

# C<sup>in</sup> CHAMBERS

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY, INC.

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## Texas Center's director discusses plans for the new grant year

Christmas hit the Texas Center for the Judiciary, Inc. several months early this year.

Santa Claus brought a new executive director, a state of the art computer system and a new grant year beginning with the tools and plans necessary to activate the



The staff of the Texas Center has three new faces. From the left is Matthew Reeves, Mari Kay Bickett, Linda Gary, Nancy Lovejoy, Anneya Duron and Tricia Hall. See Staff story, page 3.

Texas Center's mission: "Judicial Excellence Through Education."

Mari Kay Bickett, formerly the academic director of The National Judicial College in Reno, NV, facilitated the meeting between the Texas Center Board of Directors and the Goals & Search Committees which produced the mission statement last February. Three months later in May, the Board of Directors of the Texas Center appointed Bickett to serve as its executive director.

"She (Mari Kay) possesses the personal qualities, knowledge and experience which will take the Texas Center to a new level in judicial education and

in service to the judges of the State of Texas," said Judge Neel Richardson, Chair of the Board of Directors of the Texas Center. "Mari Kay is an acknowledged leader in her field, respected by all. We are fortunate to have a person of her stature and ability to lead our organization."

Bickett, who began her post as executive director in June, said she believes that education is the key to success in almost all situations.

"I believe all of us here (Texas Center staff) have the opportunity to make a difference nationally. If we do our jobs,

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### Family violence requirement offered at conference

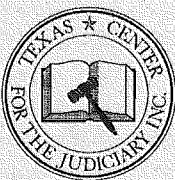
Trial judges attending the 1994 Judicial Section Annual Conference will have a quality family violence education opportunity.

The program, entitled "Family Violence: Effective Judicial Intervention," is made possible through a grant from the Women Judges' Fund for Justice. The two-part program will be offered on

Thursday and Friday during the conference. The purpose of the session is to empower judges with more resources and understanding of domestic problems and to provide an educational opportunity for them to comply with state law which now requires eight hours of judicial training in that area. A table on page 2 explains the law.

Only judges who do not hear cases involving family violence, sexual assault or child abuse will be exempt from the training. Judges in office on Dec. 31, 1993 or before must complete the

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## Director

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we can't help but have a positive effect on the court system," she said.

Bickett said the operations of the Texas Center will maintain its focus on providing Texas judges and court support staff the tools through education to efficiently run their courts.

"We will offer programs in court management and docket control. We will offer judicial writing programs as well as substantive and procedural programs for the new judge, the incumbent judge and the appellate judge," she said. "In all of our courses, we will continue to address ethical issues and fairness issues."

The new director said it is equally important to provide training to judges which can help them cope with the po-

tential conflict and increased stress that arises in their professional as well as their personal lives. She considers this training an essential component of attaining judicial excellence.

The sometimes heart-wrenching, life-changing decisions judges often encounter in their courtrooms everyday while hearing such cases involving murder, rape, child abuse and custody can cause stress not fathomable to other professionals, Bickett said.

"It's our responsibility at the Texas Center to give judges and court staff the tools to carry out those duties the public has elected them to do," she said.

In the following year, Bickett plans to review the Texas Center's judicial education programs and begin to develop a curriculum using the foundations already in place such as the College for New Judges and the regional programs..

In addition, the director will search for objective methods of determining what judges need to know to carry out their duties most effectively.

"We want to incorporate the most innovative education methodologies into the judicial classroom, continue to use the quality faculty members that are already educating Texas judges and recruit new faculty members as well," she said.

In addition to these goals, Bickett has brought to the Texas Center her experience of developing, organizing and implementing judicial course offerings for The National Judicial College since 1988. In her previous position as academic director, she participated in the overall management at the college and its grant funding program, from the preparation of grant proposals to the supervision of grants from both public and private funding resources. ■

## Family violence

*Continued from page 1*

coursework before Aug. 31, 1996. Judges who took office after Dec. 31, 1993 must complete the training within the judge's first term of office.

The goals of the family violence program at the annual conference are to help judges understand the counter-intuitive nature of family violence dynamics, to enable judges to respond appropriately within a judicial forum to family violence and to assist judges in crafting appropriate orders.

Dr. Mary Ann Dutton, a mental health professional, will discuss the dynamics of family violence. Dutton's discussion will be followed by a videotape presentation called "Seeking a Protective Order" with moderator Judge Kent Sims of the 31st District Court in Wheeler.

The videotape consists of two scenes. One depicts an in chambers ex parte

### Family Violence Requirement Explained

Section 22.011(b) of the *Government Code* was amended by the 73rd State Legislature in 1993 to mandate district and county-level judges to complete eight judicial training hours related to family violence issues.

#### Section 22.011 (d) specifically requires training on the following seven topics:

- Statutory and case law relating to videotaping a child's testimony and to the competency of children testifying;
- Methods of eliminating trauma to children caused by the court process;
- Case law, statutory law and procedural rules relating to family violence, sexual assault and child abuse;
- Methods for providing protection of victims of family violence, sexual assault or child abuse;
- Available community and state resources for counseling and other aid to victims and offenders;
- Gender bias in the judicial process;
- Dynamics and effects of being a victim of family violence, sexual assault or child abuse

shows an in-court hearing before a judge, with the alleged abuser present, seeking subtly to intimidate the victim.

After the videotape, judges will break into pre-assigned groups, and discussion leaders will guide the group through a series of questions provided in the program. Judges will complete a credibility assessment form that relates to issues raised in the videotape.

On day two, the program offers a legal lecture by Judge Steve Daniel, circuit judge for the 16th Judicial District in Murfreesboro, Tenn. Daniel will discuss the legal and constitutional issues arising in family violence litigation. He will address the issues and concerns articulated the day before during the break-out session.

meeting between a judge and a victim. The judge has read the victim's statement and is seeking to supplement the written allegations. The second scene

legal lecture, Judge Sims and Judge Daniel will highlight some model court-based family violence programs which are in place around the nation. ■

## Texas Center staff thanks Judge B.B. Schraub

Judge B. B. Schraub voluntarily served as the interim executive director of the Texas Center for the Judiciary, Inc. between October 1993 and June 1994.

His extensive efforts and numerous out-of-town trips to Austin from Seguin during the transition period are greatly appreciated by the staff of the Texas Center.

Judge Neel Richardson, Chair of the Board of Directors of the Texas Center, said Schraub's service afforded the board the luxury of having adequate time to conduct a careful and thorough search for a new executive director.

"Because he answered the call in our time of need, we were able to carry on all of the Center's functions without missing a beat, including the presentation of the New Judges College, five regional conferences, the Annual Criminal Justice Conference and the Professional Development Program for Court Administrators," Richardson said.

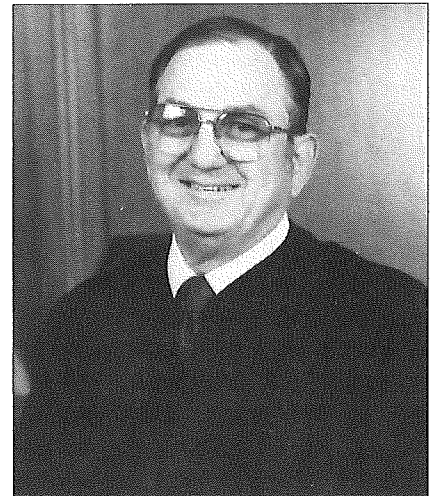
Judge Schraub attended all the regional conferences and assisted the

staff in the day to day operations of the Texas Center. He also helped with the management of the grant, the board of directors meetings and actively participated with the Search & Goals Committee in finding an executive director.

"He spent so much of his personal time with the center, and he did not sit as a visiting judge all those months because he was volunteering his time to us," said Tricia Hall, director of education conferences and operations for the Texas Center.

Judge Schraub has been the Presiding Judge of the 3rd Administrative Region since 1990. He graduated from St. Mary's School of Law in 1954.

He served as a municipal court judge in Seguin in 1961, county court at law judge for Guadalupe County from 1967-69 and Guadalupe County Judge from 1969-71. In 1971, he served as the district attorney for Guadalupe County until he was appointed judge of the 25th District Court where he served for 20



*Judge Schraub, former interim director of the Texas Center, turned over his duties to Mari Kay Bickett in June. He volunteered his time for almost eight months.*

years.

Schraub has served the Texas judiciary in other positions including: Chair of the Judicial Section, State Bar; Chair of the Texas Center between 1980 and 1981; and as a faculty member for the Texas College of the Judiciary and The National Judicial College. ■

## Bickett, staff introduce themselves to the judiciary ...

As the Texas Center for the Judiciary, Inc. embarks on its new grant year, veteran staff members welcome three new faces.

In the following article, each staff member is highlighted, so that judges will know who they are and what they do for the Texas Center.

New Texas Center employees include Mari Kay Bickett, executive director; Matthew Reeves, communications coordinator and Anneya Duron, administrative assistant.

### MARI KAY BICKETT Executive Director

Bickett began her post in June and comes to the Texas Center from Reno, NV where she was the academic director of The National Judicial College. As executive director, Bickett is responsible for all operations of the Texas Center,

including management of the grant funds and contributions and developing and organizing judicial education programs for Texas judges.

"The opportunity to work with a

***I like working in a job where I know that what I do and the staff does makes a difference and to actually be able to see the positive results of that effort.***

Mari Kay Bickett

quality judicial program and judges in a state the size of Texas was irresistible," Bickett said.

Bickett began her career as a bank-

ing officer and was one of three candidates chosen to be trained as a telecommunications engineer for Nevada Bell. She engineered communication systems for most of the large casinos in Reno. As an independent contractor in the same field, Bickett worked for the Federal Reserve Bank and the United Nations in New York, General Electric and the Chicago Board of Trade.

After seven years in the telecommunications industry, Bickett attended Nevada School of Law. She received her J.D. cum laude and began working for The National Judicial College in 1988 after practicing criminal and appellate law.

"Learning and education holds a fascination for me," Bickett said. "I like working in a job where I know that what I do and the staff does makes a differ-

*See Staff, page 4*

## Staff

*Continued from page 3*

ence and to actually see the positive results of that effort.”

Bickett has been married to Joe Bickett for 18 years, and they have a cat named Billy Clyde Bickett. Her husband is the morning and noon news co-anchor for KTBC television in Austin. She enjoys snow skiing, shopping for antiques and collecting shopping bags as portable art.

### MATTHEW REEVES

Communications Coordinator

***I enjoy the friendly environment and the creative opportunities I find on a daily basis at the Texas Center.***

Matthew Reeves joined the Texas Center in mid-Aug. He was the managing editor of a small computer trade magazine at Publications and Communications Inc. in Austin.

As communications coordinator for the Texas Center, Reeves is responsible for the content, design and printing of all publications, brochures, programs and flyers. He is the editor of *In Chambers*, and he is the Texas Center's spokesperson and media contact.

“I enjoy the friendly environment and the creative opportunities I find on a daily basis at the Texas Center,” Reeves said.

Reeves enjoys seeing live music on the weekends and getting outside. He also likes to travel.

### ANNEYA DURON

Administrative Assistant

***I also like the sense of professionalism that I get from being around the judiciary.***

Anneya Duron became the Texas Center's administrative assistant in late July. She is the executive director's assistant, answers phone calls and routes callers to the appropriate party, sorts and distributes the mail and drafts Texas

Center correspondence. Duron also prepares all bank deposits, including conference and contribution checks.

“It's neat to be a part of an environment with all new equipment,” she said. “I get to implement my own style in terms of documents such as correspondence and schedules,” she said. “I also like the sense of professionalism that I get from being around the judiciary.”

Duron said she enjoys country western dancing and being in the sun. Violin playing has been part of her life for nine years. She plays at weddings and baptisms.

### TRICIA HALL

Director of Education  
Conferences and Operations

***I see a bright future for the Texas Center, and I feel our judges and our education endeavors are going to come first.***

Tricia Hall, director of education conferences and operations, has worked for the Texas Center for eight years. She is responsible for the overall planning and management of conferences and meetings from logistical arrangements to support materials.

Hall is one of 1700 people nationally who has earned meeting professional certification from the Convention Liaison Council.

Hall acts as a liaison between the Texas Center and the Texas Center committees by providing the items they need for meetings. She also oversees the day to day operations of the Texas Center to ensure that it is running smoothly.

“I see a bright future for the Texas Center, and I feel our judges and our education endeavors are going to come first,” she said. “I have learned a lot by being around judges, and they're a great group to work for.”

Hall said she enjoys cooking Spanish, Italian and continental cuisine. She grows herbs and spices in her garden. Hall and her husband, Gary, like to travel to historical inns on holidays.

### NANCY LOVEJOY

Registrar

***I like being able to get everything entered and then generating the information that the Texas Center needs.***

Nancy Lovejoy joined the staff as registrar one and a half years ago. She calculates and updates the judges' CLE hours and puts them into a database. Lovejoy reports any judge lacking required hours at the end of the year to the Education Committee. Also, Lovejoy merges databases to print mailing labels, nametags and other media in preparation for conferences and meetings.

“I like being able to get everything entered and then generating the information that the Texas Center needs.”

Lovejoy said she and her sweetheart, Gary, like to dance to Zydeco and country and western music. She has two daughters and one grandbaby on the way.

### LINDA GARY

Financial Assistant/Course Administrator

***I like working with judges and getting to know them, and I've met a lot of interesting people.***

Linda Gary, the financial assistant/course administrator, has worked for the Texas Center for five years. Gary processes the Texas Center's account payables and all other accounting.

She completes credit applications for hotels and payroll, updates conference archives, prepares speaker packets, runs confirmation letters, updates all contributions and memorials and maintains grant funds by tracking dollars spent.

“I like working with judges and getting to know them, and I've met a lot interesting people,” Gary said.

Gary likes to camp and swim with her husband, Tom, and two sons, a kindergartner and an eighth grader. She also collects dog figurines and dolls in her spare time. ■

NEW JUDGES

- Hon. Patrice M. Barron**  
14th Court of Appeals, Houston  
Succeeding Gary C. Bowers
- Hon. Mary Nell Crapitto**  
County Court at Law #1, Galveston  
Succeeding John M. Thoma
- Hon. Mercer Benton Eskew**  
County Court at Law, Bastrop  
Succeeding Robert E. Raesz, Jr.
- Hon. Phil Hardberger**  
4th Court of Appeals, San Antonio  
Succeeding Orlando L. Garcia
- Hon. A. Robert Hinojosa**  
308th District Court, Houston  
Succeeding Bob W. Robertson
- Hon. Ramona Freeman John**  
313th District Court, Houston  
Succeeding Robert L. Lowery
- Hon. Steve M. King**  
Probate Court #1, Fort Worth  
Succeeding Robert M. Burnett
- Hon. Paula Larsen**  
303rd District Court, Dallas  
Succeeding N. Sue Lykes
- Hon. Lena Levario**  
204th District Court, Dallas  
Succeeding Richard D. Mays
- Hon. Alma L. Lopez**  
4th Court of Appeals, San Antonio  
Succeeding Alfonso Chapa
- Hon. Paul McCollum**  
8th Court of Appeals, El Paso  
Succeeding Richard Barajas
- Hon. Don McManus**  
288th District Court, San Antonio  
Succeeding Raul Rivera
- Hon. James W. Mehaffy, Jr.**  
58th District Court, Beaumont  
Succeeding J. Michael Bradford
- Hon. Berta Alicia Mejia**  
315th District Court, Houston  
Succeeding Eric G. Andell
- Hon. Kathleen H. Olivares**  
205th District Court, El Paso  
Succeeding Sam W. Callan
- Hon. Susan S. Soussan**  
270th District Court, Houston  
Succeeding Ann Tyrrell Cochran
- Hon. Catherine M. Stone**  
4th Court of Appeals, San Antonio  
Succeeding Fred Biery
- Hon. Mike Wood**  
Probate Court #2, Houston  
Succeeding Kenneth Pat Gregory

THANK YOU  
for YOUR CONTRIBUTIONS

Lee G. Alworth  
Spurgeon E. Bell  
William Blanton, Jr.  
John R. Carter  
Hannah Chow  
B. F. Coker  
Fred W. Davis  
Gene L. Dulaney  
James M. Farris  
James Fitz-Gerald  
Louis B. Gohmert, Jr.

David L. Hodges  
E. James Kazen  
Mack Kidd  
Andrew J. Kupper, Jr.  
Delwin McGee  
John W. Mitchell  
Scott D. Moore  
Robert S. Pieratt  
Joe S. Powell  
Cecil G. Puryear  
Hugh Snodgrass

Ralph Taite  
William R. Vance  
Raul Vasquez  
Carl Walker, Jr.  
Lee W. Waters  
Albert L. White  
Don R. Windle  
Michael J. Wood  
Antonio Zardenetta



JUSTICE GERALD T. BISSETT  
MEMORIAL

Martin J. Chiuminatto, Jr.  
Walter Dunham, Jr.  
Jack & Nancy Onion

JUDGE DONALD CARROLL  
MEMORIAL

Tom & Jill Ramey

MRS. CHARLES (PEGGY)  
CHAPMAN MEMORIAL

Weldon & Mary Kirk

JUDGE THOMAS L. CLINTON  
MEMORIAL

Grainger McIlhany  
B. B. & Estella Schraub  
George M. Thurmond

JUDGE WILLIAM H. EARNEY  
MEMORIAL

Gene Ater  
Bob & Joan Dickenson  
Weldon & Mary Kirk  
Curt & Mary Steib  
George M. Thurmond

MR. RUDY HABERMAN  
MEMORIAL

Jack & Nancy Onion

JUDGE GUY HAZLETT  
MEMORIAL

Ray D. Anderson  
Grainger McIlhany

JUDGE CHARLES W. LINDSEY  
MEMORIAL

R. C. Vaughan

MRS. CONNALLY  
MCKAY(GLEE)  
MEMORIAL

Tom & Jill Ramey

JUDGE CHARLES J. MURRAY  
MEMORIAL

David F. Farris

JUDGE RICHARD B. PENNELL  
MEMORIAL

R. C. Vaughan

JUDGE TRUMAN E. ROBERTS  
MEMORIAL

Bobby L. Cummings  
Jim & Nan Russell

JUDGE BOB W. ROBERTSON  
MEMORIAL

Eugene Chambers  
Jackson B. Smith, Jr.

JUDGE THOMAS H. ROUTT  
MEMORIAL

Ruben Guerrero

JUDGE PETER S. SOLITO  
MEMORIAL

Eugene Chambers  
Jackson B. Smith, Jr.

JUDGE CLARENCE  
N. STEVENSON MEMORIAL

Marilyn Aboussie  
Martin J. Chiuminatto, Jr.  
Pat Priest  
Juan Velasquez, III

JUSTICE JAMES F. WARREN  
MEMORIAL

Jerry A. Sandel

JUDGE JERRE S. WILLIAMS  
MEMORIAL

Marilyn Aboussie

JUDGE ARDELL M. YOUNG  
MEMORIAL

Clyde R. Ashworth

No. 161 Issued November 5, 1993

**Trial judges appointing another sitting judge to serve pro bono as a mediator**

**Q** May a trial judge appoint another sitting judge to serve pro bono as a mediator of a dispute that is the subject of a pending case?

**A** No, because, for the following reasons, it would be inappropriate for the appointed active judge to serve as a mediator:

**Explanation**

1. *Mediation is not a judicial activity.* A court's referral of a dispute to a mediator initiates a statutory, nonjudicial dispute resolution procedure that is an alternative to and outside of the judicial system. The applicable statute only authorizes a judge to refer the dispute to a "nonjudicial" forum Civ. Prac. & Rem. Code, Sec. 154.021(a)(3).

Diverting a pending civil dispute to a nonjudicial forum is analogous to diverting a defendant from criminal prosecution to nonjudicial drug or mental health treatment, outside the criminal justice system. The purpose of such procedures is to move disputes out of the court system, so that courts can devote their limited resources to due process litigation of cases that must be tried. The Code of Judicial Conduct recognizes this principle by locating its mediation provision in Canon 5, concerning extra-judicial activities.

2. *Judges should not be mediators in a private capacity.*

a. Texas Canon 5E, which prohibits an active full-time judge from acting as a mediator for compensation outside the judicial system but permits a judge to encourage settlement in the performance of official duties, should be construed to have the meaning stated by the corresponding ABA Code provision, which provides that a judge shall not act as a mediator in a private capacity. ABA Canon 4F. Texas Canon 5E does not

permit a judge to be a mediator without compensation outside the judicial system. A judge's statutory duty to encourage parties to attempt out of court procedures to resolve a dispute does not imply authority to act as a statutory mediator.

b. Texas Canon 3A(5)(b), concerning one of a judge's "Duties of Office," permits a judge to try to settle a case by conferring separately with the parties, but such an attempt to settle a case in court does not constitute mediation pursuant to the statutory plan.

3. *Mediation confidentiality conflicts with judicial duty.*

Canon 3A(5)(b) states the only exception to the principle that a judge should not participate in secret proceedings con-

cerning any pending case, and it has a proviso that such ex parte communications in effect terminate the judge's judicial authority in the case.

The Committee concludes that, except when using this limited procedure in Canon 3A(5)(b) subject to the proviso, active judges should not be mediators, because a mediator's duty not to disclose confidential information (Civ. Prac. & Rem. Code, Sec. 154.053) may conflict with a judge's duty to disclose certain types of information (such as criminal conduct or a lawyer's unprofessional conduct). Another problem is that being a mediator could involve a judge in litigation under related Sec. 154.073 to resolve a conflict between mediation confidentially and other law requiring the judge to disclose information.

4. *Judge mediation would impair confi-*

*dence in the judiciary.*

Widespread judge participation in negotiating and deal-making for the purpose of avoiding the judicial system would diminish public confidence in the independence, integrity and impartiality of the judiciary. A judge should refrain from activities that involve the judge in frequent nonjudicial transactions with lawyers likely to come before the court. Advisory opinions and private conversations with parties and lawyers are essential to mediation; but advisory opinions are not consistent with the constitutional duty of the judicial branch to decide "cases" and "controversies," and ex parte conferences are not consistent with due process or with the adversary system.

No. 162 Issued August 30, 1993

**Guest of honor and fund raising for a political party**

**Q** May a judge be a guest of honor at a fund raising event for a political party?

**A** Yes. Canon 7(3) states that a judge may indicate support for a political party and attend a political event. Canon 5C(4)(a) allows a judge to accept a gift incident to a public testimonial and by implication endorses public testimonials to judges.

**Explanation**

Canon 5(B)2 at one time prohibited judges from soliciting funds for any educational, religious, charitable, political, fraternal or civic organization. The Canon also prohibited judges from speaking or being guests of honor at such an organization's fund raising events. The word "political" was removed from this section of the Canon by the Supreme Court February 10, 1988 (published S.W.2d Vol. 743-744, page XXIX.) The committee believes this change was to allow judges to be speakers or guests of honor at "political" fund raising events. The Canon later was amended by the

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Supreme Court, effective December 19, 1989, to allow judges to be speakers or guests of honor at educational, religious, charitable, fraternal or civic organizations while continuing the prohibition against fund raising for such organizations (published S.W.2d Vol. 779-780, page XXX.)

*It should be noted that Canon 5B(2) found on page 125 of the 1990 edition of the Texas Judicial Service Handbook erroneously includes the word "political," which was deleted by the Supreme Court in 1988.*

**No. 163** Issued August 23, 1993

### **Publicly supporting bond issue to build criminal justice center**

**Q** May a judge actively support and campaign for voter approval of a bond issue to build a criminal justice center by speaking at civic clubs, writing letters and preparing documentary material in support of the bond issue?

**A** Yes, with certain limitations. Canon 3 provides that judicial duties of a judge shall take precedence over all other activities. Thus, judicial duties should take precedence over campaigning for a bond issue to build a new criminal justice center.

Other limitations are set out in Opinion No. 82 (1986). Because the question in Opinion 82 is so similar to the question asked in this opinion, the committee reiterates the answer it gave in Opinion 82 and reproduces the answer below.

**Q** May a judge support a county bond election, designated a "law and order election," to fund an expanded and improved jail facility, a new county criminal court building, and renovation and improvement of civil district and family court facilities?

**A** Yes, with certain limitations. Canon 4 of the Code of Judicial Conduct permits a judge to engage in activities to improve the law, the legal system, and

the administration of justice.

### **Explanation**

However, Canon 4 also sets forth certain limitations, "subject to the proper performance of his judicial duties, [a judge] may engage in [such duties], if in doing so he does not cast doubt on his capacity to decide impartially an issue that may come before him:

A possible second limitation may occur if the "law and order" bond issue is not segregated from others' issues which do not pertain to law improvement, the legal system and the administration of justice.

In our Opinion No. 64, this committee was of the opinion that it would be unethical for a judge to actively support a bond election to raise funds to develop

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## ETHICS Q & A OPINIONS

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a city water project. If the "law and order" bond issue is submitted with other issues and not segregated, ethical considerations may become involved. See Canon 5.

A possible third limitation may occur depending upon what the judges mean by "support" the bond election. To support a bond issue connotes much more than a mere endorsement. Canon 1 states, "A judge should uphold the integrity and independence of the judiciary." Canon 2 states, "A judge should avoid impropriety and the appearance of impropriety."

Canon 7 states, "A judge should refrain from political activity inappropriate to [the Judiciary]."

Your committee is of the opinion that proper facilities and equipment for courts and jails are essential to the legal system and the proper administration of justice.

Subject to the limitations set forth above, a majority of the committee is of the opinion that it would not be unethical to support a bond issue for those purposes enumerated in the posed question.

**No. 164** Issued September 10, 1993

### **Use of title "Judge" by municipal court judge running for justice of the peace**

**Q** May a municipal court judge running for Justice of the Peace use the word "Judge" in campaign literature, campaign stationary and press releases?

**Q2** May a municipal court judge running for Justice of the Peace use a photograph of herself wearing a judicial robe in campaign literature and newspaper articles.

**A** Yes to both questions. In Opinion 137 (1990), the committee stated in answer to question 3 that a "judge's campaign literature should state the judge's present title and position, ..." The committee also stated that the judge should not use "judicial letterhead" to solicit contributions or other support for the judge's campaign. The term "judicial letterhead" was defined in that opinion as "letterhead that shows a judge's title, position and official address and is suitable for official judicial correspondence." Thus, the committee concludes that while the municipal court judge may use the title "Judge" in campaign literature, stationary and press releases, she should not use "judicial letterhead" as defined in Opinion 137 for those purposes.

In Opinion 159 (1993), the committee stated in answering questions 1 and 2 that a judge running for non-judicial political office should not use the title "Judge" in political advertising or in the name of a campaign committee. The committee believes that a different result is proper when a judge is running for a judicial office. In that case, the com-

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mittee believes that it is permitted to use the title "Judge" in political advertising, in the name of a campaign committee, in campaign literature, in campaign stationary, in campaign press releases and in newspaper articles. In addition, a judge may describe in her political literature her experience as a judge. See opinion 159, question 3.

**No. 165** Issued November 16, 1993

***Raising funds for religious and or non-profit organizations***

**Q** After January 1, 1994, may a full-time municipal judge who is a member of a non-profit organization for religious purposes speak to churches for the purpose of raising funds when such judge is not introduced as a judge? If not, may he do so outside his territorial limits?

**A** No. After January 1, 1994, Canon 5 controlling the Judge's extra-judicial activities will be redesigned Canon 4. Specifically, Canon 5B(2), which addresses this question, remains unchanged as it is redesignated Canon 4C(2) after January 1, 1994. It will continue to provide that a judge shall not solicit funds for any religious, educational, charitable, fraternal or civic organization.

While the Canon distinguishes between soliciting funds (prohibited), and being a speaker or guest of honor at fundraising events (allowed), the Committee does not reach or consider the rationale for that distinction inasmuch as the question specifically addresses speaking "for the purpose of raising funds" and is, therefore, a prohibited solicitation.

Additionally, Canon 2B provides that a judge should not lend the prestige of judicial office to advance the interest of others. The fact that the speaker is not introduced as a judge does not remove the prohibition because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. (Compare Opinions 73,136 and

150). Finally, the activity in question is prohibited, even outside the judge's territorial limits, because there is no exception in Canon 4C(2) based on territorial limits.

**Q2** May a judge participate in fundraising activities of a civic organization in which he is a mere participant of selling items bought by the organization?

**A2** No. In addition to being a prohibited solicitation as addressed above, the judge's participation would violate Canon 2B by lending the prestige of judicial office to advance the interests of others and would create an opportunity for someone to convey the impression that they are in a special position to influence the judge by making generous

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ETHICS  
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OPINIONS

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purchases from him. The fact that the judge would be a "mere participant," or one of many selling the items, would not remove the prohibition under the Canons. See Opinions 10, 11, 16, 25, 59, 131, 150 and 155.

**No. 166** Issued November 16, 1993

***A master serving as an attorney in the probate court for which he or she serves as the master***

**Q** May a master appointed to conduct probable cause hearings in mental commitment cases on an "as needed" basis appear as an attorney on unrelated matters in the probate court for which he serves as a master?

**A** No. Canon 6D(2) specifically suggests that a part-time master of a probate court should not practice law in the court which he serves as long as his appointment is in effect. Although the master would conduct the probable cause hearings only on an "as needed" basis, he is considered a part-time master for purposes of Canon 6D(2) because Canon 8B(18) defines "part-time" to include service on a periodic basis.

See Opinion 79 (1985) for related issue. All references herein are to the Texas Code of Judicial Conduct, effective January 1, 1994.

**No. 167** Issued November 16, 1993

***Accepting appointment to a city disabilities commission to advise city government***

**Q** May a judge accept appointment to a city commission on disabilities whose purposes are to advise and make recommendations to the mayor, city council and city department directors regarding the needs, rights and privileges of people with disabilities? The commission's duties shall include, but not be limited to, developing programs to provide employment opportunities for people with disabilities; to address accessibility issues; to address issues of alcoholism and drug abuse; to take advantage of all federal, state and local funding opportunities; and to ensure adequate housing for people with disabilities.

**A** No. Canon 5G provides that a judge should not accept appointment to a governmental commission concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. This governmental commission is not concerned with the improvement of the law, the legal system or the administration of justice. The committee

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concludes that service on the commission is therefore prohibited by Canon 5G. See also Canon 4H of the new code of judicial conduct, effective January 1, 1994, which is the same as Canon 5G now in effect.

No. 168

Issued April 18, 1994

### *Using comments from faculty evaluation forms in campaign advertising*

#### **Facts Assumed**

A Municipal Judge, who is also a candidate for a county-level judgeship, currently serves as a faculty member for the Texas Municipal Courts Education Center (TMCEC) and as a Discussion Leader for a course at the National Judicial College (NJC). Both the TMCEC and the NJC provide the faculty evaluation forms where judges (whose identities are completely confidential) make comments about the judge.

**Q** May the Judge use the comments from the faculty evaluation form in his campaign advertising, e.g., comments such as "as asset to the judiciary," "knowledgeable," or "a common-sense judge?" The comments would be used in the context of "this is what other judges from around the state think about Judge X." No comment would be attributed to any particular judge, since the identity of the judge making the comment is unknown.

Would Judge X be permitted to state "this is what lawyers from around the state say about Judge X" if Judge X can ascertain that the judge making the comment was a lawyer?

**A** No. Even though the anonymity of the quotes would remove this question from the specific application of Canon 5(3), prohibiting a judge from authorizing the public use of his or her name endorsing another candidate for any public office, this type of advertising would

nevertheless imply that other judges were endorsing this candidate. Such an implication would violate Canon 2(A) by causing the public to question the integrity and impartiality of the judiciary. Furthermore, the candidate would be causing the judges who made the evaluations to lend the prestige of judicial office to advance his private interests in violation of Canon 2(B).

Additionally, this type of campaign advertising referring to lawyers is questionable. Text, out of context, is pretext. The quotations in question were made about a faculty/discussion leader. To lift them from that context and apply them in a political campaign would be misleading use of these speaker evaluations. The judges and/or lawyers who filled out the evaluations may or may not be sup-

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## ETHICS Q & A OPINIONS

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portive of the candidate. Canon 2 states that a judge should avoid impropriety and the appearance of impropriety in all the judge's activities. The Committee believes that the unauthorized use of these evaluation quotes would violate the trust in which they were given and should not be used.

No. 169

Issued April 6, 1994

### *Referring to an opponent as "removed" in a judicial election*

**Q** Would a candidate for judicial office violate the Canons of Judicial Conduct by stating that his or her opponent had been "removed" as a District Judge, when, in fact, the opponent had not been

removed but had been defeated for re-election?

**A** Yes. The word "removed" could refer to the voters having previously voted for the candidate's opponent and therefore the candidate has lost his or her bench. However, Canon 5(2)(ii) states that a judge or judicial candidate shall not "knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

#### **Explanation**

The term "remove" suggests that a statutory or administrative process was used to expel a judge for misconduct or other matters that would make him or her unfit to serve. Although the voters are, in effect, "removing" an office holder by voting for the nonincumbent, this is a process of the electorate and does not state a reason for defeat. To suggest that a defeated judge was "removed" from office would be misleading and violate Canon 5(2)(ii).

Additionally, judges and judicial candidates should engage in the highest form of campaigning to reflect their understanding of the dignity and important public trust of the office they are seeking. To suggest, by the use of words that could be misleading or taken out of context, that a defeated judge was removed for misconduct defeats not only the Canon, but also the spirit of the office.

No. 170

Issued June 29, 1994

### *Handing out campaign materials and endorsing other candidates*

**Q** 1. May a judge of a district, county or J.P. court running for re-election or candidate for any such office hand out campaign material for candidates of one's own political party along with one's own material and recommend to people that they vote for these candidates?

*Continued on next page*

2. May a judge of a district, county, or J.P. court running for re-election or candidate for any such office hand out campaign material for candidates of one's own political party along with one's own material without making any endorsement but with the request that the voters consider these other candidates? 3. May a judge of a district, county or J.P. court running for reelection or candidate for any such office hand out campaign material for candidates of one's own political party that contains an advertisement for such judge along with advertisements for the other candidates? 4. For any of the activities described above which are determined to violate the new code, would it be permissible for one's spouse to engage in such action?

**A** It is the opinion of the committee that the first three questions are prohibited by Canon 5(3) of the Code of Judicial Conduct which provides in the first sentence, "A judge or judicial candidate for judge as set out in Questions one through three would be a public endorsement. Articulating a "recommendation" as set out in Question one or by asking "consideration" as set out in Question two would merely be another form of public endorsement.

Although it does not involve articulating support for another, still involves an overact of personally handing out campaign material for another candidate and would be a public endorsement.

Opinion No. 100 concluded that joint campaign activity by two judge candidates would violate the Canon 2 prohibition against lending the prestige of judicial office to advance the private interests of others. Opinion 130 reaffirmed the conclusion that "private interests" include candidacy. See also Opinions No. 73, 92, 136 and 145. Question 4 involves the conduct of a spouse of a judge or candidate for judge. The code does not attempt to regulate the activities of a judge's spouse, so this conduct would not be prohibited.

**No. 171** Issued August 30, 1994

### *Judge as facilitator*

**Q** May a judge facilitate or moderate a discussion between two factions of a community dispute (developer vs. environmentalist)? The focus of the discussion is to find ways to improve communication in order to avoid conflicts that ultimately would require legislative or judicial determination. There would be no compression for the Judge.

**A** No. The activity described is that of mediator. Opinion 161 discusses the judge's role as mediator and clearly

states that mediation is not a judicial activity. ( See Opinion 161 for further discussion of judges and mediators.)

**No. 172** Issued August 30, 1994

### *Recusal of municipal judges*

**Q** Should the judge of a municipal court recuse himself from presiding over the trial of cases of a Defendant who has civil action pending against the judge in state and federal courts?

**Facts:** The question is submitted by an attorney in private practice who also serves as a part-time municipal court judge. In the municipal court over which he presides, there are a number of pending complaints against an individual who has named the judge as a party, along with a number of others, in state and federal lawsuits. There is some indication that the judge may have been added as a party defendant in the civil actions to secure his recusal from the municipal court cases.

**A** Since this is a recusal question, there is a threshold issue which the com-

mittee must address. Since the adoption of Tex. R. Civ. P. 18a and 18b and the companion Tex. R. App. P. 15 and 15a, the committee has not responded to questions regarding recusal. The facts presented by this inquiry, though, require that a limited exception to this rule be established. The judge presides over a municipal court, and it appears that no statute or rule of court specifically applies to recusal. For instance, Tex. R. Civ. P. 2 provides that the rules govern procedure "in the justice, county and district courts of the State of Texas in all actions of a civil nature, which such exceptions as may be hereafter stated." The judge in question presides over a municipal court, and the question submitted does not involve actions of a civil nature but rather actions of a criminal nature. There appears to be no provision of the Code of Criminal Procedure directly governing this matter. Tex. Code Crim. P. Ann. art. 30.01 deals with the disqualification but does not appear to apply to this case. It seems that the specific question regarding recusal is not governed by any statute or rule of court. Since the reason for the Ethics Committee's reluctance to deliver opinions on recusal issues does not exist in this case, we conclude that we should proceed to render an opinion.

Canon 2A provides that a judge should act in a way that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B provides that a judge should not allow "family, social or other relationships to influence his or her judicial conduct or judgment." While not directly governing the issue, the spirit of Rule 18b(2), which provides that a judge shall recuse himself in any proceeding in which his impartiality might reasonably be questioned, has applicability here. Consequently, it is the conclusion of the committee that the judge should recuse himself. Procedural mechanisms which might effectively deal with the problem of a party making a practice of naming a judge and his successors as party defendants for the sole purpose of securing a recusal are beyond the scope of this committee's authority.

**Judge Snowden M. Leftwich, Jr.**

Judge Snow Leftwich of Dallas died December 25, 1993. He was 71. Leftwich received his J.D. and B.B.A. from the University of Texas. Gov. Preston Smith appointed Leftwich judge of the 192nd District Court in Dallas in Dec. 1969. He served the court until his retirement in 1984. Judge Leftwich was Domestic Relations Court Judge in 1969, Assistant U.S. Attorney between 1952 and 1953 and assistant district attorney of Dallas County between 1950 and 1951. Leftwich also was a member of the Salesmanship Club and Phi Delta Theta fraternity. He earned the Bronze Star with Clusters and the Purple Heart with Clusters during his tour in World War II in the 32nd Infantry Division.

**Judge James K. Evetts**

Judge James K. Evetts of Belton died March 2, 1994. Judge Evetts attended Mary Hardin-Baylor College, Southern Methodist University School of Law and Judge Advocate School in 1942 at the University of Michigan. He served the 27th District Court in Belton from 1953 until 1973. Between 1931 and 1932, Evetts was the Belton City Judge. He was the Bell County Attorney from 1933 to 1934 and the district attorney for the 27th Judicial District between 1936 and 1952. Judge Evetts served in the Army from 1942 until 1946. He received a Bronze Star, a Purple Heart and four Campaign Stars. In addition, Judge Evetts was Chair of the Judicial Section of the State Bar between 1956 and 1957.

**Judge Richard B. Pennell**

Judge Richard B. Pennell of Sherman died June 22, 1994. He was 65. Judge Pennell attended Austin College and Eastern A&M in Wilburton, Okla. He earned his J.D. from Baylor University in 1959. After law school, he was an assistant with the Grayson County Attorney's Office. Pennell was judge of the County Court at Law No. 1 in Grayson County from March 1984 until his death. Pennell had been re-elected to the court to begin a new term in Jan. 1995. He also served in the United States Air Force during the Korean Conflict.

**Judge Ardell M. Young**

Judge Ardell M. Young of Fort Worth died Nov. 26, 1993. He was 82. Judge Young received his J.D. degree from the University of Oklahoma in 1936. He was appointed by Gov. Preston Smith as judge of the 153rd District Court in Tarrant County in 1971. In 1981, he retired from the court. Judge Young was a former assistant district attorney for Tarrant County, and between 1958 and 1962, he was the director of the State Bar. Judge Young also was a former vice-president of the Fort Worth-Tarrant County Bar Association. During World War II, Judge Young served in the Army Field Artillery.

**Judge William H. Earney**

Judge William H. Earney of Marfa died Dec. 2, 1993. He was 74. Judge Earney received his B.B.A. in 1946 and his J.D. in 1954 from the University of

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IN  
MEMORIAM

For those who served our state courts

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Texas. In 1972, he was appointed by Gov. Preston Smith to the 83rd District Court in Presidio County. Earney retired in 1984. He was Presidio County Attorney from 1957 until 1965 and district attorney of the 83rd Judicial District from 1965 until 1972. Judge Earney also was the past president of the Trans-Pecos Bar Association and the Presidio County Bar Association, and he served in the Navy from 1941 to 1946 in the Pacific.

**Judge Thomas L. Clinton**

Judge Thomas H. Clinton of Lubbock died Dec. 4, 1993. Judge Clinton was 72. He attended Texas Tech University and earned his J.D. from St. Mary's University in 1951. In addition, Judge Clinton completed coursework at the Texas Judicial College at Sam Houston State University and The National Judicial College. In 1972, Judge Clinton was appointed to the County Court at

Law No. 2 bench in Lubbock. He became judge of the 99th District Court in Lubbock in 1975. Judge Clinton was serving his fourth term in that court when he passed away.

**Judge Lynn Coker**

Judge Lynn Coker of Conroe died Aug. 15, 1993. He was 58. Judge Coker was elected Montgomery County Judge in 1970. In 1977, Gov. Dolph Briscoe appointed him judge of the 9th District Court, which included Montgomery, Waller, San Jacinto and Polk Counties. He served the court until Dec. 1992.

**Judge Guy Hazlett**

Judge Guy Hazlett of Borger died June 1, 1994. He was 70. Judge Hazlett received a B.S. from West Texas State University in 1947 and a J.D. from Baylor University in 1950. He was elected judge of the 316th District Court in Hutchinson County in 1977. He retired in 1990. Judge Hazlett served as a member of the Texas House of Representatives from 1953 to 1957. From 1963 to 1977, Judge Hazlett was judge of the Court of Domestic Relations. He also was a B-17 pilot in the U.S. Air Corps, 8th Air Force, World War II. During the war, he was held as a prisoner of war in Germany.

**Judge Bill L. Bedard**

Judge Bill L. Bedard of Dallas died June 30, 1994. He was 66. He earned a BS and a JD from Washington University in St. Louis, Mo. Judge Bedard had served two terms as judge of Dallas County Probate Court #3 and had been elected in the 1994 Republican Primary without opposition in the general election. He was a member of The National College of Probate Judges, Texas College of Probate Judges, Texas Bar Foundation and the Dallas Bar Foundation. Bedard also served in the U.S. Army until the end of World War II. He entered the U.S. Air Force, Judge Advocate General, serving on active duty during the Korean War and later was promoted to Lt. Col. in the Air Force Reserve from which he retired. ■

# LOOKING AHEAD

## JUDICIAL CALENDAR

### 1994

#### JUDICIAL SECTION ANNUAL CONFERENCE

September 27-30, 1994  
The Fairmont Hotel  
Dallas

**TEXAS COLLEGE  
for NEW JUDGES**  
December 4-9, 1994  
Criminal Justice Center  
Huntsville

### 1995

#### TEXAS COLLEGE of ADVANCED JUDICIAL STUDIES

March 5-8, 1995  
Omni & Marriott Hotels  
Austin

#### CRIMINAL JUSTICE CONFERENCE

May 17-19, 1995  
Hyatt Regency  
Austin

#### PROFESSIONAL DEVELOPMENT PROGRAM

June 19-23, 1995  
Huntsville

#### JUDICIAL SECTION ANNUAL CONFERENCE

September 24-27, 1995  
San Antonio

#### JUVENILE JUSTICE SEMINAR

November 15-17 (or 8-10), 1995  
Austin

#### TEXAS COLLEGE for NEW JUDGES

December 3-8, 1995  
Huntsville

### 1996

#### SOUTHEAST TEXAS CONFERENCE

February 7-9, 1996  
Huntsville

#### SOUTH TEXAS CONFERENCE

March 6-8, 1996

#### CENTRAL TEXAS CONFERENCE

March 20-22, 1996

#### NORTHEAST TEXAS CONFERENCE

April 10-12, 1996

#### WEST TEXAS CONFERENCE

April 24-26, 1996

#### CRIMINAL JUSTICE CONFERENCE

1996  
Dallas

#### PROFESSIONAL DEVELOPMENT PROGRAM

June 10-14, 1996  
Huntsville

#### JUDICIAL SECTION ANNUAL CONFERENCE

September 24-27, 1996 (Tent.)

#### TEXAS COLLEGE for NEW JUDGES

December 8-13, 1996  
Huntsville

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## *in* CHAMBERS

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