

IN

CHAMBERS

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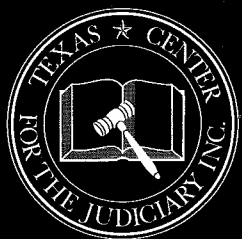
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**Judicial Excellence
Through Education**

Judicial Section Annual Conference to offer a variety of educational opportunities

The 1998 Judicial Section Annual Conference will offer an abundance of educational opportunities as well as general sessions with U.S. Circuit Judge Thomas Reavley and Harvard University Law School Professor Arthur Miller. The conference will convene at the Adam's Mark Hotel in Houston Tuesday through Friday, September 15-18 with registration beginning at 3:30 p.m. on Tuesday.

"The goal of the curriculum committee was to offer a variety of topics and give judges an opportunity to choose an educational track which best meets their needs," said Mari Kay Bickett, Executive Director of the Texas Center.

The Wednesday morning session features Judge Reavley in the opening session and Pro-

fessor Miller in a panel discussion. The afternoon schedule consists of meetings including the Annual Business Meeting, Appellate Justices, District Judges, County Court at Law Judges and Senior & Retired Judges Business meetings as well as Judicial Administrative Region meetings.

The new on-line Benchbook for the Texas Judiciary will be debuted at the Annual Conference.

The Thursday morning schedule will allow participants to choose from either a computer basics course or a jury management session or an appellate track. Thursday's afternoon session features a variety of specialty tracks. Topics from which to choose are: *CPS Cases; Family Violence; Working with Difficult People;*

Crime Victims Rights & Compensation; Journey: The Pathway of the Law; When Judges Speak Up; County Auditors; and Judicial Campaign Finance.

Friday's session will focus on new procedures and rule changes as well as significant decisions in family, civil, criminal and juvenile law.

The conference will also provide opportunities for networking and socializing including a pre-conference golf tournament at Greatwood golf course, afternoon bridge, an opening reception, and Sounds of the Big Band Era Celebration. The Texas Court Reporters Association will also sponsor a silent auction at the Big Band Celebration.

All Texas judges should have received registration brochures in the mail.

1998 PDP Conference

Over 125 court coordinators, managers and administrators attended the 1998 Professional Development Program which included classes in caseload management, court structure and court technology. Participants rated the program 4.36 on a scale of 1 to 5. Comments included:

"The whole week was positive and helpful. The staff was knowledgeable and willing to share their experiences."

"Good, excellent conference."

"Staff was wonderful & well prepared. I enjoyed all speakers."

"The conference was run well. Everyone was positive and the instructors used innovative methods of teaching which were effective."

"This week was so informative, and it has given me a good foundation on which to build."



Participants listen to a presentation about "Change in the Trial Court Environment" lead by Bob Wessels, Court Manager for Harris County Criminal Courts at Law, at the 1998 Professional Development Program. The annual program was hosted at the Criminal Justice Center on the Sam Houston State University campus in Huntsville, June 15-19.

Judicial Section Fees Due

Judicial Section membership dues notices were mailed in May, 1998. Dues are for the period June 1, 1998 through May 31, 1999, and the fee is \$30 for all active, retired and former judges.

Judicial Section members who are not current with their dues will be required to pay dues when registering for the annual conference.

If you have not sent in your dues for this year, please do so now. Checks should be made payable to "Judicial Section, State Bar of Texas" and remitted to:

Hon. Thomas Bacus
Secretary-Treasurer
Judicial Section
County Court at Law #2
900 7th Street, Room 353
Wichita Falls, TX 76301.

CJE Reports Mailed

Continuing judicial education (CJE) credit transcripts were mailed in June 1998. If you did not receive a transcript or have a question concerning the transcript, contact Lacy Finley, registrar at 800-252-9232.

CJE transcripts are mailed three times a year: March, June and December.

The Texas Center is continually updating its records. Please contact Lacy Finley about any recent jurisdiction status and address changes to ensure mail gets to you in a timely fashion.

Annual Conference Airline Reservations

Southwest Airlines is the official airline of the Judicial Section Annual Conference! Southwest airlines is offering a 10% discount on most of its already low fares, for travel to and from the Judicial Section Annual Conference. Call (or have

your professional travel agent call) the Southwest Airlines Groups and Meeting desk at 1-800-433-5368, Monday - Friday, 8 a.m. to 5 p.m. and Saturday, 8:30 a.m. to 5:30 p.m. and refer to I.D. Code T0708. Call by September 7, 1998 to take advantage of this offer. Call right away as fares are subject to terms and availability.



Resolutions

Proposed resolutions for the Annual Conference in Houston in September should be submitted in writing no later than August 27, 1998. Please submit resolutions to Judge Fred Davis, 17th District Court, 401 W. Belknap, Fort Worth, TX 76196.

Bylaws Amendments

Proposed Bylaws amendments for the Annual Conference should be submitted in writing by August 27, 1998, to Judge David Hodges, Judicial Section Chair, County Court at Law #1, 501 Washington, Waco, Texas 76701.

DATE CORRECTION

The dates for the year 2000 Professional Development Program and the year 2000 Judicial Section Annual Conference were incorrect in the Spring 1998 *In Chambers*. The correct dates follow:

PROFESSIONAL DEVELOPMENT PROGRAM
Criminal Justice Center, Huntsville
June 12-16, 2000

JUDICIAL SECTION ANNUAL CONFERENCE
Hyatt at Reunion, Dallas
September 24-27, 2000

The complete conference schedule is on page 12.

Bar Foundation Fellow

J.W. "James" Summers was inadvertently omitted from the list of Texas Bar Foundation Fellows in the Spring 1998 *In Chambers*. Judge Summers is a sustaining member of the Bar Foundation.

STAFF OF THE TEXAS CENTER FOR THE JUDICIARY, INC.

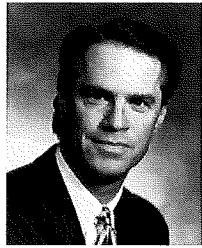
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Judge David Hodges

From the Chair

Just a note to publicly thank those judges on the Texas Center Board, the Judicial Section Executive Committee and the chairs of legislative committees who have worked countless hours on our behalf during the past few months preparing for the upcoming legislative session. Last session, the Legislature recognized its obligation to more adequately fund the Judiciary. This session we will be asking the Legislature to continue with that momentum by:

1. funding technology for all courts;
2. significantly increasing funds for judicial training;
3. passing a pay bill for the statutory courts;
4. providing specific funding to increase appellate court legal staff salaries and for targeted case load assistance for the larger appellate courts.

In addition, there are many substantive issues that may be addressed during this legislative session. We have had committees working on jury reform, assigned judges legislation and the application of performance measures for both appellate and trial courts. It is our understanding that some or all of these matters may be addressed in the upcoming session and we have attempted to be proactive instead of reactive so that our Section can take some position on these matters.

Also, the Long Range Planning Committee has been working on a plan to develop our own private funding resources for judicial education in addition to that provided by the legislative grant. It is our hope that by expanding our funding base, we can provide courses for small groups of 30 to 50 judges which will allow more one-on-one interaction.

We have a great meeting planned for September in Houston. I hope you will make plans to attend and be active in your Section.

Sincerely,

Judge David Hodges
Judicial Section Chair/Conference Leader
County Court at Law #1, Waco, TX

Reavley, Miller to Discuss Judicial Leadership

U.S. Circuit Judge Thomas Reavley and Harvard University Law School Professor Arthur Miller will be the featured guests for the opening session of the 1998 Judicial Section Annual Conference which carries the theme "Judicial Leadership for Texas."

In an innovative session that includes a panel discussion, judges will discuss the rule of law combined with their ethical duty to provide leadership in the judiciary.

According to Judge Reavley, a judge requires a knowledge of the law and procedure as well as a highly developed perspective on human conduct in order to carry out his or her responsibility.

"All of us need to learn more about what goes into doing this job well, and we need to help each other in that mutual effort," Judge Reavley said.

Both Professor Miller and Judge Reavley bring a wealth of experience and knowledge to our Annual Conference.

Professor Miller holds the Bruce Bromley Chair at the Harvard University Law School. He has taught there since 1971. Prior to joining the Harvard faculty, he practiced law in New York and taught at the Universities of Minnesota and Michigan. Professor Miller has reported on the latest developments and interpretations in the field of law on ABC News "Good Morning America" since July, 1980, and he appears weekly on WCVB-TV's Midday News and also appears frequently on cable's Court TV. In addition, he has contributed law columns to the Boston Globe and USA Today. He also has been a moderator on the nationally acclaimed PBS series, "The Constitution: That Delicate Balance," "Managing Our Miracles: Health Care in America," "Terrorism," "The Presidency" and "Ethics in America." He won an Emmy Award for "The Sovereign Self." He continues to carry on an active legal practice, mostly in the federal appellate courts.

Judge Reavley served as a District Judge in Travis county from 1964 to 1968 and as a Texas Supreme Court Justice from 1968 to 1977. He was appointed to the U.S. Court of Appeals, 5th Circuit, in 1979 and has had senior status since 1990. Judge Reavley is a visiting professor of law at the University of Texas and Pepperdine University as well as a lecturer in law at Baylor Law School. He is a member of the Texas Judicial Council, the Federal-State Jurisdiction Committee and the Judicial Conference.

HELPING JURIES LEARN

by Merrill L. Hartman
District Judge
192nd District Court

When I try cases without a jury I always do four things: take notes, ask questions, seek summaries and discuss the testimony with my court reporter and bailiff. Why? Because if I am going to have to decide something important it is my duty to be sure I understand it before I decide. How can I give a good answer if I don't understand the question? By ironic contrast, in jury trials we ask juries to listen to testimony, look at exhibits, read documents and decide our most important question, questions our Constitution says are too important for judges to decide, but we deny them the right during the trial to take notes, ask questions, discuss the testimony or hear summaries. Juries are like judges. Before they can decide the case they too have to learn what happened. How would you feel if you had to sit for days to observe a serious controversy that you were going to have to decide

but were not allowed to use these basic learning tools? It could make you crazy.

So why don't we treat juries like we treat ourselves? If it's good enough for the judges why isn't it good enough for juries? Because we have a backward-looking, precedent-oriented profession not accustomed to questioning its assumptions very often. The time has come to question the assumptions we have been making about the way jurors learn and do something about the impediments to that process.

The Arizona Supreme Court Committee on More Effective Use of Juries has already addressed this problem and provided a summary of its recommendations in a November 1994 report, "Jurors: The Power of 12." I learned of this report recently at the U.S. 5th Circuit Judicial Conference where U.S. District Court Judge Richard M. Bilby recommended that all trial judges implement the recommendations contained in the report.

I have adopted several of these techniques to improve juror comprehension and

the jurors, the lawyers and I have been very pleased with the results. I let jurors take notes, ask questions, discuss the testimony with each other as the case proceeds, hear daily summaries and receive a copy of the court's charge at the time of final arguments.

The Wilmington Institute recently conducted post trial interviews in order to evaluate the effectiveness of my jury trial innovations. The jurors interviewed in all three civil cases overwhelmingly approved of the new procedures, stating that the initiatives helped them to feel more confident

about their verdict. The Wilmington Institute reported that the increased freedom of communication aided in the quality of the juror decisions and may also "constructively shape perceptions of the viability of the American jury process itself."

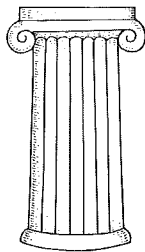
*The time has come
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Taking Notes

Jurors in my courtroom are allowed to take notes during trial. Jurors are instructed that these notes are not evidence, but simply memory joggers which should not be shared with other jurors.

Taking notes is a basic learning style that everyone uses. As children we were all taught at a very early age to take notes in school, and as adults we continue to use this skill. We don't attempt to memorize task lists or lists of phone numbers; we take notes. Realizing this, it makes sense that in order for a jury to learn about a case, they should be permitted to take notes. Taking notes enables jurors to learn better and remember better. If this happens, deliberations may be used solely for deliberating, instead of wasting time trying to recall what went on at the trial.

Some argue that jurors should not be permitted to take notes because the notes may be taken inaccurately or selectively, supporting the juror's particular views or biases. However the risk of writing something down inaccurately is no greater than the risk of hearing something incorrectly or



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.

JUDGE-MENTALITY

remembering it incorrectly. The Wilmington Institute study reported that most jurors found taking notes useful for referencing dates, places and times. One juror reported, "I took about eight pages or so [of notes]. . . . It is a part of my thought process and part of my listening process. Nothing gets done unless it is written down. That is how I operate. My dad said he was really having a hard time in a trial he served on as a juror because he could not take notes."

Asking Questions

Jurors are permitted to submit written question to the court at any time. I make copies of these questions and distribute them to the lawyers. If the lawyers wish, they may answer these questions for the jury, usually during their morning summaries. Sometimes, questions are deemed inappropriate or the answers inadmissible.

Although some argue that allowing questions from the jury adds twelve more lawyers to a courtroom proceeding, the overwhelming response I have gotten from lawyers is positive. In a long, complex case it is very easy for an attorney to leave out a key piece of information. When this happens juries may assume something that is completely incorrect, which can be dangerous. Thus, questions posed by jurors bring to light elements of the case which the attorneys may have overlooked and protect clients from inappropriate assumptions.

In the cases I presided over, jurors generally discussed questions as a group. Any questions left unresolved were then submitted as group inquiries. For the most part, jurors were satisfied with the responses given, voicing concern, however, over the time taken by the court to respond. One jury commented in an interview that not all questions submitted to the judge were answered, leaving the impression that some questions may not have been appropriate. This affected the jury's sense of confidence. In the future, the court will explain to the jury why it is not appropriate to answer particular questions.

Discussing the Testimony

Jurors are allowed to discuss the testimony amongst themselves during breaks when all are present; however, I caution them not to reach any conclusions or make any decisions until they deliberate at the end of the case.

While some argue that jurors may take a position or make up their mind before all the evidence is in, this argument is levied by people who do not understand how people think. As humans, we reassess and redecide issues constantly. I may have a particular opinion about a particular topic, then I read a newspaper article containing new information which makes me reassess the topic and alter my opinion. Then I discuss the issue with a friend and change my mind once more, based on new information. In this same fashion jurors constantly redecide the issues based upon the testimony presented each day.

Furthermore, there are two phases to a jury trial: the putting forth of the evidence and the jury deliberations. In the same way, there are two types of discussions that jurors may have: discussions about the testimony and discussions concerning the outcome of the trial (deliberations). These are two very different discussions. Jurors may freely discuss particular testimony and the events of the day without deliberating the final decision which they will eventually have to make.

Discussion is nothing more than a learning tool. To get clear, a lot of people need to think out loud. In fact, discussion may even make deliberations more efficient: when the time comes to reach a verdict, instead of spending time getting clear about what they heard, the jury can spend time deciding how to vote.

The jurors in my courtroom felt that discussing the testimony as the trial progressed was extremely helpful. Daily discussion provided them with the opportunity to ask and answer questions regarding the day's evidence in a casual atmosphere, which

some found to be less intimidating than formal deliberations. Some felt that the informal discussions even encouraged the "quiet" jurors to speak, resulting in a freer flow of communication.

"It helped to expedite the process. We had discussions usually at every break on things we had seen. Six or seven people were normally the key speakers. Our discussions revolved around the evidence and our questions about specifics. Our individual opinions were not really a part of the discussions until the deliberation," reflected one juror. Another stated, "[i]t helped to get a better feel for how I felt about the evidence. By hearing how someone else felt, I could draw better judgment on the evidence presented. I could be more objective instead of relying on personal feelings."

Daily Summaries

Each morning the lawyers for opposing sides take five to ten minutes a side to summarize what they think they have proven and what they think they will prove. This helps the lawyers get their thoughts together and provides the jurors with cohesion as the trial progresses.

Some lawyers argue that these summaries are inappropriate because they benefit the better advocate. However, one could make this argument for just about any phase of the trial because in reality, the entire trial is an advantage to the better litigator. People who aren't good at explaining their case well, at every opportunity, should not be making such representations and taking money from clients. Hopefully, the best lawyer doesn't win, justice wins.

Jurors who participated in the Wilmington Institute's study felt that the daily summaries aided their understanding of the case and helped them to focus their attention on what was important. "For an untrained person, to sit there in a courtroom in awe of the system, it gets quite confusing with all of the legal points. The summation refreshed our memories for both sides. It reemphasized the major points."

The jurors had only one complaint--"it did make the proceedings a little longer."

continued on page 6

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JUDGE-MENTALITY

Helping Jurors Learn cont.

Copies of the Court's Charge

Each juror is given a copy of the court's charge when it is read to the jury for their assistance in argument and deliberations. This is important because it prevents one person from becoming the owner of the information. Statistics show that in general, humans retain more by reading than by hearing. When I read the jury charge in the courtroom, the jurors' eyes start to glaze over and they stare into space. To have the charge read again in the jury room gets about the same response, I would imagine. With a copy of the charge in front of each juror, each is able to have a more active role in deliberations.

One juror stated in his Wilmington Institute interview, "It was tremendously helpful to have the charge in front of us." The jurors were better able to focus on the specific question at hand as a result of each having a copy of the charge.

The most difficult task for the juror is to learn the case. We intend for jurors to be guardians of the truth, yet we take away from their power to do so when we deny them the use of all tools they've been taught to use--tools which judges use daily when trying cases without a jury. Juror comprehension and satisfaction are improved by the removal of these disabilities. Notes, discussions, questions and summaries produce a cycle of interaction between the jury and the attorneys that allow jurors to act and feel more like informed judges of the facts than confused observers of the case.

For these initiatives to become accepted into the legal community, a positive reception by the bench, the bar and the public is key. Already, the public has embraced the initiatives; lawyers generally are in favor of such procedures and feel that they are party neutral. However, a lot will depend on the appellate bench and how many appellate experiences are successful.

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Impelling Course Offered at Annual Conference

Journey: The Pathway of the Law from Its Origins to the Third Millennium

by Judge Pat Lycos, Former District Judge

At the conclusion of the Constitutional Convention, Benjamin Franklin was asked,

“What have you wrought?”

He replied, “. . . a Republic, if you can keep it.”

A century ago Oliver Wendell Holmes remarked, “the rational study of law is . . . to a large extent the study of history.”

As the millennium approaches--we purists doggedly insist the 21st Century begins January 1, 2001--it compels thoughtful judges to contemplate the future of our Republic, the administration of justice, individual rights and the rule of law.

Science and technology are developing so rapidly that the future is now. Current innovations of the biosciences, such as cloning and gene splicing, are the primeval phase of the industrial creation of life forms. Pundits have said we are on the cusp of a second genesis. The development and production of new organisms will spawn a multitude of litigation. We are already witnessing the growth of intellectual property, transactional and employment law.

Mega corporations such as DuPont and Monsanto are shedding their chemical businesses and are aggressively pursuing bioscience commerce. Hypothesize, if you will, that such a company was developing a more productive honey bee and the unintended consequence was the africanized “Killer” bee. Imagine, the tort claims!

Factor in the technology of cyberspace, outer space exploration and robotics, just to name a few, into the

biosciences equation and it is obvious that Texas judges will be faced with new and novel litigation. These complex issues will be ruled upon in the absence of precedential case law and without parameters of statutory law.

Judges will be blazing new paths in the law. The thoughts and actions of judges today will guide our people a hundred years hence; and perhaps determine whether we can keep our Republic. The study of his-

tory and the classics proves the maxim that there is really “nothing new under the sun.” One can appreciate how the bases of Hammurabi’s Code is relevant to robotics. . . or, why it is useful to know that a wrongful taking, in common law, was considered a trespass.

To understand the role of the judge and to be a reasoned decision maker, one must know the origins of the law, the competing philosophies and the dynamics which shape(d) the pathway of the law.

Accordingly, a pupillage group from the Garland Walker Inn of the American Inns of Court has developed an exciting multimedia presentation entitled “Journey: The Pathway of the Law from its origins to the Third Millennium.” Among the luminaries making presentations are Frank Read, Dean of South Texas College of Law, affiliated with Texas A&M University, and the distinguished barrister Myron (Mickey) Sheinfeld.

Please join us at the Annual Conference, Thursday, September 17, 1998 at 1 p.m. and explore how the past governs the future.

Science and technology are developing so rapidly that the future is now. Current innovations of the biosciences, such as cloning and gene splicing, are the primeval phase of the industrial creation of life forms. Pundits have said we are on the cusp of a second genesis.

ETHICS OPINIONS

No. 218 ISSUED MAY 13, 1998

County Judge as Practicing Psychologist

FACTS

Prior to assuming the bench, a constitutional county court judge (who is also a licensed mental health professional) maintained a private clinical practice which included preparation of court-ordered social studies in adoption and child custody proceedings.

Q *May a constitutional county court judge who is also a licensed mental health professional provide clinical and technical (but not legal) consultation to other licensed mental health professionals who are involved in the preparation of court ordered social studies? The consultations would only be given under the following conditions:*

- 1. the judge is not involved in the interview process, investigation or other information gathering activity required in conducting the studies;*
- 2. the judge would only consult with other licensed mental health professionals, and he would not be involved in frequent transactions with lawyers or other persons likely to come before the court on which the Judge serves;*
- 3. the judge will not voluntarily testify as an expert witness while continuing to serve on the bench;*
- 4. the fact that the judge was consulted in preparation of a social study report may be noted in the report by listing his name and professional credentials (absent his judicial title); however, a disclaimer will be given and no representation will be made that the judge holds a particular opinion or makes a specific recommendation regarding disposition of the case under study; and*
- 5. the judge would be compensated on a fee basis by the mental health professional who employs him.*

A No. The purpose of a court-ordered social study is to provide evidentiary support for a determination of the best interests of a child in a custody or adoption proceeding, and it is ordered spe-

ETHICS Q & A OPINIONS

cifically prepared for use of a court in making that determination. Recognition of the contribution of the county judge in preparation of a social study would tend to lend the prestige of his judicial office to advance the private interests of others in violation of Canon 2(B).

This activity could also exploit the judge's judicial position, and by making him a potential witness in all cases in which he serves as a recognized consultant in preparation of a social study, it could involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves, in violation of Canon 4(D)(1).

Canon 2(A) requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and the judge should restrict his private clinical practice to non-court related activities while serving as a county judge.

No. 221 ISSUED JUNE 4, 1998

Constitutional County Judge as Sales Agent

Q *May a Constitutional County Judge become an independent agent in order to sell products and/or services for a communications company and receive commission?*

A No. Even though a judge may attempt to separate two careers, when a judge is an independent agent selling products or services for a communications company he may lend the prestige of his office to that position and thereby advance the private interest of himself or his company in violation of Canons 2B and 4D(1).

Furthermore, these activities could interfere with the judge's proper performance of judicial duties in violation of Canons 2A, 3A and 4A(2) in that his acts may not promote public confidence in the judiciary and his selling duties may take precedence over judicial duties or interfere with the proper performance of judicial duties.

No. 222 ISSUED MAY 13, 1998

Letters of Recommendation

Q *May a judge write a letter of recommendation for (1) a secretary in the office; (2) a prosecutor who is applying for a position with a law firm; (3) a fellow judge, who has made application for another judicial position?*

A Yes. Such letters may be written. The applicable section of the Code of Judicial Conduct is 2B which states that a judge should not lend the prestige of judicial office to advance the private interests of the judge or others. The commentary to Canon 2B of the ABA 1990 Model Code provides:

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may provide a letter of recommendation based on the judge's personal knowledge. A judge also may permit the use of the judge's name as solicited by a selection authority such as a prospective employer, judicial selection committee or law school admissions office. A judge may also provide information in response to a request from a sentencing judge or probation or corrections officer.

The Committee is of the opinion that so long as letters are based on the judge's own personal knowledge and are written to a specific person the letters may be written. It is not appropriate for a judge to write a "to whom it may concern letter" because of the lack of knowledge by the judge as to its specific use.

No. 224 ISSUED MAY 13, 1998

J.P. and Constables Association Endorsing Political Candidate

Q *May a Justice of the Peace and Constables Association endorse candidates for political office?*

A No. Canon 5 states, in part, that a judge shall not authorize the public use of his or her name endorsing another candidate for any public office. Judges as a group cannot do what judges individually cannot do even if the group consists of some non-judicial members.

ETHICS OPINIONS

No. 225 ISSUED JUNE 4, 1998

Judicial Neutrality Prohibits J.P. "War on Hot Checks"

Q1 *May a county-wide decal issued as a part of a "declared war on hot checks" that includes the names of the district attorney, sheriff and constable and contains a generic warning against passing hot checks also include the justice of the peace's name?*

A No. Canon 3A provides that a judge must act at all times in a manner that promotes impartiality of the judiciary. If a justice of the peace allows his or her name to appear on a decal, along with the names of the prosecutor and law enforcement officials, the clear implication is that the judge is acting in conjunction with these entities to prevent and prosecute issuance of hot checks. This violates Canon 3A by implying that the judge is partial to law enforcement, the judge will assume the accused is guilty, and that the judge is indeed assisting law enforcement in hot check prosecution efforts. Thus, a judge should not permit use of his or her name in a general law enforcement program.

Q2 *Justices of the peace across Texas "in reality, . . . conduct an executive branch prosecutorial function in hot check cases." The victim files the complaint and all relevant evidence in the justice of the peace office, the J.P. office then investigates and prosecutes the case by interviewing potential witnesses and contacting the accused "to pay restitution . . ." Is this appropriate judicial conduct?*

A Canon 1 of the Code of Judicial Conduct states that a judge should observe standards to preserve the independence of the judiciary. When Canon 1 speaks of "independence," it refers to the judicial branch of government that must remain separate from the other two branches under Article II, Sec. 1, of the Texas Constitution. The executive branch includes prosecutors, sheriffs and constables; therefore, a judge cannot at any time act as a prosecutor in any capacity.

If the inquiring justice of the peace, or any judge, is prosecuting cases within its

jurisdiction, especially contacting the accused for guilty plea arrangements, then the judge is absolutely, unequivocally, and indefensibly violating both the Code of Judicial Conduct and the Texas Constitution. Further activity in this vein must immediately cease.

No. 226 ISSUED MAY 19, 1998

Judge as Attorney for Self, Spouse and/or Corporation

Q *A judge is sued individually, along with her spouse and a corporation that the judge and her spouse solely own. May the judge represent herself, her spouse and/or the corporation in the suit as attorney of record?*

A Yes and No. A judge may always represent herself in a legal action. Whether she is permitted to represent her spouse or the corporation depends on the type of judge being sued. Canon 4G and Canon 6 must be looked at together for the answer. Canon 4G provides that a judge may not practice law but may represent herself and, without compensation, give legal advice to and draft or review documents for a member of the judge's family. Judges required to comply with Canon 4G (appellate judges at all levels, district and county court at law judges) may not represent their spouse or the corporation.

With minor exceptions, Canon 4G does not apply to a County Judge, a J.P. or a municipal judge. The Code of Judicial Conduct does not prohibit these judges from representing their spouse, and the corporation and themselves.

No. 228 ISSUED MAY 13, 1998

Justice of the Peace as Board Member of Water Supply Corporation

Q *May a justice of the peace serve as a member of the board of directors of a water supply corporation if the customers are located in the justice's precinct?*

A No. For a justice of the peace to serve as a director under such circumstances would be a violation of Canon 4D(1). This provides that "a judge shall refrain from financial and business

dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves." A director of a corporation occupies a position of a fiduciary toward the corporation for its shareholders. A justice of the peace accepting such director's position could be involved in financial and business dealings which would tend to reflect adversely on his impartiality as a judge, and he could be involved in frequent transactions with persons that would likely be before him in court.

For a justice of the peace to so serve as director would also be violative of Canon 4A(1), which provides 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.

It should be noted that Canon 4D(2) does not apply here because the judge asking the question is a justice of the peace. See Canon 6C(1)(b).

No. 229 ISSUED JUNE 4, 1998

Judge May not Solicit Funds for Banquet

Q *May a municipal judge serve as the Director of the County Crime Commission? The position receives a \$500 per month salary if the Commission has the funds. In those months that there are no funds the Director is expected to donate his time. The major duty is to organize and collect funds for an annual banquet. The banquet is held to recognize area law enforcement personnel.*

A No. Canon 4C(2) states that, "A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization . . ." Although municipal court judges and justices of the peace are exempted from portions of Canon 4, they are not exempted from 4C(2).

Leadership Nominations

One June 22, the 1997-1998 Nominating committee, chaired by Judge Pat McDowell, slated the following judges for nomination for the 1998-1999 Judicial Section Executive Committee and the Texas Center for the Judiciary Board of Directors:

JUDICIAL SECTION EXECUTIVE COMMITTEE:

Chair: Hon. Cynthia Stevens Kent
Judge, 114th District Court, Tyler

Chair-Elect: Hon. Marilyn Aboussie
Justice, 3rd Court of Appeals

Place 6: Hon. Mary Ann Bramblett
Judge, 41st District Court

Place 7: Hon. John Hyde
Judge, 238th District Court

Place 9: Hon. Vincent Sprinkle
Judge, Tarrant County Court at Law #3

TEXAS CENTER FOR THE JUDICIARY, INC. BOARD OF DIRECTORS:

Chair: Hon. Cynthia Stevens Kent
Judge, 114th District Court, Tyler

Chair-Elect: Hon. Marilyn Aboussie
Justice, 3rd Court of Appeals

Secretary-Treasurer: Hon. Karl Prohl
Judge, 198th District Court

Place 2: Hon. Bonner Dorsey
Justice, 13th Court of Appeals

Place 6: Hon. Philip Martinez
Judge, 327th District Court

Place 9: Hon. Mark Atkinson
Judge, Harris County Criminal Court at Law #13

Other members of the nominating committee are Hon. Steve Smith, Hon. Paul Davis, Hon. Alma Lopez, Hon. Manuel Banales, Hon. Guadalupe Rivera, Hon. Billy John Edwards, Hon. Wallace Bowman and Hon. Carlton Dodson.

The Bylaws of the Judicial Section and the Texas Center for the Judiciary allow additional nominations to be made from the floor at the annual meeting.

Silent Auction Donations

The Texas Court Reporters Association is seeking donations for the Silent Auction conducted during the Big Band Era Evening Celebration, Thursday September 17 at the Judicial Section Annual Conference. The silent auction benefits the Texas Center for the Judiciary, Inc.

Some good ideas for donations are arts & crafts, electronics, antiques, gift certificates, unique items from your city or region, travel offers, etc.

Mail this by September 1, 1998 to: Texas Center for the Judiciary, Inc., 1414 Colorado, Suite 502, Austin, TX 78701-1627. Instructions on when and where to mail or deliver your donation will be provided to you after September 1, 1998.

Name: _____

Court: _____

Address: _____ Phone: _____

City/State/Zip: _____ Fax: _____

Auction item(s) to be donated: _____

Value: \$ _____

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THANK YOU FOR YOUR CONTRIBUTIONS TO THE TEXAS CENTER FOR THE JUDICIARY, INC.

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LOOKING AHEAD: JUDICIAL CONFERENCE CALENDAR 1998-2000

JUDICIAL SECTION ANNUAL CONFERENCE 1998
September 15-18, 1998 ♦ Adam's Mark Hotel, Houston

COLLEGE FOR NEW JUDGES 1998
December 6-11, 1998 ♦ Crowne Plaza Suites, Dallas

COLLEGE OF ADVANCED JUDICIAL STUDIES 1999
February 28-March 3, 1999 ♦ Marriott & Omni, Austin

CRIMINAL JUSTICE CONFERENCE 1999
May 5-7, 1999 ♦ Hyatt Hotel, Austin

PROFESSIONAL DEVELOPMENT PROGRAM 1999
June 14-18, 1999 ♦ Criminal Justice Center, Huntsville

JUDICIAL SECTION ANNUAL CONFERENCE 1999
September 26-29, 1999 ♦ Renaissance Hotel, Austin

COLLEGE FOR NEW JUDGES 1999
December 12-17, 1999 ♦ Crowne Plaza Suites, Dallas

PROFESSIONAL DEVELOPMENT PROGRAM 2000
June 12-16, 2000 ♦ Criminal Justice Center, Huntsville

JUDICIAL SECTION ANNUAL CONFERENCE 2000
September 24-27, 2000 ♦ Hyatt at Reunion, Dallas

COLLEGE FOR NEW JUDGES 2000
December 3-8, 2000 ♦ Crowne Plaza Suites, Dallas

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IN CHAMBERS

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