

The State of Texas
House of Representatives

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OPINION COMMITTEE



Representing
Hunt, Hopkins, and
Van Zandt Counties

Dan Flynn
State Representative • District 2

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ID. # 47907
RQ-0083-KP

December 17th, 2015

The Honorable Ken Paxton
Attorney General
State of Texas
300 West 15th Street
Austin, Texas 78701

ATTN: OPINIONS COMMITTEE

Dear General Paxton:

This is a request for an Attorney General's Opinion, which I am authorized to make under Section 402.042(b), Government Code.

My questions primarily concern the extent to which current law authorizes or requires a judge of a state court to refuse to apply foreign law in certain family law disputes. By "foreign law," I mean the law of a country other than the United States. By "family law dispute," I mean a legal dispute regarding a marital relationship or a parent-child relationship. Each of my questions assumes the family law dispute is before a Texas court that has personal jurisdiction over the parties, children and/or property that are the subject(s) of the family law dispute, as well as having subject matter jurisdiction.

My specific questions are:

1. May a judge refuse to enforce a judgment regarding a family law dispute, if the judgment resulted from an application of foreign law by a court or other tribunal of another country that violated (1) a party's right to due process guaranteed by the United States Constitution or the Texas Constitution or (2) the public policy of this state?

- 2A. If the parties to a family law dispute voluntarily elect to engage in arbitration and the parties agree that foreign law will govern the dispute, may a judge refuse to enforce the decision of the arbitrator regarding the family law dispute, if the arbitrator's application of the foreign law to the dispute would violate (1) a party's right due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
- 2B. If the parties to a family law dispute voluntarily elect to engage in arbitration and the parties voluntarily agree that the arbitrator will apply the principles of a particular faith to resolve the dispute, may a judge refuse to enforce the decision of the arbitrator regarding the family law dispute, if the arbitrator's application of the principles of the parties' faith to the dispute would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
3. If, on the basis of established principles of conflicts of law, a judge determines that foreign law applies to a family law dispute, may the judge refuse to apply the foreign law to that dispute, if doing so would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
4. If the parties to a family law dispute voluntarily enter into a contract that provides for foreign law to govern the dispute, may a judge refuse to enforce the contract provision (i.e., refuse to apply the foreign law to that dispute), if doing so would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
5. If the parties to a family law dispute voluntarily enter into a contract that provides that the dispute will be resolved by a court or tribunal outside of the United States, may a judge refuse to enforce that contract provision (i.e., refuse to defer to the jurisdiction of a foreign court or tribunal), if application of the foreign law that would be applied to the dispute in the foreign forum would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
6. If, on the basis of established principles of *forum non conveniens*, a foreign court or tribunal would be a more convenient forum for the resolution of a family law dispute, may a judge refuse to decline jurisdiction if the foreign court or tribunal would apply foreign law to the dispute that would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?

7. Does a judge abuse his or her discretion if the judge allows the application of foreign law under a circumstance described in Questions 1 through 6 (above) and under those circumstances doing so would violate (1) a party's right to due process guaranteed by the U.S. Constitution or the Texas Constitution or (2) the public policy of this state?
8. May a judge refuse to enforce a provision of a contract that is entered into voluntarily that provides for any of the following:
 - A. An arranged marriage?
 - B. Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows child labor in dangerous conditions?
 - C. Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that lacks laws against child abuse?
 - D. Granting custody of a female child to a conservator who would remove the child to a foreign jurisdiction that allows the practice of female genital mutilation?
 - E. Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows a person to be subjected to any form of slavery?
 - F. Providing for a consequence or penalty for breach of the contract that violates the public policy of this state, such as the infliction of bodily harm?
9. May a judge refuse to enforce an adoption order entered by a foreign court or tribunal, if the order would result in a violation of fundamental rights, Texas law, or the public policy of this state?
- 10A. May a judge refuse to enforce an agreement of the following type(s) that is signed voluntarily, if under the circumstances the agreement is unconscionable:
 1. A premarital agreement?
 2. An agreement between spouses to partition or exchange community property so that it becomes separate property of one of the spouses?
- 10B. May a judge refuse to enforce a premarital agreement if the agreement violates the public policy of this state or a statute that imposes a criminal penalty?
11. Under what circumstances does Chapter 36, Civil Practice and Remedies Code, authorize a judge to refuse to enforce a judgment of a foreign court regarding a family law dispute where the judgment grants or denies payment of a sum of money to one of the parties?

The Honorable Ken Paxton
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I will appreciate receiving the answers to these important family law questions and look forward to receiving your opinion regarding each of them.

Please have the appropriate person contact my office should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Flynn", with a horizontal line extending to the right.

Representative Dan Flynn

House District 2