

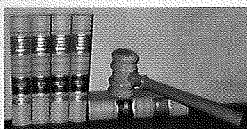
IN CHAMBERS

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY, INC. VOLUME 25, No. 4 FALL 1998



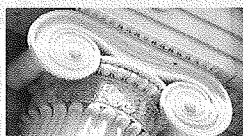
Letter from the Chair:
Fulfilling the Duties of the Judiciary
Judge Cynthia Stevens Kent

Annual Conference
Overview



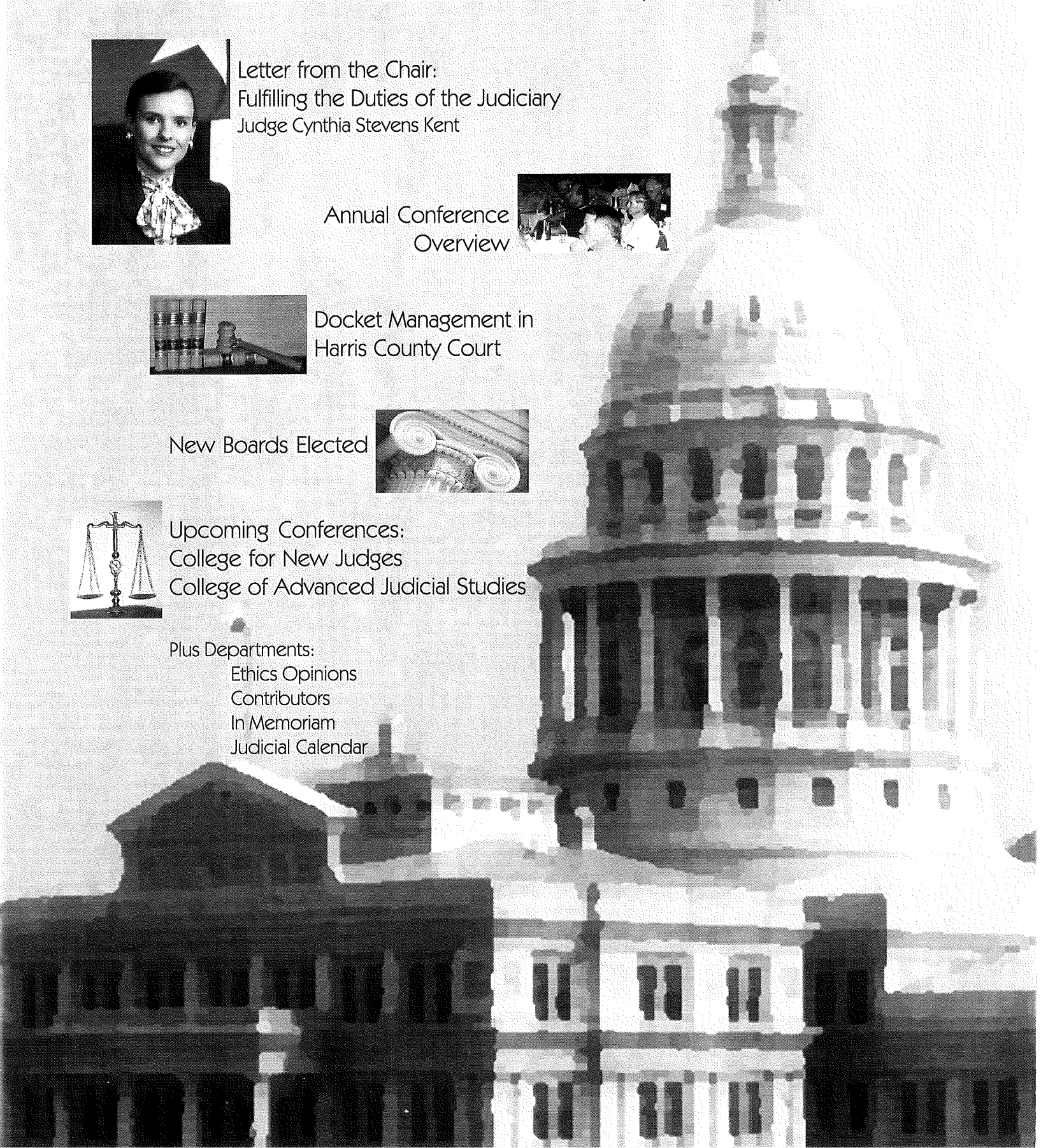
Docket Management in
Harris County Court

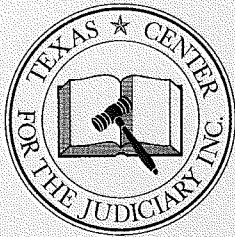
New Boards Elected



Upcoming Conferences:
College for New Judges
College of Advanced Judicial Studies

Plus Departments:
Ethics Opinions
Contributors
In Memoriam
Judicial Calendar





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Meet the Texas Center Registrar

As the Registrar at the Texas Center, Lacy Finley has the constant challenge of maintaining an accurate database with correct records on all

judges and their judicial education hours. In addition to her duties as the registrar, Lacy also serves as the network administrator, making sure the Texas Center's computer system stays up and running.

"I enjoy the challenge of keeping all those records updated. I like to be able to hand out accurate information. What I really like is learning something new everyday. Working at the TCJ, I learn new things constantly," Lacy said.

Lacy grew up in Eldorado, Texas. She is the daughter of Janee & Tip Finley, both of Eldorado. Lacy also has two younger sisters that are truly the light of her life. "I am so proud of both of them. They are strong and beautiful, not to mention super smart!" Her sister Summer is currently in London attending Rose Bruford, a secondary school for theater arts. "Summer is the funniest person you will ever be around. I think we will be seeing her on TV before too long!" Ashley, the youngest sister, recently was named Homecoming Queen for her High

School. She is an accomplished pianist who has composed her own music since she was 14. "When the announcer called Ashley's name, it was like I won! I was so excited for her."

Lacy came to Austin in 1994 to attend the University of Texas. To help put herself through college she took a job managing an office for her Aunt and later as an Executive Assistant to the President/Owner of a marketing firm. At the marketing firm she worked with people in a variety of professions including banking, sports and politics. When asked who she thought was the most interesting person she met, she replied, "Earl Campbell. I met him while he served on our Board of Directors. Most people would think that being a living legend, he would be unapproachable. He is truly a wonderful, kind and honest person. I think he is a positive role model."

When not working Lacy enjoys cultivating her garden, "I grew up on a farm/ranch. We always had vegetable gardens and gorgeous flower beds. I think I inherited my mom's and grandmother's green thumb." She is also an avid reader of anything she can get her hands on.

"I am very excited to be a part of the TCJ team. My coworkers really are the best. I also enjoy meeting all of our Judges. We have a lot of very interesting people!"

In the Texas Center Library

Child Support and the Courts Video: The cooperation of the courts is vital for the successful implementation of the State Case Registries (SCR) and the Federal Case Registry (FCR). The purpose of this video is to help the judicial audience, comprised of justices, judges, court administrators, clerks of court and attorneys understand their critical role in the child support enforcement program as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

For information regarding video availability and check-out, contact Renea Overstreet at 800-252-9232.

Texas Juvenile Probation Statistical Report: Statistical and Other Data on the Juvenile Justice System in Texas for Calendar Year 1997. Published July 1998.

Get On Line

Visit the Texas Center website at www.yourhonor.com. Access information about the Texas Center and its conferences, offer suggestions and send any staff member e-mail. Also, go to the website www.tx.judicial.net for access to the new Benchbook.

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In Chambers is the official publication of the Texas Center for the Judiciary, Inc. The quarterly newsletter is funded by a grant from the Texas Court of Criminal Appeals. The staff of *In Chambers* strives to provide current information about national and local judicial education issues and course opportunities for Texas judges. Readers are encouraged to write letters to the editor and submit questions, comments, suggestions and story ideas for the newsletter. Contact the editor, Renea Overstreet, by calling 512-463-1530, 800-252-9232 (in Texas), faxing 512-469-7664, or e-mailing at renea.o.tcj@netrange.com. The Texas Center's address is 1414 Colorado, Suite 502, Austin, TX 78701-1627.

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Letter from the Chair

Fulfilling the Duties of the Judiciary

by Judge Cynthia Stevens Kent

Samuel Adams wrote to James Warren on February 12, 1779, "If virtue and knowledge are diffused among the people, they will never be enslaved. This will be their great security." Throughout much of our American history the importance of virtue and education has been seen as the cornerstone upon which our liberties and freedom are founded.

The judicial branch of government was created as an important check and balance to protect the weakest of our society from the oppression of the majority and to protect the rights and liberty of the majority by fair application of the rule of law. Continuing judicial education to maintain high standards of professionalism, ethics, and wisdom in the Texas judiciary is a duty that all judges must perform. The Texas Center for the Judiciary, Inc. and the Judicial Section of the State Bar of Texas is committed to helping each judge meet this duty.

This year will be an exciting and challenging year for the Texas judiciary. Maintaining the independence of the judiciary will be an important assignment for all Texas judges. Judicial independence is currently under unprecedented attack. Hopefully through improved communication between the members of the judiciary, constantly improving judicial education, and a partnership between the bench and bar to communicate our commitment to truth and justice, the independence of our Texas judges will be maintained.

I appreciate the confidence of my fellow judges in electing me to serve as your 1998-1999 chair. Let me assure you that I will devote my best efforts in service to our judicial system and its improvement. Let me encourage you to continue your hard work as a Texas judge and yet find the time and energy to assist in the following:

1. Restoring Public Trust and Confidence in the Legal Profession

Richard Pena, President of the State Bar of Texas and Tony Alvarado, Executive Director of the State Bar of Texas are working on an aggressive agenda of encouraging lawyers and judges to educate the public about the quality work and professionalism that still exists in the Texas Bar as well as working on improving the professionalism and civility of the bench and bar in Texas.

During the week of November 16, 1998 the entire state of Texas will participate in a public education program called "Keep Justice Alive." Your help and participation in this week's activity are vital. What can you do?

- a. Use this week to educate the public about your courthouse, the court system and our judicial process.
- b. Contact your local bar leaders today and ask what the judges can do to participate fully in the public educational process during the week of November 16th.
- c. Organize trips by your local judges to several schools and civic organizations during the week of November 16th and talk to the student and the public about the good things which our justice system provides.
- d. Invite schools to visit the courthouse during the week of November 16th and set aside time to speak to the classes and let them observe the careful and professional dispensation of justice in our courthouses.
- e. Participate in drafting articles and letters to the media about the hard work and positive aspects of our justice system.
- f. Please review the last six months of jurors and find two or three jurors who are willing to speak out about their positive experience as a juror. These antidotal stories can help demonstrate that our system of justice is working. Please share these stories with the media and forward copies to the State Bar offices in Austin.

There may be other successful programs you and your local bar may organize for this week. Please share those with President Richard Pena so that they might be duplicated across the state.

Additionally, it is important that the provision of the Texas Lawyer's Creed be adhered to by the bar and that increased civility between the bench and bar be encouraged. Judges can certainly take the lead in highlighting professionalism, civility, and legal competency in a positive light.

Look around your courthouse and see what can be changed to make the courthouse and our justice system a friendlier and more responsive branch of government.

2. Protecting Judicial Independence

President Richard Pena is organizing a local media response team across the state to respond to inaccuracies and untruths about lawyers, judges, and legal issues in the media. It is important that you contact your local bar leaders to find out what they are doing to participate in this program. Additionally, when you see a situation which needs a response, advise the local media response team.

By the bench and bar working together to educate the public about the importance of an independent judiciary we can continue to provide that critical check and balance which is vital to our American liberty. Be on guard against attacks to judicial independence. Sometimes a good idea in the abstract is a silent attack against the independence of judges and our judicial system. Please let me know if you are concerned about a program or policy and its possible infringement upon judicial independence so that the Judicial Section's committee can help you carefully evaluate that program or policy.

3. Legislative Agenda

During the 1999 Legislative session there will be numerous important issues which might affect the Texas judiciary and our justice system. Numerous committees have been organized through the Judicial Section to provide important resource information to the Texas legislature. It is important that Texas judges work together on these issues and not against each other.

Chief Justice Tom Phillips chaired a committee which established a funding priority list for the Texas judiciary. This priority list includes:

Information technology for the judiciary.

Judicial education funding. This is a high priority item for the Texas Center for the Judiciary, Inc. These funds are critical and we need to support the full and proper funding for the Texas Center to continue to improve in providing quality continuing judicial education programs. This funding is completely separate from any long range plans being investigated for the Texas Center. It is KEY that the long range plans which are under feasibility study and research not be confused by anyone with the immediate and important need for the legislative funds for judicial education.

Uniform pay bill for statutory County Courts at Law.

This is an issue the judges of Texas have continually asked the county courts at law to "wait until the next legislative session." Our County Court at Law judges have waited and now is the time to improve and stabilize their pay situation without penalizing some of the larger metropolitan court at law judges.

Appellate Strike Force Fund.

This is a high priority for the appellate judges and a needed fund to provide for timely judicial review.

Appellate court block grants to continue this needed funding.

State law library funding increase.

Retirement Plan I and II parity.

Full day's pay for visiting judges.

Appellate court staff salaries increase.

Special foster care program funding.

In addition to the funding issues mentioned above there are many important legislative issues which will be discussed next year. Some of these include the rewrite of jury system laws, a call for greater judicial accountability, and the rewrite of many substantive law issues. It is important that judges who deal day in and day out with these issues be available to provide calm, articulate, and informed resource testimony to assist the legislature in making proper decisions.

4. Long Range Plan for the Texas Center for the Judiciary, Inc.

Judge Lamar McCorkle of Harris County has been appointed as the Chair of the Long Range Planning Committee and will be working with his committee on obtaining the feasibility study for the expansion of services, educational programs, and resources provided by the Texas Center for the Judiciary, Inc. to the judges of Texas. Additionally, Judge McCorkle's committee will begin the process of assisting the Board of Directors in developing a procedure for selection of a retired Texas judge to serve as President of the Texas Center for the Judiciary, Inc.

5. Judicial Involvement in Our Texas Community.

During the super regional judicial conference this Spring in Austin there will be a number of new opportunities for judges to participate in providing community service and demonstrating our commitment to restoring public trust and confidence in our legal profession. A committee is being appointed to organize these community service project and the participation by all Texas judges is important. You will receive specific information about these projects and how you can participate in your registration packet next year. Please carefully consider setting aside a little extra time and energy to work on these community service projects during our regional conference.

Again, thank you for allowing me this opportunity to serve you and our judicial system. If you have any suggestions or input about judicial section or Texas Center business please feel free to contact me. You may reach me at the following numbers:

Tyler Office: (903) 535-0613
Tyler FAX: (903) 535-0615
Quitman Office: (903) 763-2332
E-Mail: Kent114@tyler.net

Your friend in the judiciary,



Honorable Cynthia Stevens Kent
Judge, 114th District Court
Chair, Judicial Section of the State Bar of Texas
Chair, Texas Center for the Judiciary, Inc.

Docket Management in Harris County Court at Law No. 2

by Judge Michael A. Peters
County Court at Law No. 2
Harris County

Judge Cunningham's views on the judge's role in docket management, *Docket Management In a High Volume Specialized Court (In Chambers, Winter 98)* points to the need of the judge to take an active interest in case flow management. More accurately, it emphasizes that while judges have few options in moving cases off their dockets, they need only one: the power to afford defendants and the state fast and speedy trials. In order to do this they must be able to rely on a sound court management system and it is in the system that the philosophy of case flow principles can be realized, but only with the active participation of the judiciary.

When I assumed the bench of County Criminal Court at Law Number Two in Harris County in January of 1991, I was faced with many of the same problems that Judge Cunningham speaks of: delay was expected, resets were the norm, trial dates were used to buy the lawyers and their clients time, and attorneys would set cases in my court with the expectation that a trial would not be forthcoming. More simply stated, a conflict was built in at the onset of the trial court agreement. Finally, the cost of indigent attorneys was high simply because of so many resets.

Let me for a moment ex-

plain the court management style and system in Harris County to further point out the important role that judges play in managing their case loads. This role cannot be fully appreciated, in my view, until one understands the non-judicial tasks that must be done in order for a judge to control future events in cases.

Intake

The County's 22 District Courts trying criminal cases and 15 County Criminal Courts at Law utilize a twenty-four-hour-a-day intake system staffed by the district attorney's office so that all cases are screened prior to acceptance of charges. This first step in case initiation is a quality control measure for the prosecution by avoiding the filing of charges when all the elements are not present.

Integrated Information System

The information system is integrated which allows for information from any department to be captured only once and then incremented by additional information depending on departmental need. Defendant booking information is seen by everyone in the system immediately, as is all case information throughout the life of the case. Finally, all departments enter all information on-line so that throughout the life of the case, information is available

to all who need it.

Rules of Court

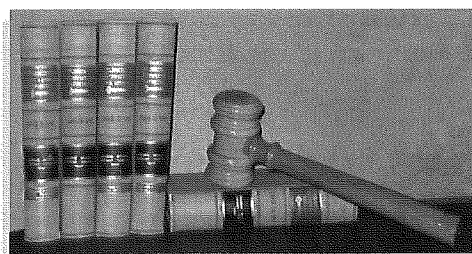
The county criminal courts promulgate the Rules of Court that describe, among other matters, how cases are to be allocated to the courts and how cases filed against a defendant may be attracted back to the court if the defendant has not been finally discharged from a sentence or if an appeal is pending. This feature extends the judges' knowledge of events should the court again have to assume jurisdiction of the defendant in a new case. The rules are made a part of the district clerk's office procedures and incorporated into the minutes. This step legitimizes the methods and philosophy of how cases are processed.

Automatic First Settings

The automated system ensures that persons booked into the county jail appear automatically on the courts' dockets at the next available workday, while the rules of court ensure that persons who bond out are placed on the courts' dockets in seven days. These features allow tracking without relying on the sheriff to notify the courts as to who is in jail.

Calendar, Index and Exceptions

This information, both on-line and in batch, allow the court coordinators to project cases and balance the dockets, determine attorney



Judge-Mentality is an In Chambers guest column written by a judge. Opinions presented in the column are not necessarily those of the Texas Center for the Judiciary, Inc. Please call Renea Overstreet, 800-252-9232, if you would like to submit a column or a letter in response to a column.

conflicts in future settings, and determine what did NOT happen on a given day. Large systems are dependent on exception information or, more simply stated, with thousands of cases moving through a system, it is more important to know what was missed.

Agreed Signed Settings before Leaving Courtroom

Finally, the courts permit no continuances without a date and time certain for re-appearance, regardless of the type of appearance. It is the duty of coordinators to provide dates. The court's index facilitates this step by reflecting each attorney's projected settings. Attorneys as well as the coordinators know when acceptance of a setting offered by the coordinator conflicts with another setting in a criminal court.

Application to the Bench

With this design in mind, I began a program to enforce the policy of the court, a measure that only a judge can take. While numbers alone do not reflect that the quality of justice is good or bad, we must rely on them to tell us whether cases are moving, the time it takes to move them, and the exceptions — those statistics referred to as outliers, when a case takes an inordinate amount of time to reach disposition or a certain defendant's bond is abnormally high. Moreover, statistics tell us the difference be-

tween volume of work to be done and volume of work completed, and allows us to project whether or not we are holding our own. With these numbers we can look at our own performance and determine policy for the coming years.

The county courts receive approximately 56,000 cases annually and dispose of 98% and 102% of their cases annually, the latter percentage meaning that the disposition rate reduces the pending caseload below the number that were pending at the beginning of the year.

Pending cases are not necessarily backlogged as long as they are disposed of within a framework consistent with a criterion for disposing of them. For example, a case older than 120 days would constitute a backlogged case if such a case should have a life span of no more than 120 days. A motion to revoke probation, as it does not require a jury hearing, may have a life span of, say, 90 days. In 1997 the county courts disposed of 47.68% of their cases within the first thirty days and only 22.09% were older than ninety days at time of disposition. But, again, numbers do not tell

the story of quality of justice but they allow us to measure performance.

In County Court Two I instituted a policy that pleas would not be taken on the trial date, the rationale being twofold: the defendants and attorneys are given plenty of

Judges must not be placed in a position to grapple with the many non-judicial details of case flow management, for in this they use valuable judicial time.

time to dispose of a case and not waste the court's time, and all parties to the case and the general public must have confidence in the court's ability to bring a defendant to trial when one is requested. Obviously we would be hindered in our efforts to provide trials for those who actually want them if the date is taken by someone who merely wanted to manipulate the system. In this regard, Judge Cunningham and I apparently share a philosophy that strengthens the system of justice.

The first order of business when I took the bench was to more effectively utilize setting dates, not just trial dates, but all dates. Parties agree to specifics; what has to be done by what date. In 1990, the year before I took the bench, the court disposed of 102 cases by trial with eight of them (8%) jury

trials and 94 of them court trials. In my first year on the bench (1991) I was able to dispose of 95 trials but now 69 of them (almost 73%) were jury trials. In 1992 that number moved to 139 total trials with 84 of them (60%) were jury trials. And so it has gone with 1993 showing 139 trials again, this time 92 (66%) of them jury trials. Through 1997 we were able to dispose of a total of 873 trials with 632 (over 72%) being jury trials. The number of cases awaiting trial has gotten steadily lower, not only in court two but in all the courts, as the assurance of trials has become the standard.

Today in court two we can guarantee a jury trial any day of the week during any week of the year if need be, and it is in this position that the courts must continue to operate if we are to gain and keep the respect of the people.

Judges must not be placed in a position to grapple with the many non-judicial details of case flow management, for in this they use valuable judicial time. Judges must first have a philosophy of case flow management and this philosophy must extend to all persons and departments involved in the process—and that is everyone—from the point of arrest to the entry of a final conclusion to the case.

Justice delayed is truly justice denied.

Ethics Opinions Q&A

No. 223, Issued September 22, 1998
Master on Leave Required to Comply with Code

Question: An Associate Judge (Master) appointed by a District Judge is seriously considering running for district judge. She wishes to take leave from her current position beginning on the date she files as a candidate. While on leave she will not act in any judicial capacity nor will she receive pay or benefits. She would like to continue coverage for county group health insurance, the cost of which could be borne completely by her. She may have accrued vacation and sick leave which would be reinstated if and when she returns to her job as Associate Judge.

While she is on leave without pay:

1. Is she prohibited from working for pay in a job unrelated to the law?
2. Is there any kind of law-related work for pay which she cannot perform? If so, what?
3. Can she practice law or act as a mediator? Can she associate with a law firm whose lawyers appear in court or accept court ordered mediations?

Answer: A full-time district court master must comply with all provisions of the Code of Judicial Conduct whether on leave or not. A leave of absence is not a complete separation from employment; it connotes a continuity of employment status. As a result, the master on leave cannot take any employment prohibited by Canon 4.

No. 230, Issued October 7, 1998
Judge as Assistant to County Party Chair for Appointments

Question: May a judge serve as Special Assistant to the County party Chair responsible for Appointments? The position would require the judge to communicate the process of applying for various county, city and state governmental appointments as well as communicating what appointment positions are available.

Answer: No. A judge may not act in this capacity due to the public nature of the position. It places the judge in the position of a de facto political power brokers. This is a violation of Canon 2 which states

that a judge should not lend the prestige of judicial office to advance the private interests of other; nor shall a judge permit others to convey the impression that they are in a special position to influence the judge.

No. 231, Issued September 22, 1998
Judge on Thank You Page in Political Party State Convention for Contribution

Question: May a judge be publicly thanked in a political party state convention program for contributing to the cost of a dinner provided to young people who serve as pages and sergeants-at arms at the state convention?

Answer: Yes. Canon 5 states, in part, that a judge may indicate support for a political party. The presence of a judge's name on a list of contributors to a dinner sponsored by a political party is permitted by the Canons.

No. 232, Issued October 7, 1998
Appointed Judge Listed as "Judge" in Campaign Material

Question: May any of the following individuals refer to themselves as "judge" in campaign material (including public forums) when running for elected judicial office: family law associate judge, criminal law magistrate, juvenile referee, jail magistrate, Title IV master?

Answer: The Code does not dictate whether such individuals are considered "judges." Reference to appropriate statutes or constitutional provisions may be required to make that determination. The Committee notes, however, that Canon 5(2)(ii) provides that a judicial candidate shall not knowingly or recklessly misrepresent the candidate's identity, qualifications or present position.

No. 233, Issued October 7, 1998
Sitting Judge Completing Mediation Training

Question: May a sitting judge, as part of a mediation training program, (1) observe three mediation sessions conducted by the other persons serving as mediators, and (2) conduct two pro bono mediations, so long as the mediations would not be in

connection with any case pending in the judge's court and the judge would receive no compensation for her services?

Answer: Yes. A sitting judge may observe mediation sessions conducted by another mediator and may, without compensation, serve as a mediator. Canon 4.F provides: "an active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties." Canon 3B.(8)(b) concerning ex-parte communications does not prohibit a judge from "conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties."

Since Op. No. 161 in 1993 first addressed the propriety of a judge's serving as a mediator, alternative dispute resolution procedures have become more favored as a state policy in numerous legislative enactments, more favored by judges because of their effectiveness in disposing of disputes at every level, more favored by state agencies which now build ADR procedures into many of their rules, and more favored by individuals who include ADR procedures in their agreements and rely on them to resolve more and more of their disagreements. In light of this growing reliance on ADR procedures as an adjunct to traditional forms of adjudication, and in light of the favorable experience of many judges in encouraging and participating in alternative dispute resolution procedures, we withdraw in its entirety our former Opinion 161 and find in the Code no prohibition against an active judge serving as a mediator or arbitrator without compensation so long as the judge follows the guidelines of Canon 3B.(8)(b).

There is no prohibition against an active judge serving as a mediator or arbitrator without compensation so long as the judge follows the guidelines of Canon 3B.(8)(b) and that such mediation or arbitration does not interfere with the prompt and efficient management of that judge's own court docket.

No. 234, Issued October 7, 1998
**Court Administrator Campaigning
for Candidate of Her Choice**

Question: May a court administrator for a judge campaign for political candidates and support referendum issues during non-court hours when she is away from the courthouse and on her own personal time?

Answer: Yes. Canon 5's prohibition of "inappropriate political activity" applies only to judges and judicial candidates, not to court personnel. Canon 6 does not list court administrators or staff as persons subject to the Code. Although an earlier version of Canon 3C.(2) required court staff to observe "the standards of this Code," since March 1994 Canon 3C.(2) has required judges, as part of their administrative responsibilities, to ensure only that members of their staff observe "the standards of fidelity and diligence" that judges must observe. Canon 3 also instructs judges to ensure that staff and court officials observe other code provisions not at issue in this opinion. See Canon 3B.(4), 3B.(6), 3B.(8) and 3B.(10).

The code does not prohibit political activities by the administrator, provided that she engages in them away from the courthouse, during non-court hours, on her own time, without giving the impression that she speaks for the judge. The administrator must remember that the judge for whom she works cannot lend the prestige of his office to advance the political interests of others [Canon 2B.], indicate his opinions on issues likely to come before his court [Canon 5(1)], or endorse candidates for public office [Canon 5(3)]. The administrator must scrupulously avoid suggesting in any way that the judge personally approves of the candidates she endorses or the positions she takes on the issues. She must also schedule her political activities so that they do not interfere with her official duties [Canon 4A.(2)].

No. 235, Issued October 7, 1998
Judge and Political Activities

Facts: A person serving as President of a County Women's Political Caucus and who also serves as the Mayor's appointee and Chair of the Mayor's Commission on the Status of Women will soon be appointed as a part-time Master over the Mental Health cases for a County Court at Law and a Probate Court for the county where she resides. It is anticipated that the Master will preside over hearings two or three days a month.

Question: Is it a violation of the Code of Judicial Conduct for a Master over mental health cases in a statutory county court to 1) remain as president of a county women's political caucus; and/or 2) remain as Chair of the Mayor's Commission on the Status of Women?

Answer: No, as to both positions. Under Canon 6D.(1), a part-time master of a statutory county court is required to comply with all provisions of the Code of Judicial Conduct except, among other, Canon 4H. This exception would permit a **part-time** master to serve as an appointee to a commission even if it is concerned with issues of fact of policy on matters other than improvement of the law, the legal system or the administration of justice.

There is no direct prohibition in the Code of Judicial Conduct regarding service as president of an organization such as a county women's political caucus, as long as the master does not authorize the public use of her name endorsing another candidate for any public office under Canon 5(3) or solicit funds under Canon 4C.(2). Additionally, the master must conduct her extrajudicial activities so they do not cast reasonable doubt on her ability to act impartially as a master or interfere with the proper performance of her judicial duties under Canon 4A.(1) and (2).

No. 236, Issued October 7, 1998
**Judge Compensated for
Performing Marriage Ceremony**

Question No. 1: May a judge receive a fee for performing a marriage ceremony during regular office hours?

Question No. 2: May a judge charge for weddings, after hours, away from the courthouse?

Answer to Both Questions: Yes, within reason. Canon 4D.(1) states, in part: "A judge shall refrain from financial and business dealings that... exploit his or her judicial position." This provision ensures that a judge does not take advantage of his or her judicial office with regard to financial issues.

The Committee considered whether a judge may charge a fee for performing a wedding in Judicial Ethics Op. No. 72. In that opinion, the Committee decided that charging a fee for a wedding would exploit the judge's judicial position in

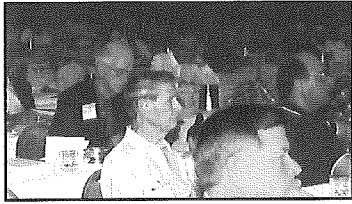
contravention of Canon 5(1) (later renumbered as Canon 4D.(1), with no change in language).

Giving further consideration to the issue, the Committee now withdraws that part of Op. 72 concerning fees. Relevant to our decision is DM-397, issued May 31, 1996. Although the Attorney General's opinion interpreted the law, and although finding conduct legal does not necessarily mean that conduct is also ethical, several holdings in the opinion inform our decision on the ethics questions presently raised.

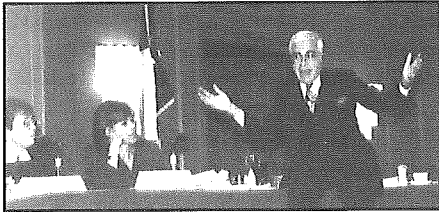
In DM-397, the Attorney General considered whether a judge could perform marriages, at the office or elsewhere, and whether the judge could charge and keep any fees assessed for this service. Initially, the Family Code authorizes certain state judges to perform marriage ceremonies, thereby denominating performance of a wedding ceremony as a proper judicial function. Next, acceptance of a fee for performing this discretionary judicial function is proper under Section 154.005 of the Local Government Code and JM-22. Last, a fee paid to a judge for performing an official function does not fall within the definition of "honorarium." Thus, a judge authorized to perform a marriage ceremony may collect and retain a fee for performing a marriage ceremony.

With regard to use of the judge's office or court personnel, the Attorney General noted that marriage performance is an officially sanctioned judicial function. As such, weddings may be performed at the judge's office during business hours, and clerks may assist. A judge must take care, however, that use of public resources be reasonable in relation to the function being carried out; each judge has many mandatory duties to perform in addition to the discretionary authority to conduct marriages.

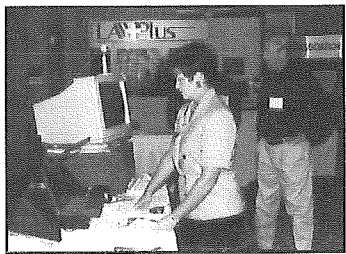
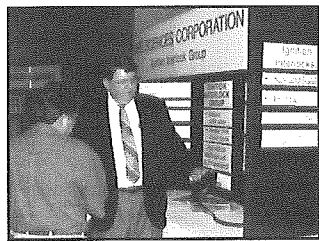
We find this logic persuasive with regard to Canon 4D.(1)'s admonishment that judges not exploit their judicial positions. As long as the fees are reasonable and conducting ceremonies during business hours does not unreasonably interfere with required judicial duties, then no ethics violation arises. Judges should not, however, take advantage of their official position to conduct such services, or such activity will constitute exploitation of judicial position and a violation of Canon 4D.(1).



Judges in General Class Session.



Arthur Miller facilitating a panel discussion on Judicial Leadership.



1998 Judicial Section Annual Conference

The 1998 Judicial Section Annual Conference convened September 15-19 allowing Texas judges opportunities for continuing judicial education as well as interaction with judges and colleagues from around the state. The conference received an overall rating of 4.4 on a scale from 1 to 5.

Featured at the conference were U.S. Circuit Judge Thomas Reavley and Harvard University Law School Professor Arthur Miller. Both brought a wealth of knowledge and experience to the conference as they dealt with issues pertaining to judicial leadership.

Class topics covered in general sessions included Jury Management, Computer Basics, New Procedures and Rules and Significant Decisions. Specialty Topics included CPS Cases, Family Violence, Working with Difficult People, Crime Victims, Journey: The Pathway of the Law, County Auditors, When Judges Speak Up and Judicial Campaign Finance.

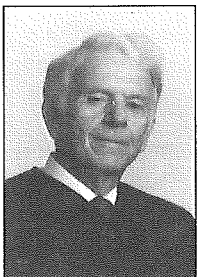
At the annual business meetings for the Judicial Section and Texas Center for the Judiciary, Inc. new board members were elected for the Judicial Section and Texas Center Boards of Directors. These new members are listed on page 3. During this time, conference leader and chair, Judge David Hodges handed over the reins to newly elected chair Judge Cynthia Stevens Kent.

The conference also included vendors who displayed their services and products for two days.

Recreation time and networking opportunities outside of class included a pre-conference golf outing, receptions and a Sounds of the Big Band Evening Celebration featuring a silent auction sponsored by the Texas Court Reporters Association. The auction raised around \$8000 for the Texas Center.

Next year's Judicial Section Annual Conference will be September 26-19, 1999 at the Renaissance Hotel in Austin.

Judge Eldon B. Mahon honored as Bar Foundation's Outstanding Jurist



Senior United States District Judge Eldon B. Mahon was honored with the Samuel Pessarra Outstanding Jurist Award during the 1998 Judicial Section Annual Conference in September.

The Outstanding Jurist Award was first established in 1987 to honor an active federal or state judge. In 1995 the Foundation received a bequest from the estate of Mrs. Samuel Pessarra in honor of her husband for the purpose of

funding the Outstanding Jurist Award, and the award was renamed the Samuel Pessarra Jurist Award in 1995.

Judge Mahon is a Senior U.S. District Judge for the Northern District of Texas where he has served since 1972. He was a U.S. Attorney for the Northern District of Texas from 1968 to 1972, and practiced law in Abilene from 1964 to 1968. He was Vice President of Texas-Electric Service Company in Fort Worth from 1963 to 1964, and served as a Texas District Judge from 1961 to 1963 in the 32nd Judicial District. Prior to that he

served as the District Attorney in the 32nd District from 1948 to 1960. He was the Mitchell County attorney in 1947 and a briefing attorney for the Supreme Court of Texas from 1945 to 1946.

Judge Mahon served 40 months tour of duty with the U.S. Air Force during World War II. He was enlisted as a private and discharged as a Captain after one year of duty in the South Pacific with the 5th Bomber Command.

He is a charter member of the American Inn of Court CLXXXIV which was renamed the Eldon B. Mahon Inn of Court in 1993.

Thank you for your

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In Memoriam for Those Who
Served Our State Courts

Hon. Alfonso Chapa
Senior Chief Justice
Fourth Court of Appeals
San Antonio



Upcoming Conferences

College for New Judges

The 1998 College for New Judges will be December 6-11 at the Crowne Plaza Suites in Dallas. All newly appointed and elected judges and those moving to appellate courts will be invited to this conference.

The program provides invaluable information and training to help participants make the transition from an advocate to that of a fair and impartial administrator of justice or from a trial court to an appellate court.

The Rules of Judicial Education, published by the Court of Criminal Appeals, mandate that each judge performing judicial functions complete at least 30 hours of continuing education within the judge's first year on the bench. The College is designed to satisfy that requirement by offering at least 30 hours of continuing judicial education.

College of Advanced Judicial Studies

The College of Advanced Judicial Studies will be February 28 through March 3, 1999 at the Marriott and Omni Hotels in downtown Austin.

Nicknamed the "Super Regional," this conference convenes in Austin during legislative years taking the place of the 5 regional conferences which are convened during the non-legislative years.

Conference brochures containing registration forms will be mailed in January 1999.

1998-2000

LOOKING AHEAD: JUDICIAL CONFERENCE CALENDAR

COLLEGE FOR NEW JUDGES 1998

December 6-11, 1998

Crowne Plaza Suites, Dallas

1999

COLLEGE OF ADVANCED JUDICIAL STUDIES

February 28-March 3, 1999

Marriott & Omni, Austin

CRIMINAL JUSTICE CONFERENCE

May 5-7, 1999

Hyatt Hotel, Austin

PROFESSIONAL DEVELOPMENT PROGRAM

June 14-18, 1999

Criminal Justice Center, Huntsville

JUDICIAL SECTION ANNUAL CONFERENCE

September 26-29, 1999

Renaissance Hotel, Austin

COLLEGE FOR NEW JUDGES

December 12-17, 1999

Crowne Plaza Suites, Dallas

2000

PROFESSIONAL DEVELOPMENT PROGRAM

June 12-16, 2000

Criminal Justice Center
Huntsville

JUDICIAL SECTION ANNUAL CONFERENCE

September 24-27, 2000

Hyatt at Reunion
Dallas

COLLEGE FOR NEW JUDGES 2000

December 3-8, 2000

Crowne Plaza Suites
Dallas

Texas Center for the Judiciary, Inc.
1414 Colorado, Suite 502
Austin, Texas 78701-1627

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