

Civil Justice Reform – Law Firms

Judicial Selection Reform: A Priority For Texas

The Editor interviews **The Hon. John L. Hill, Jr.**, Shareholder, Winstead Sechrest & Minick P.C. and former Chief Justice of the Supreme Court of Texas and Attorney General of Texas.

Editor: What is the background of the efforts to achieve tort reform in Texas?

Hill: Tort reform really started in Texas in 1987 when I was Chief Justice of the Texas Supreme Court. The first initiative had to do with joint and several liability. It was manifestly unfair for a defendant who was just marginally liable to be exposed to huge damages and to have to pay all of them simply because the other defendants would or could not pay their fair share. The case law permitted such damages – and some of the decisions of the Texas Supreme Court had not dealt with this issue effectively. This resulted in legislation in 1987.

It was not a complete cure to the problem – but started the move in Texas to look at our tort system more critically. It opened the door to examine other defects in the system that were unfair to business.

One of the sources of Texas' prosperity has been that businesses came here because they felt that this state was a friendly place to do business. However, there remained concern about the unfairness in our civil justice system.

So, after the initial step to improve the situation was taken by the legislature in the 1987 session, an effort began to examine other aspects of our civil justice system that might deter businesses from coming to our state. What had been festering beneath the surface came to light – and we have been involved in serious civil justice reform efforts ever since.

The tort reformers have been highly successful in this state in connection with legislative reforms. When you couple that with the new faces on the Supreme Court, the court is very much in tune in upholding what the legislature does to improve the civil justice system. When you stand back and look at the big picture, there has been a sea change in Texas in the prospects for civil justice reform.

Editor: Would you share with your readers why you feel that the biggest problem with the Texas civil justice system is the current system for selecting judges?

Hill: Toward the end of my service as Chief Justice, I strongly emphasized in my State of the Judiciary address to the legislature the need for judicial selection reform along the lines of the Missouri Plan, which is a combination of judicial appointment and election.



The Hon. John L. Hill, Jr.

(When a vacancy occurs, the governor makes the appointment to fill the vacancy. Then, the new judge has to stand for election at the first election cycle. He does not have a ballot opponent but runs on his record. There is usually not much money spent.)

One of my efforts was to drive the money out of the system, which is a major problem for Texas. It is a scandal that our system permits extensive money to be poured into judicial races primarily by lawyers who may have cases before the judges.

Editor: Do you see improvements taking place in the current system for selecting judges?

Hill: We do have some things going on this year that give us more hope. We've been working on this reform for 18 years. I mentioned when I started on this mission that it is a long-term proposition and is "not for the short-winded."

One reason I think we may get some progress next year is that the people who have been so successful in getting tort reform, as distinguished from court reform, have recently stated that they are planning to make merit selection of judges one of their primary legislative initiatives in 2007. We have been waiting for help like this.

For a long time, we have had the better argument on the merits of changing the system, but what we have not had is grass roots political support because the right to elect judges is so deeply embedded in Texas. It is hard to get people to change even though we point out we are not denying a person the right to vote for a judge but are simply trying to make the selection system more focused.

Editor: Is there a connection between tort reform and judicial selection?

Hill: Yes, tort reform leaders realize that, even with all the success they have had with legislation, unless the trial courts, appellate courts and a

Supreme Court in Texas are willing to uphold these reforms and willing to exercise their discretion in favor of fairness and reasonableness, their efforts can go in vain. They understand that tort reform also involves court reform.

Editor: I would think the public at large would be very uncomfortable with the notion of a sitting judge accepting contributions.

Hill: That concern existed in many quarters in Texas when I stepped down from the bench. At that time I made a point of saying that I thought we were hurting our state by not addressing this issue. I thought the best way to address it was twofold: (1) to bring merit selection to Texas, which should go a long way to driving the money out of the system, and (2) then selecting judges who were in tune with the notion that judges do not have a constituency – they are not politicians.

Our voters must have a better understanding of the role of the judiciary. They should understand that judges should make their decisions with an open mind (neutral and impartial). Judges should not be forced to run for election and articulate their positions on issues that may come before the court. I think every member of the present Texas Supreme Court shares this view.

Editor: You mentioned the quality of the current Texas Supreme Court, yet there is a perception that there are still lower level courts that permit abuses to persist?

Hill: One concern has been that some lower courts will hear cases where parties do not meet the jurisdictional requirements or where it would impose a demonstrable hardship to be in that court. That has been somewhat ameliorated by the Texas Supreme Court's ruling that requires lower courts to comply with the law and court rules with respect to venue and forum non conveniens and allowing for interlocutory appeals of rulings.

People should not be sued in a county where they do not belong or suffer a settlement because the case is before a court where they don't believe they can get the fair trial. Our Supreme Court has been vigilant in all these areas and has moved a lot of cases around and heard many appeals – and in class actions have held the plaintiffs' feet to the fire by requiring that Rule 42 certification requirements be met.

The fact remains that our Supreme Court cannot look at every case or correct all mistakes by lower level courts. Also, about 90% of the cases that are filed are settled. This happens at the trial court level where the defendant simply gives up. That is the real world that we live in!

You are never going to have a pure system that ensures total fairness until every trial judge is devoted to impartiality. You must plod along with the thought that if you take the money out of the system; it will go a long way toward assuring impartiality.

Editor: The Texas legislature recently approved an increase in judicial salaries. Were they adequate?

Hill: It was certainly a step in the right direction. You cannot look at being a judge in monetary terms – it is a sacrifice. You know what you are getting into. I knew I would only get \$27,000 as Attorney General. The point is that if we are not careful we will drive more and more qualified people out of the judiciary because a starting lawyer here makes more than a sitting judge.

It's not easy for a legislator, particularly in Texas, to support salary increases for judges since legislators' retirement packages are tied to how much a district judge makes. It makes legislators vulnerable to the charge of self-interest when they vote to increase judges salaries.

Editor: To what extent are you reaching out to the legal community and beyond for support for reform of the judicial selection process and for other reforms that would assure judicial excellence?

Hill: I am President of the Texas Chapter of the American Judicature Society, probably the premier national group involved in improving the administration of justice. We are one of the few states that has a state chapter. It focuses particular attention on judicial selection and I continue to spend a great deal of my time on that issue.

I am also head of the Committee for Judicial Excellence, which is a non-profit that reaches beyond the legal community. I worked on judicial excellence issues with many general counsel here in Texas. I worked with Alan Lackey of Shell, Charlie Lotter of JCPenney, Hugh Rice Kelly of Reliant Energy, as well as with the general counsel of TU, Conoco Phillips, Texaco-Chevron and BP. All the energy companies have been very supportive of these efforts.

We don't want to overlook the broader community either. Texas people recognize that we are a "heavy duty" state. The business community is a key to our growth and prosperity as a state. It is therefore to everyone's advantage to see that we have a fair judicial system. That penetrates right down to the farmer in Muleshoe, Texas. Texans have an innate sense of fairness. I am dedicated to this issue because I feel that we must always advocate what is right.