



GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge Ryan Dennard Commissioner, Precinct 1 Kevin O'Brien Commissioner, Precinct 2 Stephen Holmes Commissioner, Precinct 3 Ken Clark Commissioner, Precinct 4

October 6, 2014

District and County Judges of Galveston County
600 59th St.
Galveston, Texas 77551

Your Honors,

In response to your September 30th letter, we will gladly meet with members of Galveston County's judiciary to discuss the Department of Justice Administration. We've sought such communication all along.

That's why two members of Commissioners Court attended the judges' meeting on August 7th to discuss that very subject. During that meeting, Judge Jan Yarbrough stated she did not care if or why the Director of Justice Administration had been terminated because it was fully within the County Judge's authority to do so. None of the other judges in attendance said otherwise.

Weeks later, in an email to County Judge Henry, Judge Cox stated that certain unnamed statutes prohibited Commissioners Court from supervising the Director of Justice Administration. Judge Henry's email reply asked, "What statutes?" Rather than responding to this question, Judge Cox issued a sua sponte order without issuing notice to Commissioners Court or conducting any evidentiary proceedings.

The present problem has not been caused by our unavailability for discussion. Rather, the problem has been caused by the issuance of an order, without jurisdiction, in violation of the Code of Judicial Conduct's requirement that parties with a legal interest in a proceeding be given an opportunity to be heard. Indeed, the courtesy of a simple phone call to the county's Legal Department may have avoided the current dilemma.

We still believe that further conversation may help resolve some outstanding issues. We have set aside the following dates and times to meet and discuss these issues:

Monday, October 20, 2014	9:00 a.m.
Monday, October 20, 2014	1:30 p.m.
Tuesday, October 21, 2014	1:30 p.m.
Friday, October 24, 2014	9:00 a.m.
Friday, October 24, 2014	1:30 p.m.

We have posted notices of meetings of Commissioners Court for all of these dates and times. Please let us know your selection at your earliest convenience so we may cancel the other posted meetings. In consideration of your schedules, none of these dates fall during a jury week. When we meet, our discussions should be based on fact and law. Conversations also need to distinguish between the current situation and whatever situation the parties may wish to create in the future. For example, if the county

court at law judges want to establish a court administrator system under Government Code Section 75.401, there is a process for seeking establishment of that system. If that process was initiated, Commissioners Court would give the matter due consideration. But the matter currently at issue is the nature of the Department of Justice Administration.

To assist you in preparing for our joint meeting, we are forwarding with this letter an appendix of documents showing that the Justice Administration Department and its Director reports to and is subject to the control of Commissioners Court. The appendix contains a representative sample of the evidence we have located. We would appreciate you reciprocating by providing to us in advance of the meeting whatever evidence you have which supports your contention that the Department of Justice Administration is an extension of the judiciary.

Some of the questions that we will seek to have answered at our joint meeting include:

1. Do you believe the Director of Justice Administration is a judicial employee under Chapter 151 of the Local Government Code?
2. If so, where are the predicate sworn applications and orders to establish such a position under chapter 151?
3. Do you believe the Director of Justice Administration is a "court administrator" under Section 75.401 of the Government Code, as alleged in a recent Attorney General opinion request?
4. If so, where are the predicate applications and orders to establish such a position under section 75.401?
5. If the Director of Justice Administration is an employee of one or more members of the judiciary:
 - a. The judges issue formal orders appointing the officials under their control, including the County Auditor and even court reporters. Is there an order of one or more judges appointing the Director of Justice Administration?
 - b. Why does the position job description say the position reports to the County Judge? Why did Judge Cox emphasize the same reporting structure in the revised job description? Where are job descriptions showing the position reports to a member of the judiciary?
 - c. Why does the county's annual financial report, prepared by the County Auditor who is hired by and reports to the State District Judges, show the position reports to Commissioners Court?
 - d. What personnel records, such as time-off and vacation requests and performance reviews, show the existence of a supervisory relationship between the Director and a member of the judiciary?
 - e. Why have multiple members of the judiciary said in recent weeks that Justice Administration is a Commissioners Court department?

If we can determine the answers to these questions, we will have a much better understanding of your position on this matter. We look forward to receiving and discussing these facts.

While we hope our meeting will help resolve the matter, we cannot delay filing of a petition for writ of mandamus in the meantime. As the county's principal governing body, we have primary responsibility for ensuring efficient operation of county business. Judge Cox's September 24, 2014 order purports to interfere with that operation and needs to be addressed promptly.

We emphasize that filing of the mandamus petition is being done as a courtesy and in an effort to maintain the integrity of the judicial system. We are keenly aware that the September 24th order is void and has no legal effect. See *In re El Paso County Com'rs Court*, 281 S.W.3d 16 (Tex. App.—El Paso 2005, no pet.); *Dist. Judges of 188th Judicial Dist. v. County Judge Gregg County, Tex.*, 657 S.W.2d 908, 910 (Tex. App.—Texarkana 1983, writ ref'd n.r.e.). We could simply ignore the order. We have not done so only because we prefer to maintain some semblance of order.

We do prefer to avoid the expense of litigation which will cost taxpayers unnecessarily. The easiest way to achieve that is to persuade your colleague to withdraw his September 24th order. Regardless of what one may believe about the facts involved, the District Court lacked jurisdiction and authority to enter that order. There exist proper procedural vehicles for challenging an action of Commissioners Court. As you likely realize by now, a sua sponte order of a State District Judge in these circumstances is not a proper exercise of judicial power. See *In re El Paso County Com'rs Court*, 281 S.W.3d at 27; *Hooton v. Enriquez*, 863 S.W.2d 522, 528 n.7 (Tex. App.—El Paso 1993, no writ); *Atlantic Richfield Co. v. Liberty-Danville Fresh Water Supply Dist. No. 1*, 506 S.W.2d 931, 934 (Tex. Civ. App.—Tyler 1974, writ ref'd n.r.e.).

Eventually the September 24th order will either be withdrawn by the District Court or be ordered to be withdrawn by appellate courts. Dressing a lawless act in the clothing of the law undermines the rule of law in our community. Withdrawing the order sooner rather than later would help maintain the integrity of and respect for Galveston County's judiciary.

We also acknowledge the recent request for an Attorney General opinion relates to these issues, but we believe any resulting opinion is unlikely to be helpful. The opinion request seeks confirmation "that the authority to appoint and terminate court personnel lies with the courts, not the county judge nor the commissioners court," which is, of course, true. However the Director position at issue is not "court personnel" based upon historical practice and presently available documentary evidence.

Through good-faith consideration of all of the facts, hopefully the truth of the situation can be mutually agreed upon and this matter resolved amicably.

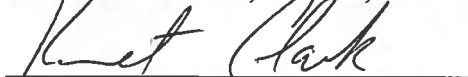
Very truly yours,



Mark A. Henry, County Judge



Kevin D. O'Brien, Comm., Pct. #2



Kenneth Clark, Comm., Pct #4



Ryan L. Dennard, Comm., Pct. #1



Stephen D. Holmes, Comm., Pct #3

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