

# IN CHAMBERS

Official Publication of The Texas Center for the Judiciary, Inc., P.O. Box 12487, Capitol Station Austin, Texas 78711

Vol. 8, No. 1

July, 1981

## CRIMINAL JUSTICE BILL PASSES LEGISLATURE

Senate Bill 127, which establishes the Criminal Justice Division of the Governor's Office, passed the 67th Session of the Texas Legislature on the final day of the session, and has been signed by Governor Clements.

Passage of this bill will enable the Texas Center for the Judiciary, Inc. to receive Criminal Justice Division grant funds and continue to operate as in the past. "We would anticipate that the grant from CJD will come directly to the Center as a private, non-profit corporation," Jack H. Dillard, executive director of the Texas Center for the Judiciary, said.

Judge B. B. Schraub, Chairman of the Judicial Section and Chairman of the Board of Directors of the Center, spearheaded the efforts on the part of the Section in securing passage of the legislation.

"The Center is also grateful to Supreme Court Chief Justice Greenhill, Judges Truman E.

Roberts, and Tom G. Davis of the Court of Criminal Appeals, who testified and stood ready to testify before various legislative committees during the legislative process," said Dillard. "We appreciate too, the many other judges who contacted their senators and representatives."

"While this is good news for the present," Chairman Schraub said, "it is the feeling of our Section leaders that we should con-

tinue, and intensify, our efforts to obtain funding from private sources — foundations, individuals, and corporations — under the banner of our tax-deductible corporation. These funds could assure an even more effective program within the judiciary, enable the Center to sponsor more regional conferences, and add new and varied programs," Schraub added.

As a result of fundraising efforts initiated by the Center, a total of \$16,220 has been donated. These funds are on deposit and earning the highest possible interest.

The Center, which did receive its CJD grant through the State Bar of Texas, was established as a non-profit corporation in April, 1980.

"Looking to the future," Schraub said in a letter to Texas judges, "the Board of Directors of the new non-profit corporation feel it would be to the best interest of the judges of this state for the Texas Center to be operated independently of any governmental funds."

Judge Schraub emphasized the importance of judicial support, in concrete terms, for the Texas Center and the work it does.

"With your cooperation," he said, "we will be able to demonstrate to foundations and others that the judges of Texas are indeed behind this effort."

The Board of Directors of the

Center, in addition to Judges Schraub and Davis, who is vice-chairman, include Justice Quentin Keith of Beaumont, immediate past chairman of the Judicial Section, and Judges James K. Allen, Dallas; John T. Boyd, Plainview; J. S. Freels, Jr., Sherman; Noah Kennedy, Corpus Christi; Charles L. Reynolds, Amarillo; Truman E. Roberts, Austin; and Thomas J. Stovall, Jr., Houston.

The Texas Center for the Judiciary, Inc. is grateful for the following contributions, as of June 23: (The Center also wants to thank spouses and families for joining judges and court support personnel in making these contributions.)

### FOUNDER'S MEMBERSHIP \$1000

Quentin Keith and Mrs. Keith  
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James K. Allen

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# GREENHILL DELIVERS STATE OF JUDICIARY MESSAGE

Supreme Court Chief Justice Joe R. Greenhill presented the second State of the Judiciary message to a joint session of the 67th Legislature of the State of Texas.

As in his first judiciary message, the chief justice pointed out the formidable delay in the administration of criminal justice created by the assignment of all criminal appeals to one court, the Court of Criminal Appeals. He expressed his appreciation for the legislature's response to this problem, the proposal of "a constitutional amendment to give the intermediate courts criminal, as well as civil jurisdiction."

Chief Justice Greenhill said that it is now the legislature's duty to "carry out the provisions of this constitutional amendment adopted by the citizens of Texas last November."

In order to accommodate major changes in the judicial system, Greenhill stressed the need for adequate funding from the legislature. The Courts of Appeals, he said, "will need additional judges, support personnel, and equipment for their enlarged duties and caseloads." He urged the legislature to give to the judiciary "the tools with which to make the system work efficiently and swiftly."



Chief Justice Joe R. Greenhill

In his address, Chief Justice Greenhill offered further recommendations for a more efficient and equitable judiciary.

- **Consideration should be given to the non-partisan election of judges.**

Greenhill explained that "there are no meaningful party or individual platforms for the judiciary."

- **The continuous course and expense of adding new trial judges, while others are not trying a sufficient number of cases, is a real problem. The legislature should take action to re-district or simply continue to add new trial judges.**

Noting considerable discrepancies in dockets of trial judges, the chief

justice said it is up to the legislature to decide how this predicament can be resolved. He suggested the matter might be an appropriate subject for an interim committee study.

- **Legislation relating to Neighborhood Dispute Centers should be given serious consideration.**

Neighborhood Dispute Centers, Greenhill said, hold "great promise for the speedy resolution of disputes without the cost and delay of litigation."

By giving those involved in family or neighborhood disputes an opportunity to air their differences, Greenhill continued, problems may be solved "without resorting to violence, even murder."

Chief Justice Greenhill informed the legislature of other important activities of the Supreme Court, including oversight of the State Bar, the upcoming judicial meeting to promulgate new rules for media coverage, additions to the Bar Exam, and newly promulgated rules of trial and appellate practice.

In addition to House and Senate members, attending the State of the Judiciary presentation were Lieutenant Governor Bill Hobby, House Speaker Billy Clayton, U.S. House Majority Leader Jim Wright, and members of the Texas Supreme Court and Court of Civil Appeals.

## CORPUS CHRISTI SITE FOR SECTION CONFERENCE

Judge Tom G. Davis, chairman-elect of the Judicial Section, has appointed a six member committee to work with him in arranging the program for the Judicial Section Conference September 29-October 2 at Corpus Christi.

The 1981 program committee is composed of Judge Fred Biery, San Antonio; Justice Richard Countiss, Amarillo; Judge Ralph Elliott, Sherman; Judge William Lott, Georgetown; Chief Justice Austin McCloud, Eastland; and Judge David Wilson, Lufkin.

The chairman-elect of the Judicial Section traditionally has been

chairman of the program committee. Judge Davis and the committee have completed most of the program assignments.

The opening session on Wednesday, September 30, will be devoted to "Cameras in the Courtroom." Chief Justice Greenhill of the Supreme Court of Texas is arranging this part of the program.

Headquarters for the four day conference will be the Holiday Inn Emerald Beach Hotel in Corpus Christi. Registration material will be mailed from the Texas Center within the next few weeks.



Texas Center for the Judiciary, Inc.

IN CHAMBERS  
Published Bimonthly

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Austin, Texas 78711

# Ethics Committee Issues Opinions

## Opinion No. 52

**Question:** May a Judge serve on a Board of Mental Health Mental Retardation Center (MHMR)?

**Answer:** Canon 5G of the Code of Judicial Conduct states as follows "A judge should not accept appointment to a government committee, commission, or other position that is concerned with issues of fact or policy on matters other than improvement of the law, the legal system, or the administration of justice", and Canon 5B (1) states "A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court."

The Committee is not wholly aware of all the duties and responsibilities of the office, however, it is of the opinion that if such duties and responsibilities of the office do not contravene Canon 5G or Canon 5B (1), it would not be unethical to serve on the Mental Health Mental Retardation Board.

## Opinion No. 53(A)

**Question:** May a Judge endorse a specific candidate or candidates?

**Answer:** The Code of Judicial Conduct as amended February 19, 1980, does not specifically prohibit a judge from supporting a candidate or candidates, however, the Code in Canon 2B expressly states "He (a judge) should not lend the prestige of his office to advance the private interests of others;" The Code in Canon 1 provides "A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved".

The Code further states in Canon 2A "A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary".

The Committee is of the opinion that endorsing a candidate or candidates is within the discretion

of a judge provided the nature and type of endorsement does not contravene Canon 1, Canon 2A and Canon 2B of the Code of Judicial Conduct.

## Opinion No. 53(B)

**Question:** May a Judge endorse a specific party?

**Answer:** The Committee assumes that the question is referring to a political party as distinguished from a specific person. Canon 5B (2) states "A judge should not solicit funds for any . . . political . . . organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate or trustee of such an organization".

The Committee is of the opinion that since Canon 5B (2) permits a judge to be an officer, director, delegate or trustee of a political party, that the endorsing of such political party is within the discretion of a judge and does not violate Canon 5B (2) of the Code of Judicial Conduct.

(Continued on back page)

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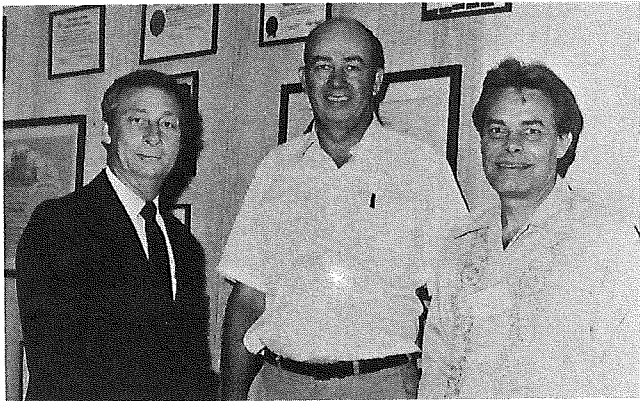
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# 1981 CRIMINAL JUSTICE CONFERENCE

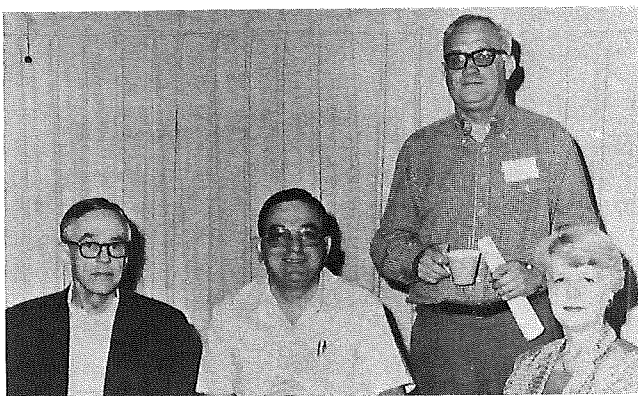
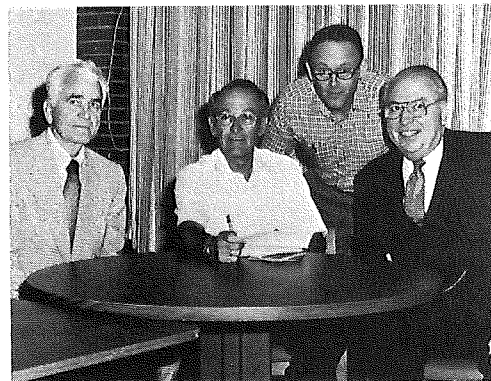


Pictured at left are three former Sam Houston State University students who attended the conference in Huntsville; l-r, Judge Bennie Boles, Carthage; Judge David Walker, Lufkin; and Judge John Martin, Conroe.



Elliott Bowers, President, SHSU, delivers a luncheon address.

Judicial Section Executive Committee members, l-r, Leonard Hoffman, Dallas; F. Lee Duggan, Houston; James Clawson, Belton; Connally McKay, Tyler, met during the Criminal Justice Conference.



Judge Carl Dally, third from left, Conference chairman, and Jack H. Dillard, far right, pose with students who appeared on the luncheon program with SHSU president Elliott Bowers.



— at Executive Committee meeting, l-r, Clarence A. Guittard, secretary-treasurer, Judicial Section; B. B. Schraub, chairman, Judicial Section; Judge Tom G. Davis, Austin; and Judge Barbara Culver, Midland.

# ATTENDANCE RECORD SET AT HUNTSVILLE CONFERENCE

Approximately 215 Texas judges attended the twelfth annual Criminal Justice Conference held May 6-8 in Huntsville, the largest number ever to attend the Criminal Justice Conference.

Judge Carl E. F. Dally of the Court of Criminal Appeals served as chairman of the three day conference, held yearly for county court at law and district judges who have criminal jurisdiction.

Those attending the conference participated in a number of informational seminars. Seminar topics included "Search and Seizure," "Procedure to Follow — Revocation of Probation and Pleas of Guilty," and "Evidence."

Panelists for the seminars were

Judge Sam Houston Clinton, Judge Leon Douglas, Judge Mike McCormick, Robert Huttash, Walter Prentiss, Judge Sam Robertson, Judge Marvin Teague, and Judge Robert C. Wright.

Special addresses to the Conference were made by Judge Max Rogers, Presiding Judge, Second Administrative Judicial District; Roy Rawls, Executive Administrator, Texas Court of Criminal Appeals; and Dr. E. T. Bowers, President, Sam Houston University.

Other activities included a tour of Texas Department of Corrections Facilities, a barbeque at Texas Department of Corrections, Goree Unit, and a presentation of Gil-

bert and Sullivan's "Mikado" by the Huntsville community players.

In addition to the Criminal Justice Conference, the Texas Center for the Judiciary, Inc. has sponsored a number of educational conferences for the judiciary and support staff in 1981. Among these were the West Texas Judicial Conference, held in San Angelo; the Second Administrative Judicial Conference, Huntsville; the Third Administrative Judicial District Conference, Salado; The First Administrative Judicial Conference, Tyler; the South Texas Mid-Winter Conference, Kerrville; and the Texas Association of Court Administration Conference, Austin.

## Texas Attorney General Opinions

**The Attorney General's Office has released the following opinions of concern to Texas judges and courts:**

### **Opinion No. MW-293**

**Issued January 29, 1981**

**RE:** May legislature create panels within the 14 courts of appeals which would be charged solely with criminal jurisdiction.

**Opinion Summary:** Under the recent amendment to article V, section 6 of the Texas Constitution, the legislature is empowered to create, within the various courts of appeals, panels which are charged solely with criminal jurisdiction.

### **Opinion No. MW-294**

**Issued February 4, 1981**

**RE:** Return of concurrent criminal jurisdiction over lands to which Texas has previously ceded exclusive jurisdiction to the United States. The land in question is the Gary Job Corps Training Center.

**Opinion Summary:** The 1978 amendment by Congress of the Comprehensive Employment and Training Act, 29 U.S.C. section 937(d), did not work an immediate reinstatement of state and local criminal jurisdiction over activities at the Gary Job Corps Training Center. Affirmative action by the state signifying an acceptance of the offer of recession of jurisdiction on the offered terms is necessary to complete the transfer of authority.

### **Opinion No. MW-298**

**Issued March 6, 1981**

**RE:** Whether section 53.06 of the Family Code requires service of summons on the parents of a married juvenile.

**Opinion Summary:** Section 53.06 of the Family Code requires the judge of a juvenile court to direct issuance of summons on the parents of a juvenile who is married.

### **Opinion No. MW-306**

**Issued March 17, 1981**

**RE:** Constitutionality of section 3e(a) of article 42.12 of the Code of Criminal Procedure.

**Opinion Summary:** A proposal to condition a grant of shock probation upon a defendant's pleading guilty or nolo contendere and waiving his right of appeal would not contravene the sixth and fourteenth amendments to the United States Constitution. A trial judge may constitutionally deny a motion for shock probation without holding a hearing, so long as he is not a party to a plea bargain promising shock probation to the defendant in return for a guilty plea.

### **Opinion No. MW-322**

**Issued April 14, 1981**

**RE:** Collection of fines assessed in Dallas County Criminal Courts. Specifically, "Does the sheriff of Dallas County have the sole re-

(Continued on Page 7)

# CRIMINAL PROCEDURE SEMINAR OFFERED FOR APPELLATE JUDGED

A Seminar on Criminal Procedure for Justices of Courts of Appeals will be held August 30-September 2, 1981 at the Quality Inn South in Austin.

The legislature's passage of Senate Bill 265, giving Courts of Civil Appeals criminal jurisdiction, will result in major changes and adjustments of these courts. Through a series of educational presentations, the Seminar on Criminal Procedure is designed to help existing judges of Courts of Appeals as well as new appointees make the transition to criminal jurisdiction.

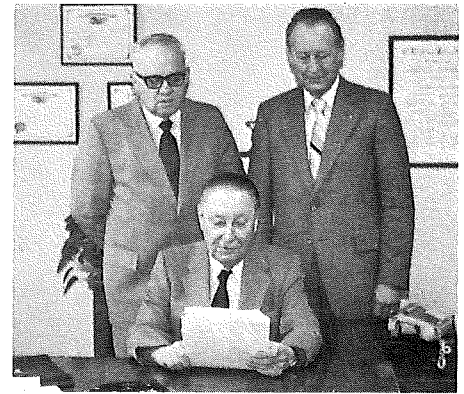
Eligible judges will receive registration material for the seminar from the Texas Center for the

Judiciary, Inc., sponsor of the three-day seminar. The Center will handle all lodging arrangements.

Seminar activities begin with registration from 4:00 p.m.-6:00 p.m. on August 30; adjournment will be at 4:00 p.m., Wednesday, September 2.

A full schedule is planned for all three days. An outstanding faculty has been recruited to make presentations to seminar participants on numerous aspects of criminal procedure.

Seminar planning committee members, pictured at right, are left to right: Judge Tom Davis of Austin, Justice Quentin Keith of Beaumont, and Chief Justice



Charles Reynolds of Amarillo. This program committee was appointed by Judge B. B. Schraub, chairman of the Judicial Section and president of the Board of Directors, Texas Center for the Judiciary, Inc.

## TEXAS CENTER PUBLICATIONS

The two-volume Manual for Texas Juvenile Court Judges, a publication of the Texas Center of the Judiciary, Inc., is now available for distribution to juvenile judges. The last Juvenile Judges' Manual was printed and distributed by the Texas Center in 1973.

Judge Craig Penfold, Dallas, worked diligently to provide juvenile judges with this comprehensive Benchbook and Formbook. He was assisted in this effort by Judges Gerald Shackelford, Amarillo; Andrew Z. Baker, Galveston; D. H. Buchanan, New Braunfels; Jim Farris, Beaumont; Darrell Hester, Harlingen; Rachel Littlejohn, Beeville; Bill Logue, Waco; Robert Lowry, Houston; William C. Martin, Longview; Scott Moore, Fort Worth; E. W. Patterson, Gonzales; and Enrique Pena, El Paso — all members of the Juvenile Justice Committee.

Due to the limited number print-



Attending a Juvenile Justice Committee meeting in Austin recently were: seated l-r: Judge Darrell Hester, Harlingen; Judge William C. Martin III, Longview; and Judge Robert Lowry, Houston. Standing l-r: Judge Craig Penfold, Dallas; Judge Scott Moore, Fort Worth; Judge Rachel Littlejohn, Beeville; and Judge Jerry Shackelford, Amarillo.

ed, the manual is available only to Texas judges who try juvenile cases. Juvenile judges who have not received a comunique regarding the Juvenile Justice Manual should contact the Texas Center for the Judiciary.

## ANNE CAIN JOINS TEXAS CENTER STAFF

Ms. Anne Williams Cain has joined the Texas Center for the Judiciary staff as Publications Supervisor. Cain completed her undergraduate work at Austin College in Sherman, Texas and recently received a Master's Degree in Administration and Planning from the University of Texas. Before coming to the Center, Ms. Cain worked as a legislative intern during the 67th legislative session.

Her duties will include producing the "In Chambers" newsletter, managing the Center's various publications, and assisting in preparation of material for judicial seminars.

# JUDICIAL APPOINTMENTS ANNOUNCED

Governor Bill Clements recently appointed three judges to administrative district judges posts and reappointed three others.

Appointed were Joe E. Kelly, retired district judge of Victoria, 4th administrative district; E. E. Jordon, retired district judge, Amarillo, 9th administrative district; and Ray L. McKim, Odessa, active district judge, 7th administrative district.

Reappointed were Jose F. Alamia, Edinburg, 5th administrative judge; Max M. Rogers, Huntsville, 2nd administrative district, and Herman Jones, Austin, 3rd administrative district. Alamia, Rogers, and Jones are retired district judges.

Terms of office of Paul M. Peurifoy, Dallas, 1st administrative district, and Charles J. Murray, Ft. Worth, 8th administrative district, do not expire at this time. Ross E. Doughty's term as administrative judge expires this year but no action has been taken by the governor as of June 24. Doughty, long-time trial judge and former member of the Texas Supreme Court is from Uvalde and is presiding judge of the 6th administrative district.

Kelly succeeds Judge Peter Michael Curry of San Antonio; Jordon succeeds Judge Howard Davidson of Lubbock, and McKim succeeds Judge Perry Pickett of Midland. Davidson and Pickett are retired district judges.

Other appointments by Governor Clements are:

## COURTS OF CIVIL APPEALS

Charles Mills Bleil, Sixth Court of Civil Appeals, Texarkana

## DISTRICT COURTS

Jack Carter, 5th Judicial District Court, Texarkana

Glen M. Ashworth, 86th Judicial District Court, Kaufman

David Diaz, 94th Judicial District

Court, Corpus Christi  
Billy John Edwards, 104th Judicial District Court, Abilene  
Melchor Chavez, 197th Judicial District Court, Harlingen  
Patricia R. Lykos, 180th Judicial District Court, Houston  
Floyd R. Wilson, 220th Judicial District Court, Meridian  
Marvin F. Marshall, 242nd Judicial District Court, Plainview  
Donald R. Jones, 266th Judicial District Court, Stephenville  
Marion M. Lewis, 267th Judicial District Court, Victoria  
Regan Clark, 268th Judicial District Court, Richmond  
Alvin Louis Zimmerman, 269th Judicial District Court, Houston  
Thomas D. White, 270th Judicial District Court, Houston  
Arturo E. Guerra, Jr., 275th Judicial District Court, Edinburg  
William Reed Porter, 276th Judicial District Court, Daingerfield  
John R. Carter, 277th Judicial District Court, Georgetown  
Michael A. Matheny, 279th Judicial District Court, Beaumont

Thomas R. Phillips, 280th Judicial District Court, Houston  
Louis M. Moore, 281st Judicial District Court, Houston  
Kelly Loving, 282nd Judicial District Court, Houston  
Jack Hampton, 283rd Judicial District Court, Houston  
Olen Underwood, 284th Judicial District Court, Conroe  
Frank B. Kiser, Jr., 286th Judicial District Court, Levelland  
Jack D. Young, 287th Judicial District Court, Muleshoe

Recent county court at law appointments include:

Robert F. Harkins, County Court at Law #2, McKinney  
Sherman Ross, County Court at Law #10, Houston  
Larry Starr, County Court at Law, Longview  
James M. Simmonds, County Court at Law, Del Rio  
Thomas R. Culver III, County Court at Law, Richmond

## ATTORNEY GENERAL OPINIONS

(Continued from Page 5)

sponsibility for the collection of all fines assessed in the Dallas County Criminal Courts?", and "Do the judges of Dallas County Criminal Courts have the authority under the statutes creating these courts to order or direct that fines assessed in these courts be paid to or collected by the county clerk employees who are the clerks of said courts?"

**Opinion Summary:** Both the sheriff and county clerk have responsibilities in the collection of fines. The judges of the county criminal courts of Dallas County may direct a defendant to pay the amount of a fine to either the sheriff or the county clerk, acting on behalf of the state.

### Opinion No. MW-330 Issued April 29, 1981

**RE:** Whether a trial judge may constitutionally instruct jurors about the possible effects upon a prisoner's sentence of parole and good conduct time.

**Opinion Summary:** The courts would be likely to uphold a statute which authorizes a judge to instruct jurors about the possible effects upon a prisoner's sentence of parole and good conduct time, so long as it required the judge to admonish the jury not to discuss the subject.

For a complete copy of the opinions listed above write to: The Attorney General of Texas, Supreme Court Building, P.O. Box 12548, Austin 78711.

## ETHICS OPINIONS

(Continued from Page 3)

### Opinion No. 53(C)

**Question:** May a Judge engage in precinct, county and state party conventions as a delegate?

**Answer:** Canon 5B (2) states "A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising event, but he may attend such events".

The Committee is of the opinion that Canon 5B (2) permits a Judge to be a delegate at a precinct, county and state party conventions.

### Opinion No. 54

**Question:** May a Judge serve as a Trustee on a Trust which involves oil and gas properties only where such properties are all located outside the elected district of such Judge with one minor exception?

**Answer:** No. Section 5D of the Code of Judicial Conduct states as follows: "A Judge should not serve as the Executor, Administrator, Trustee, Guardian or other Fiduciary." The Code is quite explicit and since the only exception stated therein pertains to members of a Judge's family, which

situation is not involved in this question, the committee is of the opinion that to act as a Trustee under the circumstances described would violate Section 5D of the Code of Judicial Conduct.

### Opinion No. 55

**Question:** May a judge periodically have fund-raising benefits to pay for (1) campaign costs, (2) living expenses or (3) office expenses?

**Answer:** (1) *Campaign Costs:* Canon 7 of the Code of Judicial Conduct, which pertains to the political activities of a judge, does not specifically address itself to fund-raising matters to cover campaign expenses; therefore, the committee is of the opinion that it is not unethical to have fund-raising benefits to raise funds to pay for campaign expenses provided the nature and type of benefit does not, in any manner, compromise the judge in his integrity, his independence in judicial affairs, nor give the appearance of impropriety. (2) *Living Expenses:* The committee is of the opinion that fund-raising benefits to pay the living expenses of a judge would be unethical. Canon 5 c(1) of the Code of Judicial Conduct would appear to prohibit such fund-raising events as it states:

A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the

proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

In addition to the above, to permit such fund-raising events would seem to defeat the purpose and spirit of the Code of Judicial Conduct.

(3) *Office Expenses and Overhead:* The committee is of the opinion that fund-raising benefits for the purpose of raising funds to cover the office expense or office overhead of a judge would be unethical for the same reasons he should not have such benefits to pay for his living expenses.

### Opinion No. 56

**Question:** Does the Code of Judicial Conduct prohibit a judge from having a fund-raising benefit in a year when he is not up for election?

**Answer:** The committee is of the opinion that the Code of Judicial Conduct does not prohibit non-election year fund-raising activity provided the purpose of such fund-raising does not contravene other provisions of the code.

The nine-member Committee on Judicial Ethics is chaired by Justice Jack Smith of Houston.

Additional questions may be addressed to:

Texas Center for the Judiciary, Inc.

P.O. Box 12487, Capitol Station  
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## JUDICIAL CALENDAR

### August 30-September 2

Courts of Appeals Seminar  
Quality Inn South, Austin

### September 10-11

Briefing Attorneys Institute  
Quality Inn South, Austin

### September 29-October 2

Judicial Section Conference  
Corpus Christi

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