



## JUDY WARNE, JUDGE

257TH JUDICIAL DISTRICT COURT  
201 CAROLINE, 16TH FLOOR  
HOUSTON, TEXAS 77002  
(713) 274-4560

May 27, 2015

The Honorable Debbie Riddle  
State Representative  
P.O. Box 2910  
Austin, Texas 78768

Dear Representative Debbie Riddle:

I am responding to your question about Texas courts and judicial tools to prevent applications of foreign law that are inconsistent with the U.S. Constitution and Texas Constitution, as well as our state's public policies. I understand your question is asked in light of Senate Bill 531, which addressed the issue of foreign law in Texas family law cases and it is the purpose of this letter to provide you with resource information regarding the effect this bill would have on the administration of our courts, vis a vis the Texas Constitution and specific provisions of the Texas Family Code.

As family law judge in Harris County for 10 years, I am bound by our state and federal constitutions. For example, in any case that involves enforcement of a foreign court order, our courts are obligated to ensure that the foreign tribunal met basic constitutional standards of due process in reaching its result. I can tell you we have provisions in the Family Code and the Civil Practice and Remedies Code, as well as provisions of international treaties to which the United States is a signatory, that allow the courts to refuse to be bound by foreign laws or court orders that violate fundamental human rights or Texas public policy.

While judges are careful not to lobby the Legislature on issues such as this, I can say that Senate Bill 531 raises questions in my mind in light of the broad array of tools Texas courts can already deploy as needed to address foreign law issues. I am not sure what the bill would have added beyond what we can already do. Because we have so many tools, it's possible that Senate Bill 531 would cause confusion while courts and litigants attempt to determine how to harmonize its provisions with existing, substantially overlapping, statutes.

Some lawyers have questioned the effects of the bill on pre-marital and marital agreements, for example. While the potential effects of the bill on these important agreements are uncertain, I understand the argument and it would be cause for concern unless the bill was modified.

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Here is the concern: Chapter Four of the Family Code says that in order for a pre-marital contract to be unenforceable, it must be *unconscionable*. This is a very high burden for a party attacking the contract to prove. However, if the pre-marital contract involves a foreign law issue, under the bill the pre-marital contract will be unenforceable if the applicable foreign law to the contract would be *contrary to public policy*. This burden may or may not be easier for the attacking party to meet but it would certainly add different language to the Code. The use of different terms in different parts of the Code to govern the same kinds of agreements could very well cast doubt on those agreements, which are very important to many families, and that would be very troubling.

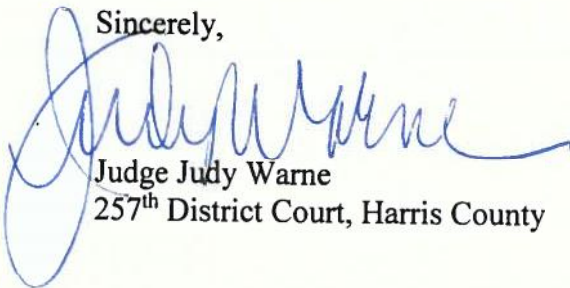
Another example: Texas provides jury trials in divorce cases, which is a constitutional right of Texans. Certainly most other countries do not have a right to a trial by jury for marriage dissolutions, but we would honor many of those divorces. The bill does not give me any guidance as a judge regarding whether to enforce or not enforce a foreign judgment when the foreign judgment resulted from *trial to a judge* and the parties had no access to a *jury trial*.

Although I trust that the proponents of the legislation have our state's best interest in mind, it's important to understand the potential consequences of any legislation. Because our courts have ways to address the issues that concern the proponents, they can be assured that Texas courts will act appropriately in cases with a foreign law component.

Finally, Chapter 152 of the Texas Family Code, which is our version of the Uniform Child Custody Jurisdiction and Enforcement act gives us very specific guidelines which we must follow to enforce and/or modify foreign orders. This act has been adopted by all 50 states and several US territories and assists in the assurance that foreign orders that meet the uniform standards are given full faith and credit.

I hope I have been responsive to your questions.

Sincerely,



Judge Judy Warne  
257<sup>th</sup> District Court, Harris County