

IN CHAMBERS

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Judges to Meet in Houston for Annual Conference

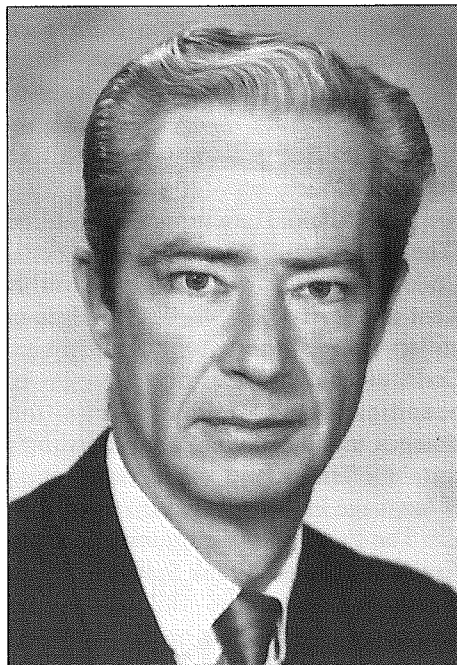
Judge Weldon Kirk, Chair of the Judicial Section, has called for the Annual Conference of the Judicial Section of the State Bar of Texas to be held at the Hyatt Regency Hotel in Houston, September 21-24, 1993. Vice-Chair Neel Richardson of Houston, who serves as chair of the Program Planning Committee, has put together an excellent educational conference for the judges.

The conference will commence with registration on Tuesday. Golf, tennis and bridge will be held on Tuesday afternoon.

The educational program will begin Wednesday at 8:45 a.m. and will be held at the hotel which is located at 1200 Louisiana Street in downtown Houston.

The educational program on Wednesday is sponsored by the Texas Bar Foundation and offers separate programs for trial and appellate judges.

The program for trial judges is entitled "Personal Dynamics in the Trial" and will examine the present means for managing jurors and suggest changes in management that are consistent with the objectives of the jury trial system. Participants will see a trial from a juror's point of view and will learn how jurors communicate during deliberations. The possible futures of the American court system will be examined. This program, under the direction of Judge David Hodges of Waco, will be presented by Mr. David Strawn, President of Dispute



Judicial Section Chair Weldon Kirk

Management, Inc. in Florida.

The program for appellate judges is entitled "Logic for Judges" and is a workshop designed to provide hands-on experience in the practical application of logicians' theories to appellate decision-making and opinion writing. Workshop members will participate in exercises in which they will examine privately their own judicial opinions in light of deductive and inductive reasoning. Leading cases, including those of the U.S. Supreme Court
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NOMINATING COMMITTEES ANNOUNCE SLATES OF OFFICERS

The Nominating Committees have released their lists of nominees for officers of the Texas Center for the Judiciary and for the Judicial Section. Those nominated to be officers of the Texas Center are:

Chair:

Judge Neel Richardson

County Criminal Court at Law #8
Houston

Vice-Chair:

Judge Ray D. Anderson

121st District Court, Brownfield

Secretary-Treasurer:

Justice Linda B. Thomas

5th Court of Appeals, Dallas

Board of Directors:

Place 1:

Justice Bea Ann Smith

3rd Court of Appeals, Austin

Place 3:

Judge M. Kent Sims

31st District Court, Wheeler

Place 7:

Judge J. Manuel Bañales

105th District Court, Corpus Christi

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New Judges Page 4

Officers Nominated

from page 1

Place 8:

Judge Suzanne Stovall
County Court at Law #1
Conroe

Place 10:

Judge John T. Forbis
Senior District Judge
Childress

The nominees for the Judicial Section are:

Chair:

Judge Neel Richardson
County Criminal Court at Law #8
Houston

Vice-Chair:

Judge Ray D. Anderson
121st District Court, Brownfield

Executive Committee:

Place 2:

Justice Rose Spector
Supreme Court of Texas, Austin

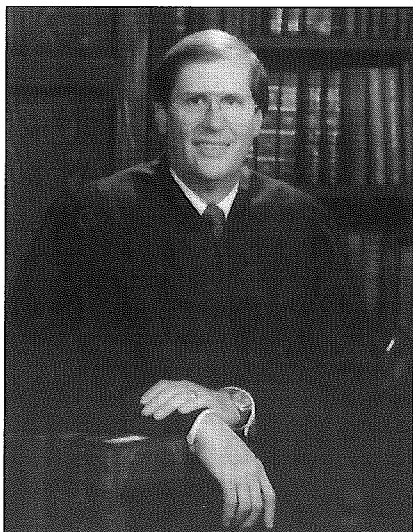
Place 3:

Judge Paul R. Davis, Jr.
200th District Court, Austin

Place 4:

Judge Sue Koenig
360th District Court, Fort Worth.

The election of officers will be held on Thursday afternoon, September 23, at the Hyatt Regency Hotel during the Judicial Section Annual Conference.



Judge Neel Richardson of Houston, Chair of Program Committee for Conference and Nominee for Chair

Annual Conference

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Court, will also be discussed. This program, under the direction of Justice Bud Arnot of Eastland, will be presented by the Honorable Ruggero J. Aldisert, Chief Judge Emeritus of the U.S. Court of Appeals for the Third Circuit.

Thursday morning's educational program for trial judges will consist of three concurrent breakout sessions for trial judges with a choice of topics in civil, criminal or family law. The Civil Law program, under the direction of Judge Paul Davis of Austin and Judge Kent Sims of Wheeler, will focus on the Reports of the Supreme Court Task Forces and include breakout sessions on Discovery, Sanctions, Judicial Appointments, and the Code of Judicial Conduct. A representative from each task force, along with a liaison from the Supreme Court, will be present to discuss the reports. Judges will have an opportunity to provide input to the Supreme Court.

The Criminal Law program is entitled "The New and Different Texas Penal Code-1993." District Judges Cynthia Kent and Larry Gist will assist judges in understanding the new Texas Penal Code, including the new ranges of penalties for offenses, definition changes, modifications of what constitutes certain offenses and other clarification of language in the Penal Code rewrite.

The Family Law program, under the direction of Judge Frank Sullivan of Fort Worth, will focus on violence in the courtroom, protective orders, handling volatile litigants, how to handle the problem cases before they erupt, punishment/treatment alternatives, and domestic violence from the police's perspective. This program will be of particular interest to judges who handle juvenile cases also.

On Thursday morning, appellate judges will continue with the program on "Logic for Judges".

The business meetings of the Texas Center for the Judiciary, Inc., and the Judicial Section of the State Bar of Texas will be held Thursday afternoon, followed

by the meetings of the administrative judicial regions.

The program on Friday morning is a general session for all judges on "Hot Topics" and will include reports from the Supreme Court of Texas and the Court of Criminal Appeals, an update on *Batson*, a presentation on the Americans with Disabilities Act as it applies to judges and courts, and attorney disciplinary procedures.

The program will provide up to 10.00 hours of continuing judicial education.

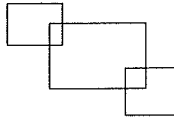
Social activities, under the direction of Judge Ann Cochran of Houston, will include golf, tennis and bridge on Tuesday afternoon; an elegant reception on Tuesday evening at the Houston Museum of Natural Science which is co-sponsored by the Houston Bar Association; the Inspirational Breakfast on Wednesday morning featuring a performance by the A.D. Players, a Houston-based Christian theatre company; and a New Orleans Mardi Gras party on Thursday evening, complete with cajun food, music for dancing and a silent auction.

Shopping at Galleria Mall is the highlight for spouses on Wednesday with complimentary shuttle service every 15 minutes from 10:00 a.m. until 4:00 p.m. The spouses' program will be held on Thursday and will include a tour of Bayou Bend (the home and gardens of Miss Ima Hogg), a brief city tour, and lunch at the Heritage Club.

New this year is a post-convention trip to New Orleans. Judges will have an opportunity to unwind from the conference at the elegant Omni Royal Orleans Hotel located in the heart of the French Quarter. The trip is organized by BMA Travel and judges can sign up for the trip directly with them. For more information regarding the post-convention trip call BMA at (512) 452-5242.

Conference invitations were mailed to judges on July 30, and the deadline to register is August 27, 1993. If you need additional information, please call the Texas Center at (512) 463-1530.

Traveling to Houston?



For those who are going to attend the Judicial Section Annual Conference in Houston, the following information may be helpful.

Persons flying into Houston

Airports:

Airport Express provides shuttle service between Hobby Airport and the Hyatt Regency Hotel. The cost is \$7.50 one-way and the ticket counter is located in the baggage claim area of the airport. Shuttle service runs every 30 minutes during the following weekday hours:

From Houston Hobby to Downtown:

7:00 a.m. until 11:30 p.m.

From Downtown to Houston Hobby:

5:35 a.m. until 8:05 p.m.

Hobby Airport is approximately 20 to 30 minutes from the Hyatt Regency Hotel.

Airport Express also provides shuttle service between Houston Intercontinental Airport and the Hyatt Regency Hotel. The cost is \$12.50 one-way and ticket counters are located in the baggage claim area of each terminal. Shuttle service runs every 30 minutes during the following weekday hours:

From Intercontinental Airport to Downtown:

7:30 a.m. until 11:50 p.m.

From Downtown to Intercontinental Airport:

5:30 a.m. until 8:00 p.m.

Houston Intercontinental Airport is approximately 45 minutes to 1 hour from the Hyatt Regency Hotel.

If you have any questions regarding airport transportation, please contact Airport Express at (713) 523-8888.

Parking at the Hyatt Regency

The Hyatt Regency will offer a conference rate of \$3.50 for self-parking (with no in/out privileges; Guests must pay each time they leave the garage). If you self-park, the Regency Parking Garage is located next to the hotel and features a skywalk from the 3rd Floor of the garage into the 3rd Floor of the

Contributions to the Texas Center

Since the April 1993 Issue of *In Chambers*

John Robert Adamson
Will Barber
Pat M. Baskin
Carlos C. Cadena
Jerry L. Calhoon
Criminal Justice Section,
SBOT
John R. Hollums

Mack Kidd
V. Sue Koenig
Dwight E. Peschel
Robert S. Pieratt
Sam Robertson
Gary R. Stephens
Barbara Lane Walther
John Weeks

JUDGE HENRY G. BRASWELL MEMORIAL

Grainger McIlhany

JUDGE W. C. DAVIS MEMORIAL

Joe & Jayne Dibrell
Wendell & Fay Odom
Jack & Nancy Onion
John Luther Smith

JACK DILLARD MEMORIAL

Mike M. Machado
B. B. Schraub

JUDGE CHARLES J. MURRAY MEMORIAL

Sam & Gloria Paxson

MRS. TRUMAN E. ROBERTS (GLORIA) MEMORIAL

Grainger McIlhany
Jack & Nancy Onion
Jack & Betty Prescott

JUDGE TRUMAN E. ROBERTS MEMORIAL

Joe & Jayne Dibrell
Grainger McIlhany
Jack & Nancy Onion
Jack & Betty Prescott

JUDGE CLARENCE N. STEVENSON MEMORIAL

Joseph Connally
Richard N. Countiss
Harold Entz
Weldon & Mary Kirk
Jack & Nancy Onion
E. W. Patteson
Mickey Pennington
B. B. Schraub
George M. Thurmond

MRS. BILL THRASH (WILLIE MAE) MEMORIAL

Joseph Connally

JUDGE CLAUDE WILLIAMS MEMORIAL

Grainger McIlhany

Hyatt Hotel.

Valet Parking is available at a conference rate of \$5.50 (with in/out privileges) and the daily charge will be billed to the guest's room.

NEW JUDGES

Eric G. Andell

1st Court of Appeals, Houston
Succeeding Sam H. Bass, Jr.

Cyde R. Ashworth

Presiding Judge, 8th Administrative
Judicial Region, Fort Worth
Succeeding Roger Jeffery Walker

Joe D. Clayton

241st District Court, Tyler
Succeeding Joe Tunnell

Carolyn Marks Johnson

189th District Court, Houston
Succeeding Richard W. Millard

Joseph P. Kelly

24th District Court, Victoria
Succeeding Clarence N. Stevenson

David M. McCoy

100th District Court, Childress
Succeeding John T. Forbis

John F. Miller, Jr.

102nd District Court, Texarkana
Succeeding Leon F. Pesek, Sr.

Richard B. Patteson

County Court at Law, Tyler
Succeeding Joe D. Clayton

Robert J. Seerden

Chief Justice, 13th Court of Appeals
Corpus Christi
Succeeding Paul W. Nye

Linda Reyna Yanez

13th Court of Appeals, Corpus Christi
Succeeding Robert J. Seerden

Juvenile Justice Benchbook Available

The *Texas Juvenile Justice System Benchbook and Reference Manual* is available for purchase. The manual, written by Judge Harold C. Gaither, Judge of the 304th District Court in Dallas, and edited by Professor Robert O. Dawson of the University of Texas School of Law, can be purchased from the Texas Center at a cost of \$15.00 per book. They are in stock and available for immediate distribution. Please write the Texas Center to obtain a copy of the manual.

JUDICIAL CALENDAR

**Judicial Section
Annual Conference**

September 21-24, 1993
Hyatt Regency Hotel, Houston

**Texas Association for Court
Administration Annual Conference**

October 19-22, 1993
Omni Hotel, Austin

Juvenile Justice Seminar

November 3-5, 1993
Omni Hotel, Austin

Texas College for New Judges

December 5-10, 1993
Criminal Justice Center, SHSU
Huntsville

Southeast Texas Judicial Conference

February 9-11, 1994
Criminal Justice Center, SHSU
Huntsville

South Texas Judicial Conference

March 2-4, 1994
Marriott Hotel, Corpus Christi

Central Texas Judicial Conference

March 23-25, 1994
Hilton Hotel, Arlington

Northeast Texas Judicial Conference

April 6-8, 1994
Sheraton Hotel, Tyler

West Texas Judicial Conference

April 20-22, 1994
Lubbock Plaza Hotel, Lubbock

Criminal Justice Conference

May 11-13, 1994
Omni Hotel, Houston

**Professional Development Program
for Court Coordinators,
Managers and Administrators**

June 13-17, 1994
Criminal Justice Center, SHSU
Huntsville

Judicial Section

Annual Conference
September 27-30, 1994
Fairmont Hotel, Dallas

**Texas Association for Court
Administration Annual Conference**

October 11-14, 1994
Omni Hotel, Austin

Texas College for New Judges

December 4-9, 1994
Criminal Justice Center, SHSU
Huntsville

Judge Farris Elected President of National Juvenile and Family Court Council

The Honorable James M. Farris of the 317th District Court in Beaumont was sworn in as president of the National Council of Juvenile and Family Court Judges at the 56th Annual Conference in Reno, Nevada.

Judge Farris will provide leadership to the organization's 2,500 members and direct the focus of its committees, which address major juvenile and family law issues such as family violence, child abuse and neglect prevention and creating family court systems. His special focus for the year is preventing juvenile delinquency. He plans to work through the National Council in developing a nationwide prevention/early intervention program for at-risk children.

A native Texan, Farris is a graduate of Baylor University and Baylor University School of Law. After law school, he served as Assistant Attorney General of Texas and Assistant District Attorney for Jefferson County. He served as Judge of the County Court at Law #2 for 7-1/2 years, after which he was elected Judge of the 317th District Court and has served on that court since 1978.

Judge Farris' honors are many and his involvement in juvenile organizations are numerous. In 1991, he was selected by the U.S. Department of Health and Human Services to be the Texas recipient of the Biannual "Commissioner's Awards for the Prevention of Child Abuse and Neglect". He was chosen as the one judge from Texas to serve on the Commission on Children, Youth and Family Services and was appointed the presiding officer of that Commission. Frequently, Judge Farris serves as a faculty member for the education programs sponsored by the Texas Center for the Judiciary, most recently serving as a Course Director for the Texas College of Advanced Judicial Studies. He also serves on the faculty of the Texas College for New Judges. He speaks between 70 and 90 times per year on issues related to juvenile justice.

IN MEMORIAM

Judge Clarence N. Stevenson

Judge Clarence N. Stevenson of Victoria died June 2, 1993. He was 58 years old. He received his B.A. from the University of Texas at Austin in 1959, and his J.D. from the University of Texas School of Law in 1960. He was in private practice for several years before becoming the assistant county attorney. In 1977, he was appointed as Judge of the 24th District Court, serving on that court until his death.

Judge Stevenson was appointed to the Texas Board of Criminal Justice by Governor Ann Richards in July 1991. His

term was to expire in February 1995. He served as Secretary-Treasurer of the Texas Center for the Judiciary, Inc., and Judge Stevenson frequently was a speaker at various seminars and conferences sponsored by the Center and served as a faculty member of the Texas College for New Judges. He was named to the Texas Adult Probation Commission in June 1983 and served as its chairman from 1985 until 1989. He also served as chairman of the Judicial Advisory Committee, an advisory board to the Texas Board of Criminal Justice.

Criminal Justice Conference Held in Austin

This year's annual Criminal Justice Conference was held in Austin May 19-21, 1993, and drew over 300 judges from across the state. The conference at the Doubletree Hotel was sponsored by the Texas Center for the Judiciary, Inc. in cooperation with the Texas Court of Criminal Appeals and offered attending judges up to 9.00 hours of continuing judicial education.

The Honorable Bill M. White of the Court of Criminal Appeals was in charge of the educational content of the program which featured a presentation by the Honorable Charles Moylan, Jr., of the Court of Special Appeals in Baltimore, Maryland, on *Recent Impact Decisions of the U.S. Supreme Court, Search and Seizure, and Confessions*.

Other topics presented to the judges were: *Gang Activity* by Judge Sharen Wilson of the Criminal District Court #1 in Fort Worth; *Sentencing* by Judge Larry Gist of the Criminal District Court in Beaumont; a legislative update by Thomas Krampitz of the Texas District and County Attorney's Association; and an update on *Recent Decisions of the Court of Criminal Appeals* by Presiding Judge Michael McCormick.

A special highlight during the conference was a presentation made by Judge



Judge Gerry Meier presents donation to Judge Weldon Kirk

Gerry Meier of the 291st District Court in Dallas in which she presented to Texas Center Chair Weldon Kirk a check in the amount of \$12,000 donated by the Criminal Justice Section of the State Bar of Texas. Judge Meier serves as Chair of the State Bar Section. The Texas Center is honored to accept this generous donation to help further the educational endeavors of the Center to the judges of the state of Texas.

Next year's Criminal Justice Conference will be held May 11-13, 1994, at the Omni Hotel in Houston.

Ethics Opinions

No. 150

*Judge as Member of Host
Committee for Fund Raising
Event?*

Issued November 17, 1992

Q: Should a judge permit the judge's name to be included in a list of the members of the "Host Committee" on an invitation to a fund raising event?

A: No. Canon 5B(2) provides that a judge shall not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization.* Canon 10 provides that the word "shall" when used in the Code means compulsion. The Committee concludes that if a judge should agree to be listed as a host on an invitation to a fund raising event, that would constitute soliciting funds for the cause benefited by the event and, therefore, would violate Canon 5B(2).

Canon 2B is also relevant. It provides that a judge should not lend the prestige of judicial office to advance the interests of others. Such use of a judge's name would use, or at least would give the appearance of using, judicial prestige for fund raising even if the invitation does not identify the host judge as a judge, because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. (Compare Opinions 73 and 136.)

Canon 2B also provides that a judge should not permit others to convey the impression that they are in a special position to influence the judge. By hosting a fund raising event a judge would create an opportunity for a litigant to attempt to curry favor by contributing generously, and then to convey such an impression.

The applicable principles are also addressed in Opinions 11 (1976), 16 (1977), 41 (1979), 51 (1980), 59 and 60 (1982), and 131 (1989). The same rules apply to judges' personal participation in public fund raising activities for

organizations devoted to the improvement of the law, the legal system, or the administration of justice. Canon 4C.

* Committee Footnote: As the Canon 5B(2) distinction between soliciting funds, and being a speaker or guest of honor at such an event, is quite specific, the Committee does not reach or consider the rationale for that distinction.

No. 151

*Judge as Trustee of Family Trust
and as Business Partner of Aunt
and Cousins*

Issued January 22, 1993

Q: May a judge handle her family's business interests, some of which are held in trust and in partnerships with an aunt and several cousins?

A: Yes. Canon 5C(1), (2), and (3) allow this activity if the business is not a publicly owned business, does not require the judge's frequent disqualification from cases, does not reflect adversely on the judge's impartiality, does not interfere with the proper performance of judicial duties, does not exploit her judicial position, and does not involve the judge in frequent transactions with lawyers or others likely to come before the judge's court. The affirmative answer to this question assumes that none of these conditions will occur.

Further, a judge may serve as a fiduciary for a member of her own family, if such service will not interfere with the proper performance of judicial duties. This affirmative answer is subject to the conditions stated in Canon 5D, i.e., the judge should not serve if her fiduciary duties will engage her in proceedings "that would ordinarily come before the judge, or if the estate, trust, or award would become involved in adversary proceedings in [her] court or one under its appellate jurisdiction."

No. 152

*Judge as Trustee of Nonprofit
Cemetery Trust Association*

Issued January 22, 1993

Q: May a judge serve as trustee for a Cemetery Trust Association that is non-profit, meets once a year to approve investments made, and to advise on future investments?

A: A judge may serve, but should not approve investments made or advise on future investments. Canon 5B(3) provides that a judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions. The same canon provides that a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should not serve if it is likely the organization will be engaged in proceedings that would come before her or would be regularly or frequently engaged in adversary proceedings in any court.

2. A judge shall not solicit funds for such organization but may be listed as a trustee and may be a speaker or guest of honor at an organization's fundraising events.

3. A judge should not give investment advice to such an organization. Canon 5B provides that a judge may participate in civic and charitable activities that do not reflect adversely upon her impartiality or interfere with the performance of judicial duties, and Canon 2B provides that a judge should not lend the prestige of her office to advance the private interests of herself or others. Subject to these conditions, such service is allowed under the code. See Judicial Ethics Opinions Nos. 57, 70, and 144.

Ethics Opinions

No. 153

Judge as Lessor of Law Office to Attorneys Practicing in Her Court

Issued January 22, 1993

Q: May a judge lease her former law office, of which she is the sole owner, directly to attorneys who will be practicing in her court?

A: No. Canon 5C(1) provides that a judge should refrain from business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before her court. The committee believes that such a relationship constitutes a business dealing that falls within this prohibition. Because the judge's ownership interest is large, the relationship may create the appearance of impropriety.

Canon 5C(3) provides that a judge should manage her investments and other financial interest to minimize the number of cases in which she is disqualified. As soon as the judge can do so without serious financial detriment, she should divest herself of investments and other financial interests that might require frequent disqualification. See Judicial Ethics Opinion No. 129.

No. 154

Ex Parte Communications from Litigants

Issued January 22, 1993

Q: What is a judge's ethical obligation upon receiving from a litigant a letter which attempts to communicate privately to the judge information concerning a case that is or has been pending?

A: Canon 3A(5) provides that a judge shall not permit or consider improper ex parte or other private communications concerning the merits of a pending or impending judicial proceeding. (Canon 10 provides that the word "shall" when used in the Code means compulsion.) Judges may comply with Canon 3A(5) by doing the following: 1) Preserve the original letter by delivering it to the court clerk to be filemarked and kept in the clerk's file; 2) Send a copy of the letter to all opposing counsel and pro se litigants; 3) Read the letter to determine if it is proper or improper ex parte communication; if improper, the judge should send a letter to the communicant, with a copy of the judge's letter to all opposing counsel and pro se litigants, stating that the letter was an improper ex parte communication, that such communication should cease, that the judge will take no action whatsoever in response to the letter, and that a copy of the letter has been sent to all opposing counsel and pro se litigants.

Canon 3A(4) provides that a judge shall accord to every person who is legally interested in a proceeding the right to be heard according to law. Consideration of an ex parte communication would be inconsistent with Canon 3A(4), because it would not accord to other parties fair notice of the content of the communication, and it would not accord to other parties an opportunity to respond.

Canon 3 provides that the judicial duties of a judge take precedence over all the judge's other activities. A judge's consideration of a controversy that is not brought before the court in the manner provided by law would be inconsistent with the judicial duty to determine "cases" and "controversies" (Art. 3, Constitution of the United States). A judge has no authority or jurisdiction to consider, or to take any action concerning, out-of-court controversies. A judge's consideration of a controversy that is not properly before

the court could give the appearance of inappropriate action under color of judicial authority, which would tend to diminish public confidence in the independence and impartiality of the judiciary, rather than promote it as Canon 1 and Canon 2 require a judge to do.

Finally, a judge should try to minimize the number of cases in which the judge is disqualified. If a judge permits a communication to the judge concerning any matter that may be the subject of a judicial proceeding, that could necessitate disqualification or recusal.

No. 155

Activities of Retired Judges

Issued January 22, 1993

Q #1: May a retired judge who is subject to assignment do the following things?

a. **Lawyer Activities:** (1) appear in court as a lawyer; (2) practice law without appearing in court; (3) use judicial title; (4) be "of counsel" to a business.

b. **Other Than in Law Practice, Use Former Judicial Title in Directories, on Stationary or Business Cards:** (1) for judicial purposes; (2) for business and social purposes.

c. **Political Activities:** (1) publicly endorse another candidate for office; (2) work on a political campaign.

d. **Raise Money for Charities.**

e. **Activities Governed by Law:** (1) perform weddings; (2) administer oaths; (3) disregard financial disclosure requirements.

A to Q #1: (Retired Judges Subject to Assignment):

a: **Lawyer Activities:**

a(1) **Appear in Court as a Lawyer**

No ethical question is presented, because under Government Code Section 74.055 every judge who is eligible for

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Ethics Opinions

assignment has certified the judge's willingness not to appear and plead as an attorney in court.

a(2) Practice Law Without Appearing in Court

Yes, but subject to the provisions of Canons 2, 2B, 5, and 5C (1) and (6). Canon 8G says that a retired judge subject to assignment is not required to comply with the Canon 5F provision that a judge should not practice law (with exceptions that do not apply). However, the principles stated in the headings of Canons 2 and 5, and the specific provisions of Canon 2B and Canon 5C (1) and (6), do apply to retired judges subject to assignment.

A retired judge subject to assignment should avoid the appearance of impropriety (Canon 2), and should minimize the risk of conflict with judicial duties (Canon 5). A judge should not use the prestige of judicial office to advance private interests (Canon 2B). Canon 5C(1) provides that a judge should refrain from financial and business dealings that (a) tend to reflect adversely on the judge's impartiality, (b) interfere with the proper performance of judicial duties, (c) exploit the judge's judicial position, or (d) involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves. The words "financial and business dealings" include the practice of law. Opinion 132. Canon 5C(6) provides that a judge should not use or disclose for any nonjudicial purpose any information that the judge acquires in a judicial capacity. These provisions impose on a retired judge who is subject to assignment the duty to observe rather strict limitations on any law practice in which the judge engages. Paragraph (3) discusses one example.

a(3) Use Judicial Title in Law Practice.

No. The use of the title "Judge" or "Justice" on letterhead, in directories, or in any other public way would at least give the appearance of using judicial prestige for private advantage and of

exploiting the judge's judicial position. See Opinion 102, which concluded that a retired judge would violate Canon 2B by using the prestige of the judge's former title to advance the private interest of a law practice. (That judge was not subject to assignment, but at that time the same Code provisions applied to all retired judges.) See also Opinions 67 and 128. (In Op. 128 the reference to Canon 3B should say 2B).

a(4) Be "Of Counsel" To a Business

Yes, subject to the limitations stated above in sections (1), (2), and (3). The Committee notes that Opinion 87 is no longer useful. The statute headed "Ineligibility to Practice Law", which was cited in Opinion 87, has been repealed.

b. Other Than in Law Practice, Use Former Judicial Title in Directories, on Stationary or Business Cards

(1) For Judicial Purposes

Yes. In official judicial correspondence and cards, and in law directories, a retired judge subject to assignment may be identified as a retired judge or justice. (Opinion 128.)

(2) For Business and Social Purposes

Yes, but subject to the pertinent provisions of Canons 2B and 5C(1). For personal business and social correspondence and cards, and in business and social directories, the Code of Judicial Conduct does not prohibit the use of the title "Judge" or "Justice". However, Canon 2B provides that a judge should not use judicial prestige for private advantage, and Canon 5C(1) provides that a judge should refrain from financial and business dealings that tend to exploit the judge's judicial position. A judge should avoid any use of judicial title that would give the appearance of using the prestige of judicial office for private advantage, or of exploiting the judge's position. See Opinion 137, Question 1.

c. Political Activities

(1) Publicly Endorse, or Work on campaign for, Another Candidate or Office

No. Canon 7(3), which applies to retired judges subject to assignment, provides that a judge shall not authorize the public use of the judge's name to endorse another candidate for any public office. Such a judge's endorsement of another candidate, or participation in another's campaign, would be inconsistent with the principles stated by Opinions 145, 136, 130, 100, 92, and 73.

(2) Work on a Political Campaign for a Party or Issue

Only to the extent permitted by Canon 7(3), which provides that a judge may indicate support for a political party, attend political events, and express the judge's personal views on political matters. Other Code provisions preclude campaign work other than that expressly permitted by Canon 7(3). A judge should promote public confidence in the impartiality of the judiciary (Canon 2A), and should be and appear to be (Canon 2) unswayed by partisan interests or public clamor. Canon 3A(1). A judge may not serve as an officer, director, trustee, or advisor of an organization if it is conducted for the political advantage of its members. Canon 5B.* A judge should not use or appear to use judicial prestige for the benefit of others. Canon 2B.

d. Raising Money for Charities

No. Canon 5B(2), which applies to retired judges subject to assignment, provides that a judge shall not solicit funds for any charitable organization. See Opinions 150, 131, 110, 60, 59, 51, 41, 25, 16, 11, and 10.

e. Activities Governed by Law

(1) Perform Weddings; (2) Administer Oaths; (3) Disregard Financial Disclosure Requirements.

As these activities are governed by rules of law, it would not be appropriate for this Committee to undertake advisory opinions concerning them, either as to retired judges who are subject to assignment or as to those who are not. See Opinion 127, last paragraph.

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Q #2: May a retired judge who is not subject to assignment do the things listed in question 1?

A to Q #2: (Retired Judges Not Subject to Assignment):

As Canon 8, headed "Compliance with the Code of Judicial Conduct", now imposes no specific responsibilities of retired judges not subject to assignment, the code does not prohibit such judges from engaging in any of the activities listed under Question 1. Opinions 15 and 32 no longer apply to retired judges not subject to assignment, because when those opinions were issued the Code compliance provisions imposed substantially the same requirements on retired judges who were not subject to assignment and on those who were.

The right of retired judges to practice law is a law issue on which the Committee expressed no opinion, but the Committee does note that the statutory prohibition against appearing and pleading as an attorney does not apply to judges who do not choose to be subject to assignment. The Committee also notes again that the Legislature repealed the "Ineligibility to Practice Law" statute cited in Opinion 87.

* Committee Footnote: A February 10, 1988 Supreme Court Order deleted from Canon 5B(2) the word "political", thereby resolving the previous conflict between Canon 5B (a judge may not be an officer of an organization conducted for political advantage) and Canon 5B(2) (a judge may be an officer of a political organization). On page 125 of the 1990 Texas Judicial Service Handbook the word "political" in Canon 5B(2) is a misprint.

No. 156

Issued January 22, 1993

Q: May a constitutional county judge accept a seven day expense paid trip to a

foreign country to tour the facilities and meet representatives of a corporation that is building a large industrial facility in his county?

FACTS: In addition to judicial responsibilities, the county judge is the presiding officer of the commissioners court and his duties include representing the county at ceremonial functions and promoting economic development. The corporation is requesting a tax abatement from the county. The judge's judicial responsibilities include presiding in cases of probate, juvenile delinquency, misdemeanors, and civil dispute, none of which presently involve the interests of the corporation hosting the trip.

A: Yes. Canon 8A(4) defines "County Judge" to mean the judge of the county court created in each county by Article V, Section 15 of the Texas Constitution. Canon 8C(1) provides, "A county judge who performs judicial functions shall comply with all provisions of this code except he or she is not required to comply: (1) when engaged in duties which relate to the judge's role in the administration of the county...." Traveling to meet with agents of a corporation building a large industrial complex and seeking tax abatement in his county are duties that relate to the judge's role in the administration of the county. Consequently, in performing those duties, the county judge is not required to comply with the code.

The county judge should be alert to the fact that future cases may come before him in his judicial function in which the corporation may be a party or its interests may be affected. If that happens, the judge should comply with Canon 2, which requires that a judge act so as to promote public confidence in the integrity and impartiality of the judiciary, not allow social or other relationships to influence his judicial conduct or judgment, and not lend the prestige of his office to advance the private interests of others nor permit

others to convey the impression that they are in a special position to influence him. The judge should also comply with Canon 3A(1), which provides that a judge should be unswayed by partisan interests, public clamor, or fear of criticism; 3A(5), prohibiting ex parte communication concerning the merits of a pending or impending judicial proceeding; and 3A(9), providing that a judge shall perform judicial duties without bias or prejudice.

Whether the judge should recuse or disqualify himself in such cases is governed not by the Code of Judicial Conduct but by Texas Rules of Civil Procedure 18a and 18b. Consequently, the committee expresses no opinion on that subject.

No. 157

Participation in Political Fund Raising Events

Issued January 22, 1993

Q #1: Can a Justice of the Peace, County Court at Law Judge or District Judge join in raising funds for a political party by participating in a car wash at a function sponsored by that political party? The names of the judges are not advertised with relation to the event. However, the judges are present and actively participate in the car wash.

A: Canon 7(3) specifically provides that a judge or judicial candidate may attend political events, and may indicate support for a political party. This provision of the code applies to a Justice of the Peace, County Court at Law Judge or District Judge. Given the conditions stated, it would appear that the question should be answered "Yes".

Q #2: Can a Justice of the Peace, County Court at Law Judge or District
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Judge be the chairman of a committee within a political party that will be responsible for holding fund raising events to obtain money for a donation to a particular charitable organization within their community? The decision as to which charitable organization will receive the funds will be made by a committee which does not include any judges. It is contemplated that the judge will chair the committee which decides on the fund raising events and help organize those events.

A: No. With respect to County Court at Law and District Judges, this activity would be prohibited by Canon 5B(2) which provides that a judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization. Even though under the proposed arrangement a judge would not participate in the selection of the particular charitable organization to receive the funds, the judge would, nevertheless, be lending the prestige of his office to the solicitation and giving the impression that contributors might obtain special favor with him.

With respect to a Justice of the Peace, Canon 5B(2) is made inapplicable by the specific provisions of Canon 8D. However, other canons which do apply to Justices of the Peace, and all other judges, appear to prohibit a justice's participation in the activity described. For instance, Canon 4C provides that a judge should not personally participate in public fund raising activities even for an organization devoted to the improvement of the law, the legal system or the administration of justice. Canon 5C(1) provides that a judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, exploit his or her judicial position or involve the judge in frequent transactions with lawyers or persons likely to come before the court. Canon 2B provides that a judge should not lend the prestige of his or her office to

advance the private interests of himself, herself or others nor convey nor permit others to convey the impression they are in a special position to influence him or her. Consequently, the committee concludes that the question should be answered "No" for Justices of the Peace, too.

Previous ethics opinions have discouraged such activities in many similar contexts. See Opinions, 10, 11, 16, 25, 41, 51, 59, 60, 67, 110, 131, 147 and 150.

No. 158

Issued January 22, 1993

Q #1: Can a judge serve as a District Chairman or District Commissioner of a local Boy Scouts of America organization which denies homosexuals and persons without religious principles from serving as leaders?

Q #2: Can a judge be a member of the Knights of Columbus organization whose principles are against abortion?

A: Yes to both Question 1 and Question 2. Canon 5B clearly allows for a judge to be a District Chairman or District Commissioner in an organization such as the Boy Scouts of America or a member of religious, charitable and fraternal organizations such as the Knights of Columbus. Such leadership or membership is subject to the prohibition against soliciting funds found in Canon 5B(2), giving investment advice in Canon 5B(3).

With respect to serving as a District Chairman or District Commissioner in the Boy Scouts of America, the judge should be aware of Canon 5B(1) which 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 her or will be regularly or frequently engaged in adversary proceedings in any court." An organization as large as the Boy

Scouts of America may be involved in adversary proceedings anywhere throughout the country. The determination of whether the Boy Scouts of America will be "regularly" or "frequently" engaged in adversary proceedings must be made by the individual judge.

Both questions go further inasmuch as it is the principles and practices of the respective organizations which cause the judge to question the propriety of his involvement either as a District Chairman or District Commissioner of a local Boy Scouts of America organization or as a member of the Knights of Columbus. The respective principles and practices in and of themselves do not prohibit a judge from serving as a leader or being member. However, in light of the controversy surrounding these issues the judge should consider Canon 2A before deciding how involved to become with any organization. Canon 2A provides that a judge should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Most organizations have principles and policies with which others disagree. For example, Canon 7(3) allows a judge to support a political party, attend political events, and in accordance with Canons 7 and 3A(8), express views on political matters. Such associations are allowed even though political parties often express, in their platforms and elsewhere, their views on the same and similar subjects. A judge's membership does not necessarily diminish the public's confidence in the character of the judiciary.

No. 159

*Use of "Judge" by Sitting Judge Running for Non-Judicial Office
Issued May 4, 1993*

Q #1: May a sitting judge who runs for a non-judicial political office use the title "Judge" as part of political advertising, e.g. "Elect Judge _____ to Congress.?"

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Q #2: May a sitting judge who runs for a non-judicial political office use the title "Judge" in the name of the campaign committee?

A: No, a sitting judge may not use the title "Judge" as part of his or her political advertising for non-judicial office nor may he or she use the title "Judge" in the name of the campaign committee.

Canon 2B provides that a judge should not lend the prestige of his or her office to advance the judge's private interest. The use of the term "Judge" in the campaign material would give the appearance of using the prestige of judicial office for the private gain of the candidate. See Opinion 137, Question No. 3, where the use of judicial letterhead for campaign purpose for election to another office was prohibited as giving the appearance the candidate was attempting to exploit his judicial position.*

Q #3: May a sitting judge describe in his or her political literature for a non-judicial office his or her past experience as a judge, and use the word "Judge" in that connection?

A: Yes, a judge may describe in his or her political literature for a non-judicial office his or her experience as a judge. In such a situation, the judge must be cautious not to give undue emphasis to his or her present position so as to give the impression he or she is attempting to exploit his or her judicial office. See Opinion 137, Question No. 3.

* It is significant to note that the 1972 and the 1990 revision of the ABA Model Code of Judicial Conduct requires that a judge running for non-judicial office resign his or her judicial office. According to the American Judicature Society, it is thought this is the rule adopted in all states except Texas. The clear theme throughout the country in cases concerning this subject is

that a person who identifies himself or herself as "Judge" in a political campaign for non-judicial office is using the prestige of judicial office for personal gain.

No. 160

Issued August 4, 1993

Q: May a judge who serves as chairman of a State Bar committee use court staff, equipment, postage, and long distance telephone service to conduct the business of the committee without violating the Code of Judicial Conduct?

A: Yes. Although Canon 5G prohibits a judge from serving on most governmental committees and commissions, an exception exists pursuant to Canon 4A and 4B for participation in activities concerning the law, the legal system, and the administration of justice, all of which this Committee perceives to be appropriate judicial activities in the interest of the State and for its benefit. Being permitted to participate in such activities necessarily implies a judge does not violate the Code by using resources available to him to conduct the business of a State Bar committee that promotes the improvement of the law, the legal system, or the administration of justice. This Committee notes, however, that the use of any such resources in a manner that would cause a judge to violate the Code would itself also be a violation of the Code. For example, Canon 3 prescribes that judicial duties take precedence over all other activities. If by using court resources for the business of a State Bar committee a judge is unable to use the same resources to discharge his judicial duties, the use of the resources would be improper. Also, Canon 2A dictates that a judge comply with the law. If a judge were to use court resources in a manner that would cause the judge to violate the law, use of the resources would also violate the Code.

Court of Criminal Appeals to Oversee Continuing Judicial Education

Commencing on September 1, 1993, the Court of Criminal Appeals will administer the Judicial and Court Personnel Training Fund and will have responsibility to adopt rules for the continuing education for all judges and support personnel of the appellate, district, county level, municipal and justice courts, as well as prosecuting attorneys and criminal defense lawyers who regularly represent indigent defendants in criminal cases. This came about as the result of the enactment of Senate Bill 947.

In addition, the General Appropriations Act appropriated funds from the Judicial and Court Personnel Training Fund to the Court of Criminal Appeals to carry out the provisions of SB 947.

Traveling to Austin? Omni Offers Special Rate

If you are traveling to Austin and are interested in hotel accommodations, the Texas Center is pleased to announce that the Omni Hotel in Austin is offering judges a new "Executive Service Plan" (ESP). This new program offers judges an opportunity to stay at the Omni Hotel for a negotiated rate, **with the guaranteed availability of a room.** If you qualify for a government rate, certainly you have the option of going with that rate for your accommodations. However, if the government rate is not available during your dates of travel, the Omni Hotel will guarantee you a room at the Center's **ESP rate of \$75.00 per night** (exclusive of state and local taxes) during 1993, which includes the assurance of a room, complimentary coffee and danish in the Atrium Cafe, a morning newspaper, complimentary shoe shine, turndown service, express check-in and check-out, and complimentary van service to and from the airport. If you are interested, please contact Tricia Hall at the Texas Center or you may dial the Omni ESP direct at (512) 320-5959.

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**Texas Center for the
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