

SPRING TERM, 2015

Procedural Opinion of the Court

NOTICE: The following document represents the official Opinion of the Court, and constitutes a binding decision on all parties concerned within the jurisdiction of the Court. This decision, and all concurring or dissenting opinions, will remain on the official record for seven (7) years in accordance with Article IV 3.5.A of the Student Body Constitution.

**BAYLOR UNIVERSITY STUDENT COURT**

MCCAHERILL, HARDY *v.* KINGHORN

Issued February 6<sup>th</sup>, 2015

**INTRODUCTION**

The Baylor University Student Court (hereinafter, the Court) acting upon inquiry from the Defendant in the aforementioned matter, not yet heard in trial, and in the interest of effecting the most expedient, efficient, and constitutional judicial proceedings for this and all future matters to appear before the Court, does hereby issue this Opinion of the Court on the question of representation before the bench.

The Defendant inquired with the Court as to the constitutionality of utilizing counsel and advocates for cases heard in the Court. The Defendant made claim that under the Baylor University Student Body Constitution (hereinafter, the Constitution), Article IV, Section 3, Paragraph 2, Clause E, no in-court representation is allowed. The clause in question reads as follows:

“Right to call witnesses and present witnesses on one's behalf. Witnesses must have first-hand knowledge of the incidents relating to the case. Character witnesses are specifically prohibited from attending any portion of the hearing. Students may not appoint individuals to represent them.”

**JURISDICTION**

The Court finds its jurisdiction for ruling on all matters arising from interpretation of the Constitution in Article IV, Section 2, Paragraph 2, Clause A of the Constitution. The Court holds that, as its jurisdiction

over questions of interpretation of the Constitution is original, and as there is no appellate body over the Court except for the relief of sanctions, the Court serves as the sole interpreter of the Constitution and reserves all right to consider, decide, and publish opinion in all matters arising under the aforementioned clause.

## **DISCUSSION**

The Court will present its discussion on the above ruling in three parts: first, the context of the sentence in question in the clause itself; second, the context of the clause in the paragraph of which it is a part; and third, the wording and context of the clause within the Constitution as a whole.

### **(I)**

The portion of the clause upon which the question is based reads as follows: “Students may not appoint individuals to represent them.” While the Court does recognize the ambiguity of the sentence, and is fully aware of how it may follow, when taken out of context, that plaintiff or defendant electing representation to the bench would not be allowed. The Court, however, holds a different understanding of the sentence based upon the placement of the sentence within a greater clause that deals with the right to call, examine, and cross-examine witnesses, as well as the specific exclusion of character witnesses. It follows from this context that the sentence also refers to witnesses. Specifically, it is the interpretation of the Court that the clause prevents two very clear possibilities. First, it establishes that any witness, being called and subpoenaed, may not appoint a spokesperson or representative to take the stand for him or her. Second, it reiterates the previous sentence in the clause that prohibits the use of character witnesses. The sentence prevents a party from presenting a witness to “represent” the quality of their character, or the lack thereof to be found in their opponent, to the Court.

Further,

### **(II)**

The Court establishes the context of the clause in the larger paragraph of which it is a part. The title of that paragraph is *Student's Rights Afforded by Due Process*. The Court recognizes this paragraph to be an establishment of the parties' positive and affirmative rights as they progress through the pre-judicial and judicial phases. It stands to reason that clauses within this section would not attempt to limit or restrict those positive rights, and any such limitation would be reserved for portions of the Constitution specifically dealing with the procedural rules of judicial proceedings. The Court recognizes the final sentence of the clause as a restriction only on the specific right established in the clause, not a restriction of the positive rights of the parties.

Lastly,

### (III)

As to the comparison of the questionable sentence to the other restrictive clause regarding representation and participation, found within Article IV, Section 3, Paragraph 3, Clause B, the disparity between the wording and context of the two leads the Court to believe that the meanings of these restrictive clauses are separate and independent. The clause in Paragraph 3 reads as follows: "Attorneys are expressly forbidden from participating in the judicial hearing." Firstly, the Court recognizes this clause as a restriction upon who may participate in the judicial proceedings based upon its context, placement, and explicit wording earlier in the paragraph, and continues to abide by such restriction. Secondly, the Court holds and has always acted upon the interpretation that this clause deals exclusively with Attorneys-at-Law, licensed by the State of Texas, or any other of the United States. Third, the clause does not restrict representation by peers. Finally, the Court holds that because the wording of this restrictive clause is so specific, the ambiguous wording is so vague, and the context is so disparate, it can be logically established that the clauses are unrelated.

Therefore, the Court recognizes that 1) the Constitution was not constructed to limit the use of student advocates and 2) interpreting the document in its totality does not indicate that the prohibition of advocates, who are not considered licensed attorneys, is

present in the Constitution; the Court finds that the Constitution does not intend to restrict a student's access to non-affiliated, and non-licensed student advocates.

### **RULING**

The Court has found and shall hold henceforth that students pleading or answering cases as parties before the bench of the Court SHALL BE PERMITTED TO ASSIGN COUNSEL AND CO-COUNSEL MEMBERS, AND ADVOCATE REPRESENTATION TO THE COURT, subject to the discretion and approval of the Chief Justice of the Court, as established in, and pursuant to, Article IV, Section 3, Paragraph 3, Clause B, Sub-clause f. The Court will continue to consider these counselors and advocates to be wholly separate and distinct from witnesses. They may not be called as witnesses and their statements shall not be considered by the Court to be testimony entered in trial. Further, the Court rules that these advocates MUST BE FELLOW STUDENTS. This restriction is issued under the same clause of the Constitution aforementioned in this section, and shall be considered precedent of the Court.

*It is so ordered.*