

CHAMBERS

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY, INC. VOLUME 22, No. 1 WINTER 1995

Texas Center hosts 114 new judges during college

More than 100 of the state's newest judges got a head start on their transition from advocate to judge during the Texas Center for the Judiciary, Inc.'s College for New Judges Dec. 4-9 in Dallas.

The 114-member class was the largest number of participants in the college's 20-year history.

The college, traditionally held the second week of December, attracted newly appointed judges and many of the new appellate, district and county court at law judges elected in November.

The week-long college consisted of an appellate and trial judge program. The appellate portion of College '94 focused on judicial opinion writing, decision making, ethics and fairness. Trial judges attended classes covering ethics, fairness, evidence, trial management and the judge's relationship with the community and the media.

M. Kent Sims, Dean of the College for New Judges and judge of the 31st District Court in Wheeler, was joined by 14 of the state's most experienced judges and other professionals to edu-

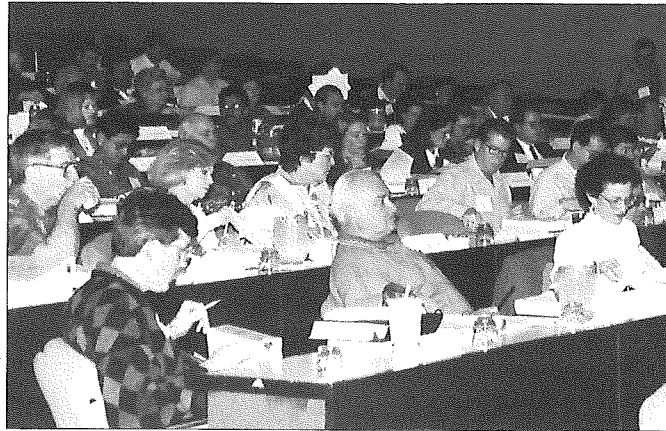


Photo taken by Matthew Reeves

College for New Judges attendees participate during class session in Dallas at the Doubletree Hotel at Park West.

cate the class members of the college.

Sims said the college was meaningful to each new judge because of the commitment of the faculty and staff of the Texas Center to meet the needs of the participants.

"My grin got bigger each day because the college was so successful," Sims said. "Several participants told me they had ten times more confidence to serve the bench at the conclusion of the college than they did beforehand, and that's really how we wanted them to feel."

The faculty's objective, Sims said,

was to help the new judges make a smooth transition to the impartial role they were elected or appointed to uphold and to help them develop sensitivity to the ethical issues that judges face both on and off the bench.

"The faculty worked so hard on communicating these goals to their individual subjects," Sims said.

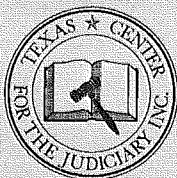
Terrie Livingston, who recently took office on the 2nd Court of Appeals in Fort Worth, said she noticed the faculty commitment and was grateful for the opportunity to

learn from such an outstanding and active group of judges.

"The faculty presence in the discussion groups was great," Livingston said. "That gave a lot of continuity to the course since the faculty was sitting in

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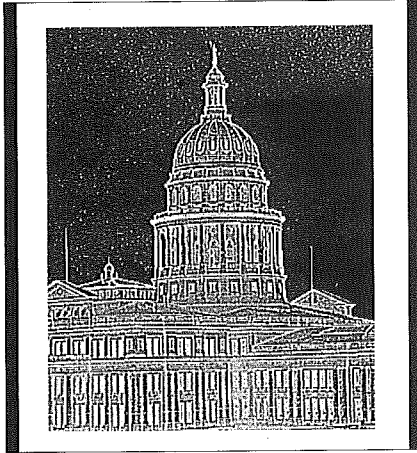
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State officials, leaders recommend changes in judicial selection

CAPITOL WATCH



Texas Legislature '95

State leaders are asking members of the 74th Texas Legislature, which convened Jan. 10, to foster changes in the state's judicial selection process.

A working group put together by Lt. Governor Bob Bullock last summer, outlined a plan to start a nonpartisan system for choosing Texas' district and appellate judges in a Nov. 29 press release.

Implementation of the new system would require state legislation and voter approval to amend the Texas Constitution.

Members of the judicial reform group include Supreme Court Chief Justice Tom Phillips; Supreme Court Justice Bob Gammage; Supreme Court Justice Jack Hightower; Court of Criminal Appeals

Presiding Judge Michael McCormick; Bill Whitehurst, an Austin attorney; George Christian, an Austin businessman; and Senators Ike Harris of Dallas, Chris Harris of Arlington, David Sibley of Waco, John Montford of Lubbock, Rodney Ellis of Houston and Greg Luna of San Antonio.

The working group's recommendations were attached to the Nov. 29 news release in a document entitled "Fact Sheet: Working Group Proposal Texas Judicial Selection Reform." The fact sheet proposals outlined below are divided into two categories: selecting appellate judges and selecting district judges. ■ (See Summary of Judicial Selection Proposals below)

Summary of Judicial Selection Proposals

SELECTING APPELLATE JUDGES

■ The governor would appoint all appellate judges for the Supreme Court, Court of Criminal Appeals and the 14 Courts of Appeals. These appointments would be subject to Senate confirmation.

■ Two years after Senate confirmation, judges would have to be approved by voters in an uncontested election.

■ If approved, the judge would serve six more years and face approval in uncontested elections every six years. If rejected, the governor would appoint a new judge for that seat, and the process would start again.

SELECTING STATE DISTRICT JUDGES

■ All district judges would be elected in nonpartisan, contested elections in odd-numbered years to keep selection of these judges separate from the political primaries held in even-numbered years. There would be no runoffs. Therefore, the judicial candidate with the

most votes would be elected.

■ After a district judge is elected in a contested race for the first four-year term, the judge would face the voters for approval in an uncontested election each subsequent four years.

■ The district judge would have to run in a contested election again after being approved in two uncontested elections. If the district judge is ever rejected by the voters, a new judge would be chosen in a contested, nonpartisan election.

■ Harris, Dallas, Bexar and Tarrant Counties' district judge candidates would run their first election in county commissioner precincts. After serving a first term, judges would face approval from all voters in the county in an uncontested election.

■ If a judge in one of these counties is rejected by the voters or does not seek approval in an uncontested election, a new judge would be chosen in a contested election held in the county commissioner's precinct in which the outgoing judge was first elected.

■ For all other counties, district judges would be selected district-wide.

Committee studies mentoring programs for Texas

A special committee appointed by the Board of Directors of the Texas Center for the Judiciary, Inc. is studying the possibility of implementing a mentoring program for new trial judges in Texas.

Committee members include Mari Kay Bickett, executive director of the Texas Center for the Judiciary, Inc.; Paul Davis, judge of the 200th District Court in Austin; M. Kent Sims, judge of the 31st District Court in Wheeler and Bea Ann Smith, justice on the 3rd Court of Appeals in Austin.

In late November, the committee met with Blan Teagle, a consultant from the Florida Supreme Court Judicial Education Office in Tallahassee who advises state organizations considering mentoring programs.

The committee discussed the characteristics of other state's mentoring programs, components of mentoring program selection criteria, different administrative structures and typical topics and roles incorporated into mentor relationships.

"We are trying to figure out what experienced judges needed to know (as new judges) and what are some of the needs of the current structure that aren't met," Davis said. "Then, we have to identify whether a mentoring program can fill that gap."

Sims said he suspects that a Texas mentoring program would serve our

state judges well. "I can see it (mentoring) filling a void especially for new judges sitting on the bench before the College for New Judges (in December each year)," Sims said.

Before any decisions are made about the design and implementation of a potential mentoring program for Texas, the committee will conduct needs assessment surveys to determine viability.

The first survey was distributed to the class of the College for New Judges in December. Participants of the college were elected to the bench for the first time in November or recently were appointed to a vacant bench.

"We wanted to know what new judges would expect if they had a mentor and if they thought it would be a

good idea," Sims said.

Currently, the committee is analyzing the surveys.

Another needs assessment survey will be distributed to judges during the Texas College of Advanced Judicial Studies, which will be held March 5-8 in Austin.

"We're hoping to get a comprehensive assessment of what they (participants of Advanced Judicial Studies College) needed to know as new judges and a reassessment of the current curriculum on how it can be complimented," Davis said.

Teagle said mentoring looks promising based on other states' programs. "The effort here is whether there's a need worth the time and money to implement a program," he said. ■

College

Continued from page 1

the audience most of the time. They were able to make comments based on what they had heard earlier."

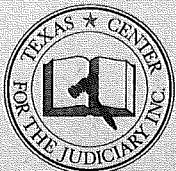
Mari Kay Bickett, executive director of the Texas Center for the Judiciary, Inc., pointed to another benefit of attending the college.

"I think the new judges learned they are not in this alone. There are

other judges feeling the same anxieties, asking the same questions and looking forward to the challenges of the bench," Bickett said. "They developed a network of colleagues."

Bickett added, "Now, they understand the wealth of experience and knowledge their peers can offer. The Texas Center's ongoing programs will help them in their pursuit of judicial excellence through education." ■

THANK YOU
for
YOUR
CONTRIBUTIONS



Judicial Excellence
Through Education

- Marilyn Aboussie
- W. M. Blanton
- Fred W. Davis
- Robert Garza
- Carol Haberman
- Dixon W. Holman
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- Albert H. White
- James E. Wright
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JUDGE WILLIAM H. EARNEY, JUDGE GUY HAZLETT & JUDGE ANDELL M. YOUNG MEMORIALS
Mrs. M.C. Ledbetter

JUDGE CLARENCE N. STEVENSON MEMORIAL
Robert J. Seerden

Advanced Studies conference scheduled

The Texas Center for the Judiciary, Inc.'s College of Advanced Judicial Studies will be held March 5-8 at the Omni and Marriott Hotels in downtown Austin.

Michael Keasler, judge of the 292nd District Course in Dallas, is Dean of the College for Advanced Judicial Studies.

The judicial education program will offer a combination of two-day and one-day seminars.

Judges will receive their invitations late this month and are encouraged to sign-up for their chosen course soon after receiving the conference information. The Advanced Studies courses have limited enrollment, and sign-up is first come, first serve.

Registration will be Sunday, March 5. Classes will run Monday and Tuesday. A general session will be held Wednesday for all judges who attend.

CJE transcripts

Anneya Duron, registrar for the Texas Center for the Judiciary, Inc., records all your CJE (continuing judicial education) hours. She will mail transcripts with the total number of hours recorded in the Texas Center database to each judge three times per year.

The CJE requirement for appellate, district, statutory county court, county court at law and statutory probate judges is 16 hours per year and 30 hours during the first year a judge takes the bench.

Duron mailed a CJE transcript to each judge as of Dec. 16. Questions concerning transcripts should be addressed to her at 800-252-9232 by Jan. 15.

After Feb. 1, the Education Committee will notify judges who have not accumulated the minimum hours of education for the previous reporting year. Upon receiving this notification, a judge has **30 days** to respond to the committee with a request for a waiver including a statement of the reason(s) that prevented compliance.



Checking-out videos

Stop by the Texas Center for the Judiciary, Inc. and browse through our judicial education video tapes.

Judges may check-out video tapes for 14-days. Video tapes may be renewed for one additional 14-day period.

Call Matthew Reeves at 800-252-9232 to check-out tapes via mail. The Texas Center charges \$7.50 per video to cover mailing and handling expenses.

New to the Texas Center Library is the *Advanced Judicial Learning Series: Administrative Competence Curriculum Guide*. The guide also is ready for check-out.

Outstanding Jurists



1994 Texas Bar Foundation Outstanding Jurists Weldon Kirk (on far left), Presiding Judge of the 7th Administrative Region and judge of the 32nd District Court in Sweetwater, and Austin McCloud (on far right), Chief Justice (Ret.), 11th Court of Appeals in Eastland, stand with Raymond Kerr, Esq., Bar Foundation Board of Trustees Chair, after receiving their awards during the Judicial Section Annual Conference in Dallas.

NJC scholarships

The National Judicial College is offering limited tuition scholarships for Texas judges for several judicial education courses in January, February, March and April. Call Anneya Duron at 800-252-9232 for more information.

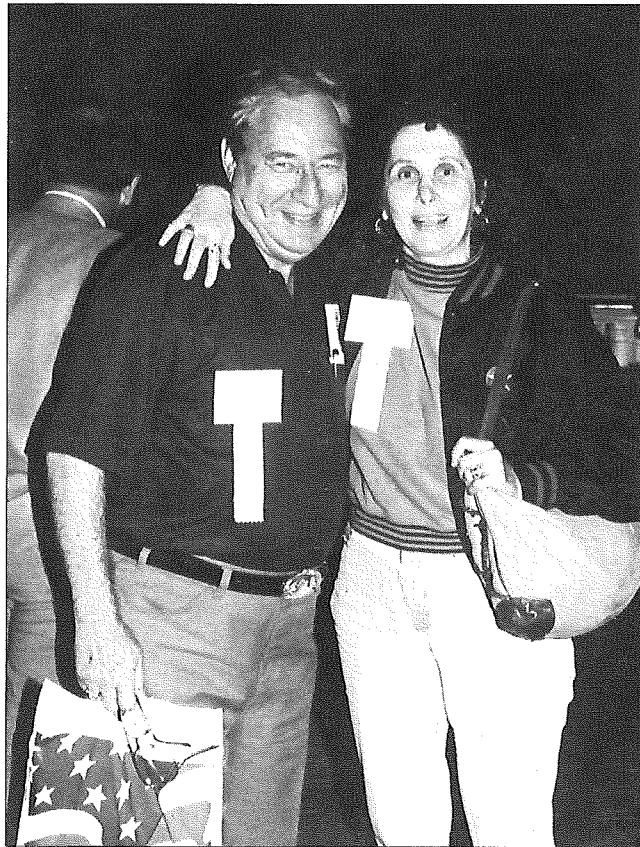
Outgoing board, committee members



Outgoing members of the Board of Directors of the Texas Center for the Judiciary, Inc. (from left to right) Manuel Banales, judge of the 105th District Court in Corpus Christi; Gus Strauss, Jr., judge of the 2nd 25th District Court in Hallettsville; Mickey Pennington, judge of the 38th District Court in Uvalde; and Immediate Past Chair Neel Richardson, judge of the County Criminal Court at Law #8 in Houston stand together after receiving recognition plaques during the Judicial Section Annual Conference in Dallas. The Texas Center staff is grateful for their service and support.

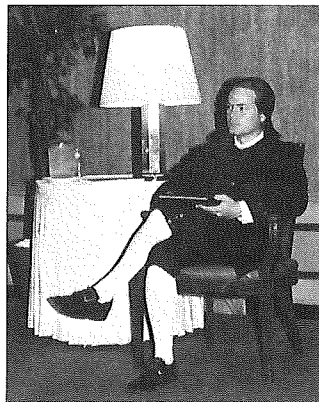


Outgoing members of the Executive Committee of the Judicial Section of the State Bar stand after receiving recognition plaques during the Judicial Section Annual Conference in Dallas. From left to right are Immediate Past Chair Neel Richardson, judge of the County Criminal Court at Law #8 in Houston; Dan Gibbs, a senior district judge in Dallas; Bill White, judge on the Court of Criminal Appeals in Austin and John Fashing, judge of the County Court at Law #2 in El Paso. The Texas Center staff is grateful for their service and support.



Above: Herman Gordon, a senior district judge in Houston, and his wife Phyllis Gordon await lunch.

Right: Clay Jenkinson of the University of Nevada Reno interprets the nation's third president, Thomas Jefferson.

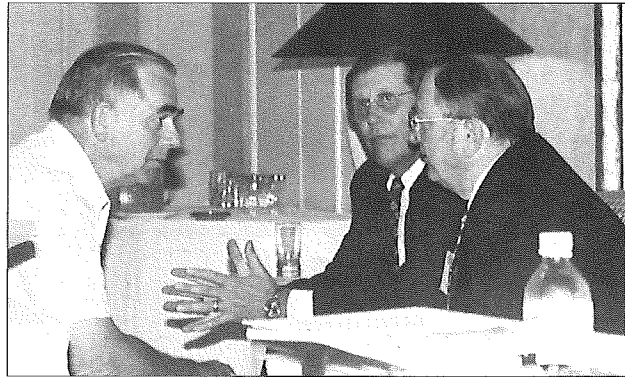


Below: Harold Crossley, D.D.S., Ph.D., of the University of Maryland speaks to trial and appellate judges about the complexities of substance abuse in our society.

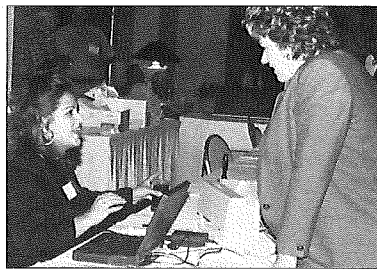


Judicial Section Annual Conference '94

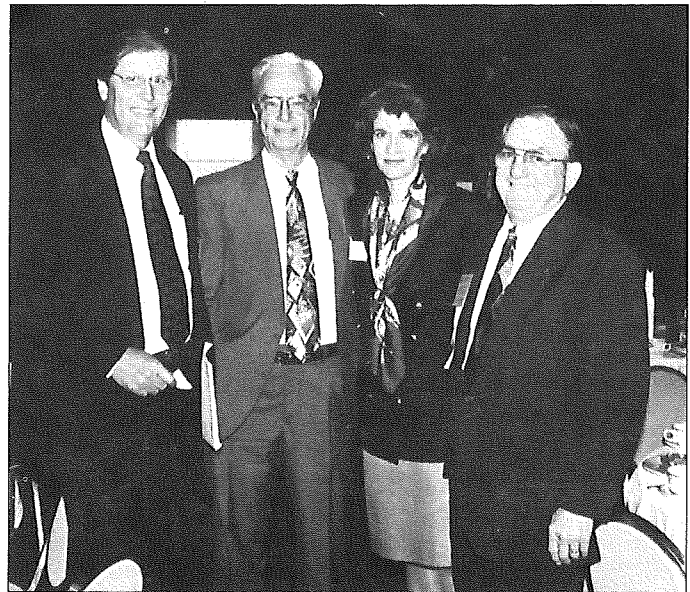
Judicial education, fellowship, fun



Above: Senior District Judge Oliver S. Kitzman; Judge Neel Richardson, immediate past chair of the Judicial Section Executive Committee; and Judge B.B. Schraub discuss conference activities.



Left: Anneya Duron of the Texas Center uses the center's new laptop computer to help participants.



Photos taken by Matthew Reeves

Above: Neel Richardson, immediate past chair of the Judicial Section Executive Committee and judge of the County Criminal Court at Law #8 in Houston; Weldon Kirk, Presiding Judge of the 7th Administrative Judicial Region and judge of the 32nd District Court in Sweetwater; Mari Kay Bickett, executive director of the Texas Center for the Judiciary, Inc.; and B.B. Schraub, Presiding Judge of the 3rd Administrative Judicial Region in Seguin, prepare for dinner.

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Ex parte communications with a municipal judge; Municipal judge acting as attorney for same city; Municipal judge acting as practicing attorney

Q1 What is a municipal court judge's ethical obligation upon receiving ex parte communication from a criminal defendant concerning a pending case?

A1 Judicial Ethics Opinion 154 (1993) discusses a judge's obligation when receiving ex parte communication in writing. The general considerations discussed there also apply here. It should be noted that Canon 3A(4) and (5) discussed in Opinion 154 have been amended by the new code effective March 1, 1994. Comparable provisions are now found in Canon 3B(8) of the present code; however, it should also be noted that Canon 3B(8) does not apply to justice and municipal court judges. See Canon 6C(1)(a). Instead, Canon 6C(2) of the present code applies to municipal and justice court judges receiving ex parte communications.

Canon 6C (2) provides that a justice or municipal court judge should not consider ex parte communications concerning the merits of a pending judicial proceeding, unless authorized by law or by one of the seven listed exceptions to that rule. Thus, justice and municipal court judges may comply with Canon 6C(2) by doing the following:

1. Upon receiving an ex parte phone call, the judge should inform the caller that ex parte communication is prohibited unless it falls within one of the exceptions of Canon 6C(2). The judge should then converse with the caller in order to determine if the call is a proper ex parte communication allowed by Canon 6C(2) or an improper ex parte communication. If improper, the judge should inform the caller that the communication is improper, that such com-

munication should cease, that the judge will take no action whatsoever in response to the call, and that no improper communication should take place in the future. The call should then be ended.

Q2 May a municipal court judge simultaneously serve as city attorney for the same city?

A2 Regarding question No. 2, a municipal court judge should not simultaneously serve as an attorney for the same city. Such action compromises the independence of the judiciary. It violates numerous code provisions including, at least, the following:

1) Canon 1, which requires a judge

ETHICS
Q & A
OPINIONS

to uphold the integrity and independence of the judiciary; 2) Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; 3) Canon 2B, which provides that a judge should not allow any relationship to influence judicial conduct or judgment nor shall a judge convey or permit others to convey the impression that they are a special position to influence the judge; 4) Canon 3A, which requires that a judge's judicial duties take precedence over all the judge's other activities; 5) Canon 3B(2), which provides that a judge shall not be swayed by partisan interest, public clamor or fear of criticism; 6) Canon 3B(5), which requires that a judge perform judicial duties without bias; 7) Canon 4D(1), which requires that a judge refrain from financial and business dealings that tend to reflect ad-

versely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transaction with persons likely to come before the court on which the judge serves; 8) Canon 4I, which provides that a judge may receive compensation if the source of such payments does not give the appearance of impropriety and 9) Canon 5(1), which provides that a judge shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which he holds.

Q3 May a municipal court judge who is a practicing attorney preside in a case when one of his clients is a party?

A3 Regarding question 3, a municipal court judge who is a practicing attorney should not preside in a case in which one of his clients is a party. Doing so would violate all of the Canons listed in the previous paragraph. In such a case, the judge should recuse himself. See Judicial Ethics Opinion 172 for further guidance.

Passing out criminal attorney business cards to unrepresented defendants

Q Does the Code allow a judge to give to unrepresented criminal defendants business cards of the Harris County Criminal Lawyers Association?

A The Harris County Criminal Lawyers Association is a private and voluntary organization of criminal defense attorneys. The organization has asked district and county court judges to provide unrepresented defendants with a business card urging the defendant to call the association for referral to a lawyer among its members.

Canon 2B states that a judge should

not lend the prestige of judicial office to advance the private interests of others, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. The Committee concludes that by presenting the association's business card, the judge would be advancing the private interests of the association and its members, in violation of Canon 2B.

No. 175 Issued November 2, 1994

Probate court investigator serving simultaneously as master in the same court

Q1 May a probate judge appoint a person to serve simultaneously in the same court as both a master under Section 574.0085 of the Health and Safety Code and as a probate court investigator under Section 25.0025 of the Government Code?

Q2 May a person appointed to be a probate court master simultaneously serve in the same court as a court investigator?

FACTS ASSUMED

The person serving as statutory probate court investigator would file applications for guardianship for indigent incapacitated persons.

A1 The committee has previously declined to answer a question concerning who a judge may appoint as a master because that is a question of law as distinguished from a question of ethics. See Opinion No. 79 (1985).

Whether a person is qualified to be appointed a master is a question of law. As we stated in Opinion No. 79, the only foreseeable ethical consideration would be if a judge knowingly appointed a person who was not qualified or made an appointment in disregard of Canon 3C(4).

Because the Committee assumes the judge would only appoint a qualified

person and would follow the requirements of Canon 3C(4), the Committee declines to answer the question for the same reasons it declined to answer a similar question in Opinion No. 79.

A2 In Opinion No. 104 (1987) and again in Opinion No. 127 (1989), the Committee concluded that a judge should not prepare pleadings to begin the process of civil commitment for mentally ill persons. The Committee adheres to those conclusions and concludes that a master should not do so for the same reasons stated in Opinions 104 and 127.

Even if the Master does not prepare

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applications for guardianship or other pleadings, the Committee concludes that he should not simultaneously serve in the same court as an investigator. In Opinion No. 166 (1993), the Committee concluded that a master conducting probable cause hearings and mental commitment cases should not appear as an attorney on unrelated matters in the same court he serves as a master.

Opinion No. 166 was based on Canon 6D, which provides that a part-time master should not "practice law" in the court in which he or she serves. Although the duties of a court investigator may not include practicing law and may therefore not be expressly prohibited by Canon 6D(2), such simultaneous service would contravene other code provisions.

These include, at least, the following: 1) Canon 1, which requires a judge to uphold the integrity and indepen-

dence of the judiciary; 2) Canon 2(A) which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; 3) Canon 2B, which provides that a judge should not allow any relationship to influence judicial conduct or judgment nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge; 4) Canon 3A, which requires that a judge's judicial duty takes precedence over all the judge's other activities; 5) Canon 3B(2), which provides that a judge shall not be swayed by partisan interests, public clamor or fear of criticism; 6) Canon 3B(5), which requires that a judge perform judicial duties without bias; 7) Canon 4D(1), which requires that a judge refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with persons likely to come before the court on which the judge serves; 8) Canon 4I, which provides that a judge may receive compensation if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety and 9) Canon 5(1), which provides that a judge shall not make statements that indicate an opinion on any issue that may subject to judicial interpretation by the office which he holds. The Committee concludes that serving simultaneously as a master and court investigator would be likely to cause a conflict with all of these provisions.

In Opinion No. 173 (1994), the Committee cited all these provisions in concluding that a municipal court judge should not simultaneously serve as city attorney for the same city. The Committee believes that the same conflicts are inherent when a probate court master serves simultaneously as the court's investigator.

LOOKING AHEAD

JUDICIAL CALENDAR

FUTURE TEXAS CENTER
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&

JUDICIAL SECTION PROGRAMS

1995

TEXAS COLLEGE of ADVANCED JUDICIAL STUDIES

March 5-8, 1995
Omni & Marriott Hotels
Austin

CRIMINAL JUSTICE CONFERENCE

May 17-19, 1995
Hyatt Regency
Austin

PROFESSIONAL DEVELOPMENT PROGRAM

June 19-23, 1995

JUDICIAL SECTION ANNUAL CONFERENCE

September 24-27, 1995
San Antonio

COLLEGE for NEW JUDGES

December 3-8, 1995

1996

SOUTHEAST TEXAS CONFERENCE

February 7-9, 1996
Huntsville

SOUTH TEXAS CONFERENCE

March 6-8, 1996

CENTRAL TEXAS CONFERENCE

March 20-22, 1996

NORTHEAST TEXAS CONFERENCE

April 10-12, 1996

WEST TEXAS CONFERENCE

April 24-26, 1996

CRIMINAL JUSTICE CONFERENCE

May 1996
Dallas

PROFESSIONAL DEVELOPMENT PROGRAM

June 10-14, 1996

JUDICIAL SECTION ANNUAL CONFERENCE

Dates to be announced

COLLEGE for NEW JUDGES

December 8-13, 1996

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