

IN CHAMBERS

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Chairman Thurmond Calls for Judicial Section Annual Conference in Fort Worth

District Judge George M. Thurmond, who moved up to the Chairmanship of the Judicial Section when former Justice Richard N. Countiss resigned to go into private practice in June, has called for the Annual Conference of the Judicial Section to be held in Fort Worth at the Worthington Hotel, September 27-30, 1988. Judge Thurmond presides over the 63rd District Court in Del Rio and by virtue of being the Chairman-Elect of the Section was already in charge of the program for the conference this year.

The conference will commence on Tuesday with golf, tennis, bridge, and racquetball in the afternoon. For those who are not athletically inclined, there will be a

presentation by Dr. James G. Denton, renowned plastic surgeon, who will show slides and pictures of his work. The Fiesta Fort Worth Welcome Reception will be held that evening and will honor judges and their spouses, as well as other dignitaries from around the State.

On Wednesday, while the spouses are touring the Kimbell Art Museum and selected stately homes, the judges will get down to the business of judicial education. The Texas Bar Foundation will sponsor the program that day, which is devoted to "Professionalism and the Law: Views

from the Bench and the Bar." Selected topics of current interest will be presented from the perspective of a sitting judge and from that of a trial attorney.

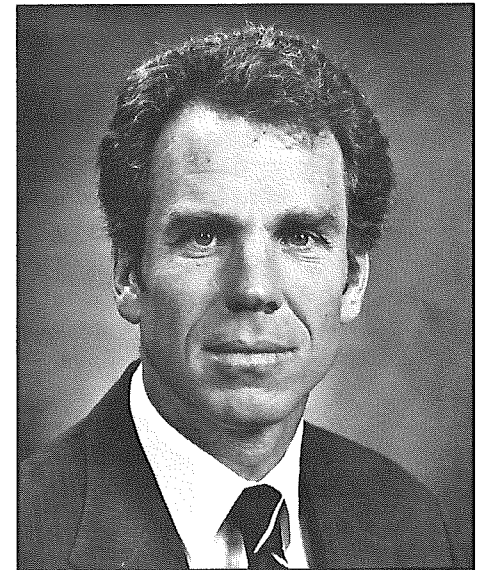
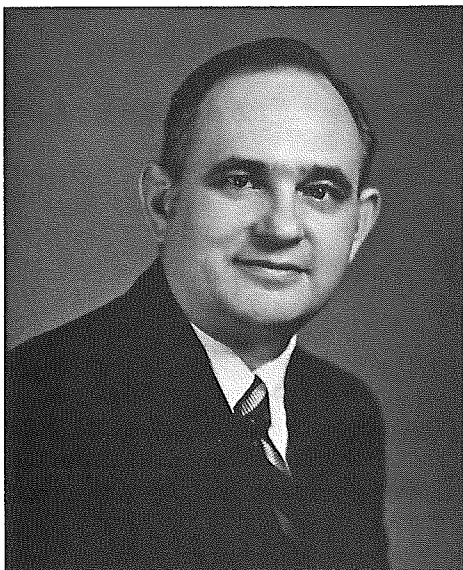
Be sure to bring your boots because Wednesday's activities will include the "Fort Worth Fandangle", an exciting evening of food, drink, and special entertainment, including a judicial roast, all at the fabulous Billy Bob's located in the historic Stockyards area of north Fort Worth.

Thursday morning's program will include reports from the Supreme Court and (continued on page 2)

Roger Staubach to Speak at Breakfast

Roger Staubach will provide one of the many highlights of the Judicial Section Annual Conference when he speaks at the Inspirational Breakfast on Wednesday, September 28th, at 7:00 a.m.

After eleven seasons in the National Football League, including eight and one-half as the Dallas Cowboys starting quarterback, Roger Staubach established himself as one of the top quarterbacks--not to mention the winningest--in the NFL history. As the starting quarterback, he led the Cowboys to four Super Bowls, achieving victories in Super Bowls VI and XII at the end of the 1971 and '77 seasons. In fact, as the team's starting quarterback, Dallas' won-loss record during that span is 90-31, (continued on page 2)



Judge Tom Stovall Receives Award

SEARCH Group, Inc., a national consortium for justice information and statistics, recently announced that Judge Thomas J. Stovall, Jr., Presiding Judge of the 2nd Administrative Judicial Region of Texas, is the 1988 recipient of the O. J. Hawkins Award for Innovative Leadership and Outstanding Contributions to Criminal Justice Information Systems, Policy and Statistics in the United States. The award, named for SEARCH's first Executive Director, formally acknowledges Judge Stovall's service to improving the criminal justice community's ability to develop and effectively use justice information. The SEARCH Membership Group cited Judge Stovall's pioneering leadership and professional accomplishments in helping to expand the use of technology, particularly by the courts, and of advocating a common-sense approach to improving the administration of court systems nationwide. Judge Stovall has gained a national reputation as an innovative and knowledgeable jurist eager to apply the benefits derived from information systems to the criminal justice

process.

Almost two decades ago, Judge Stovall's jury management efforts in the Houston courts laid the groundwork for the national one-day/one-trial program. He worked with NASA scientists to design a computer-driven random number generator which resulted in a fair selection of jurors. Primarily through his efforts, there are now at least 23 state court administrative offices using modern management methods and implementing data processing to support the information needs of state-level court management.

A member of SEARCH since 1971, Judge Stovall also serves on the Board of Directors of SEARCH, the Board of Directors of the National Center for State Courts and the merged Institute for Court Management (ICM), the Board of Directors of the National Conference of Metropolitan Courts, and he is a frequent lecturer at the National Judicial College and at conferences sponsored by SEARCH and the ICM. Judge Stovall is one of the founding fathers of the Texas Center for the Judiciary.

Thurmond (continued)

Court of Criminal Appeals, and presentations on the civil trial aspects of *Batson v. Kentucky*, innovative probation, legal representation of death row inmates and Texans' War on Drugs. Separate programs will be held on Thursday afternoon for trial judges, appellate judges and retired judges.

The conference will continue Friday morning with the annual business meetings of the Texas Center and the Judicial Section (which will include a presentation of the proposed legislative program for the upcoming session of the Legislature), and will conclude by noon. ■

Staubach (continued)

including playoff games.

At present, Mr. Staubach is president of The Staubach Company, a diversified commercial real estate company headquartered in Dallas, but servicing clients nationally. The company deals in general real estate brokerage, corporate services, retail leasing, real estate investments, and asset management. The Staubach Company made the Inc. 500 list in 1985 and 1986 as one of America's fastest growing private companies. He also serves on the board of directors of several businesses, including MBank Dallas, Dallas Corporation, and Network Security Corporation.

In addition, Mr. Staubach has been an active member of the Fellowship of Christian Athletes since 1965 and is a member of the Salvation Army Advisory Board. He is serving on the Board of Texas Youth in Action, the youth division of Texans' War on Drugs, is associated with the Special Olympics, has been active with the National Diabetes Association and the Juvenile Diabetes Association. He also serves as chairman of Youth for Tomorrow, which supports three boys' homes and a girls' home for teenagers.

Chief Justice Howard Fender of the Fort Worth Court of Appeals will preside at the Inspirational Breakfast and will conduct the Memorial Service. Music for the breakfast will be provided by one of the finest groups in the State, the *Gospel Express*. ■

New Judges

Daniel M. Downey
295th District Court, Houston
Succeeding Frank O. White

Brady G. Elliott
268th District Court, Richmond
Succeeding A. Reagan Clark

J. David Phillips
County Court at Law #1, Austin
Succeeding Alberto Garcia

John J. Specia, Jr.
225th District Court, San Antonio
Succeeding Emilio Miller Garza

Richard E. Stephanow
1st Court of Appeals, Houston
Succeeding Kenneth M. Hoyt

Benchbook Orders Filled

Benchbooks for District and County Court at Law Judges have been printed and delivered to those who ordered them. We have extra copies of both benchbooks available for ordering. The Benchbook for District Court Judges is \$39.50 and for the Statutory County Court Judges is \$30.00. Please contact us by mail or telephone (512-463-1530) to place an order.

"Search & Seizure" . . .

The videotapes on "Search & Seizure" by Judge Charles E. Moylan, Jr. are still available for viewing. Reviews so far have been excellent! If you would like to borrow one of the tapes for a few days, at no cost to you, please contact by telephone or letter, our Publications Coordinator, Tricia Stringer.

ETHICS OPINIONS

No. 115

Issued April 22, 1988

Q. May a constitutional county judge ethically serve as a co-chairman of a committee created for the purpose of eliminating drug abuse in his or her county? The committee would solicit funds for the purpose of educating the public, offering rewards, compiling statistics, and seeking necessary legislation.

A. As a titular head of county government, a county judge should encourage the formation of such described organizations. Canon 8C(1) permits the judge's participation in such programs so long as they relate to his or her duties in the administration of the county. However, the code imposes other restrictions which might make it impractical for a judge to participate in the organization's activities. For instance, (1) a judge should not personally solicit funds (Canon 4C); (2) a judge should not give investment advice (Canon 5B[3]); (3) such activities do not interfere with his or her judicial duties (Canon 5B[1]); (4) the organization does not engage in proceedings that would ordinarily come before the judge in his judicial capacity, or will be regularly or frequently engaged in adversary proceedings in any court (Canon 5B[1]); (5) service on the committee would not detract from public confidence in the integrity and impartiality of the judiciary (Canon 2A); (6) the judge would be unswayed by partisan interests, public clamor, or fear of criticism (Canon 3A[1]); (7) such service does not cast doubt on the judge's capacity to decide any issue that may come before his or her court (Canon 4A); and (8) the judge does not try drug or drug related cases.

The committee is of the opinion that Canon 8C(1) permits a judge to ethically serve as a co-chairman of such described committee, provided he or she adheres to those provisions of the code enumerated above.

No. 116

Issued April 22, 1988

Q. May a trial court judge adopt local rules to provide for an "Office of the Guardian Ad Litem" and appoint an attorney to that office who shall have the responsibility, in accordance with orders in all domestic relations cases involving child support orders, to collect and distribute all support payments, maintain necessary records for the court, and file motions for contempt where payments are not promptly made, and in return for such services receive a small monthly service charge out of court ordered child support payments in order to finance this office?

A. The proposal is to create a self-supporting plan whereby a representative of the court will take the necessary steps to insure prompt payment of child support in accordance with court orders. The procedure would insure against a former spouse becoming delinquent for many months before this was ever brought to the attention of the court.

The proposed procedure does not result in violation of the Code of Judicial Conduct. A trial judge has a legitimate interest in seeing that the best interest of the child is protected by prompt payment of support orders. The order creating the position of guardian ad litem would not result in the judge lending the prestige of his office to advance the private interest of others in violation of Canon 2B and would not constitute the practice of law in violation of Canon 5F. The judge should not engage in ex parte communications with the guardian ad litem as to the merits of the motions for contempt or other proceedings pending in the court in violation of Canon 3A(5).

Although Tex. R. Civ. P. 173 authorizes the appointment of a guardian ad litem and the allowance of a reasonable fee for his services, this opinion does not pass upon the legality of the proposal for an

office of the guardian ad litem, but only the ethical considerations.

No. 117

Issued April 22, 1988

Q. Must a candidate for judicial office repudiate a vote or votes shown by uncontroverted evidence to be illegal?

A. Whether a vote is illegal is a question of law to be decided by the proper forum, not the Judicial Ethics Committee.

The committee finds nothing in the Code of Judicial Conduct that requires a candidate in a judicial race to publicly repudiate a vote either before or after a legal determination of the validity of the vote.

No. 118

Issued April 22, 1988

Q. Where a defendant elects to take a safety driving course in lieu of other penalty, may the judge designate a specific agency and course that the defendant attend?

A. Assuming that there is more than one agency offering a safety driving course, the committee is of the opinion that the judge may not designate a specific agency because Canon 2B prohibits a judge from lending the prestige of his or her office to advance the private interests of others.

No. 119

Issued April 22, 1988

Q. May a statutory county court at law judge ethically serve on a regional "council of governments" which administers federal programs and grants for various county entities?

(continued on page 4)

ETHICS (continued)

(No. 119)

A. No. The various functions of the council and the name of the council itself indicate that the council is governmental in nature.

A statutory county court at law judge must comply with Canon 5G of the Code of Judicial Conduct which prohibits such judge from accepting an appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy matters other than the improvement of law, the legal system, or the administration of justice.

No. 120

Issued August 3, 1988

Q. *Is it ethical for a district judge to mediate civil cases in order to expedite the settlement process?*

A. The committee is of the opinion that a district judge may not mediate civil cases. Canon 3A(5) states, "A judge...shall not directly or indirectly initiate, permit, nor consider ex parte or *other communications* concerning the merits of a pending or impending judicial proceeding." (emphasis added) Furthermore, Canon 5E of the Code of Judicial Conduct states, "A judge should not act as an arbitrator or mediator." Canon 8 makes Canon 5E applicable to district judges. However, Canon 8 also lists other classifications of judges who are exempt from compliance with 5E.

No. 121

Issued August 3, 1988

Q. *May a district judge conduct settlement conferences for suits filed (1) in his court, or (2) in another judge's court, where he only conveys settlement offers and asks questions? In the conference he sets no values, gives no opinions, and discloses no confidential information.*

A. Although judges should encourage settlement negotiations, the described procedure appears to make the judge a mediator. Canon 5E of the Code of Judicial Conduct prohibits a judge from being a mediator. Also, Canon 3A(f) states, "A judge...shall not directly or indirectly initiate, permit, nor consider ex parte or *other communications* concerning the merits of a pending or impending judicial proceeding." (emphasis added)

The committee is of the opinion that the use of the settlement procedure outlined above by a district judge would be a violation of Canons 5E and 3A(5) of the code. Whether the litigation is filed in the judge's court or any other court makes no difference. The committee notes that Canon 5E is not applicable to all classifications of judges. See, Canon 8.

No. 122

Issued August 3, 1988

Q. *Would it be a violation of Canon 5G of the Code of Judicial Conduct for a county court at law judge to serve as a member of the board of directors of a private agency which is established to oversee the operations of job-training, remedial education, summer youth employment programs, on-the-job training programs, etc., under a federal job training program?*

Preface: The committee is advised that the board of directors decides which local agencies receive funding and in what amounts. The board of directors also has oversight and reporting duties and further generally designs and implements programs to insure that the money is spent wisely and effectively.

A. From the information furnished to the committee, the agency is a private, non-profit organization. Even though the agency implements programs funded by the federal government, the agency is not a governmental committee or commis-

sion; and therefore, the committee perceives no violation of Canon 5G of the Code of Judicial Conduct in serving on the board of directors of such agency. See, limitations set out in judicial ethics opinion No. 85.

No. 123

Issued August 3, 1988

Q. *If a senior judge's wife becomes a member of a political action committee for a group of hospitals, does this in any manner constitute a violation of the Code of Judicial Conduct?*

A. The code does not in any manner attempt to regulate the activities of a judge's spouse. Canon 2B does prohibit a judge from (1) allowing family members to influence his judicial conduct or judgment, (2) allowing others to use the prestige of his office (in this case his title) to advance their private interests, and (3) allowing others to convey the impression that they are in a special position to influence the judge.

Canon 2A admonishes judges to conduct themselves in a manner to promote public confidence, and Canon 3A(2) admonishes judges to be unswayed by partisan interests.

The committee perceives no violation of code if the senior judge's wife accepts the described appointment. However, if the judge perceives, in the acceptance of assignments, any impropriety or appearance of impropriety as a result of his or her spouse's appointments, refusal to accept such assignment or recusal after accepting the assignments would not be inappropriate. ■

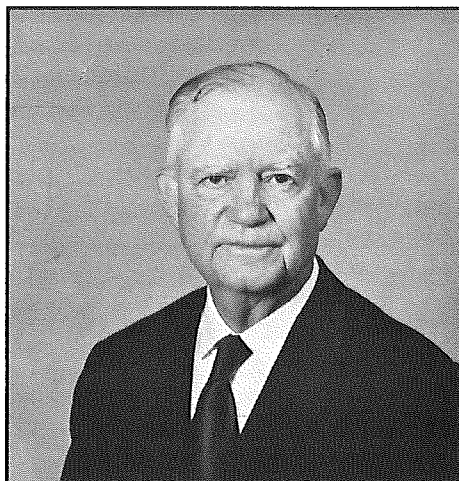
IN MEMORIAM



Justice Bert H. Tunks

Justice Bert H. Tunks of Houston died May 8, 1988. He was 77 years old. Justice Tunks received his J.D. from the University of Texas School of Law in 1940 and was admitted to the Texas Bar that same year. He was in private practice from 1941-1957. In 1957, he was appointed by then-Governor Price Daniel as Judge of the 113th District Court and served on that bench until 1967 when he was appointed to serve as Chief Justice of the 14th Court of

Civil Appeals. Chief Justice Tunks remained on the appellate bench until his retirement in 1975.



Judge Eugene C. Williams

Judge Eugene C. Williams of San Antonio died April 26, 1988. He was 82 years old. Judge Williams was qualified to practice law and admitted to the Texas Bar in 1938. He was elected as Representative in the Texas Legislature in 1947. In 1950, he was elected as Judge of the County Court at Law #2 in Bexar County where he

served until 1954, when he was appointed to serve as Judge of the 131st District Court. He retired from that district bench in 1974.

Judge G. P. Hardy, Jr.

Judge G. P. Hardy, Jr., of Bay City died July 8, 1988 in Houston. He was 75 years old. Judge Hardy earned his law degree from the University of Texas in 1936. He served as City Attorney of Bay City from 1938-1947 and as County Attorney in 1947. He was appointed to the 130th District Court in May of 1947 and retired from that bench in 1983.

Judge Frank O. White

Judge Frank O. White of Houston died January 13, 1988. He was 61 years old. Judge White earned his law degree from the South Texas School of Law in 1954 and was admitted to the Texas Bar that same year. After practicing law for 28 years in Harris County, he was elected Judge of the 295th District Court in 1982. In 1986, he was re-elected to that court and remained on that bench until his death.

JUDICIAL CALENDAR

Judicial Section Annual Conference
September 27-30, 1988
Worthington Hotel, Fort Worth

Texas Association for Court Administration
October 18-21, 1988
Wyndham Southpark Hotel, Austin

Juvenile Justice Seminar
November 2-4, 1988
Driskill Hotel, Austin

Constitutional County Judges Seminar
November 15-18, 1988
Hotel to be announced, Austin

Texas College for New Judges
December 4-9, 1988
University Hotel, Huntsville

Constitutional County Judges Seminar
Dates to be determined
Hotel to be announced, Lubbock

Southeast Texas Judicial Conference
February 8-10, 1989
University Hotel, Huntsville

South Texas Judicial Conference
March 1-3, 1989
Sheraton Hotel, South Padre Island

Central Texas Judicial Conference
March 15-17, 1989
Marriott Airport Hotel, Austin

Northeast Texas Judicial Conference
March 29-31, 1989
Tanglewood on Lake Texoma, Pottsboro

West Texas Judicial Conference
April 12-14, 1989
Westin Paso Del Norte, El Paso

Criminal Justice Conference
May 10-12, 1989
University Hotel, Huntsville

Trial Court Management Seminar
June 12-16, 1989
University Hotel, Huntsville

Judicial Section Annual Conference
September 19-22, 1989
Sheraton Park Central, Dallas

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