

IN CHAMBERS

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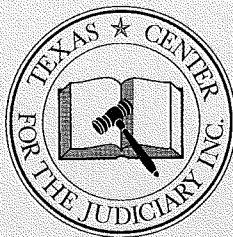
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Judges Coach Mock Trial Team to State Championship

For the second year in a row the Kerrville High School Mock Trial team captured the Texas State Championship. The team has a judicial connection as Judge Steve Ables is the team coach along with Judge Karl Prohl. The Kerrville team won the state championship sponsored by the Dallas Bar Association and immediately started preparations for the National Championship in St. Louis. The year's national case was a Sherman Anti-Trust Act problem based on the historical events of St. Louis Cardinal Curt Flood's suit against professional baseball in the early 1970s.

The Kerrville team went undefeated at the Nationals along with Colorado, and the eventual champion, Georgia. The final rankings of first, second, and third place were determined by a count of overall scoring ballots and the Kerrville team missed out on first place by one ballot.

Judge Ables has been working with the Mock Trial program at Kerrville High School since 1991. "I find working with these highly motivated young people to be very rewarding," says Ables. "I wouldn't trade anything for the experience of witnessing these young scholars move from timid lawyer wanna-bes to seasoned advocates. I wish I could talk more judges into becoming mentors and coaches for their high school programs."

Judge David Gipson is on the Board of Directors of the Texas State Mock Trial and was invited to St. Louis to be a judge in the competition.

In the Texas Center Library

Child Support and the Courts, Office of Child Support Enforcement, Department of Health & Human Services, Administration for Children and Families

In 1996 the President signed into law the most sweeping revision of the Child Support program to date, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). PRWORA strengthens the ability of the nation's child support programs to collect support on behalf of children and families through a number of reforms, one of which is the expanded Federal Parent Locator Service (FPLS). To help inform court personnel about their role in this new initiative, the Office of Child Support Enforcement (OCSE) has developed several products. These products include: an overview of child support in general; PWORA and FPLS initiatives; a video entitled *Child Support and the Courts*; and computer software to assist States and counties to capture the required data elements for non IV-D orders.

Domestic Abuse and Custody Mediation Training for Judges and Administrators and Domestic Abuse and Custody Mediation Training for Mediators, American Bar Association, Center on Children and the Law

The first curriculum is designed as a three-hour training for judges, court administrators, and mediation program directors. The second curriculum is designed as six, three-hour modules for practicing mediators. Both curricula use state-of-the-art PowerPoint slide presentations and include instructions for trainers. The curriculum for mediators also includes numerous small group and role-play exercises.

Examining the Work of State Courts, 1997, and State Court Caseload Statistics, 1997, National Center for State Courts

These volumes offer a full portrait of the state courts in a nontechnical fashion. Produced by the Court Statistics Project of the National Center for State Courts, they analyze and interpret the work performed in the nearly 16,500 state trial and appellate courts by more than 29,000 state judicial officers. Incorporating data from throughout the justice system, these volumes provide a broad-based framework for examining court workload and bring national trends to light.

Moving Beyond Battered Women's Syndrome: A Guide to the Use of Expert Testimony on Battering and Its Effects, National Association of Women Judges

A grant from the State Justice Institute made it possible for the National Association of Women Judges to sponsor this valuable publication.

National Drug Court Institute Review, The National Drug Court Institute

This semi-annual publication will keep the drug court practitioner abreast of important new developments in the drug court field.

Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America, Notre Dame Law Review, The National Drug Court Institute

This is an important article on the drug court movement.

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On the Cover: Zilker Gardens, Austin, Texas

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, Angela Outlaw, by calling 512-463-1530, 800-252-9232 (in Texas), faxing 512-469-7664, or e-mailing at angelao@yourhonor.com. The Texas Center's address is 1414 Colorado, Suite 502, Austin, TX 78701-1627.

Nominating Committee to Meet

The fiscal year 1999 Nominating Committee will be meeting in June to slate officers and new members for the fiscal year 2000 Texas Center for the Judiciary, Inc. Board of Directors and the Judicial Section Board of Directors.

Four positions are open on the Texas Center Board of Directors:

- one appellate court judge position
- one district court judge position
- one county court at law judge position
- one retired judge or justice position

Judges in these positions will serve three-year terms. In addition, the chair-elect and secretary/treasurer will be nominated for one-year terms. This term the chair-elect position will be held by a district court judge.

Three positions are open on the Judicial Section Board of Directors:

- one for an appellate court judge
- two for district court judges

Judges in these positions will serve three-year terms. The chair-elect nominee for the Texas Center, if elected, will also serve as the chair-elect of the Judicial Section. The secretary/treasurer position on the Judicial Section Board of Directors is an appointed position.

If you have an interest in serving on either of these boards or if you want to recommend a name for nomination, please notify Chief Justice Linda Thomas, Chair of the Nominating Committee, in writing no later than May 31, 1999. Also, please provide the Texas Center for the Judiciary, Inc. a letter of interest/nomination.

Send your letters to:

Honorable Linda Thomas
Chief Justice

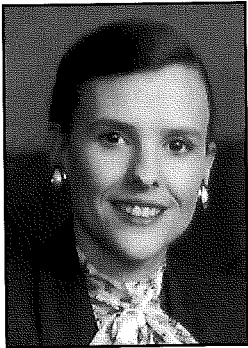
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Letter from the Chair

Progress Report

by
Judge Cynthia Stevens Kent

The College for Advanced Judicial Studies was extremely successful and educational for the members of the Texas Judiciary. My thanks, on behalf of the Judiciary, to our executive director, Mari Kay Bickett, and her entire staff on a well run and well-organized conference in light of the problems with assembling in Austin during a legislative session. I also appreciate how patient and understanding each of our Texas judges were in dealing with the crowded conditions and transportation issues during the conference.

Let me update you on the status of several judicial issues which involve the Texas Judiciary. Any remarks, suggestions, or ideas on improving our conferences, education programs, or the Judiciary in general are welcomed. In the Winter 1999 issue of *In Chambers* the various Texas Center for the Judiciary, Inc. and Judicial Section committees and committee chairs were listed. These individuals stand ready to answer your questions and assist you in participating in the Texas Center for the Judiciary, Inc. and the Judicial Section. Please feel free to call me or these committee chairs with your suggestions and questions.

Legislative Issues

The Texas Legislature is working diligently writing new laws for us to learn and apply in our courts. It is very difficult to give you an accurate report on the progress of the bills which affect the Judiciary as they are still making their way through the legislative review process and many will not be voted on until late May 1999. However, Lynn Nabers has informed us of the status of the following bills as of the end of April 1999:

1. Judicial Committee on Information Technology

This funding would continue with phase two of the information technology funding begun by the 75th Legislature. The funding would work toward implementation of a State Judicial Information Technology Infrastructure, State Judicial System Web Home Page, State Telecommunications Infrastructure, Judicial Information Management System, Trial Court Technology, and Appellate Court Technology. We have requested \$9,385,492.00 for fiscal year 2000 and \$7,685,492.00 for fiscal year 2001. The House has so far recommended only \$4,398,162.00 for fiscal year 2000 and \$2,898,162.00 for fiscal year 2001. The Senate has so far recommended \$5,600,492.00 for fiscal year 2000 and \$4,400,492.00 for fiscal year 2001.

2. Judicial Education

This is a very important piece of legislation for many judicial educators including the Texas Center for the Judiciary, Inc. The request from the Judiciary was to increase funding from the Judicial and Court Personnel Training Fund (Fund 540) for continuing education programs for judges and court personnel at all levels. This legislation, HB 2705 and SB 1187, are still being considered by the Legislature. At press time HB 2705 passed favorably out of the House Judicial Affairs Committee and is now awaiting a date to be heard on the House floor. SB 1187 passed favorably out of the Senate Committee on Jurisprudence and was then heard on the Senate floor. This bill is expected to be referred to the House Judicial Affairs Committee for review.

3. Uniform Pay for Statutory County Courts at Law

This important legislation would provide state funding to the 175 statutory county courts at law in view of the expansion of state-level jurisdictional responsibilities assumed by these courts in recent years. This proposal would provide funds to standardize the salaries of the 175 county court at law judges across the state to a level of \$1,000 less than district judges. There are some other adjustments being considered which address the special needs of the met-

ropolitan court at law judges. This legislation, HB 1123, passed favorably out of the House Judicial Affairs Committee and is waiting to be heard on the House floor.

4. Appellate Court Strike Force Panel and Staff

This bill would establish and staff a three-judge panel for each of the three largest appellate courts (1st, 9th, and 14th) to eliminate backlogs and reduce the necessity of transfers among courts. This legislation, SB 678, was referred to the Senate Committee on Jurisprudence. Currently, the Senate and House Finance Committees are considering the \$990,000.00 per fiscal year request.

5. Appellate Court Block Grant

This proposal included maintaining the current block funding levels with some adjustments for the workloads of the appellate courts on a parity basis with some additional funding for special needs. The Senate Finance Committee recommends no change to the funding. The House has recommended the continuation of the block grants plus additional funds for the Supreme Court, Court of Criminal Appeals, and an increase for the Court of Appeals.

6. State Law Library

The judicial proposal was to increase funding for the State Law library for technology, telecommunications, library services, materials, security, and enhanced salaries. The House and Senate are considering increasing the funding, but not at the levels requested.

7. Judicial Retirement

This proposal includes enhanced retirement benefits for all Plan II judges by adjusting the base retirement annuities on the current salary of district judges (as adjusted from time to time) as opposed to the current plan which does not increase retirement as salaries later increase. This would bring Plan I and Plan II judges into parity with each other. Currently three pieces of legislation regarding judicial retirement are being considered: HB 2084, SB 82, and SB 761. HB 2084 is pending in the

House Pensions and Investments Committee and SB 82 is pending in the Senate State Affairs Committee. SB 761 was passed favorably out of the Senate State Affairs Committee, was heard on the Senate floor, and is now in the House Pensions and Investments Committee.

8. Full Day's Pay for Visiting Judges

This proposal would provide that visiting judges would be paid the same amount as those judges for whom they are sitting. Currently, a former or retired judge is limited to 85 percent of the sitting judge's salary. The proposed legislation, HB 2863 and SB 1719, passed favorably out of their judicial committees and are waiting to be heard on the floor.

9. Appellate Court Legal Staff Salaries

This proposal would make the salaries of the appellate court attorneys comparable to those of key state agencies, such as the Attorney General's Office. Equalization of the dockets of the 14 court of appeals is also being considered. Equalization would be considered achieved if the total cases on the docket per justice varies by 10 percent or less among all the appellate courts. The House has recommended no additional funding at this time. However, the Senate Finance Committee is considering significant increases in the salary funding.

10. Foster Care

This proposal would establish and fund special courts to advance cases involving children in foster care. The proposed foster care legislation, HB 3706 and SB 1735, are moving right along through the legislative process. HB 3706 passed favorably out of the House Juvenile Justice and Family Issues Committee and is waiting to be heard on the House floor.

SB 1735 passed favorably out of the Senate Committee on Jurisprudence and has been referred to the House Juvenile Justice and Family Issues Committee.

11. Open Meeting Law for District Judges

This is a proposal to require district judges to comply with the open meeting law in most of their administrative decisions. The proposed legislation, HB 599, was left pending in the House State Affairs Committee.

12. Assignment of Retired and Former Judges as Visiting Judges

The status of visiting judges in Texas is still under considerable debate and discussion. The legislation addresses the number of years you must serve as a judge before you are eligible to

serve as a visiting judge, the number of objections allowed, and the process for making objections. The proposed legislation consists of HB 639 and SB 263. HB 639 was left pending in the House Judicial Affairs Committee. SB 263 was passed favorably out of the Senate Committee on Jurisprudence and is now in the House Judicial Affairs Committee.

13. Creation of New Courts

Several individual district court bills proposing the creation of several new courts have moved out of judicial committees. The majority of these bills will be considered in an Omnibus bill which is yet to be finalized.

14. District Court Performance Measures

The House has passed legislation which would require the Office of Court Administration and the Texas Judicial Council to engage in a pilot project to develop and implement performance measures for the individual district court of this state. The study shall include no fewer than 20 courts of varying jurisdictions. The Office of Court Administration shall report the results of this study to the Legislature no later than January 2001. This is the possible precursor to mandatory performance measures from the legislative branch of government against the judicial branch of government. I would hope that the judges of this state give this issue in-depth constitutional thought.

Mr. Lynn Nabers and several other experienced individuals are watching legislation which might affect the Judiciary. We are blessed to have such qualified people providing the Texas Judiciary such a valuable resource. If you have questions about legislation, you can contact Justice Marilyn Aboussie, Chair of the Legislative Resource Committee, or any one of the other committee members.

TCJ Long Range Plans

With respect to our long range plans, Cargill and Associates is working on the feasibility study which should be complete by June 1999. Once the feasibility report is reviewed by the Board of Directors they will decide what recommendations should be made to the members during the September 1999 Annual Judicial Conference. If you have any suggestions or input on the long range project, please contact Judge Lamar McCorkle in Houston or me in Tyler.

Closing Remarks

The National Conference of State Trial Judges has published a wonderful book entitled

The Judge's Book which articulates a dilemma of judges. They write:

Contemporary American society places justice as one of the highest, if not the highest, of our aspirations. Daniel Webster said, 'Justice Sir, is the great interest of man on earth. It is the ligament which holds civilized beings and nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race.' The English lords wrested by force of arms from King John the promise that 'To no one will we sell, to no one will we refuse or delay, right or justice.' Inscribed over the entrances to the U.S. Supreme Court building are two phrases: 'Equal Justice Under Law' on the west portico and 'Justice the Guardian of Liberty' on the east portico...

This empowerment of American judges and its concomitant obligations create the dilemmas of the judicial role. Judges are expected to be experienced; wise and worldly; involved in the leadership of the community; sensitive to the problems in the society, including the economic and political issues; conversant with the cutting edge of knowledge of scientific and medical issues; active in the critical examination and reform of the law and the agencies of the law; warmly concerned for the tribulations of those who are troubled; and certainly possessing the humanizing benefit of a sense of humor, as well as the modesty and humility to recognize that they cannot have all of those things.

Thank you for the opportunity to serve the Texas judiciary this year. I know that meeting the type of expectations set out above is possible, but I hope that the Judicial Section of the State Bar and the wonderful programs through the Texas Center for the Judiciary, Inc. can help Texas judges be the best we can be. If you have any suggestions for improving our educational programs, conferences, or long range planning, please do not hesitate to contact me.

Your friend in the judiciary,



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

Judge-Mentality

How to Develop Consensus Among Judges

by Judge Jay Patterson, 101st District Court Dallas



One year, as we approached the deadline for making budget requests to the County Commissioners, I had a brilliant idea! We judges have a huge volume of paper we have to contend with for about 1,000 pending cases each. We have no secretaries or law clerks, and no way to type orders, opinions or letters without doing them ourselves (the administrators already have enough to do). Why not organize and make a joint budget request that we 13 civil district judges share two secretaries? I quickly e-mailed my great idea (how could the commissioners refuse such a reasonable and restrained request?) to the other 12 judges. Not one judge supported my idea. Three judges said they didn't want to do it. My great idea died for lack of a second.

At that point I realized that arriving at consensus among judges was tougher than with any other group I had ever been involved with. Why was it so difficult for a group of professionals with such a high sense of humor, so driven by the desire to correctly follow the law, so full of selfless spirit, so generous with their time, and with such a sincere commitment to the welfare of their fellow citizens, to arrive at agreement on issues they have in common? It was counterintuitive but consensus escaped them.

When I was elected president of the Association of Attorney-Mediators, not for my leadership ability but to mediate between the members of the board of directors, (even though we were strewn out all over Texas) we were able, time after time, to achieve consensus on questions that were important to us. The other 12 judges I worked with and I had trouble doing this.

After taking the bench, I soon learned that the judiciary is the least powerful, least cohesive, least unified, least communicative,

and most vulnerable branch of government. As I watched the judiciary pummeled repeatedly by the legislative and executive branches of government, I realized as a self-described patriot, that our democracy was seriously threatened by the inability of the judges to speak with one voice, to be unified, to gain consensus. I also learned that the judiciary is the most poorly equipped branch of government and suffers with 19th century organization and resources. I didn't realize that most judges in Texas had no secretaries, law clerks, or computers.

I had been a successful attorney-mediator and had trained attorneys and judges in mediation skills. Unfortunately, those same skills didn't prove to be as successful once I took the bench and attempted to achieve a consensus among the judges. There simply was no course on "How to Obtain a Consensus Among Judges Without Really Trying." So I embarked on a study of my own by listening and taking notes as I observed what worked and didn't work to achieve agreement between judges.

As an observer of the process of judge-to-judge communications and negotiations, I was reminded of captains I knew during my U.S. Navy service. Judges are like captains of small ships. Considering the atmosphere they work in, the courtroom, their ships must be mine sweepers.

The independent, self-reliant nature of good judges and their need to make timely decisions, usually without discussing them with their peers or anyone else beforehand, contributed to the difficulty in building consensus among judges. Weighty decisions such as where to have lunch, the best time to have a social gathering, or who would bring the potato salad, required more discussion than in other groups. We couldn't even agree on a good time to pray together.

In my frustration, I had to admit to my-

self I had been spoiled by quick successes in political and civic groups where consensus required no more than a few well chosen moving remarks by one speaker. Rallying the troops to consensus in those groups seemed effortless compared to achieving consensus among judges. My study was going to take longer and require more patience than I originally realized. What follows are my observations.

Public Servants

The most effective mediators are those whose hearts are in the right place and who wade into the middle of a difficult dispute, not to seek their own advantage, but to serve the people involved in the dispute by helping them resolve the dispute. Experienced judges at a faculty meeting to critique the last College for New Judges reminded me that the best judges maintain their focus on their primary role as public servants, with emphasis on the word "servant". Their hearts are in the right place. They are people of good will. By spiritual faith or whatever commitment they have, they are dedicated to service, to thinking of the other person first, and to leaving the judicial campground better than they found it. They make a practice of helping the other person look good and of striving to help bring out the best in others. They treat others the way they want to be treated.

Burning Bridges

The first time I heard, "Be sure to burn your bridges," I did a double take. In retrospect, I agree we should burn the bridges that lead us to think of ourselves first, that tempt us to gain one-upmanship, or cause us to close our ears to others' views. After sharing what I thought was a great idea with my fellow judges, instead of being carried out of the room on their shoulders, my idea was received with a response that was a non sequitur or someone else's idea. I noticed at another meeting with Bar Association members, a judge who had heard my idea but not acknowledged it to my face, was standing up espousing the idea himself. Building consensus is a process of

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 Angela Outlaw, 800-252-9232, if you would like to submit a column or a letter in response to a column.

planting seeds, standing back and giving them a chance to germinate in the minds of other judges and then watching them grow. I have to use patience, good listening skills, be sensitive to the thoughts and feelings of others, go slowly and not rush it, and every now and then, keep my big mouth shut. Those lessons did not come easily for me. In fact, it reminded me of how I successfully courted my wife and persuaded her to say "yes" to marrying me.

The Danger of Good Listening

I realized the one danger of being a truly good listener, is that the others' ideas might make sense to me and might change my opinions-how radical! I needed to be ready to adopt other judges' ideas. I needed to be aware of the short and long term interests of others. More importantly, I needed to be sure not to let my ego get in the way or use position-based or one-upmanship negotiating to try to get my way. I recognized that other judges are a lot like me. While I was sharing my great original idea, the other judges were partly listening to me but mostly thinking about what they were going to say next. How could I seriously resent that when I was doing the same thing. For me, I needed to learn to genuinely care in my heart about what the other person had to say, to respect the desire of others to choose not to be part of a consensus, and to identify and try to understand the basis for their choices.

The Power of Good Listening

Good mediators know that truly listening to others with empathy is tremendously empowering. A simple neutral response such as, "I understand," can acknowledge to the other person that you are actively listening and you care about what they say.

Selecting Leaders

I learned it is important to select judges who are respected, trusted, and have good skills to lead discussions and decision making among judges. My model for this is our own Judge David Godbey in Dallas.

Choosing Words Carefully

In a meeting of judges one judge exited with the parting comment, "You all are transferring all your 'dog' cases to me!", referring to "paybacks" of cases transferred because of recusal or other similar cases. The statement was incorrect and put our integrity into ques-

tion. Most of us try scrupulously to transfer back comparable cases. The statement hung in the air after the judge was gone and colored the impression the other judges had of the speaker. The speaker did not mean to attack the other judges but was simply letting off steam. I need to include in my repertoire of good listening skills listening to myself before I speak to ensure the words I choose really convey the message I intend and won't be misunderstood.

Bishop on Bishop, Pawn on Pawn

This chess game expression applies to chess games, but also applies to interpersonal relationships. Certain judges are listened to more by certain other judges and can be more effective in persuading them or getting them to understand why consensus on a particular issue is of mutual benefit. The opposite is true where the two people have bad chemistry or a history of misunderstandings.

People Are Watching

People notice more about us than we may realize. A friend came up to me some time ago and told me, "I wish my faith was as strong as yours. Your faith is so unquestioning." Where did that come from? I had never discussed my faith with him. I can sure tell when others are not really listening to me and I'm confident they can tell when I'm not really listening to them. These lessons also apply between judges.

The Art of Living in the Question

One of our most effective attorney-mediators trains new mediators to "live in the question." You will rarely hear him state what he thinks in a mediation. He asks questions instead. His "living in the question" leads to successful resolution of disputes and consensus time after time. It avoids cumbersome emotional responses that often come from statements made while discussing differences of opinion. This technique can also work for judges.

Our Homework

There is homework we can do to improve our ability to achieve consensus among judges. Here are some resources that I have found helpful:

- *Getting to Yes* by Roger Fisher and William Ury
This book can teach us how to nego-

ciate more effectively with others by using interest-based negotiations rather than position-based negotiations. We will get farther building consensus with other judges if we first determine the interest of the other parties on the issue and then work from there.

- *Getting Past No, Negotiating Your Way From Confrontation to Cooperation* by William Ury
This book details a "Breakthrough Strategy" that can help us dramatically improve our chances of reaching agreements with difficult people.
- *7 Habits of Highly Effective People* by Stephen R. Covey
- *The St. Francis Prayer*
- *The Bible*
This classic is a storehouse of wisdom. I find the book of Proverbs to be especially insightful and useful. I collect verses from Proverbs that I believe are pearls of wisdom for judges.

In Conclusion

I plan to continue observing and learning ways to achieve consensus among judges for my benefit and for the benefit of the judiciary. I encourage all judges to do the same. Many areas of our branch of government will not be preserved or improved as needed unless we do this. I volunteer to serve as scrivener and recorder of ways to better achieve consensus among judges. Please share any thoughts, observations, lessons, experiences and successes you have with me. You can contact me at (214) 653-6937, 101st District Court, 600 Commerce St., Dallas, TX 75202, jpatterson@dcdc.legist.net.

Innovative Court Tackles Substance Abuse Problems

by Judge John Cruzot
Criminal District Court #4
Dallas

Dallas County initiated a new game plan and a new court and staff to tackle the persistent problem of drug addicted Texans on January 6, 1998. The Dallas Initiative for Expedited Rehabilitation and Treatment (DIVERT) Court is an effort to make direct and immediate judicially supervised intervention in the lives of drug addicted felons.

Ordinarily people who are arrested for drug possession post a bond and wait as much as a month for their cases to be heard by a Grand Jury. If indicted, the case will be set for a court appearance for two to three weeks later. The defendant is required to appear with an attorney. He may not have hired an attorney and will be allowed time to do so. The case may be passed several times for investigation, pre-trial motions or trial. This process may take several months to culminate in actually being heard by a court. All this time a chemically dependent defendant's drug or alcohol problems have not been addressed. The defendant will continue to use drugs and very likely commit additional crimes.

DIVERT Court screens all person arrested for possession of less than 1 gram of a controlled substance at the time they are arrested and jailed. If the defendant has no prior felony convictions or probations and no history of violent offenses and asserts to be chemically dependent, he or she is given a drug chemical abuse evaluation and ordered to attend the next DIVERT Court session, which can be a week or less after arrest.

Once in court, the defendant is re-

quired to observe proceedings and become acquainted with the program requirements. All observers are encouraged to attend Narcotics Anonymous (NA) or Alcoholic Anonymous (AA) meetings before their next court appearance one week later.

In the interim week all evaluations and assessments are collected and files are created for each observer. Prior to court the chemical dependence evaluator, case managers, prosecutor, defense attorney, program coordinator and the judge meet to staff all cases to draft a plan of action for each defendant. Once court begins, all new intakes are advised of their rights and responsibilities prior to being accepted in the program.

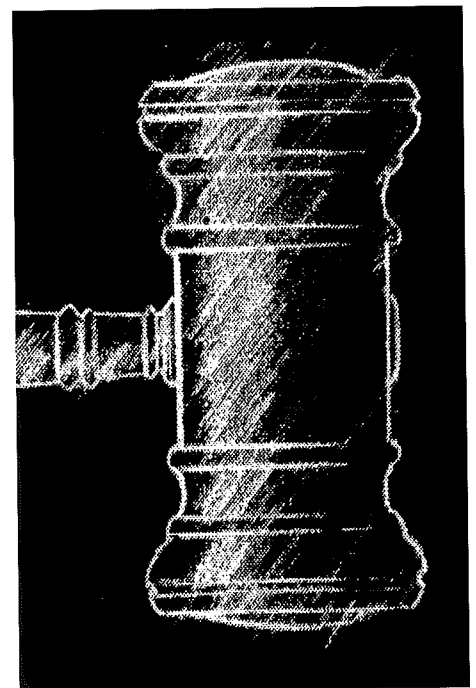
All admitted into the program are immediately ordered to attend group therapy sessions, attend NA or AA meetings. Some may be required to attend life skills or G.E.D. classes, parenting classes or anger control classes. Participants who are dual diagnoses, that is, suffer chemical dependency and mental illness, will be required to submit to a psychological evaluations to determine a course of action for them.

Obviously, DIVERT Court is radically different from business as usual in reference to chemically dependent persons in the criminal justice system. All participants must report to their case manager two times a week or more to give urine samples and verify attendance to group therapy sessions and NA or AA

meetings. Sanctions for noncompliance range from paying eight dollars for urine tests that show positive for drugs to increased therapy sessions or weekend in jail to expulsion from the program.

A participant who achieves a drug free lifestyle can complete the program within eighteen months. Upon successful completion of the program, the original criminal case is not prosecuted.

Currently, DIVERT Court is serving approximately 100 participants. Some are living drug free lives for the first time in many years. Others are struggling but making progress. Some are still chemically dependent and may require inpatient commitment. Whatever an individual's level of need, we will work hard to devise a plan for their recovery.



Ethics Opinions Q&A

No. 240, Issued March 15, 1999
Judge on the Board of a
Non-Profit Corporation Which
Trains Volunteers and Paid Staff to
Be Appointed by the Judge to
Serve as Guardians of
Incapacitated Persons

Question: May a judge serve as a member of a board of directors of a non-profit corporation which trains volunteers and employs professional staff to be appointed by the judge to serve as guardians of incapacitated or minor persons?

Answer: No. Canon 4 states that a judge "...shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge or interferes with the proper performance of judicial duties." The difficulty with the scenario presented is that the qualifications and competence of a guardian must be determined and approved by the judge. A judge cannot pass on the qualifications and competence of an individual trained by a corporation if the judge is a member of the board of that corporation without creating an appearance of impropriety regarding the judge's capacity to act impartially. A casual observer could well con-

clude that the judge would consider anyone trained by "his/her" corporation to be qualified and competent regardless of evidence to the contrary. It is the appearance of impropriety that must be avoided. It would make no difference if the judge were a voting or non-voting member of the board.

No. 241, Issued March 15, 1999
May a Judge Require Donations to
a Specific Charity?

Facts: A trial judge requires defendants in certain cases to donate items (such as toys, clothing, diapers, and food) to specific charities or crime victim groups as a condition of community supervision. She also orders such charitable donations pursuant to plea bargains in which the defendant has agreed to make such donations, and grants dismissals when she knows the state has required the defendant to make donations as a condition of the dismissal. The charities vary each month.

Question: Does the Code of Judicial Conduct permit a judge to order such charitable donations, on her own volition or as part of a plea bargain, or to grant a motion to dismiss knowing that the state

has required the defendant to make a charitable donation?

Answer: The Code of Criminal Procedure and the case law govern the trial court's discretion to impose conditions of community supervision. See e.g., Article 42.12, §§ 11(a) & (b), and annotations. These statutes are interpreted by the courts and not by the ethics committee. The committee answers questions of ethics and not questions of law. See Opinions 79 & 175.

The judge must not only act within the legal limits set by statutes and case law, but also within the ethical standards set by the Code of Judicial Conduct, which restrict a judge's freedom to single out certain charities and private organizations for court-ordered benefits. Canon 2B forbids judges to lend the prestige of their judicial office to advance the private interests of others. In an analogous situation, the committee has ruled in Opinion 118 that under Canon 2B when a defendant has elected to take a driver safety course in lieu of other penalty, the trial judge may not designate a specific agency if there is more than one qualified agency to choose from. Judicial power should not be used to force litigants to provide gifts or services to specified charities, or other or-

ganizations; judges should not be choosing among competing charities.

No. 243, Issued March 15, 1999
Justice of the Peace as Sales Tax
Coordinator

Question: May a Justice of the Peace act as a Sales Tax Coordinator? The duties would include: 1) developing, coordinating and preparing sales tax forms; 2) assisting the city in meeting with any business to evaluate sales tax issues and negotiate with the local businesses the terms and conditions of sales tax sourcing; 3) issue sales tax reports on a monthly basis; 4) coordinate with businesses the filing of necessary documents with the State; and 5) make recommendations to the city council about sales tax collection matters. The Justice of the Peace would not be acting in any capacity as a tax collector.

Answer: No. Such activity would violate Canon 3B which provides that, "A judge should not lend the prestige of judicial office to advance the private interest of the judge or others." Meeting with business people as Sales Tax Coordinator would inevitably cause some business people, who are also litigants in the judge's court, to question the impartiality of the

judge in cases involving that business person or to perceive that the judge is lending the prestige of the judge's office to the private interest of the city.

Further, Canon 4D(1) says that, "A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality...or involve the judge in frequent transaction with lawyers or persons likely to come before the court on which the judge serves." Since both the city and the business taxpayers are persons likely to come before the court on which the judge serves, it is best that the Justice of the Peace not also serve as the city's Sales Tax Coordinator.

No. 244, Issued March 15, 1999
Judges to Give Award to
Practicing Lawyer

Question: May a group of judges give an award to honor a deceased member of the Judiciary? The recipient would be an outstanding lawyer that practices before them and would be named on a plaque on permanent display.

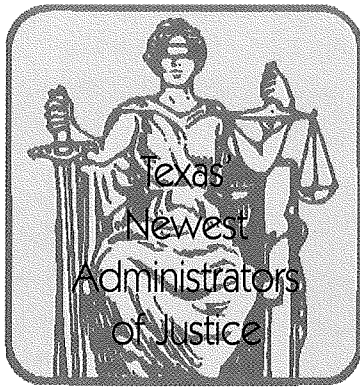
Answer: No. This would indicate that this lawyer held some

special position with the local judiciary. Canon 2 requires that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary.

No. 245, Issued March 15, 1999
Judge on the Board of a
Non-Profit Corporation

Question: May a judge serve as a director of a private, non-profit corporation supported by public and private funds? The purpose of the corporation is to provide necessities for CPS children. The judge would do no fundraising. The judge's name would appear on the letterhead as a director on a fundraising letter. Some of the children benefitting from the program could appear in the judge's court.

Answer: Yes. Canon 4C(2) specifically allows the judge's name to appear on the letterhead of the organization's fundraising letter. The committee sees no conflict with children who benefit from the organization appearing in the judge's court.



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215th District Court, Houston
 Succeeding Hon. Dwight Jefferson

Hon. John A. Coselli
125th District Court, Houston
 Succeeding Hon. Don Wittig

Hon. Kem Thompson Frost
14th Court of Appeals, Houston
 Succeeding Hon. Harriet O'Neill

Hon. Eva Guzman
309th District Court, Houston
 Succeeding Hon. John Montgomery

Hon. Ralph T. Strother
19th District Court, Waco
 Succeeding Hon. Bill Logue

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LOOKING AHEAD: JUDICIAL CONFERENCE CALENDAR

1999

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
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SOUTHEAST TEXAS REGIONAL CONFERENCE
TBD
February 7-9, 2000 or February 9-11, 2000

WEST TEXAS REGIONAL CONFERENCE
April 17-19, 2000
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SOUTH TEXAS REGIONAL CONFERENCE
March 1-3, 2000
New Braunfels

PROFESSIONAL DEVELOPMENT PROGRAM
June 12-16, 2000
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CENTRAL TEXAS REGIONAL CONFERENCE
March 15-17, 2000
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JUDICIAL SECTION ANNUAL CONFERENCE
September 24-27, 2000
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NORTHEAST TEXAS REGIONAL CONFERENCE
April 3-5, 2000
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December 3-8, 2000
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