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International Journal on the Reform of Family Courts

The Mongoose

Together, family law attorneys can reform our family courts!

Published by attorney Greg Enos

Issue: No. 30 **November 12, 2013**

The Enos Law Firm
17207 Feather Craft Lane, Webster, Texas 77598
(281) 333-3030 Fax: (281) 488-7775
E-mail: greg.enoslaw@gmail.com
Web site: www.divorcereality.com

Please forward this e-mail newsletter to everyone on your e-mail contact list!

Greetings!

The sad situation involving Judge Pratt drags on. Pratt now has an excellent criminal defense attorney and the DA is not talking about the status of the criminal investigation into backdating of court orders. I truly expect something very dramatic to happen before Thanksgiving regarding my criminal complaint. Pratt continues to get really bad press. Click here to read a new story in the *Houston Press* about Pratt.

It seems universally agreed that Pratt is finished politically, no matter what happens with the criminal investigation. Republicans are focusing on who might be appointed by the Governor to replace Pratt and which new candidates are going to jump into the race for the 311th. Donna Detamore has just joined Anthony Magdaleno and Phil Placzek in the race for the 311th. One or two other prominent Republican attorneys should announce for the 311th in the next week or so. If Pratt resigns or is removed, Governor Perry would appoint a replacement and I doubt he would wait until the March primary and April runoff.

The Democrats are actually hoping that the Republican District Attorney (who employs the same political consultant as Judge Pratt) does not charge Pratt, because they want very much to be able to talk about Pratt during the general election next Fall. Pratt's fellow Republican judges are very worried about how Pratt's problems will effect them.

In the meantime, Judge Pratt continues her relaxed work hours and she is still deciding cases with little regard for the law, rules of procedure or common sense and she is still appointing her "chosen ones" to be amicus attorneys.

I have received an amazing response from lawyers (and the public) about my

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criminal complaint and my petition calling for Pratt to be removed from office. Click here to download the petition you can sign. Click here to read the letter signed by 36 family attorneys calling on Pratt to resign or be removed. Who ever dreamed they would see prominent family law attorneys like Wendy Burgower, Warren Cole, Lynn Kamin, Reggie Hirsch, Bill De La Garza, Joan Jenkins, Craig Haston, John Pavlas, Ellen Yarrell and others sign a letter publicly calling on a sitting judge to resign or be removed?

Over 830 attorneys opened the link and presumably read my criminal complaint against Judge Pratt and not a single person has contacted me to argue that the documents and facts I presented do not constitute a crime. Pratt's political consultant told the media that I was a "loser" whose feelings were hurt (even though I won all my trials before Judge Pratt) but even Mr. Blakemore did not deny that Pratt had backdated court orders.

A Houston political blogger wrote this last week:

> A few days ago, I noted that Denise Pratt, a Family District Court Judge in Harris County, had been accused of corruption. Specifically, the Republican judge has been accused of falsifying important records in order to issue late opinions.
>
> Now, the *Houston Chronicle* reports that, in a recent evaluation of all Houston-area judges by the Houston Bar Association, Judge Pratt received the lowest marks -by far- of any jurist. In fact, her evaluation has more negative that, as one participant noted, anything he could recall in the last 40 years. Judge Pratt received overall disapproval of 79% of applicants, with 76% saying her "following the law" skills were especially poor and 80% saying likewise about issuing timely rulings. The marks were far lower than many other Judges with similar baggage, including Sharon "Killer" Keller of the Court of Criminal Appeals.
>
> The astute will recall from my article last week on the subject the original controversy was launched by Greg Enos, the Galveston-area attorney who brought down Christopher Dupuy. Speaking of Enos, the *Houston Chronicle* recently ran a profile on him. As I have said before, he is a high-profile Democrat who runs the influential Family Law newsletter "The Mongoose."

Click here to read more of this blog, *The Expatriate*. Click here to read the *Houston Chronicle* story about my efforts to reform the family courts.

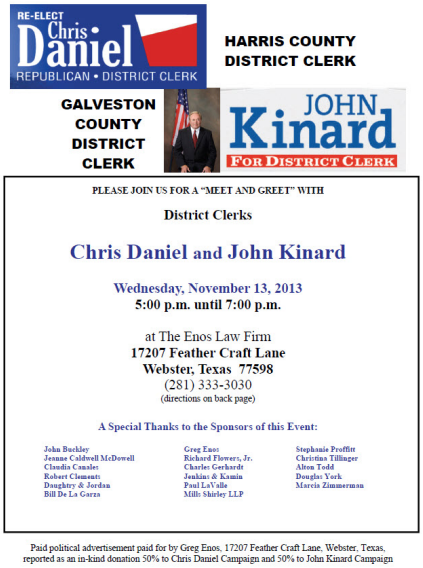
I do not expect to win every case. I just want an efficient system in which my client gets a fair hearing before a judge who works hard, knows the law, and does not play favorites. I also expect judges to appoint qualified amicus attorneys who zealously look after children (and actually visit the kids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

Greg Enos
The Enos Law Firm
(281) 333-3030

Check our web site and blog!

greg.enoslaw@gmail.com

***The Mongoose* is watching!**



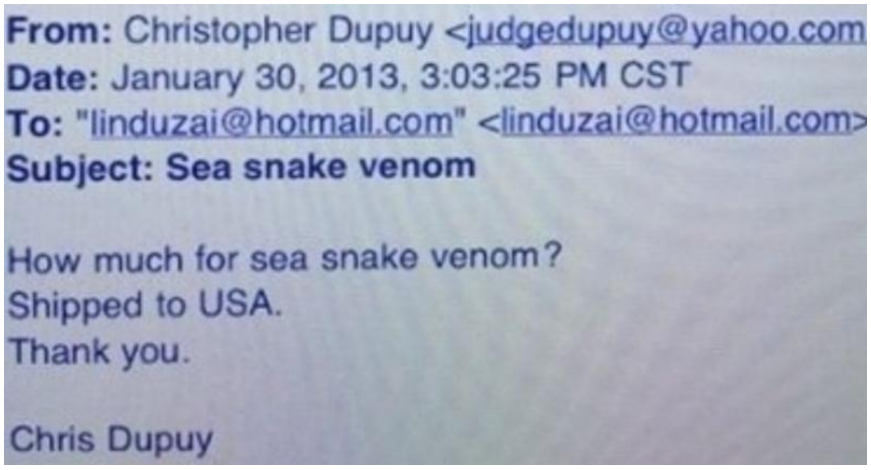
Please attend the party this Wednesday, November 13 for the Republican District Clerks of Harris and Galveston Counties at my office in Webster, Texas. Click here to download the flyer for this fun party honoring Chris Daniel and John Kinard.

Courthouse Snakes in the Grass

The Galveston County Justice Center is again warning visitors to stay on the side walk and out of the grass because several rattlesnakes have been spotted.

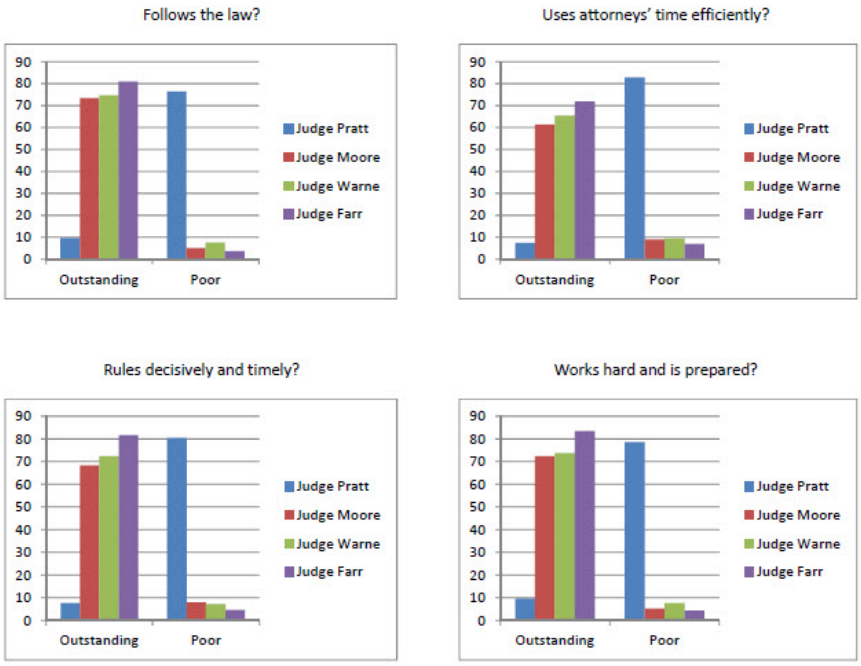
The Perils of Publishing *The Mongoose*

Publishing this newsletter and taking on judges who are doing wrong does involve some risks for me. The target judges obviously do not care for my actions and it causes me to inform clients of the problem when their cases land in those courts and it has cost me business. I have made enemies of the attorneys who make money off appointments and rulings from those judges I question. In at least one case, there is some concern about my physical safety. In December 2012, I filed a criminal complaint against Judge



HBA Judicial Poll Gives Pratt Lowest Ratings in History!

The 2013 Houston Bar Association Judicial Evaluation Survey resulted in ratings for Judge Denise Pratt that were abysmally low. It is said that Pratt's ratings were the worst any judge has ever received in the history of the survey. Here are charts comparing Pratt to a few of her family court colleagues:



Pratt and Recusal Procedure

On the day the *Houston Chronicle* ran a front page story about my criminal complaint against Judge Pratt, my associate, Christina Tillinger started a trial in front of Judge Pratt. Our client had decided to go forward after full disclosure and after seeing the newspaper article. Judge Pratt would not come into the courtroom that day until the television news cameras left the seventh floor so the trial started late and there was a three hour break for lunch. The trial did not finish that Friday and was set to resume on the following Tuesday. On that next Tuesday, Judge Pratt called the attorneys to the bench and announced she was recusing herself because she had Christopher Dupuy for using his courtroom equipment to help his girlfriend with her child custody case. He was eventually convicted of that charge and of the charge of perjury for lying about when he knew I had filed this complaint.

On January 13, 2013, my newsletter called on Judge Dupuy to resign or be removed from office. On January 24, I hosted a meeting at a BBQ restaurant of attorneys interested in removing Judge Dupuy. Dupuy had someone at that restaurant taking photographs of those who attended according to sworn testimony from one of his ex-girlfriends. On January 30, 2013, I filed a motion to recuse Judge Dupuy in one of my cases in his court. I filed my motion at 1:57 p.m. At 3:03 pm that same day Judge Dupuy allegedly sent an e-mail (shown to the left) inquiring about the purchase of sea snake venom. The e-mail states:

Subject: Sea snake venom

How much for sea snake venom?
Shipped to USA.
Thank you.
Chris Dupuy

This e-mail was allegedly shared by yet another ex-girlfriend of Judge Dupuy, but not the one who testified that Dupuy had discussed killing his ex-wife and fleeing with his children to New Zealand.

Sea snake venom is very deadly and causes rapid breakdown of skeletal muscle tissue, paralysis, renal failure, and cardiac arrest. The first symptoms that begin within 30 minutes are thirst, sweating, vomiting, generalized aching, stiffness, and tenderness of muscles all over the body. Please alert courtroom staff if you ever see me experiencing these symptoms. I usually have a syringe of anti-venom in a pocket of my bullet-proof vest.

After I filed the motion to recuse Judge Dupuy on January 30, he tried to hold me in contempt of court, but other judges intervened and I managed to escape fines and jail time. Dupuy purchased a gun at roughly the same time that this e-mail was allegedly sent inquiring about the sea snake venom.

confirmed that I had indeed filed a criminal charge against her. So, Pratt took herself off a case in the middle of trial because of my criminal complaint even though I was not the attorney there in court for my firm and even though no motion to recuse had been filed.

Now, Pratt is refusing to recuse herself in other cases involving my firm, even when we have filed motions to recuse. A lot of other attorneys are filing motions to recuse Judge Pratt and she is apparently either not ruling on them or denying them but not referring the motions to Judge Underwood.

Here is a brief primer on the procedure involved in recusing a judge:

If a motion to recuse is filed before evidence has been presented in a trial or hearing, the judge only has two options: recuse herself or refuse to recuse herself. If the challenged judge refuses to recuse herself, then she cannot hear any further matter in the case until an assigned judge hears the motion to recuse. TRCP 18a(f)(1). See e.g. *Jamilah v. Bass*, 862 S.W.2d 201, 203 (Tex. App - Houston [14th Dist.] 1993)(orig. proc.).

Any order signed by the challenged judge after a motion to recuse is filed is void. *In re Rio Grande Valley Gas Co.*, 987 S.W.2d 167, 169 (Tex. App. - Corpus Christi 1999, orig. proc.).

The only exception to this rule that nothing can be heard until the recusal is decided is if the challenged Judge finds "good cause" and indentifies what that good cause is on the record or in her order. TRCP 18(a)(f)(2)(A). There is no case law that explains what "good cause" in this situation would be. *In re Stearman*, 252 S.W.3d 113 (Tex. App. - Waco 2008, orig. proc.). After a lot of searching, the only suggestion I could find is in the transcript of the January 23, 2010 meeting of the Supreme Court Advisory Committee discussing the amendment to Rule 18a that added this "good cause" language. At pages 19884-8, Judge Gray suggested a trial judge challenged by a recusal motion might find good cause to go forward "because we've got the expert from Finland here on something. You know, we're going to go ahead and make the record." In other words, he suggested that "good cause" to proceed with a hearing despite a pending recusal motion would involve circumstances when it would not be possible or practicable to conduct the hearing on a later date after the recusal is determined. In the family law context, one might imagine emergency circumstances where the child is about to be taken out of the country and a delay caused by a recusal motion would in effect prevent any other judge from granting the needed relief. "Good cause" to proceed with a hearing would almost certainly not just be "this case involves a child" unless there is an emergency involving the child that must be addressed before the recusal motion can be decided.

Even if there is an emergency involving a child in Pratt's court, a motion to protect the child can still be heard by another judge in the courthouse even if a motion to recuse Pratt has been filed. Texas Government Code Sec. 79.094 allows another district judge in the same county to hear the case,"...as if the case were pending in the court of the judge who acts in the matter." If Judge Pratt is challenged by a motion to recuse, she should not be able to find "good cause" to proceed unless no other family judge can hear the matter.

A motion to recuse must be filed as soon as practicable after the party learns of the reason for recusal and at least ten days before the hearing or trial. TRCP 18a(b)(1). A motion to recuse can be filed less than ten days before the hearing or trial if the grounds for recusal were not known or if it was not known that particular judge would be presiding. TRCP 18a(b)(1)(B).

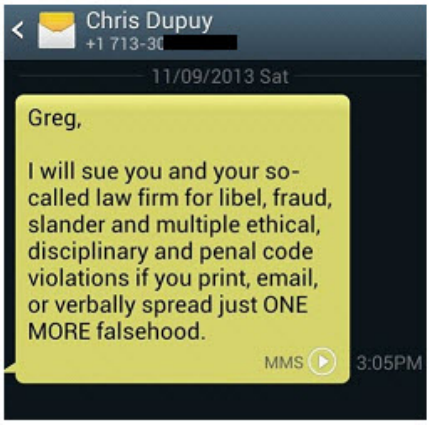
A motion to recuse must be verified. TRCP 18a(a)(1). A motion to recuse should allege a ground for recusal in TRCP 18b. After our experience with recusals of Judge Dupuy in Galveston County, I suggest that motions to recuse be very detailed and include affidavits and exhibits. The regional presiding judge (Judge Underwood) reviews the motion and can deny it on its face if it does not state sufficient grounds.

If the challenged judge refuses to recuse herself, the motion must be referred to the regional presiding judge who assigns a judge to hear the motion. If a family district judge in Harris County fails to rule on a motion to recuse or fails to refer the matter to Judge Underwood, I suggest you contact Judge Farr, our local Administrative Judge for the family courts.

The judge challenged by a motion to recuse must grant or deny the motion to recuse within three business days after the motion is filed. TRCP 18a(f)(1).

I do not know if this e-mail is a fake or if Dupuy really sent it. It would take a very twisted and creative mind to even think of fabricating such an e-mail, however. This e-mail address at least can be found many places on the Internet associated with a Chinese company that sells snake venom (the phone number is 86 23 68648680 and be sure to ask about the *Mongoose* discount on bulk purchases).

I e-mailed Dupuy's attorney in fairness to get his side of the story and she called the ex-girlfriend a drug addict but did not deny that Dupuy authored the e-mail. Dupuy himself then sent me this text message, which also did not deny that he sent the e-mail about sea snake venom.



(Legal Note: When a plaintiff's reputation is so bad that nothing the defendant can say would possibly make it worse, the allegedly defamed plaintiff is "libel-proof").

I have no proof of course that any sea snake venom was actually ordered or received by Dupuy. I do know that the terms of Dupuy's probation do not prohibit him from possessing blow guns, darts or any sort of poison.

A challenged judge cannot overrule or refuse to rule on a motion to recuse which the challenged judge considers to be procedurally defective. *In re Norman*, 191 S.W.3d 858, 861 (Tex. App. - Houston [14th dist.] 2006, orig. proc.).

The *Texas Bench Book* from the Texas Center for the Judiciary gives trial judges this advice on responding to a motion to recuse:

> FIRST: Promptly refer the motion to the Administrative Judge. Either agree to the recusal (Form C) or request the Administrative Judge to decide the recusal (Form D). Regardless of the procedural sufficiency of the motion, the challenged judge must either recuse or refer the motion to the presiding judge, *Lambert v. Tschope*, 776 SW2d 651 (Tex. App. - Dallas 1989, denied). Recusal motion must be referred to Administrative Judge, even if motion is defective, to allow another judge to determine any procedural inadequacy, *In Re Norman*, 191 SW3d 858 (Tex. App. - Hou. [14th] 2006).

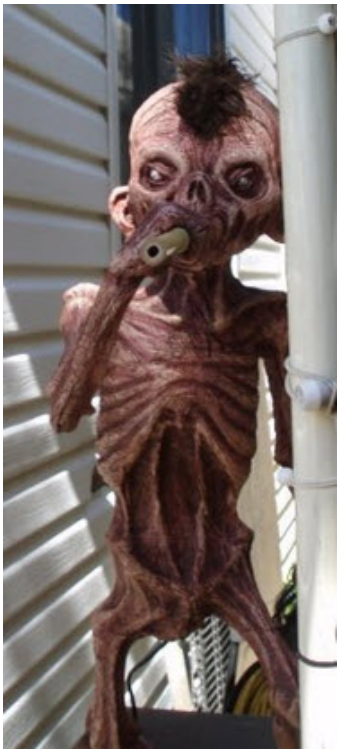
The above discussion relates to a motion to recuse filed before evidence is presented. A different set of rules apply if a motion to recuse is filed after a hearing or trial starts.

Reconsidering the So-Called "Morality" Clause Injunction

Click here
to download an article I have written on why family court judges and lawyers need to rethink the so-called "morality" clause, which enjoins a parent or conservator from allowing a boyfriend or girlfriend from spending the night when the parent or conservator has possession of the child.

One of the most important and fulfilling parts of my life is raising three young boys who live with me and their mother (to whom I am not married). I am the only "father" those boys have in their lives and I am fairly confident that they benefit from having me around. The so-called "morality" clause injunction would prevent me from living with these kids and their mother or force us to get married before we decide as a couple to be married.

I am certainly not unique in cohabitating without marriage. As of March 2012, when



Thanks to **Lori Laird** (who should be at least as worried as I am about former Judge Dupuy and her safety) for providing a **link to a video showing a swimming race between a mongoose and a sea snake**.

New Law Requires Goofy Federal Wage Withholding Order

The awkward federal form for a Wage Withholding Order is now being required in Texas thanks to an amendment to the Family Code and a new requirement by the Federal Office of Child Support Enforcement that all wage withholding orders to employers be the OMB form. National employers and payroll companies are already rejecting the old fashioned wage withholding orders that look like typed court orders.

The Texas Family Code effective September 1, 2013 says:

> 158.106 (d). The forms prescribed by the Title IV-D agency under this section shall [deleted "may"] be used: (1) for an order or judicial writ of income withholding under this chapter; and (2) to request voluntary withholding under Section 158.001.

Thanks to **Debbie Panzica** for this tip!

Here are a few tips of mine about the federal Wage Withholding Order:

1. The Judge signs on the second page.
2. If there are multiple children and one

United States Census did a supplemental survey on family living arrangements, 15.3 million unmarried heterosexual individuals were in live-in relationships. That is 6.5% of all U.S. adults 18 and over. The Census Bureau reported that 41% of cohabiting couples have children living with them. The majority of Americans under age 30 now report living together before getting married.

The so-called "morality clause" injunction should usually not be ordered because:

1. The act that is being forbidden is not considered "immoral" by the vast majority of Americans. The "American Values Survey" conducted in 2012 of over 2,000 Americans on behalf of *Atlantic Magazine* and The Aspen Institute found that the great majority **(69%)** of Americans believe that a heterosexual, unmarried couple living together is morally acceptable.

2. There is usually no evidence that allowing a boyfriend or girlfriend to spend the night when the child is present will harm the child.

3. The so-called "morality" clause is fundamentally wrong because it tries in advance to forbid conduct that is not always harmful to children.

4. The real harm that most judges want to prevent with the so-called "morality" clause can easily happen during the day or with a married parent.

5. The injunction is about the only instance when judges forbid legal parental behavior in advance and try to micro-manage what is done around the child. It is based on an assumption that, regarding this one behavior, a loving parent will not use common sense or protect the child.

6. The injunction ignores the perceptions of children and the realities of many single parents' lives.

7. This injunction unconstitutionally invades the parents' rights of privacy and right to make parental decisions without any evidence of harm to the child.

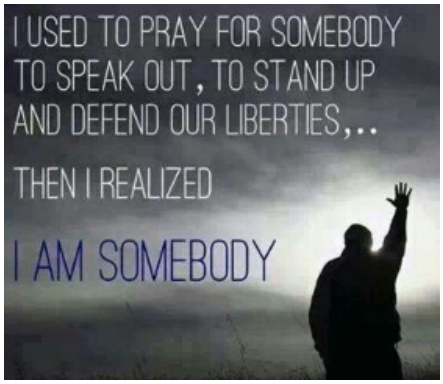
8. It is very difficult to enforce the so-called "morality clause" injunction.

An injunction against allowing a boyfriend or girlfriend to spend the night should usually only be ordered when there is evidence that a parent has allowed a "revolving door" of lovers to enter their child's life or the child has actually been harmfully exposed to adult sexual activity.

Click here to download this article on the so-called "morality" clause if you are willing to challenge your preconceived notions about what should usually be done in child custody orders.

Jabba the Hutt Clarifies Who Brought Down Judge Dupuy

or more step-downs in child support, then you should use the box for "Additional Information" on the third page and type "See attached provisions regarding reductions in the child support" and then attach an additional typed page with the specifics of the child support step down.

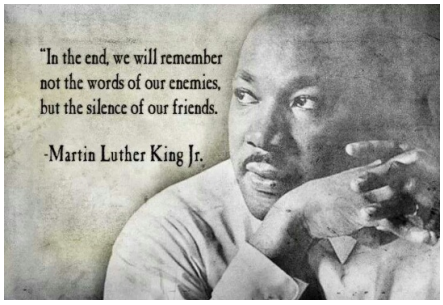


Upcoming Campaign Events

I am going to try to post notices for upcoming campaign functions for all races in Galveston County and family court races in Harris County. Candidates: please send me your notices and I will help get the word out and **please stop holding secret exclusive events for just a few big fat cats that us little people are not invited to**!

Party for District Clerks Chris Daniel and John Kinard
Wednesday, Nov. 13 from 5:00 - 7:00 pm
The Enos Law Firm
17207 Feather Craft Lane
Webster, Texas 77598
Click here for a invitation and map

Donny Quintanilla Campaign Kick-Off Party
Tuesday, Nov. 19 from 5:30 - 7:30 pm
21 Rudy & Paco's
2012 Post Office, Galveston



Attorney Greg Enos has been through his own 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

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