



IN CHAMBERS

Vol. 5, No. 1

Official Publication of the Texas Center for the Judiciary

April, 1978

HUNTSVILLE HOSTS ANNUAL MEETING Criminal Justice Conference May 10-12

The ninth annual Criminal Justice Conference will be held May 10-12 in Huntsville. Site of all Conference meetings is the Criminal Justice Center on the Sam Houston State University campus.

Court of Criminal Appeals Judge Carl E. F. Dally will serve as chairman of the Conference, which is sponsored by the Texas Center for the Judiciary, Texas Court of Criminal Appeals, Texas Department of Corrections, and the Institute of Contemporary Corrections and the Behavioral Sciences of Sam Houston State University.

Judges eligible to attend have been contacted by the Texas Center for the Judiciary.

Thursday and Friday morning will be devoted to panel discussions. Topics, moderators, and panelists are listed below.

Speedy trial under new statute, Chapter 32A of the Code of Criminal Procedure, effective July 1, 1978.

Moderator: Judge Wendell A. Odom, Court of Criminal Appeals, Austin

Trial of a capital case—Pre-Trial:

- (a) Granting or denying bail
- (b) Pre-Trial motions, with emphasis on confessions and searches

Moderator: Judge W. T. Phillips, Court of Criminal Appeals, Austin

Trial of a capital case: (a) Voir dire and selection of a jury (b) Competency and sanity

Moderator: Judge Tom G. Davis, Court of Criminal Appeals, Austin

Trial of a capital case: Evidence at punishment phase, with emphasis on testimony from psychiatrists

Moderator: Judge Leon Douglas, Court of Criminal Appeals, Austin

For the Conference panel discussions, the participants will be divided into four groups who will hear each discussion on a rotating basis. Also, each group will see a special presentation on the history and development of the law of evidence.

The Conference will adjourn after a noon luncheon Friday.

FOUR ETHICS OPINIONS DELIVERED BY COMMITTEE

The Committee on Judicial Ethics has delivered four opinions in 1978.

The Committee, an advisory committee of the State Bar's Judicial Section, is chaired by Quentin Keith, justice of the Court of Civil Appeals in Corpus Christi.

Opinion No. 28

Question: May a judge continue to serve upon the Texas Commission on the Status of Women without violating the Code of Judicial Conduct?

Assumed Facts: The Commission was created by Executive

(Continued on Page 2)

ETHICS COMMITTEE DELIVERS OPINIONS

(Continued from Page 1)

Order D.B. No. 32, dated August 11, 1977, with the duties and authority of the members defined in Section II of the order. These duties are broadly defined and intended to develop recommendations for policies and programs which will achieve equal opportunity for women throughout the state.

Answer: Based upon the information available, the Committee is of the opinion that membership upon the Texas Commission for the Status of Women would not be in contravention of any of the Canons of Judicial Conduct, provided such service poses no conflict with judicial duties or responsibilities.

Opinion No. 29

Question: Does a judge violate the Code of Judicial Conduct in participating in the trial of a case when one of the lawyers is a member of a firm in which his child is also a partner?

Answer: Subject to the opening words in *Canon 3 C (1)*, "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where: [followed by three subdivisions]," the Committee is of the unanimous opinion that the question should be answered in the negative.

Canon 3 c (1), and subdivisions (a), (b), and (c) thereof were lifted word for word from the Canons of Judicial Ethics adopted by the American Bar Association in 1972. We are of the opinion that it is significant that *ABA Canon 3 (c) (1)* contains a fourth subdivision which is not to be found in our Canons, reading as follows:

"(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(ii) is acting as a lawyer in the proceeding."

Professor E. Wayne Thode, Reporter for the ABA committee which formulated the ABA Canons, comments on subdivision (d) of the ABA Canon, supra, in "Reporter's Notes to Code of Judicial Conduct" (ABA, 1973), p. 15:

"The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that 'his impartiality might reasonably be questioned' under Canon 3C(1), 04 that the lawyer-relative is known by the judge to have an interest in the law firm that could be 'substantially affected by the outcome of the proceeding' under Canon 3C(1) (d) (iii) may require his disqualification."

The Committee adopts Professor Thode's analysis as applicable to the Texas Code of Judicial Conduct.

Opinion No. 30

Question: Does a judge violate *Canon 3 b (4)* by the appointment of his bailiff as investigator to make social studies in adoption cases when: such appointment is made with the consent of all counsel in the case and only in uncontested matters; and where the prior results were found to be excellent, the task performed diligently, and economically?

Answer: Upon the basis of recited facts, it is the unanimous opinion of the Committee that such action is not violative of the cited provision of the Code of Judicial Conduct.

Opinion No. 31

Question: May a judge subject to the Code of Judicial Conduct properly sign a letter endorsing a candidate for elective office in the State Bar of Texas when (a) such letter is addressed to members of the State Bar generally; or (b) such letter is addressed to judges only?

Answer: The members of the Committee are seriously divided as to an answer applicable to both facets of the question. A majority of the Committee is of the opinion that since the amendment of *Canon 7* permits a judge to participate in political activities generally, participation in State Bar election activities is not forbidden. However, the same majority considers such conduct undesirable since such an endorsement might be construed as the lending of the prestige of judicial office to advance the private interests of others in violation of *Canon 2 B*.

Questions may be addressed to:

Texas Center for the Judiciary
P.O. Box 12487, Capitol Station
Austin, Texas 78711
Attn: Committee on Judicial Conduct

In addition to Judge Keith, committee members are Chief Justice Stephen F. Preslar, El Paso Court of Civil Appeals; County Court at Law Judge Max Bennett, Corpus Christi; Justice Gerald T. Bissett, Corpus Christi Court of Civil Appeals; District Judge Ralph Elliott, Sherman; District Judge Harry Hopkins, Weatherford; Justice Bob Shannon, Austin Court of Civil Appeals; District Judge Jack Smith, Houston; County Court at Law Judge Joan T. Winn, Dallas; and Justice Charles Reynolds, Amarillo Court of Civil Appeals.

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Texas Center for the Judiciary

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IN CHAMBERS
Published Bimonthly

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NEW JUDGES

Appellate

Bryan Bradbury, 11th Court of Civil Appeals, Eastland (*Esco Walter*)
W. C. Davis, Court of Criminal Appeals, Austin
Jim Vollers, Court of Criminal Appeals, Austin

District Court

John M. Barron, 85th, Bryan (*W. C. Davis*)
Donnie R. Burgess, 260th, Orange (NEW COURT)
Lynn Coker, 9th, Conroe (*Ernest A. Coker, Sr.*)
Barbara Culver, 318th, Midland (*Joseph H. Mims*)
William Decker, 122nd, Galveston (*L. D. Godard*)
C. W. Duncan Jr., 27th, Killeen (*Don Busby*)
James M. Farris, 317th, Beaumont (*Ethridge Wright*)
Lazaro Garza-Gongora Jr., 111th, Laredo (*E. D. Salinas*)

County Court at Law

Jim Barlow, Waco (NEW COURT)
R. L. Blann, San Angelo, (NEW COURT)
H. D. Glover, Pecos
Eugene M. McElyea, Crockett (*W. D. Julian, Jr.*)
Blair Reeves, #4, San Antonio (*Carol Haberman*)
Neel Richardson, Criminal Court #8, Houston (*Charles M. Coussons Jr.*)
Jimmie Sparks, Criminal Court #2, Beaumont, (*James Farris*)
Don Stokes, Marshall (NEW COURT)

County Court

R. A. Deison, Conroe, (*Lynn Coker*)
Ernest F. Smith, Marshall (*Don Stokes*)

TWO AG OPINIONS AFFECT FORMER, RETIRED JUDGES

Two Texas Attorney General Opinions of particular interest to retired and former judges have recently been released.

Opinion H-1145, dated March 28, 1978, concerns the manner of compensation of a former district judge who is assigned to hear cases. The three-page opinion contains the following summary:

"A person who meets the tenure requirements for retirement but has not yet reached retirement age is a 'former district judge' rather than a 'retired district judge' for purposes of article 200a, V.T.C.S. The respective contributions of the state and county to the salary of a former district judge serving on special assignment should be in the same proportion as in the case of a regular judge. A county is not required to assume the full burden of the salary of a former district judge serving on special assignment when state funds appropriated for that purpose have been depleted."

Opinion H-1149, dated April 3, 1978, answers several questions regarding the administration of the judicial retirement system. The six-page opinion summarizes:

"A former district judge who is not yet retired is eligible for assignment as a spe-

cial judge under the circumstances stated in article 200a, V.T.C.S.

A judge on special assignment does not qualify for a disability benefit under article 6228b, section 3 if the disability occurs while he is serving on special assignment.

A judge on special assignment should pay in retirement contributions an amount equal to six percent of the salary actually paid him.

The death benefit plan in article 6228b, section 2(a-1) is available to a judge who serves on special assignment during the month of his death and who otherwise qualifies."

Complete copies of the above opinions can be obtained by writing: The Attorney General of Texas, Supreme Court Building, P.O. Box 12548, Austin 78711. Attention: Carolyn Ellis. Phone number: (512) 475-3744. There is a \$1.00 charge.

A NEW LOOK

In Chambers, as you will notice, has a new look.

A new type style, format and page size have been adopted, which we think will make the newsletter more readable, attractive, and convenient to use.

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Texas Center for the Judiciary
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas 78711

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