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CRIMINAL DISTRICT ATTORNEY
BRAZORIA COUNTY

RECEIVED
MAR 06 2000
OPINION COMMITTEE

March 1, 2000

Honorable John Cornyn
Attorney General
Attention: Elizabeth Robinson
Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0198-JC
FILE # ML-41307
I.D. # 41307

Re: Request for Attorney General's Opinion

Dear General Cornyn:

The District Clerk of Brazoria County has requested that I seek your opinion regarding the effect of the change in Article 42.01 Sec. 2 of the Code of Criminal Procedure and how that may or may not relate to his duties.

I.
FACTUAL BACKGROUND

The judgments in all Brazoria County felony cases have been prepared by the deputy district clerks at the request of the court in which they work. The forms used to prepare the judgments were drafted by a District Court Judge and reviewed by an Assistant District Attorney who also had input into the wording of the form. The Deputy District Clerk fills in the blanks on the forms as appropriate.

Recent legislative changes include additional wording regarding the preparation of judgments.

Art. 42.01 Sec. 2 now reads:

The judge may order the prosecuting attorney, or the attorney or

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(409) 864-1230

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(281) 756-1230

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*attorneys representing the defendant, or the court clerk **under the supervision of an attorney**, to prepare the judgment, or the court may prepare the same.*

The District Clerk is concerned that the language added (in bold) would require someone other than the district clerk's office to prepare the judgments and sentences, since they employ no attorneys to supervise the preparation.

II. ISSUE PRESENTED

1. How is supervision to be defined as used in the statute set out above?

III. DISCUSSION OF ISSUE

The original copy of the bill, as submitted, deleted the clerk of the court entirely as one who could be ordered to prepare the judgment of the court. (a copy of the pertinent part of senate bill 577 is attached as Exhibit A). The statute as enacted however, included the court clerk as one who could be ordered to prepare the judgment as long as it is under the supervision of an attorney. The language as enacted does not preclude the clerk from preparing the judgment. The issue is then narrowed to what supervision means in the statute.

Supervision does not require an attorney to prepare the judgment or the court clerk would have been deleted from section entirely. The fact that the forms used in Brazoria County were prepared by the judge and are then reviewed by them before signing is the type of supervision envisioned by the legislature. The judge continues to have the option of ordering either or both attorneys in the matter to review and approve the judgment prior to entering the judgment should the court find it necessary.


In other areas when the legislators envisioned the "hands on" type of supervision the District Clerk office indicates is necessary in this case, the term "personal supervision" or "direct supervision" has been used in the statute. See, Tex. Rev. Civ. Stat. Ann. Art. 6573a §23(a) (4) (Vernon Supp. 2000) (*The Real Estate Licensing Act*) and Tex. Occ. Code §651.306 (Vernon Supp. 2000) (*The Funeral Directing and Embalming Act*).

It is the opinion of my office that the current practice meets with the code requirement that the court clerk be supervised by an attorney. In reviewing the

statutes it is clear that personal or direct supervision was not intended to apply to the section now questioned.

Thank you for your attention to this matter. Please render an opinion as to whether the added language of the statute requires changes in the current process.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeri Yenne". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish extending to the right.

Jeri Yenne
District Attorney
Brazoria County Texas