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**In this Issue...**

[Probate Judge Sues Commissioners](#)

[Mandamus Response Reveals Sordid Details](#)

[Attorneys Cannot Bill Clients for Motions to Withdraw](#)

[A Party Can Testify About the Value of Property, Part 2](#)



**A Party Can Testify About the Value of Property, Part 2**

In my prior issue, I wrote that the owner of a business may testify as to the value of the business and does not have to be designated as an expert witness. *Red Sea Gaming, Inc. v. Block Investments (Nevada) Co.*, 338 S.W.3d 562 (Tex. App. - El Paso 2010, pet. denied)

Galveston County has gone nuts (again). Republican judges are battling Republican County commissioners. The war of words has escalated to lawsuits and mandamus actions and has exposed a rift among our elected officials that is hard to see ever being healed or ignored. A few Republican elected officials are secretly rooting for an independent candidate with a loose grasp on reality to defeat our Republican County Judge while other Republicans are already lining up primary opponents for GOP judges for 2016.

It looks like the disagreement is over one particular personnel decision and some budget issues, but those disagreements are really a proxy for a much deeper political feud between just a few officials that has drawn their fellow officeholders into a truly embarrassing fracas. Much like our despised Congress, it appears that our local leaders are busy fighting each other instead of working together for the common good.

I do not expect to win every case. I just want an efficient system in which my client gets a fair hearing before a judge who works hard, knows the law, and does not play favorites. I also expect judges to appoint qualified amicus attorneys who zealously look after children (and actually visit the kids in their homes). Is that asking too much? Stay tuned.

Greg Enos  
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## Probate Judge Kim Sullivan Sues Commissioners

Galveston County Probate Judge Kim Sullivan has filed a lawsuit against County Commissioners because they reduced her pay by \$5,000 per year. Even though Galveston County has only one probate judge, that judge is designated as the Administrative Statutory Probate Judge and she received an extra \$5,000 per year

from a dedicated fund created by filing fees in probate cases. The County Commissioners decided Judge Sullivan did not need to be paid to administer herself. So, they voted to eliminate that extra pay even though it is not paid from the county's general fund and even though they were reducing the pay of a well thought of, fellow Republican. This vigorous cost cutting by commissioners amounted to less than 0.0004% of the annual county budget, but it really angered Judge Sullivan.

[Click here](#) to read the lawsuit filed by Alton Todd for Judge Sullivan against County Judge Mark Henry and his fellow commissioners. FYI: I checked, and Mr. Todd does not currently have any cases pending before his new client, Judge Sullivan.

I am all for using tax dollars wisely but there is such a thing as being "penny wise and pound foolish." The obsession with cutting even small items from the budget may allow commissioner's court to brag about reducing overall spending, but is it wise? How much will the county now have to spend with outside counsel to fight this lawsuit? How much bad blood was created with this move? Four of five members of the commissioner's court are Republicans. Why would they do this to a well liked, fellow Republican?

Judge Henry would point out that the county obtained an Attorney General's opinion that said they were not required to pay the extra money to the probate judge. [Click here](#) to read that opinion. Henry also notes that all of the judges, including Judge Sullivan, recently received an \$18,000 per year raise.



## Mandamus Response Reveals Sordid Details

All ten elected Galveston County judges (9 Republican, 1 Democrat) are really mad that Republican County Judge Mark Henry fired Bonnie Quiroga, who had been the Director of Justice Administration. The judges felt that Quiroga worked for them and all were surprised that Henry suddenly terminated her without even consulting or forewarning them. District Judge Lonnie Cox issued a sua sponte order that declared the firing illegal and ordered the commissioners to stop interviewing for a replacement. Commissioners hired an Austin law firm and filed a mandamus action against Cox, who is the "Godfather" of local GOP politics. Attorney Mark Stevens filed a lengthy response for Judge Cox.

[Click here](#) to see the entire mandamus response. [Click here](#) to read the interesting allegations contained in the long affidavit of Bonnie Quiroga and the shorter affidavit from Judge Cox.

Several readers wrote to remind me about limitations on that general rule, most notably the notion that the business owner must be able to explain the basis for her opinion as to value.

*Natural Gas Pipeline Co. of America v. Justiss*, 397 S.W.3d 150 (Tex. 2012), was a nuisance suit for damages, not a divorce. However, the rule articulated by the Texas Supreme Court should apply in divorce cases when a spouse testifies what the family business. In such a situation, the spouse must also explain what that opinion is based on.

The Supreme Court stated:

*Because property owner testimony is the functional equivalent of expert testimony, it must be judged by the same standards. Thus, as with expert testimony, property valuations may not be based solely on a property owner's ipse dixit [bare assertion]. An owner may not simply echo the phrase "market value" and state a number to substantiate his diminished value claim; he must provide the factual basis on which his opinion rests. This burden is not onerous, particularly in light of the resources available today. Evidence of price paid, nearby sales, tax valuations, appraisals, online resources, and any other relevant factors may be offered to support the claim. But the valuation must be substantiated; a naked assertion of "market value" is not enough. Of course, the owner's testimony may be challenged on cross-examination or refuted with independent evidence. But even if unchallenged, the testimony must support a verdict, and conclusory or speculative statements do not.*

Thus, the spouse who testifies his auto repair business is worth \$200,000 should be asked what that opinion is based on and he should say he checked with a business broker, his banker and owners of several other similar businesses. The spouse cannot simply just say his business is worth \$200,000 without an explanation.



## Attorneys Cannot Bill Clients for Motions to Withdraw

A lawyer cannot bill her client for the time

One part of Quiroga's affidavit disparages the "Veteran's Court" run by Judge Henry, for which he is paid an extra **\$15,000** per year. The affidavit alleges that only four cases have been referred to the court in 2014. She says litigants are required to salute Judge Henry as he sits on the bench and the name plate on the bench says, "Maj. Mark A. Henry/USAF (Ret.)." I am sure that Judge Henry would point out that this is a new program and helping military veterans caught up in the criminal justice system is a worthwhile effort.

Quiroga also says in her affidavit that County Judge Henry, who is not a lawyer, is also paid another extra **\$15,000** per year by the county to serve as a magistrate and set bonds for those newly arrested. Quiroga's affidavit details the **\$10,000** spent by the county to set up a video system so that those newly arrested can appear before a magistrate via video link. She says that the county IT Department, at the direction of Judge Henry, "had installed motion activated audio/video equipment in the Galveston County Jail in a manner which would permit the County to monitor conversations between inmates and their attorneys in a room commonly used for consultation between inmates and attorneys, as well as Parole Board Hearings." It would appear that Ms. Quiroga is setting forth the basis for a "whistle blower" lawsuit, since she says she reported her concerns about these cameras to District Attorney Jack Roady the day before she was fired.

Quiroga's affidavit, which also describes a list of "Democrats" Commissioner Ken Clark allegedly gave Judge Henry to fire when he took office, definitely makes for interesting reading.

Unfairly, Judge Henry is not really in a position to respond in detail to the affidavit because of the pending litigation. Henry definitely feels he had ample reasons and the clear authority to fire Quiroga. I assume Henry would characterize most of Quiroga's allegations as the untrue statements of a disgruntled, fired employee. However, had Quiroga been allowed to retire with dignity after her many years of service in a way that did not ruffle the feathers of the judges, none of this dirty linen would have presumably been aired for all to read and the current Republican-on-Republican feuding and costly litigation could have been avoided.

I am writing here about a story that involves nothing but friends and it is perilous for me to say anything about this controversy, but I of course cannot help myself. I think the world of Bonnie Quiroga and yet I consider Mark Henry a friend. I respect Judge Cox, but, I know what a political animal he is and I can clearly see that so much of this arises from a feud between Cox and Henry that each says the other provoked. I can look back now and see the missteps and sources of this controversy and I can even suggest a compromise (if the two sides would even talk to each other).

Above all, I do know this: the county is now spending a lot of money and time on attorneys. The county will spend even more on attorneys if it wins the mandamus action (as I predict) but the judges or Quiroga immediately file a lawsuit. The position of Justice Administration is empty and all of the county's elected leaders are fighting each other. Our elected judges do not work for county commissioners and there are some things more important than saving a few dollars in the budget (or playing tricks and making it look like you reduced the budget). Mainstream Republican officials will never be popular with the Tea Party extremists and the typical suburban voter in League City and Friendswood does not care that much about small savings in the county budget. All voters do want our elected leaders, especially those of the same party, to get along and work together as a team.

The county should pay a modest settlement to Ms. Quiroga (a fraction of what it will spend on legal fees) and create an office of Court Administrator that clearly only works for the judges. The Director of Justice Administration can report to the County Judge. The duties of the two would be separated by negotiation between Henry and the judges. This would require one extra employee for a county with an annual budget of over \$123 million. Judges Cox and Henry should go on a long trek in the wilderness together to get to know, trust and like each other and Kim Sullivan should be paid her stinking \$5,000 extra a year. Commissioners should regularly spend time in court watching the judges in action and the judges should acknowledge that taxes and expenditures are the responsibilities of the commissioner's court. Above all, our leaders should replace egos and vendettas with common sense and resolve this mess and just get on with the business of government. This is not really about which side is right or wrong (or a little of both), it is about the effective and common sense operation of government.

spent preparing a motion to withdraw from the client's case. *Lee v. Daniels & Daniels*, 264 S.W.3d 273, 278 (Tex. App.-San Antonio 2008, pet. denied). In that case, the attorney's engagement letter said the client would, "pay for all time spent, costs and expenses incident to withdrawal as attorney of record to include, but not limited to, airfare, mileage, motel, and lodging."

The Court of Appeals held:

*Daniels [the attorney] sought reimbursement for all time spent in his efforts to terminate his attorney-client relationship with Cummings [the client] including time spent adversarial to his own client. None of that time was spent engaged in "legal services" performed or rendered on behalf of Cummings, his client. Instead, Daniels spent that time engaged in services performed for his own benefit. No lawyer could form a reasonable belief that time spent adversarial to the client and in pursuit of the lawyer's own interests is the rendering of "legal services" for the client. Thus, no lawyer could form a reasonable belief that fees incident to such time spent were reasonable. Therefore, we hold the particular withdrawal provision at issue here, which because of its broad nature allows the recovery of such fees, is unconscionable and contravenes Texas public policy as a matter of law.*

*We recognize our holding may impose a burden on a withdrawing attorney with legitimate reasons to terminate the attorney-client relationship. Frankly, however, our ethical and fiduciary obligations require no less. It is simply one of the costs that must be borne by a professional who operates under the mantle of a fiduciary duty. As a professional, an attorney's relationship to his client is not to be guided by "the morals of the marketplace." Otherwise, we relegate our profession to an ordinary business relationship.*

divorce and child custody battle (he won) and understands what his clients are going through. Enos graduated from the University of Texas Law School and was a very successful personal injury attorney in Texas City before he decided his true calling was to help families in divorce and child custody cases. Greg Enos is active in politics and in Clear Lake area charities. He has served as President of the Bay Area Bar Association and President of the Board of Interfaith Caring Ministries.



Attorney Greg Enos

