

# IN CHAMBERS

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May, 1980

## Colonel Adams Luncheon Speaker

Col. James B. Adams, director of the Texas Department of Public Safety, will speak at the annual Judicial Section Luncheon at 12:00 noon, Friday, June 13, in Dallas.

Luncheon site is the Mezzanine Dining Room, Dallas Convention Center. The luncheon is held in conjunction with the annual State Bar of Texas Convention in Dallas, June 10-13.

Before being named DPS director, Col. Adams served as associate director of the Federal Bureau of Investigation and executive director of the Criminal Justice Division, Office of the Governor.

## HUNTSVILLE CONFERENCE HOSTS 180 TEXAS JUDGES

The annual Criminal Justice Conference was held May 7-9 at Sam Houston State University in Huntsville, with 180 Texas judges attending.

Carl E. F. Dally, Court of Criminal Appeals judge, served as Conference chairman. The 1980 Conference was dedicated to Judge Max M. Rogers of Huntsville, presiding judge of the Second Administrative Judicial District. He is co-founder of the Conference and has been a public servant for 49 years. Judge Rogers is immediate past chairman of the CLE Committee, Judicial Section, State Bar of Texas.

Court of Criminal Appeals Presiding Judge John F. Onion, Jr., and Dr. Victor Strecher, director of the Institute of Contemporary Corrections and the Behavioral Sciences, SHSU, made special addresses to the Conference.

*See related story, pg. 4*

Panel discussion topics included "Discovery," "Contempt," "Relationship with the Grand Jury," "Self-Representation by Defendants," "Pre-Sentence Investigation Reports," "Texas Judicial System Administrative Resources," and "Shock Probation."

Panelists were Alfred Walker, Robert Huttash, I. D. McMaster, John R. McFall, Jerry Shackelford, Charles W. Barrow, Paul Ferguson, Ernie Mazorol, D. V. McKaskle Jr., Leonard Giblin Jr., Larry Gist, Frank McCarty, and Don Stiles.

## Keith Calls Special Section Meeting

Judge Quentin Keith, chairman of the State Bar's Judicial Section, has called a special meeting of the Section membership for Friday, June 13, in Dallas.

Meeting site is the Mezzanine Dining Room of the Dallas Convention Center. The meeting will begin immediately following the noon Judicial Luncheon, which is

held in conjunction with the State Bar's Annual Convention.

The purpose of the meeting is to consider and act upon a contingency plan to be used in an effort to prevent the suspension of activities of the Texas Center for the Judiciary on Oct. 1, 1980, because of possible withdrawal of LEAA funds on that date.

*Inside . . .  
Ethics Opinions*



## Rutherford Retires

Mrs. Helen Rutherford, center, records supervisor and executive secretary for the Texas Center for the Judiciary since its establishment in 1973, retired April 30, 1980. Among the judges attending a reception in her honor were, l-r, Carl E. F. Dally, Truman Roberts, Charles W. Barrow, Wendell Odom and James G. Denton. New records supervisor is Mrs. Dottie Nay.

# TEXAS ATTORNEY GENERAL OPINIONS

Four recent Texas attorney general opinions are of special interest to the Texas judiciary. Complete copies of the opinions listed below are available by writing: The Attorney General of Texas, Supreme Court Building, P.O. Box 12548, Austin 78711.

### Opinion No. MW-145

**RE:** Whether a former district judge may purchase credit under the Judicial Retirement Act for prior military service even though he is not serving as a judge at the time of the purchase.

**Opinion Summary:** A former district judge may not purchase credit for military service unless he is at such time serving as a district judge or as a special judge.

### Opinion No. MW-151

**Re:** Whether Title III of the Family Code has impliedly repealed sections 21.302-21.304, Education Code.

**Opinion Summary:** Title III of the Family Code does not repeal sections 21.302 through 21.304 of the Education Code.

### Open Records Decision No. 236

**Re:** Whether probationer's records maintained by an adult probation office are public.

**Opinion Summary:** Records of an adult probation office which indicate whether probationers are complying with the terms of their probation are records of the "judiciary" and thus not subject to the Open Records Act. It is within the court's discretion as to whether to release such information.

### Opinion No. MW-156

**Re:** Payment of premiums for county clerks' statutorily required errors and omissions policy.

**Opinion Summary:** Section 5 of article 1937, Revised Civil Statutes of Texas, as amended by House Bill 1774, Acts 66th Leg., 1979, ch. 397, at 872, violates the Texas Constitution, article III, sections 51 and 52 insofar as it authorizes the commissioners court to expend public money for premiums to insure the public against errors and

omissions of the county clerk and his deputies. Attorney General Opinions C-506 (1965) and C-607 (1966). The prior version of section 5, article 1937 remains valid authority for Dallas County Commissioners Court to pay the premiums on the required errors and omissions insurance as additional compensation to the county clerk.



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# THE JUDICIAL COORDINATING COMMITTEE REPORT

by Charles Nay  
Administrative Director

The Texas Center for the Judiciary has given the Judicial Coordinating Committee (formerly the Judicial Planning Committee) space for reporting news of its activities through *In Chambers*. The Committee appreciates the opportunity to keep you informed and trusts the information will be useful. This first item concerns the results of our recent survey.

## State Trial Court Summarized

To assess judicial needs in the Texas trial court system, the Judicial Coordinating Committee in December, 1979, sent a questionnaire to each District Judge and County Court at Law Judge plus other court personnel. The one-page survey form asked the recipient to identify the top five court priorities for improving court operations, and to state what assistance the Judicial Coordinating Committee might give to that court.

The overall percentage of return of the questionnaires was 18.6%. In describing problem areas and naming priorities for improving court operations, several topics were cited repeatedly. Frequently mentioned were the need for additional court staff, more and improved courthouse facilities, better technical assistance for courts, higher pay for current court personnel, improved design for court security, statewide minimum adequate standards for court support and space, a more "unified" trial court system, and additional courts/judges to handle the caseload.

In response to the question of how the Committee could be of assistance to trial courts, the central theme was the request that the State supply the tools necessary for trial courts to do an adequate job of hearing cases. These tools include higher pay for judges, enough funds to maintain judicial court staff and equipment, and sufficiently modern facilities in which to conduct judicial business.

The findings together with staff recommendations have been forwarded to the Judicial Coordinating Committee members for discussion. If there are other topics which you would like to see the Committee consider, please contact any Committee member or the main office in Austin at (512) 475-1545.

Judicial Coordinating Committee members are: Chief Justice Joe R. Greenhill, Austin, Chairman; Justice Charles W. Barrow, Austin, project director; Prof. David Anderson, Austin; Hon. Jim D. Bowmer, Temple; Judge John T. Boyd, Plainview; Ms. Adelfa Callejo, Dallas; Justice James G. Denton, Austin; Judge Joe L. Draughn, Houston; and Hon. Ronald D. Earle, Austin.

Also, Hon. George E. Gilkerson, Lubbock; Rep. Ben Z. Grant, Marshall; Judge Clarence Guitard, Dallas; Judge Darrell Hester, Brownsville; Ms. Billie Nance Hill, Amarillo; Judge Wendell Odom, Austin; Judge Paul Peurifoy, Dallas; Judge Truman Roberts, Austin; Judge Max M. Rogers, Huntsville; Judge Robert L. Smith, Houston; and Judge Mary Pearl Williams, Austin.

## ETHICS OPINIONS

### Opinion No. 49

**Question:** Is a judge subject to the Judicial Code of Conduct entitled to a referral fee under the following facts:

1) Prior to his appointment as judge, he represented a client in a workman's compensation case and in a third party action; 2) Also prior to his appointment, the judge referred such cases to another lawyer and at that time a referral agreement between them was made; 3) the litigation in both cases has now been completed resulting in an award of more than \$1,000,000.00; 4) the attorney to whom the cases were referred reportedly has refused to pay the judge any referral fee?

**Answer:** The referral of cases by a judge prior to taking office does not constitute the practice of law and referral fees may be accepted without violation of either Article 319, Texas Revised Civil Statutes or the Code of Judicial Conduct.

### Opinion No. 50

**Question:** Is a judge subject to the Judicial Code of Conduct in violation of the Code if he supports a candidate for the office of Executive Chairman of a political party?

**Answer:** The Code of Judicial Conduct as amended February 18, 1977, does not specifically prohibit a judge from supporting a candidate for the office of Executive Chairman of his party; however, the Code in Canon 2A 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,

(continued on page 4)

## TEXAS CENTER PUBLICATIONS

Two publications of the Texas Center for the Judiciary are currently being revised and will soon be available for distribution to members of the Judicial Section. Another publication, the *County & District Clerks' Manual*, is also nearing completion.

### Code of Judicial Conduct

The revised *Code of Judicial Conduct*, incorporating amendments made by the Supreme Court of Texas February 19, 1980, is currently being printed. The revised Code will be distributed free of charge to members of the Judicial Section upon completion.

The May 1980 issue of the *Texas Bar Journal* contains the amendments to the Code.

### Benchbook, Part II

The revision of the Benchbook for Texas Trial Judges, Part II, by Justice Quentin Keith of the Beaumont Court of Civil Appeals, is nearing completion.

The revised material, which deals with civil matters, will be printed this summer, and distributed to members of the Judicial Section at no charge.

### County & District Clerks' Manual

A revision of the *County and District Clerks' Manual* by a clerks committee is in its final stages. Texas county and district clerks will receive copies of the manual free of charge upon completion.

### A REMINDER

The 1980 Judicial Section Conference will be held in Corpus Christi, September 16-19.

Normally held the last week of September each year, the annual Conference in 1980 is scheduled a week earlier to avoid conflicts in hotel scheduling.

## MAX ROGERS HONORED

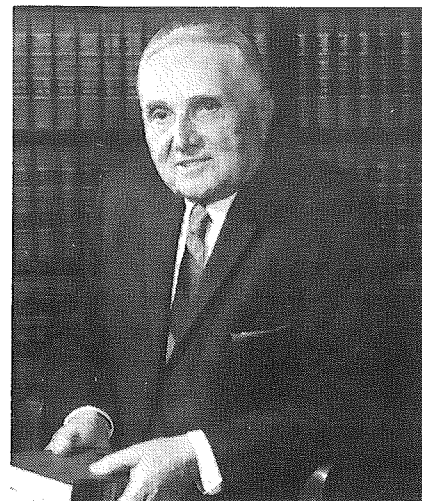
The 1980 Criminal Justice Conference was dedicated to Judge Max M. Rogers of Huntsville, presiding judge of the Second Administrative Judicial District and co-founder of the Conference.

Judge Truman Roberts, Court of Criminal Appeals, made the dedicatory remarks at the Conference.

Judge Rogers is immediate past chairman of the Judicial Section's CLE Committee, and has served in various public offices since 1931.

He was district attorney in Huntsville, 1931-36, district judge of the 12th District Court in Huntsville, 1936-65, and was appointed presiding judge of the administrative district by Gov. W. Lee O'Daniel on April 18, 1940.

In addition to his work as CLE chairman, Judge Rogers has served the Judicial Section as chairman, 1938-39. He was a member of the Bar's board of directors, 1940-41, and member of the Texas Civil Judicial Council, 1940-46.



Max M. Rogers

## ETHICS OPINIONS

(continued from page 3)

maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved."

The Committee is of the further opinion that supporting a candidate for Executive Chairman of a political party is within the discretion of a judge provided the nature and type of support does not contravene Canon 1 and Canon 2A of the Code of Judicial Conduct.

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