



RQ-0028-GA

Mike Stafford  
Harris County Attorney

March 12, 2003

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OPINION COMMITTEE

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OPEN RECORDS DIVISION

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Authority of the Presiding Judge of the Statutory Probate Courts to issue an administrative order providing statewide local rules of administration for the statutory probate courts.  
C.A. File No. 02GEN0507.

FILE # ML-43031-03

I.D. # 43031

Dear General Abbott:

On September 4, 2001, the Presiding Judge of the statutory probate courts issued Administrative Order 2001-11 that provides for statewide local rules of administration that were deleted in H.B. 900, codified as TEX. GOV'T CODE ANN. § 25.0022 (Vernon Supp. 2002), and effective on September 1, 2001. Administrative Order 2001-11 is attached as *Exhibit "A."* Pursuant to section 402.043 of the Government Code, we respectfully request an opinion on whether Section 25.0022 of the Government Code gives the Presiding Judge of the statutory probate courts the authority to issue an administrative order that provides statewide local rules of administration for the statutory probate courts that were originally in H.B. 900 but deleted before the bill was passed. A Memorandum Brief is attached.

Sincerely,

MIKE STAFFORD  
County Attorney

By: Melissa L. Barloco  
MELISSA L. BARLOCO  
Assistant County Attorney

Approved:

John R. Barnhill  
JOHN R. BARNHILL  
First Assistant County Attorney

## MEMORANDUM BRIEF

In the last legislative session, H.B. 900, codified as TEX. GOV'T CODE ANN. § 25.0022 (Vernon Supp. 2002), and effective on September 1, 2001, was an attempt to give the statutory probate court system a more cohesive administrative structure. The initial version of H.B. 900 included a Section 2 that would have provided for a local administrative system for probate courts and the creation of a "Local Administrative Statutory Probate Court Judge" in each county having a statutory probate court. Apparently several probate judges objected to Section 2, and H.B. 900 was amended so that Section 2 was deleted.

Section 25.0022(c) of the Government Code gives the presiding judge broad authority to "perform the acts necessary to carry out this section [Administration of Statutory Probate Courts] and to improve the management of the statutory probate courts and the administration of justice." TEX. GOV'T CODE ANN. § 25.0022 (Vernon Supp. 2002). Section 25.0022(d) requires that the presiding judge perform the following duties:

- (d) The presiding judge shall:
- (1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;
  - (2) advise local statutory probate court judges on case flow management practices and auxiliary court services;
  - (3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;
  - (4) appoint an assistant presiding judge of the statutory probate courts;
  - (5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;
  - (6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;
  - (7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section; and
  - (8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions.

TEX. GOV'T CODE ANN. § 25.0022 (Vernon Supp. 2002) [Emphasis added]. Section 25.0022(d)(1) mandates that the presiding judge of the statutory probate courts ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court.

The Rules of Judicial Administration established by the Supreme Court of Texas pursuant to section 74.024 of the Government Code give the presiding judge of statutory county courts the responsibility for establishing local rules. Rule 5 provides:

In addition to the duties placed on Presiding Judges by law and these rules, each Presiding Judge should oversee the general docket management, the prompt disposition of all cases filed in each district and statutory county court within the region, and the proper administration of the affairs of the courts within the administrative region. The Presiding Judge shall:

- a. ensure the adoption of uniform local rules;

TEX. R. JUD. ADMIN. 5, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. F app. (Vernon 1998) [Emphasis added]. However, according to Rule 2, "statutory county court" does not include statutory probate courts. TEX. R. JUD. ADMIN. 2.

Thus, the Presiding Judge of the statutory county courts is required to ensure the adoption of uniform local rules, which is similar to the authority given to the Presiding Judge of the statutory probate courts to ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court. The authority to ensure the adoption or promulgation of uniform local rules is not the same as having the authority to directly promulgate or adopt local rules. The issue raised by Administrative Order 2001-11 is whether the Presiding Judge overstepped his authority in requiring the promulgation of local rules.

The Presiding Judge of the statutory probate courts is also required to compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions. TEX. GOV'T CODE ANN. § 25.0022(d)(8) (Vernon Supp. 2002). In order to achieve uniformity in local rules, the Presiding Judge must have some authority to effectuate that uniformity. Therefore, Administrative Order 2011-11 arguably was authorized, if the Presiding Judge compared local rules, determined that uniformity in local rules was needed, and issued Administrative Order 2011-11 to achieve uniformity in local rules.

Assuming the Presiding Judge was acting within his authority when he issued Administrative Order 2001-11, the fact that Administrative Order 2001-11 reinstated an entire section of a deleted portion of a bill raises issues of legislative intent. One possible interpretation is that the legislature's deletion of section 2 of H.B. 900 indicates the legislature's intent that the Presiding Judge not be authorized to perform the actions in section 2. On the other hand, the legislature could have determined that section 2 was not necessary, due to the broad grant of authority given to the Presiding Judge in section 25.0022.