

Date: April 16, 2008  
To: Court Administration Task Force  
From: Richard C. Hile, Dies & Hile, LLP  
Re: Potential Conversion of County Courts to District Courts

The first issue to be discussed during the conference call on May 13 is whether county courts at law ("CCL") which have the same amount in controversy jurisdiction as district courts ("DC") should be converted to a district court. Several of you have indicated your preference in this matter. I am giving you my thoughts so that others might share their views in advance of the meeting. This should allow everyone time to consider the various alternatives in the interim.

As I look back over the past 20 years there have been numerous attempts by the Supreme Court, the legislature, via interim studies and other interested groups to address the structural problems with Texas courts. As a practical matter, none of the proposals has ever gotten off the ground and single shot attempts at specific issues have for the most part failed. One of the reasons for such failure is that prior to last session no one has ever been able to convince the legislature to take the first bold step, fade the heat that will come and actually address some of the needed changes. I believe that such an opportunity exists if we take the first step by supporting the proposed conversion outlined in CSSB1204.

I recognize that this may seem contrary to my position that local courts are best suited to manage their dockets. I generally will error on the side of giving local courts the discretion to control management of their dockets and internal workings. However, abolishing CCL that have the same jurisdiction as DC and converting them to DC involves a much broader issue regarding the proper structure of the trial court system in Texas, which I believe, is a legislative function.

If we were starting from scratch, none of us would adopt the system that we have today. There is too much overlapping jurisdiction. There is little transparency, as there are general rules applicable to county courts and district courts, exceptions to the general rule, and exceptions to the exceptions. There are many reasons for the system being like it is. The legislature is certainly one of the main culprits as they often refused to properly fund the judiciary and the need for new courts. Instead, they relied on the counties to pick up the tab and provide the needed resources. Because of these actions CCL often have the same jurisdiction as DC.

SB1204 was the first real attempt to bring some sanity to this issue. The bill seeks to re-establish the traditional CCL – DC jurisdictional lines. More importantly, Sen. Duncan and Rep. Gattis have attempted to address two of the biggest hurdles to reforming this problem. First, they allow current CCL to continue their participation in the county pension plan. This is necessary as these judges have been in these programs for years, their pensions may have vested, and the benefits are very favorable. Second, they have tried to eliminate, as much as possible, the potential adverse political consequences that might occur when an incumbent CCL judge has to run for election for his or her newly created DC. These judges are allowed to assert that they are running as an incumbent for that bench.

The passage of this legislation will not resolve the multitude of problems that exists regarding the structure of our courts. It is a first step, and a big one. I hope that this will allow the Task Force to identify other problem areas and seek legislative assistance in addressing those problems.

Any recommendation should include provisions that: 1) allow at least 4 years before implementation so that counties will have time to renovate their facilities; 2) insure that counties have the right to elect to have the existing court remain a CCL with jurisdictional limits of

\$200,000; and 3) that counties be allowed to create new CCL with jurisdiction over those matters that are traditionally granted to CCL and which were to be retained by the new DC with limits not to exceed \$200,000. The first two requirements were part of CSSB1204. The third provision would allow affected counties to create a new CCL to handle matters that are not traditionally assigned to district courts, but under SB1204 would have been retained by the new district court when the old CCL was abolished, i.e. certain criminal misdemeanor cases. This will allow counties to maintain the traditional jurisdictional distinctions between county courts and DC and at the same time may eliminate potential fiscal problems associated with the conversion of these courts. If we are going to advocate brighter lines of jurisdiction there is no reason to resort to our old confusing ways by having two categories of district judges. Moreover, changing CCL to DC may have significant fiscal implications' as counties may lose substantial fee revenue regarding criminal misdemeanor cases under SB1204.

As I recall, Bob Wessels indicated that there was a consensus among the affected parties that if there was to be an increase in the jurisdictional limits of CCL it be limited to \$200,000.00. This is a greater amount than many would like, however, it was acceptable to all concerned. I would propose such a limit.

I am also concerned that counties will have to incur the costs for modifying courtrooms that cannot handle cases that will now be assigned to the new DC. The survey indicates that approximately 15-19 of the responding judges' courtrooms cannot accommodate a 12 person jury. We should consider whether the recommendation should include any financial assistance for affected counties. One source of funding could be to allow the commissioners court to authorize an additional filing fee to pay the costs for renovating the courtrooms in issue. I noted that last session SB600 authorized the Dallas County Commissioners Court to increase filing fees by an amount not to exceed \$15 to fund improvements to Dallas County civil courts.

Finally, some judges are concerned that this conversion will be short lived, as the new district courts will be eliminated or moved as part of a redistricting effort. The proposed conversion is not "need" based; rather it is intended to try to bring some uniformity to the system. This is contrary to our recommendation that OCA conduct an objective analysis of any proposed court before one is created. These courts should not be at risk, and the legislation should provide that such be not subject to redistricting because of this change.

I recognize that this is only a first step. While we have proposed deferring any discussion regarding the complete overhaul of the trial system, these recommendations may affect that decision and we should recognize the implications of our actions. I am convinced that the necessary restructuring of the trial courts cannot be accomplished in a single act. It will have to occur incrementally and over a number of years.

I invite your comments, both members and friends, on this issue and look forward to discussing such on May 13.