

# HOUSTON POLITICS & POLICY

## Supporters defend judge in billing dispute, saying 'everyone does it'

By Kiah Collier

September 21, 2014

A prominent line of defense has emerged for a newly appointed family court judge accused this month of false billing when she was working as a court-appointed lawyer representing abused children: Everybody does it.

District Court Judge Alicia Franklin, the subject of a criminal complaint alleging she broke the law by billing for more than 24 hours of work in a single day as a court-appointed lawyer in Child Protective Services cases, has explained the high hours by saying she was billing for work done by associates and support staff.

Her supporters say the payment voucher that lawyers submit for approval to the judges who appoint them does not include a place to indicate that anyone else worked on the case, which is why it appears that Franklin did everything, from home visits to post office runs to filing court documents. They also say that billing for associates or support staff is commonplace among lawyers, including those who primarily perform court-appointed work.

Before Gov. Rick Perry appointed Franklin to the 311th District Court in June, she made a sizable portion of her living - more than \$800,000 since 2010 - on cases in which judges appointed her to represent abused or neglected children, relatives and foster parents.

"As I take it, it's up to the individual court on how they wish to handle it," said Houston lawyer Rob Clark, a Franklin supporter. "If the court wants to allow you to bill for support staff, it's always been my understanding that that's acceptable."

Legal experts, however, say state law appears to ban court-appointed lawyers from billing for work they



did not do themselves.

The applicable section of the Texas Family Code, which dictates what fees the attorneys can charge, says they "shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem."

An attorney ad litem is one appointed by a judge to represent the interests of a child or a person deemed legally incompetent.

"It sure does imply that it has to be hours worked by the actual ad litem and, I would think, especially for substantive work as opposed to more clerical things," said Austin family lawyer Jimmy Vaught, chair of the family law section of the State Bar of Texas.

### ***Itemizes bills***

Vaught said he itemizes bills for private clients so they know what they are being charged for and said he would expect the same, or higher, standards for taxpayer-funded work.

His predecessor, Houston family lawyer Sherri Evans, the immediate past chair of the family law section, noted that the statute says "shall" rather than "may."

Arlington-based family lawyer Toby Goodman, a former state representative who authored the 2003 bill that put that family code provision into place, said he has no problem with court-appointed lawyers billing for work done by associates or support staff but would expect it to be meticulously itemized and for the rates charged to be different for work done by the lawyers versus work done by their associates and staff, as it is in the private sector.

"If this particular judge is billing 24 hours out a day for her time and it's not broken out, that's inappropriate," he said.

### ***Fee schedule for work***

In Harris County, a board of judges adopts a fee schedule for court-appointed work that includes a range of minimum and maximum hourly rates, meaning judges have some discretion about how much they pay per hour.

The sampling of vouchers detailed in the Sept. 3 criminal complaint that Webster family lawyer Greg Enos filed against Franklin with the Harris County District Attorney's office includes activity logs detailing work done outside the courtroom: post office runs, communications with clients, research and a variety of other things.

All of it appears to have been completed by Franklin because the form does not indicate otherwise; there

is no column on the form to report that someone other than the primary lawyer did a particular task.

However, one of the forms requires the appointed lawyers to certify, under penalty of perjury, that the "Harris County Auditor may rely upon the information contained above to make payment according to the fee schedule" that is set locally. The certification language specifically cites the provision of the law that appears to bar ad litem attorneys from charging for work done by anyone but themselves.

Jeff McShan, a spokesman for the district attorney's office, said he could not confirm or deny the office is investigating Enos' complaint against Franklin. Enos' complaints against Franklin's predecessor, Denise Pratt, sparked two grand jury investigations and her resignation in March as part of a deal with the district attorney's office to avoid criminal charges.

In a statement, Franklin's campaign said the Houston Chronicle is promoting a "half-baked theory and political attack of a self-described liberal Democrat blogger who is actively assisting Judge Franklin's political opponent."

Enos' complaint was based on a sampling of vouchers he obtained from Sherri Cothrun, Franklin's Democratic opponent in the November general election.

Judge David Farr, the administrative judge for the nine family courts, has said there is a "disconnect" between the law and what actually is happening in the courts.

### ***New requirement***

On Thursday, Farr announced he will begin requiring lawyers he appoints to cases in his 312th District Court to sign a form swearing that they have billed only for time they personally incurred, unless they receive prior permission from him to bill for associates or support staff. At a meeting next month, he said he will ask all nine family court judges for permission to include that language on the voucher forms.

### ***Work done by attorney***

Asked about vouchers that he recently has approved, Farr said they appear to include only charges for work done by the appointed attorney, including teleconferences, home visits and preparing for hearings or trials.

"Obviously, these types of entries appear on their face to be attorney time only and I rely on the attestation of the lawyer on the case to the credibility of the voucher statement," he wrote in an email, later adding that "I personally have never seen a voucher that specified 'staff work' vs. attorney work."

Clark, the lawyer and Franklin supporter, said he received different billing instructions from different judges when he used to do court-appointed work, although he said he never had to bill for associates because he never took on that many cases.

"I think that the way that it's happened for years leaves a lot of confusion surrounding the issue and a lot of different interpretations out of different courts," Clark said. "It's up to individual judges."

Evans, the immediate past chair of the family bar, said she believes the system as it exists now is being abused and needs to be fixed.

"If the story is that this is what everybody does, that doesn't make it right," she said.



NATIONAL  
DIPPED  
FRUIT  
WEEK®

**50% OFF**

12-CT MIXED CHOCOLATE  
DIPPED FRUIT™ BOXES!

Order Now

Edible  
ARRANGEMENTS  
Pick fruit. It's fresher.

The advertisement features a white plate with several chocolate-dipped fruit items, including strawberries and round fruit pieces. The background is a dark red banner with white text. A red button with white text says 'Order Now'. The Edible Arrangements logo is at the bottom right.

**HEARST** newspapers

© 2013 Hearst Newspapers, LLC.