

In The Supreme Court of Texas

Brief of the Texas Access to Justice Commission

Regarding the Supreme Court's
Authority To Promulgate Pleading Forms

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ISSUE PRESENTED

Does the Supreme Court of Texas have constitutional, statutory, or inherent authority to promulgate family-law pleading forms that will help pro se litigants gain access to the justice system to vindicate their rights in Texas courts and create efficiencies for judges and court staff in Texas?

ARGUMENT

The Supreme Court of Texas may promulgate family-law pleading forms for two separate reasons. First, the Court has authority to promulgate pleading forms under its power to administer the judicial branch of government and to create rules of procedure. *See* Part I, *infra*. Second, the Court may promulgate pleading forms under its power to create efficiencies for Texas courts. *See* Part II, *infra*. The Supreme Court’s authority to promulgate pleading forms is confirmed by local and nationwide practice: forty-seven states—including Texas—offer court-approved, statewide pleading forms. *See* Part III, *infra*. A decision that the Supreme Court *cannot* promulgate pleading forms would uproot years of Supreme Court practice and make Texas the *only state in the country* to forbid its Supreme Court to promulgate such forms. *Id.*

I. The Supreme Court Of Texas Has Power To Promulgate Pleading Forms Under The Court’s Authority To Administer The Judicial Branch Of Government And To Create Rules Of Procedure.

The Texas Constitution, the Texas Government Code, and Texas common law uniformly recognize the Supreme Court’s authority to administer the judicial branch of government and to create rules of procedure. High courts from other states have promulgated pleading forms under powers that are substantively identical to those of the Supreme Court, and research has not revealed any instance

in which a state’s high court has concluded that it *lacks* authority to promulgate pleading forms.

A. The Supreme Court Of Texas Has Authority To Administer The Judicial Branch Of Government And To Create Rules Of Procedure.

The Supreme Court of Texas enjoys constitutional, statutory, and inherent authority to administer the judicial branch of government. The Texas Constitution states that “[t]he Supreme Court is responsible for the efficient administration of the judicial branch.” TEX. CONST. art. V, § 31(a). The Texas Constitution also requires the Supreme Court to “promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts,” and to “promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.” *Id.* § 31(a)–(b). The Court has interpreted its constitutional charge as conveying an overarching “obligation to supervise and administer the judicial branch.” *In re Castillo*, 201 S.W.3d 682, 684 (Tex. 2006) (orig. proceeding). Although the Texas Constitution identifies *duties* rather than *powers* of the Court, “[i]t is elementary that . . . the imposition of a definite duty upon any . . . court confers by implication the authority to do whatever may be necessary in

order . . . to perform the duty imposed.” *Brown v. Clark*, 102 Tex. 323, 333, 116 S.W. 360, 364 (Tex. 1909).

The Supreme Court’s authority to administer the judicial branch of government extends to helping indigent Texans protect their rights in Texas courts. As Chief Justice Jefferson recently explained: “The Constitution requires the [Texas Supreme] Court to administer justice. This occurs not only by deciding cases, but also by establishing a judicial climate in which people who lack money to hire a lawyer have a reasonable chance to vindicate their rights in a court of law.” Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012) (attached as Exhibit A).

In addition to that constitutional authority, the Legislature has confirmed by statute the Supreme Court’s authority to administer the judicial branch. The Texas Government Code provides that “[t]he [S]upreme [C]ourt has supervisory and administrative control over the judicial branch” and is “responsible for the orderly and efficient administration of justice.” TEX. GOV’T CODE § 74.021; *accord Castillo*, 201 S.W.3d at 684.

Finally, the Supreme Court enjoys inherent power over the judicial branch of government. “The Inherent judicial power of a court is not derived from legislative grant or specific constitutional provision, but from the very fact that the

court has been created and charged by the constitution with certain duties and responsibilities.” *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979). The Court’s inherent authority includes powers that the Court “may call upon . . . in the administration of justice . . . and in the preservation of its independence and integrity,” *id.*, and enables the Court to “regulate judicial affairs,” *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994).

B. Courts In Other States Have Promulgated Pleading Forms Based On Powers That The Supreme Court Of Texas Possesses.

Multiple high courts in other jurisdictions have relied on their supervisory, administrative, and rule-making authority—powers also belonging to the Supreme Court of Texas—to promulgate pleading forms. According to the Arizona Constitution, the Supreme Court of Arizona has “administrative supervision over all the courts of the state.” ARIZ. CONST. art. VI, § 3 (attached as Exhibit B). The Supreme Court of Arizona relied on that constitutional authority to promulgate “usable and understandable legal forms,” reasoning that such forms are “uniform and efficient” and “enhance the public’s access to the courts.” Admin. Order No. 89-22 (Ariz. 1989) (attached as Exhibit C¹).

The Supreme Court of Florida promulgated family-law pleading forms under its constitutional rule-making authority. *In re Family Law Rules of Procedure*, 663 So.2d 1049, 1051 (Fla. 1995); *In re Petition for Approval of Forms Pursuant to*

¹ Available at <http://www.azcourts.gov/Portals/22/admorder/Orders89/pdf89/8922.pdf>.

Rule 10-1.1(b) of Rules Regulation the Fla. Bar—Stepparent Adoption Forms, 613 So.2d 900, 900 (Fla. 1992). That authority entitles the Florida Supreme Court to “adopt rules for the practice and procedure in all courts.” FLA. CONST. art V, § 2(a) (attached as Exhibit D).

In *Nichols v. State*, 191 N.W. 333 (Neb. 1922), the Nebraska Supreme Court replaced a longwinded form for criminal information with a much shorter and plainer form. *Id.* 335–36. The court held that it had the constitutional authority to promulgate the shorter form under the court’s authority to promulgate rules for the “effectual administration of justice” and the “prompt disposition” of cases. *Id.*

Finally, the Supreme Court of South Carolina has promulgated basic family-law pleading forms, including a Complaint for Divorce form. Admin. Order. No. 11-12-2009 (S.C. 2009) (attached as Exhibit E²). In promulgating those forms, the court relied on a constitutional provision stating that “[t]he [South Carolina] Supreme Court shall make rules governing the administration of all the courts of the State” and “rules governing the practice and procedure in all such courts.” S.C. CONST. art. V, § 4 (attached as Exhibit F).

As the following table indicates, the Supreme Court of Texas possesses authority that is substantively identical to authority on which high courts of other states have relied in promulgating pleading forms.

² Available at <http://www.sccourts.org/courtOrders/HTMLFiles/2009-11-12-01.htm>.

<i>State</i>	<i>Authority Under Which Court Promulgates Pleading Forms</i>	
	<i>Supervisory Authority</i>	<i>Rule-Making Authority</i>
Texas:	<p>“The Supreme Court <u>is responsible for the efficient administration of the judicial branch.</u>” TEX. CONST. art. V, § 31(a) (emphasis added).</p>	<p>“The Supreme Court . . . <u>shall promulgate rules of administration . . . as may be necessary for the efficient and uniform administration of justice . . .</u>” TEX. CONST. art. V, § 31(a) (emphases added).</p> <p>“The Supreme Court <u>shall promulgate rules of civil procedure . . . as may be necessary for the efficient and uniform administration of justice . . .</u>” TEX. CONST. art. V, § 31(b) (emphases added).</p>
Arizona:	<p>“The supreme court <u>shall have administrative supervision over all the courts of the state.</u>” ARIZ. CONST. art. VI, § 3 (emphasis added).</p>	
Florida:		<p>“The supreme court <u>shall adopt rules for the practice and procedure in all courts including . . . the administrative supervision of all courts.</u>” FLA. CONST. art V, § 2(a) (emphases added).</p>
Nebraska:		<p>“For the <u>effectual administration of justice and the prompt disposition of judicial proceedings,</u> the supreme court <u>may promulgate rules of practice and procedure</u> for all courts” NEB. CONST. art. V, § 25 (emphases added).</p>
South Carolina:	<p>“The Chief Justice of the Supreme Court shall be the <u>administrative head of the unified judicial system.</u>” S.C. CONST. art. V, § 4 (emphases added).</p>	<p>“The Supreme Court <u>shall make rules governing the administration of all the courts of the State.</u> Subject to the statutory law, the Supreme Court <u>shall make rules governing the practice and procedure</u> in all such courts.” S.C. CONST. art. V, § 4 (emphases added).</p>

Thus, a state court's authority to administer the judicial branch of government and to create rules of procedure enables the court to promulgate statewide pleading forms. Because the Supreme Court of Texas possesses those powers, the Supreme Court has ample power to promulgate the proposed family-law forms.

II. The Supreme Court Has Authority To Promulgate Pleading Forms Under The Court's Power To Achieve Administrative Efficiencies.

As explained above, the Texas Constitution states that “[t]he Supreme Court is responsible for the *efficient* administration of the judicial branch.” TEX. CONST. art. V § 31(a) (emphasis added). Similarly, in the Government Code, the Legislature has recognized that the Court is “responsible for the *orderly and efficient* administration of justice.” TEX. GOV'T CODE § 74.021 (emphasis added). The Supreme Court of Texas, as well as courts from other jurisdictions, have rightly acknowledged that uniform pleading forms for pro se litigants create significant efficiencies for judges and court staff alike.

When the Supreme Court created the Uniform Forms Task Force in 2011, the Court recognized that “developing pleading and order forms approved by the Court for statewide use w[ill] . . . reduce the strain on the courts posed by pro se litigants.” Misc. Docket No. 11-9046 (Tex. 2011) (attached as Exhibit G). The Court's finding is confirmed by other jurisdictions' experience with standardized,

court-approved forms. Judges in jurisdictions that have promulgated standardized forms report numerous efficiencies from the use of such forms:

- North Carolina: “The judges have openly expressed their preference in reviewing and processing local template forms . . . based on uniformity, the ability to review the information at a glance for completeness, and the formatting of the documents. In fact, for ease in processing, most judges first separate the divorce files into two piles, local forms and other pleadings. The time spent processing the template forms is minimized greatly in comparison to those drafted by members of the Bar.” National Center for State Courts, *Use of Self-Help Forms* (2012) (attached as Exhibit H).
- Alaska: “Judges report that filings are more complete and include more relevant information about the issues in the case.” *Id.*
- California: “[Standardized forms] save[] a huge amount of time in training and judicial review to know that the key elements are set forth in the forms. We have a relatively small number of judges given our population and I think that part of the reason that the system works is because of standardized forms.” *Id.*
- Iowa: “Use of these forms almost certainly increases the likelihood that self-represented parties provide the type of information judges need to make decisions and move the case to the next step. Judges also know exactly where to find the information they need on the forms because the forms are standardized. Consequently, the forms and instructions have almost certainly increased the courts’ efficiency in handling cases involving self-represented parties.” *Id.*

The use of court-approved, standardized forms also creates efficiencies for court staff:

- New Mexico: “The forms improve court efficiency because court staff has forms and/or referrals to give to pro se litigants, who otherwise clog up the lines and phones with questions and requests for legal advice that court staff cannot give.” *Id.*

- Alaska: “Court clerks report a reduced need to issue deficiency notices because the fill-in-the blank forms address many common problems (they are formatted correctly and include certificate of service sections) that historically have caused documents to be deemed deficient filings because of non-compliance with court rules.” *Id.*
- Idaho: “Prior to our use of court approved forms, these parties were trying to create their own forms, or using inadequate or inappropriate forms they found from a variety of sources, which did nothing but frustrate court staff and judges who had to deal with the problems created by those documents. By having correct forms and instructions approved by the courts, these issues have diminished greatly. Less time is spent correcting or redirecting the self-represented litigants by court staff and judges, and matters are resolved more quickly and efficiently.” *Id.*
- New Hampshire: “The use of these forms increases efficiency because they reduce the explanation time required by clerical staff to the filing party, and both clerical and judicial staff know immediately where on the form to look for specific information to screen and review.” *Id.*

In short, standardized, court-approved forms reduce the time that judges spend on each pleading by enabling the judge to know in advance where to look for key information and, indeed, ensuring that each pleading contains the information that the judge needs to make a decision. The forms also create efficiencies for court staff by enabling staff to refer inquiring litigants to standardized forms and associated instructions, to spend less time rejecting forms for deficiencies, and to avoid having to correct other problems in pro se pleadings. Because the proposed family law forms will promote the efficient operation of the

judicial branch, the Supreme Court has authority to promulgate the forms under its authority to achieve efficient administration of justice in Texas.

III. A Decision That The Supreme Court Cannot Promulgate Pleading Forms Would Uproot Years Of Established Supreme Court Practice And Make Texas The *Only State In The Country* To Forbid Its Supreme Court To Promulgate Pleading Forms.

Forty-seven states offer court-approved pleading forms. *See* Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C. (attached as Exhibit I). As Chief Justice Jefferson recently recognized, pleading and order forms “have been officially sanctioned by courts in most states.” Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012) (attached as Exhibit A). Thirty-seven states offer court-approved forms for an uncontested divorce with no children – *i.e.*, one of the family law forms that the Uniform Forms Task Force is proposing. *See* Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C. (attached as Exhibit I). The ability of state high courts to promulgate pleading forms is so broadly accepted that a contrary decision would create a minority rule by which a single state supreme court—the Supreme Court of Texas—cannot promulgate pleading forms, while *forty-six other* states continue to offer court-approved forms. *Id.*

A decision that the Supreme Court of Texas cannot promulgate pleading forms would also displace the Supreme Court’s practice of doing just that. In

2005, the Supreme Court approved protective-order forms for pro se litigants to use in obtaining protective orders. Misc. Docket No. 05-9059 (Tex. 2005) (attached as Exhibit J). The Court-approved documentation includes extensive instructions on the process for obtaining a protective order, sample forms indicating where the litigant should list certain items of information, and a template form for the litigant to complete and file in court. *Id.*

In 2009, the Supreme Court promulgated “a form petition that tenants may use” in filing suit to require a landlord “to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.” Misc. Docket No. 09-9195 (Tex. 2009) (attached as Exhibit K). The form petition was promulgated along with an amendment to Texas Rule of Civil Procedure 737. The Legislature had instructed the Court to promulgate the amendment to Rule 737, but the Legislature had not instructed the Court to promulgate the accompanying form. *See* Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448) (attached as Exhibit L).

The Supreme Court has also promulgated numerous forms for use in the legislatively created “judicial bypass” procedure by which a court may authorize a pregnant minor to obtain an abortion absent parental notification. Misc. Docket No. 99-9243 (Tex. 1999) (attached as Exhibit M); Misc. Docket No. 00-9171 (Tex. 2000) (attached as Exhibit N); Misc. Docket No. 07-9035 (Tex. 2007) (attached as

Exhibit O). The Court-approved documentation includes a set of detailed, plain-language instructions regarding the judicial-bypass procedure, an application for the litigant to complete and file in court, a form for the litigant to use to request a continuance of a court hearing, and numerous other forms. Unlike the protective-order and landlord-tenant forms, the judicial-bypass forms were promulgated at the Legislature's direction. Misc. Docket No. 99-9243 (Tex. 1999) (attached as Exhibit M). In directing the Supreme Court to promulgate pleading forms, the Texas Legislature implicitly recognized the Supreme Court's constitutional authority to promulgate such forms.

The Texas Rules of Civil Procedure contain numerous forms that litigants can use in judicial processes. Texas Rule of Civil Procedure 592b contains a template form that a litigant may use in submitting an attachment bond. TEX. R. CIV. P. 592b (attached as Exhibit P). Rule 736(2) sets forth a form that a litigant may use to give notice of a suit to foreclose on certain liens. *Id.* 736(2) (attached as Exhibit Q). Rule 750 contains a form for litigants to use in filing an appeal bond in a forcible entry and detainer case. *Id.* 750 (attached as Exhibit R). And Rule 117a sets forth a fill-in-the-blank form for citing by publication or personal service in suits for delinquent ad valorem taxes. *Id.* 117a(5) (attached as Exhibit S).

Thus, nearly every state in the country—including Texas—offers court-approved pleading forms. A decision that a state high court lacks this authority is an unsupportable and unprecedented argument under both the constitution and case law that would undermine the Supreme Court’s established practice of promulgating pleading forms, and would withhold from the Supreme Court of Texas powers that most other state courts routinely exercise without controversy.

CONCLUSION

The Texas Constitution, statutory law, and common law all provide that the Supreme Court of Texas has the authority to administer the judicial branch of government, to create rules of procedure, and to achieve efficiencies for Texas courts. The Supreme Court may promulgate pleading forms in exercise of those powers.

Respectfully submitted,



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LIST OF EXHIBITS

- A. Letter from Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas, to Mr. Bob Black, President, State Bar of Texas (Jan. 25, 2012).
- B. ARIZ. CONST. art. VI, § 3.
- C. Admin. Order No. 89-22 (Ariz. 1989).
- D. FLA. CONST. art V, § 2(a).
- E. Admin. Order. No. 11-12-2009 (S.C. 2009).
- F. S.C. CONST. art. V, § 4.
- G. Misc. Docket No. 11-9046 (Tex. 2011).
- H. National Center for State Courts, Use of Self-Help Forms (2012).
- I. Texas Access to Justice Commission, Statewide Uniform Forms – All 50 States + D.C.
- J. Misc. Docket No. 05-9059 (Tex. 2005).
- K. Misc. Docket No. 09-9195 (Tex. 2009).
- L. Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448).
- M. Misc. Docket No. 99-9243 (Tex. 1999).
- N. Misc. Docket No. 00-9171 (Tex. 2000).
- O. Misc. Docket No. 07-9035 (Tex. 2007).
- P. TEX. R. CIV. P. 592b.
- Q. TEX. R. CIV. P. 736(2)
- R. TEX. R. CIV. P. 750.
- S. TEX. R. CIV. P. 117a(5).