8 about the harm that would be caused by -- that could be  
9 caused by using a form, and I liked all of your ideas  
10 about making the warnings stronger in the instructions. I  
11 think that we all need to remember the harm caused by not  
12 having forms, by people not being able to get into court  
13 to resolve their problems, to get a divorce. All the time  
14 we see people come in who because they didn't know how to  
15 get a divorce, they've gone on, had children with somebody  
16 else that if they could have just gone ahead and gotten a  
17 divorce as soon as they separated from their spouse they  
18 wouldn't have that happen. They've gone on to accumulate  
19 property after they've separated, buying houses,  
20 accumulating property, and also just the emotional  
21 attachment that people still feel when they're married to  
22 somebody. Or we've talked about concerns for people who  
23 are in an abusive relationship, the power that the abuser  
24 feels over the person while they're still married, but  
25 there's something about getting a divorce that helps stop

1 that.

2           And then my final point is as suggested by  
3 the family law section in their ideas for pro se  
4 litigants, I think the most helpful thing that the Supreme  
5 Court could do to promote the public access to the courts  
6 is to pass a rule that prohibited trial courts from  
7 refusing petition, answer, documents, simply because it  
8 was a form, not taking away a trial court's power to  
9 refuse a document if it's not legally sufficient, but  
10 taking away the court's power to refuse a document simply  
11 because it's a form.

12           CHAIRMAN BABCOCK: Ms. Holland, you have one  
13 minute.

14           MS. HOLLAND: I'm done. Thank you.

15           CHAIRMAN BABCOCK: Great, thank you.

16           MS. MARGOMOY: Good afternoon, my name is  
17 Denise Margomoy, D-e-n-i-s-e, M-a-r-g-o-m-o-y, and I am  
18 legal director at Texas Advocacy Project. I have been a  
19 staff member of the project since the year 2000, and my  
20 entire practice has been helping victims of domestic  
21 violence and low income Texans, so I think this is the  
22 target population of these forms, and every day of my  
23 legal career I have talked to these people, primarily  
24 women, but we do talk to men as well, and I just wanted to  
25 say, too, that victims of domestic violence are not going

1 to be harmed by these forms. As a matter of fact, they  
2 will be harmed by being forced to stay in their marriage.  
3 It's actually very empowering to victims to be able to  
4 represent themselves and have some sort of victory over  
5 their batterer after years and years of abuse, so we just  
6 wanted to make that very clear, and I know that there are  
7 several other domestic violence experts who are going to  
8 give information today.

9           The other thing I wanted to explain to you,  
10 one of the other speakers commented on language barriers.  
11 We talk to victims who are Spanish speaking, non-English  
12 speakers. We do at our agency provide translations to the  
13 victims, but we do tell them that all of the forms  
14 approved by the courts have to be in English. So there's  
15 not going to be an issue of judges having to look at forms  
16 in Spanish or Vietnamese or some other language.

17           Lastly, I just wanted to also say that our  
18 1-800-374-4673 number is that number on the top of all of  
19 the forms, and a lawyer will talk to the victims and  
20 answer all of their legal questions should any arise.  
21 Thank you.

22           CHAIRMAN BABCOCK: Thank you very much.  
23 Anybody else wish to speak? Yeah.

24           MR. FRIDAY: My name is Phil Friday, and I  
25 speak in favor of the forms. I was licensed in 1969 and



1 certified as a specialist in family law in 1975. I have  
2 just a very modest point. I don't want to repeat the many  
3 arguments that have been offered in favor, but I thought  
4 it might be worth addressing one of the counter-arguments.  
5 The argument has been made that making forms available may  
6 discourage litigants who could otherwise afford a lawyer  
7 to hire a lawyer, but it seems to me that the -- that the  
8 availability of the forms could be linked with lawyer  
9 referral services through the simple means of -- and think  
10 just in terms of the physical display, the physical  
11 availability of the forms, whether it's at a kiosk or the  
12 clerk's office, wherever they're made available they could  
13 be coupled with or even packaged with information  
14 regarding the local lawyer referral service, and I would  
15 suggest that at the very least it would encourage some of  
16 those litigants who are coming to pick up those forms to  
17 call a lawyer to get some advice on how to handle them or  
18 how to make their presentation. I recognize that this is  
19 just a tiny point in this whole mix, but there are ways to  
20 mitigate even some of the negative consequences that may  
21 or may not occur from the use of the forms.

22 CHAIRMAN BABCOCK: Would you mind spelling  
23 your name, please, just so we --

24 MR. FRIDAY: Friday like today. Phil  
25 Friday.

1 CHAIRMAN BABCOCK: Okay. Thank you. Great.  
2 Anybody else?

3 MS. MONTGOMERY: Hi, my name is Peggy  
4 Montgomery, P-e-g-g-y, M-o-n-t-g-o-m-e-r-y, and I guess  
5 I'm speaking from a little bit different perspective  
6 because I am a now retired corporate lawyer that has been  
7 recruited for many, many years to practice family law, and  
8 so I would like to address the standardization of forms  
9 from the aspect of a volunteer lawyer who volunteers to  
10 assist low income citizens for a number of years, and my  
11 comments are twofold, one from the aspect of assisting  
12 citizens with court cases and the other from my  
13 observations of participating in numerous legal advice  
14 clinics.

15 First, the need for lawyers to assist low  
16 income citizens with, as of this case, specifically family  
17 law matters is so significant that it clearly cannot be  
18 met by using experienced family law practitioners.  
19 Therefore, lawyers such as myself who do not regularly  
20 practice family law are called upon to volunteer. While  
21 we receive support from legal services providers,  
22 presenting and obtaining orders from the court has often  
23 been the roadblock in recruitment of corporate attorneys  
24 to volunteer, even in the simplest of uncontested court  
25 cases. I could speak from that because I have been trying

1 to recruit corporate lawyers to do pro bono work for many,  
2 many years. I understand the potential volunteers'  
3 concern, as I after having done a few divorce cases pro  
4 bono also shy away from taking even an uncontested  
5 divorce. My concern is presenting the court with orders  
6 that may or may not be accepted and the embarrassment when  
7 they're not, you know. It would be extremely beneficial  
8 to someone like myself to know that there are standard  
9 approved forms for such matters that a court would accept.

10           Also, when handling cases in the past, I  
11 have realized that if standard approved forms existed for  
12 these simple uncontested court cases then a low income  
13 citizen could handle the matter themselves, freeing up  
14 more volunteer lawyers such as myself for the more  
15 difficult cases, which leads me to my second point.  
16 Having actively participated in legal advice clinics since  
17 they were started by the Houston Volunteer Lawyers  
18 Program, I have experienced on numerous occasions a  
19 discussion of a simple divorce with clients of the clinic.  
20 In the course of the discussions I realized that while  
21 having an extremely low income, these individuals might  
22 not qualify for legal assistance through a Legal Aid  
23 provider because the income is above the monetary  
24 guidelines under which the provider can offer free legal  
25 assistance.

1           While referring these individuals to a legal  
2 referral program, I recognize that the ability for them to  
3 afford an attorney even at a reduced rate would be  
4 difficult. In fact, I often found that also to be the  
5 case when asked for a lawyer referral by individuals that  
6 work in some of the lower income jobs at my company.  
7 Individuals living paycheck to paycheck have a difficult  
8 time finding the extra cost to pay the retainer and hourly  
9 rate of a lawyer. My heart goes out to these individuals,  
10 as while they do not qualify for Legal Aid assistance,  
11 they have the same right to access to the courts.  
12 Providing individuals with resources to assist themselves  
13 in accessing the court is an important aspect of providing  
14 access to justice to all Texas citizens, regardless of  
15 their income level. Having standardized approved forms  
16 for simple matters is another step by the legal community  
17 to assist not only the court's ability to move cases  
18 through the legal system, but provide a way for low income  
19 citizens to access the justice system. Thank you.

20           CHAIRMAN BABCOCK: Thank you very much.  
21 Anybody else that wishes to speak?

22           MS. LUNGWITZ: Good afternoon, I'd like to  
23 thank you all for your time. I know this is tedious. My  
24 name is Jeana Lungwitz. I direct the domestic violence  
25 clinic at the University of Texas School of Law, and

1 before I did that for many years I was at the Texas  
2 Advocacy Project, formerly known when I was there as the  
3 Women's Advocacy Project, as a family violence attorney  
4 assisting people who could not afford private lawyers, and  
5 I'm speaking today in favor of the forms, and I'm just  
6 going to make three very brief points.

7           The first is, as I'm sure everybody knows,  
8 legal services are expensive, and there are a whole lot of  
9 people who can't afford them, and having these forms will  
10 help people have access to the courts that wouldn't  
11 otherwise have them. The second point is even if they did  
12 have access to the courts through the forms that have been  
13 around for years when you could go to Office Depot and buy  
14 "How to do your own divorce in Texas," there have been  
15 forms around for a long time; and as other people have  
16 mentioned, the forms aren't necessarily good forms; and so  
17 having some good forms that are Texas-based forms, because  
18 there are a lot of people out of other states who want to  
19 sell us some forms, having some forms from here in Texas  
20 would be very helpful.

21           And then finally, I think earlier this  
22 morning y'all were working on the pro se protective order  
23 kit. That's a kit that the very first one of those was  
24 written in the office of the Texas Advocacy Project back  
25 in the early Nineties, and it was at the request of

1 women's shelters across the state and in counties where  
2 prosecutors did not perform the duties of obtaining  
3 protective orders on behalf of people, and that has been  
4 an evolutionary process that has culminated in the  
5 approval of those forms, and I think there hasn't been any  
6 business taken away from private lawyers with the approval  
7 of those forms. I don't even think prosecutors' offices  
8 have necessarily seen any kind of reduction in the number  
9 of people who come to them requesting help with protective  
10 orders, but it does provide access particularly in  
11 counties where there is not prosecutors performing those  
12 duties.

13           The other thing that those forms have done  
14 that was kind of, I think, a more unintended consequence  
15 was assist lawyers who may not regularly practice in the  
16 area of family law, or more particularly domestic  
17 violence, figure out how to do those sorts of orders. So  
18 I would fully support standardizing some forms for use by  
19 people who wouldn't have access to the justice system  
20 otherwise. Thank you.

21           CHAIRMAN BABCOCK: Thank you very much.  
22 Would you mind spelling your name for the court reporter?

23           MS. LUNGWITZ: Yeah. It's hard, both names.  
24 Jeana, J-e-a-n-a; last name, L-u-n-g-w-i-t-z.

25           CHAIRMAN BABCOCK: Thank you very much.

1 Anyone else wish to speak to us today? Please spell your  
2 name for the court reporter, too. Thank you.

3 MR. SMITH: Sure. My name is Tom Smith, is  
4 T-o-m, S-m-i-t-h, and everybody calls me Smitty, and I'm  
5 director of Public Citizen's Texas office, and Smitty is  
6 S-m-i-t-t-y. Public Citizen is a national nonprofit  
7 consumer organization that has long been involved in  
8 attempting to make sure that everybody has access to  
9 justice and access to the courts, have a whole litigation  
10 division that works on those kinds of things up in  
11 Washington, D.C., and most of you don't recognize our role  
12 in that kind of world because we don't have a similar part  
13 of our operation down here in Texas.

14 I'm in favor of these rules. I'm in favor  
15 of the general premise that we have these kinds of rules  
16 or forms available for the uncontested divorce without  
17 children, without significant property. I think it's a  
18 very easy decision for y'all to make because with the  
19 demonstrated problems we're having of backlog of people  
20 unable to get legal services, 45 percent of the people  
21 doing it anyway using forms that may come from a -- off of  
22 a computer or out of an office supply store that don't  
23 really give you the kinds of standardized information that  
24 would be useful to a judge to make a decision as to  
25 whether it's appropriate to grant a divorce or whether or

1 not all of the various components of what's required under  
2 Texas law are being met.

3           And one of the things that the Legislature  
4 and the Court have long recognized is standardization of  
5 rules and forms is essential to making sure we actually  
6 get justice here. There's another part of my background  
7 that many of you don't know about, and that is 40 years  
8 ago I worked for Legal Aid, helped open what's now Texas  
9 RioGrande Legal Services offices in Kingsville and a  
10 number of other small communities in South Texas and later  
11 went to work in Illinois doing similar work, and the vast  
12 majority of my work as an untrained paralegal coming out  
13 of college was filling out divorce forms using a form  
14 book, a standard form book, and trying to fit the very  
15 unique circumstances of individuals, often with very  
16 complex family issues, into forms that were then taken to  
17 court and routinely granted by judges.

18           But I think that's the -- and what was --  
19 reality then was we could only serve a very, very tiny  
20 fraction of the families who needed a divorce within the  
21 legal services budget, and then there were the richer  
22 people, the middle class and wealthy people, who could  
23 afford a lawyer; but for the vast majority of people who  
24 walked in the door there was no access to justice; and  
25 that's what this process would be able to have happen.



1 And as was mentioned earlier, there was a lot of harm that  
2 occurred because people weren't able to get access to that  
3 justice. People stayed in abusive relationships. People  
4 in -- just never did anything about dissolving their  
5 marriage and got into other relationships and got property  
6 and had kids and further complicated their pre-existing  
7 relationships, and it was a huge mess that resulted  
8 because of lack of access to justice.

9           Now, the bar in those days was aware of this  
10 problem. I remember appearing before bar seminars, and  
11 people said, "You know, we really ought to do something to  
12 fix the problem," and that was 40 years ago. We've made a  
13 lot of progress. I will tell you that there's been a lot  
14 of progress made in terms of providing some additional  
15 funding for additional pro bono stuff, but the problem is  
16 still there, and we've only begun to scratch the surface,  
17 and this will make a big difference.

18           Earlier one of the questions was raised  
19 about the nature of the forms all being in English, and I  
20 think forms need absolutely to be set -- filled out in  
21 English.

22           CHAIRMAN BABCOCK: Mr. Smith, you have one  
23 more minute.

24           MR. SMITH: But one of the things that  
25 became really clear to me is that the client base that I

1 served when I was working for Legal Aid were oftentimes  
2 very competent to fill in boxes but really needed detailed  
3 explanation in their dominant language as to what the  
4 boxes meant, and I would urge you to consider  
5 multilanguage forms, or explanations, rather; and whatever  
6 form y'all adopt is going to be wrong; and you just have  
7 to get over it and realize you're going to have evergreen  
8 forms; and about once a year you're going to have to tune  
9 them up and then every four or five years after that  
10 you're going to have to come back and do it.

11           I like the idea of having a video to teach  
12 people how to do this, and whether it would be accessed at  
13 the library or in -- on the internet I think that's  
14 important, but I want to make sure it doesn't turn into a  
15 sonogram kind of deal where you get this video and the  
16 horrors of doing it wrong are all portrayed and none of  
17 the advantages, so make sure it's fair and balanced in  
18 ways that maybe Fox News might not deliver.

19           And the last thing I would like to say is,  
20 frankly, the courts have better things to do than to deal  
21 with a significant -- straightening out the significant  
22 mess made by people not getting divorces or people filling  
23 out the wrong forms and not getting the details necessary  
24 for a judge to make reasonable decisions about a given  
25 case. Thank y'all very much for working on this, and I

1 wish y'all good luck in your endeavors.

2 CHAIRMAN BABCOCK: Okay. Anybody else?

3 Great. So, Ms. Jones, spell your name. I'm just kidding.

4 Spell your name.

5 MS. MARTINEZ: Close. Laura Martinez. It's  
6 spelled L-a-u-r-a, and the last name is Martinez,  
7 M-a-r-t-i-n-e-z. I would like to thank you all for the  
8 opportunity to address you today regarding the pro se  
9 forms being proposed. I have been licensed to practice  
10 law since 1991 in Texas and have also practiced in  
11 Washington, D.C. My area of practice for the past 21  
12 years has been family law, and I have spent over 15 years  
13 working with nonprofit organizations, of which thirteen  
14 and a half of those years were with Legal Aid of Central  
15 Texas, now Texas RioGrande Legal Aid, here in Austin, in  
16 the area of family law working specifically with survivors  
17 of domestic violence. Since 2007, I have been in private  
18 practice here in Austin and now also teach domestic  
19 violence law at the University of Texas School of Law as  
20 an adjunct professor.

21 During my years of practice I have seen the  
22 gamut of those seeking legal services from the indigent to  
23 the wealthy, and what I have learned is that the decision  
24 about whether to use a form is multilayered and affected  
25 by the following and not necessarily in this order:

1 Number one, availability of resources; number two, the  
2 ability and/or the desire to represent themselves; number  
3 three, the degree to which the matter is contested; and  
4 number four, the degree to which the party cares about the  
5 contested matter. As others have pointed out, forms have  
6 been available for years. When I practiced in D.C. in  
7 1991 forms were available for protective order  
8 applications and orders. The orders were also available  
9 in both English and Spanish. The forms were used by both  
10 attorneys and pro se litigants. As Judge Hathcock has  
11 pointed out, the pro se forms here in Travis County are  
12 used by both pro se litigants and attorneys, and the fact  
13 that there was a form did not necessarily mean that the  
14 case was not going to be initially litigated or appealed.

15           The availability of forms in the divorce  
16 with no property and no children will not detrimentally  
17 affect the income of attorneys in private practice. I  
18 have conducted intake for over 20 years now both at Legal  
19 Aid and now in private practice, and what I have seen is  
20 that there are many individuals who qualify for Legal Aid  
21 services financially, which is at 125 percent of the  
22 poverty guidelines, but who will still not receive  
23 services because their family law issue isn't within the  
24 priority of cases that are accepted.

25           My first two years of private practice I was

1 also on the Lawyer Referral Services match program panel,  
2 which offers legal services to those financially eligible  
3 at a reduced rate. When someone in need of legal  
4 representation on a family law matter comes in I believe  
5 it is our responsibility as attorneys and as officers of  
6 the court to inform the individual -- individual of  
7 alternative resources if their matter can be handled with  
8 a form at a reduced rate and/or by a governmental agency  
9 at no cost. Ultimately it is the client's choice about  
10 who will represent them or whether they will represent  
11 themselves. I will tell you that even in those cases  
12 where there is no property, no children, some people will  
13 still want to hire an attorney for various reasons. They  
14 don't have the time to figure it all out, nor do they want  
15 to. They don't speak the language. They don't feel that  
16 they can walk into the courthouse and figure it out. They  
17 need it done quickly, and they don't want to waste their  
18 time figuring it out.

19           One of the requirements in the class that I  
20 teach is that the students must shadow an attorney at the  
21 Legal Aid evening clinic. The reason for this is that I  
22 think it is important that law students learn early on  
23 about the lack of resources available and see it up close  
24 in order to realize how important it is to be willing to  
25 take on a pro bono case and/or volunteer in their future

1 as an attorney.

2 CHAIRMAN BABCOCK: Ms. Martinez, you have  
3 one minute.

4 MS. MARTINEZ: Thank you. I have read the  
5 response of those opposed to the forms and their views.  
6 An option to consider would be to have an attorney  
7 available at every courthouse to assist with the use of  
8 these forms. How are we going to staff it? The attorneys  
9 staffing these positions could be both practicing  
10 attorneys whose participation would be mandatory and  
11 required to meet a certain number of hours of pro bono per  
12 year and a newly licensed attorney whose loan repayments  
13 would be made while they are there. There are a lot of  
14 law students coming out of school worried about where  
15 they're going to work and how they're going to repay those  
16 loans, and I guarantee you, I have students offering free  
17 services and can't find someone to sponsor them to do an  
18 internship. They would welcome this opportunity to also  
19 be mentored by a practicing attorney who's been doing this  
20 for years. You would develop those connections, and I  
21 think it would be beneficial to the attorneys coming out  
22 of school. Thank you for your time and for your work on  
23 this project.

24 CHAIRMAN BABCOCK: Thank you very much.  
25 Okay.

1           Yeah. Don't be bashful. But spell your  
2 name.

3           HONORABLE SUSAN SHEPPARD: Susan Sheppard,  
4 S-h-e, double-p, a-r-d. I was an associate judge here in  
5 Travis County for 25 years. I retired in December. I'm a  
6 certified family law specialist for almost 20 years, and I  
7 support the use of the uniform forms. That's probably no  
8 surprise. We've been using similar forms for many years  
9 in Travis County without complaint, without problems, and  
10 I think all that I would like to add is that it would  
11 surprise me over and over when I was handling these  
12 dockets just how poor some of the folks who have to come  
13 to court are. It's hard for us to imagine how they get by  
14 on the low income and low support that they have, and I  
15 would guess that many of them would love to be represented  
16 by an attorney.

17           They don't choose to be pro se. They don't  
18 choose to not hire a lawyer. They simply do not have the  
19 money or the time to -- to get legal representation, and  
20 their legal problems often are very minimal, and the set  
21 of forms that the committee has come up with is aimed at  
22 those folks who don't have really significant, complex  
23 legal problems. They have a car that they need to clear  
24 title to and they need a court's decision or a court's  
25 order signed as to who is going to take over what debts,

1 and having forms really helps them simply get those  
2 decisions made, and they can get on down the road.

3           It's much more efficient for the courts to  
4 be able to deal with known forms. Right now we're dealing  
5 with dozens and dozens of blank forms that are brought to  
6 court that deserve the court's scrutiny and attention, and  
7 it would be wonderful if we could just have a known  
8 boilerplate where we could just concentrate on the issues  
9 that the court needs to deal with, so I'm in support of  
10 the idea. I think the forms themselves probably could be  
11 improved in terms of some of the language and some of the  
12 format. I know our experience in Travis County is as we  
13 worked with them we saw needs for them to be tweaked, and  
14 I think it would be great for there to be a system set up  
15 for continually receiving feedback from the courts as to  
16 what needs changing on their forms. Thank you very much.

17           CHAIRMAN BABCOCK: Thank you very much,  
18 Judge Sheppard. Next.

19           HONORABLE LORA LIVINGSTON: Thank you very  
20 much. My name is Lora Livingston. First name is spelled  
21 L-o-r-a, last name L-i-v-i-n-g-s-t-o-n. I'm a Travis  
22 County district court judge with general jurisdiction, but  
23 I hear only family and civil cases, don't hear any  
24 criminal cases. I want to start by telling you a little  
25 bit about my perspective, if you will, because I want you



1 to understand that I believe my perspective is local, is  
2 statewide, and is national, and I think that that informs  
3 the comments that I bring to you today. I currently serve  
4 as a judge who hears cases all day long everyday. Many of  
5 the people that come in front of me are pro se, and most  
6 of those are poor. Not all of them are, but most of them  
7 are. They can't afford a lawyer. You've heard some about  
8 that already.

9           In addition to that, I serve on the -- I  
10 served on the inaugural board of the Texas Access to  
11 Justice Commission and was well-informed as a member of  
12 the commission about the need for a comprehensive delivery  
13 system in Texas. We still need that. I don't think we've  
14 achieved it yet. I've also served and currently serve in  
15 the American Bar Association as chair of the Commission on  
16 IOLTA, and so as a funder of legal services around the  
17 country and a supporter of that work I'm also informed  
18 about the great need in our country and in every state and  
19 in jurisdictions outside the continental USA about the  
20 need to supplement Federal dollars that are available and  
21 state and local dollars that are available for legal  
22 services. There isn't enough of that to be sure.

23           I've also served in ABA as chair of ABA's  
24 Delivery Committee; that is, the committee that speaks to  
25 issues related to delivery of legal services to the poor

1 and to the moderate income population; and I've just  
2 recently finished a term with the ABA on their standing  
3 committee on Legal Aid and Indigent Defendants. I'm a  
4 graduate, if you will, from the Legal Aid office here in  
5 Austin, is how I started my legal career. I have the  
6 perspective of the judge, which you've heard about, and I  
7 don't want to repeat the comments you've heard, but I echo  
8 the comments that you've heard from Judge Hathcock and  
9 from Judge Sheppard.

10           I also want to tell you that Texas is among  
11 about 48 or so other jurisdictions in the continental U.S.  
12 -- there are jurisdictions outside the continental U.S.  
13 including some of the Mariana Islands and Guam, the Virgin  
14 Islands, and other places, Puerto Rico, who are also  
15 working on this effort. The notion of access to justice  
16 is global in our sense of the American justice system  
17 anyway in western justice. It's global. It's a trend.  
18 It's here to stay. It isn't going away, and I would be  
19 saddened deeply if Texas took a step backwards as opposed  
20 to taking many steps forward to be leaders in the work  
21 that needs to be done to provide access to particularly  
22 poor Texans.

23           You've heard about the forms and their  
24 ability to create efficiencies and so forth, and so I  
25 don't want to repeat those points either, but I want to

1 point out that restricting forms to only -- or eligible  
2 clients -- I've heard some talk about that -- I think  
3 would be difficult, impractical. I think it would create  
4 an undue burden on the court, and I, frankly, cannot  
5 imagine as a judge telling a poor person that they have  
6 the available use of the forms but the person who just  
7 chooses to represent themselves that they don't. Remember  
8 Rule 7 of our Rules of Civil Procedure. Everyone has a  
9 right to represent him or herself, and for me as a judge  
10 to tell someone at the courthouse door that they can't use  
11 a promulgated form or an appropriate form, whether  
12 approved or not, is unthinkable to me; and I hope you  
13 don't go down that road.

14           The -- there's been some talk about pro bono  
15 and how pro bono is an appropriate response and a  
16 solution, if you will, to this problem. I appreciate  
17 that. I support that, but I also remember deeply the  
18 division within the bar about mandatory pro bono and  
19 mandatory reporting of pro bono. So we can't say that pro  
20 bono is a solution and then on the other hand say, but  
21 we're not committed enough to make it mandatory or even to  
22 require the mandatory reporting of the hours that we do on  
23 a day.

24           CHAIRMAN BABCOCK: Judge, you have one  
25 minute.

1 HONORABLE LORA LIVINGSTON: Yes, sir. So  
2 what I want to tell you is I think Texas deserves and  
3 Texas needs a comprehensive delivery system. That means  
4 pro bono. That means soup to nuts representation. That  
5 means limited scope representation. That means assisted  
6 pro se programs in courthouses around the world, around  
7 the country, partnerships with law libraries, partnerships  
8 with anybody who will partner with us to help make sure  
9 that we can provide for our citizens in this state the  
10 access to the justice system that they so richly deserve.  
11 Thank you for your work on this project.

12 CHAIRMAN BABCOCK: Thank you very much,  
13 Judge.

14 MS. OLIVER: You ready?

15 CHAIRMAN BABCOCK: You ready? Yeah.

16 MS. OLIVER: Please bear with me. I left my  
17 glasses in the car so I'm having to hold these up to see.  
18 My name is Julie Oliver, J-u-l-i-e, O-l-i-v-e-r, and I'm  
19 the executive director of the Texas Coalition on Lawyer  
20 Accountability, which is a fairly new group that -- whose  
21 purpose is to represent the public interest in discussions  
22 like this where the practice of law or the regulation of  
23 the legal profession is undergoing scrutiny and  
24 consideration to ensure that the public interest is  
25 considered. I also from 1987 until 2002 was the executive

1 director of Texas Lawyers Care here at the State Bar. At  
2 the end of that time -- of my time there I was very  
3 involved in the development of the proposal that resulted  
4 in the creation of the Access to Justice Commission, and I  
5 served as the first staff director for the commission.

6           As Jeana indicated, pro se has been around a  
7 long time and been on the table for discussion for a long  
8 time. I was disturbed to see comments in the materials  
9 and hear some comments today of other speakers to imply --  
10 or that there's a perceived conspiracy to transform the  
11 practice of law in the state. That couldn't be further  
12 from the truth. This has been an ongoing discussion. In  
13 the 2001 when the commission was created a couple of  
14 representatives from the commission went to Maricopa  
15 County, Arizona, where you may know one of the premier pro  
16 se -- court-driven pro se programs in the country exists.  
17 They have court-ordered forms. They have kiosks with  
18 computers where litigants can process their pro se forms.  
19 They have coordinated unbundled legal services so that  
20 family law attorneys are available to advise on little  
21 aspects of the pro se case. It's a very coordinated  
22 system, and so this has been on the plate of the  
23 commission since its inception, and so to think that  
24 there's, you know, been anything, you know, over the last  
25 few years to be subversive about trying to take over the

1 practice of law and direct it in a certain way is a little  
2 bit disturbing and unfortunate, because there is a place  
3 for pro se.

4           Pro se is not right for everybody. It's not  
5 right for every situation clearly, but when we have so  
6 much unmet legal need in the state we need every piece of  
7 the puzzle that we can find to try to provide access to  
8 justice. The family law section and the Solutions 2012  
9 committee have proposed a number of recommendations to try  
10 to increase pro bono activity in the state. I think  
11 that's great, and I applaud them and encourage them to  
12 keep up their energy and go forward with that. I commit  
13 my program to work with you, and I'm sure Trish and others  
14 would work with them as well. However, many of the things  
15 that they've suggested are already things that we have  
16 been trying and working on over the years, and so -- and  
17 we're still at this place. If everybody was dedicated as  
18 Stewart Gagnon we might not be at this place, but that's  
19 not the reality and it's never going to be the reality.  
20 So I think that it's important, and I appreciate your  
21 efforts to work with the forms and try to make them as  
22 solid as possible, because there is an important place for  
23 them in our system.

24           I would also encourage you or discourage you  
25 from spending a whole lot of time or energy or resources

1 on screening or policing who uses the forms. First of  
2 all, I think to really do that would be costly and very  
3 burdensome. If somebody has a lot of assets or resources  
4 and they are determined to do pro se, they're going to do  
5 it whether or not there are court-ordered forms, and  
6 they're going to have a fool for a client, but there are a  
7 lot of people who could benefit from pro se with some  
8 assistance who may not meet the guidelines of indigency  
9 for various pro bono programs and legal services programs,  
10 but because of their circumstances, perhaps their moderate  
11 income and as a couple they're been managing okay, but all  
12 of the sudden they're divorcing and they're separating  
13 into two households, and those two moderate incomes are  
14 not going so far --

15 CHAIRMAN BABCOCK: You have one minute.

16 MS. OLIVER: -- and the idea of paying a  
17 private attorney is just not feasible, and so it's those  
18 kind of people who are also out after -- you know, who are  
19 also looking at using pro se forms that could benefit from  
20 this, even though they may not specifically meet a certain  
21 percentage of poverty. So I would encourage you to  
22 continue your efforts to make the forms -- to tweak the  
23 forms. As Smitty said, and I think he's right, it's going  
24 to be an ongoing process and clearly there are a lot of  
25 people in this room who are committed to making that -- to

1 participating and supporting that process so that they  
2 continue to improve and to continue to be a positive  
3 resource for low income people or lower income people and  
4 also are such that they don't burden the courts any more  
5 than -- or burden the courts less than pro se litigants  
6 tend to at this point.

7 CHAIRMAN BABCOCK: Thank you, Ms. Oliver.

8 MS. LANGSLEY: Ready?

9 CHAIRMAN BABCOCK: Go for it.

10 MS. LANGSLEY: Hi, my name is Karen  
11 Langsley. I'm a solo practitioner from Dripping Springs,  
12 Texas. I want to thank you all for this long day, and if  
13 I had had the wherewithal to put this into song it would  
14 have helped get it out I think, but I don't, I'm not that  
15 coordinated. I wanted to let you know that from the point  
16 of view of a solo practitioner who works with family law  
17 litigants, I have an emphasis in child welfare law. I'm  
18 on the State Bar committee on Child Abuse and Neglect. I  
19 worked closely with the Attorney General's office when  
20 they had the parenting order legal clinic, which conducted  
21 legal clinics around the state for people who had  
22 establishment cases or other paternity cases, and I come  
23 to you with the request to please approve the forms from  
24 the point of view of somebody who sees just an enormous  
25 need out there. Most of the people that I work with



1 cannot -- they cannot afford attorneys.

2           The Attorney General's office, I'm sure you  
3 know, is probably the ultimate pro bono provider. Each  
4 attorney in the Attorney General's office has 6,000 cases.  
5 Each attorney has 6,000 cases. They can't possibly handle  
6 that themselves. And those are just the child support  
7 cases. There are people out there who -- who need these,  
8 and we cannot as a profession cover the entire need by  
9 ourselves. I also participate in Austin Adoption Day,  
10 have done that for the last 10 years, and as part of  
11 trying to gather resources just for that we send out  
12 letters to every firm in Austin asking that they donate  
13 one billable hour to that effort so that we can put out on  
14 Austin Adoption Day, and we typically get back about five  
15 letters. There is an enormous need out there.

16           We are privileged, all of us here are  
17 privileged to be attorneys and to be practicing in this  
18 profession. Never mind the fact that I was too scared to  
19 take physics and become a doctor, but we have a  
20 responsibility because we are privileged to those less  
21 fortunate than we are, and there are so many people out  
22 there. Aside from the issues of just not being able to  
23 get through a docket in the outlying counties where I  
24 practice, Hays, Caldwell, Blanco, it's very difficult to  
25 address these issues, and this would be the first step. I

1 understand that we're concerned about the camel sticking  
2 his nose in the tent, but I believe that we have the  
3 talent and the resources to address that. I think this  
4 is, as Judge Livingston says, an incredibly important  
5 first step, and we need to recognize the need, and we need  
6 to go forward. Thank you very much.

7 CHAIRMAN BABCOCK: Thank you very much.

8 HONORABLE FRANK RYND: Good afternoon.

9 Again, I want to echo what other people have said. Thank  
10 you for undertaking this important project, and I realize  
11 it's been a long day, actually for all of y'all a long  
12 time, serving trying to work on this. My name is Frank  
13 Rynd. I've been licensed since 1976 and had the honor of  
14 serving as an associate judge and family district judge in  
15 Harris County for almost 12 years. I'm here today  
16 speaking just as a private citizen. I come with some  
17 degree of angst, to be candid, because I know a lot of the  
18 people and respect a lot of the people who have spoken  
19 here today against the forms. I got a letter yesterday  
20 signed by several judges who I know and respect, and I do  
21 think there are some valid points that need to be looked  
22 at in a more global picture.

23 We can't solve all the access to justice  
24 problems in family law, particularly with children and  
25 other issues, strictly by forms, but today we're here to

1 comment on these forms, which are forms with no property  
2 and no children, no real property and no children, and I  
3 do think it's clear from the speakers you've heard and  
4 I'll tell you from my perspective as a judge, I used to  
5 see people that would photocopy stuff and fill it in  
6 incorrectly. The forms that you get online frequently, or  
7 worse at Office Depot or chancery courts or something,  
8 don't even follow Texas law, and you would see people come  
9 in with those. You would see them with photocopies and  
10 want you to fill them out, and so I do think the forms  
11 serve an admirable purpose and actually have some pretty  
12 good tips in there, you know, for people, which is, you  
13 know, if the children -- even if there are not children  
14 born of your husband, if they were born during the  
15 marriage this isn't the form for you, and I've had people  
16 say, "Well, I didn't have any children by him."

17           We have a real social problem with the  
18 number of people in poverty. We almost have a need to  
19 have some regularity in people's marriages. Again, I'm  
20 totally against simplifying the waiting period or  
21 shortening the waiting period. I don't think a divorce  
22 should be like getting a fishing or hunting license, but  
23 these forms don't do that. They don't change the waiting  
24 periods. They don't change the filing requirements, and  
25 again, I commend you for your hard work, but I do think

1 there are some advantages really to the courts from having  
2 a uniform form, and quite frankly you can tell the people  
3 from Office Depot, you know, "This form won't work," but  
4 again, I thank you for your time and your dedication.

5 CHAIRMAN BABCOCK: Would you mind spelling  
6 your name for the court reporter?

7 MR. RYND: Sure, it's unusual. It's  
8 R-y-n-d. First name is Frank.

9 CHAIRMAN BABCOCK: Thank you very much.  
10 Appreciate it. Great. Do we have anybody else that would  
11 like to speak? You've already spoken. Anybody else?

12 SPEAKER: I stood up at the wrong time.

13 CHAIRMAN BABCOCK: Okay. Well, if nobody  
14 else wishes to speak then we will consider the public  
15 comment period of this meeting closed. We still have one  
16 minute before 5:00 o'clock, and I'll use that --

17 MR. HUGHES: Not by my watch.

18 CHAIRMAN BABCOCK: -- only to, number one,  
19 thank all of the members of the public and the speakers  
20 both this afternoon and this morning for coming and  
21 sharing their thoughts with us, enormously important for  
22 you to do that, and we appreciate it. Secondly, if  
23 anybody sees that written comments that they wish the  
24 committee or the Court or both to consider that are not on  
25 the SCAC website, please let Angie Senneff, who is sitting

1 to my right, know about it, and we will be sure that they  
2 get up there for everyone's consideration, and we will go  
3 back to work tomorrow morning at 9:00 a.m. and finish off  
4 these forms. And thank you. And you can park in the  
5 garage here.

6 MR. ORSINGER: Tomorrow?

7 CHAIRMAN BABCOCK: So we're in recess.

8 Thank you.

9 (Adjourned at 5:03 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 \* \* \* \* \*

2 **REPORTER'S CERTIFICATION**  
3 MEETING OF THE  
4 SUPREME COURT ADVISORY COMMITTEE  
5 (FRIDAY AFTERNOON SESSION)

6 \* \* \* \* \*

7  
8 I, D'LOIS L. JONES, Certified Shorthand  
9 Reporter, State of Texas, hereby certify that I reported  
10 the above meeting of the Supreme Court Advisory Committee  
11 on the 13th day of April, 2012, and the same was  
12 thereafter reduced to computer transcription by me.

13 I further certify that the costs for my  
14 services in the matter are \$ 907.50.

15 Charged to: The State Bar of Texas.

16 Given under my hand and seal of office on  
17 this the 28th day of April, 2012.

18  
19 D'Lois L. Jones  
20 **D'LOIS L. JONES, CSR**  
21 Certification No. 4546  
22 Certificate Expires 12/31/2012  
23 3215 F.M. 1339  
24 Kingsbury, Texas 78638  
25 (512) 751-2618

24 #DJ-324