

# In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.

**Volume 28, Number 1**  
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The staff of *In Chambers* strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for *In Chambers*. Contact Morgan Morrison, Publications Coordinator, by calling 800-252-9232, faxing 512-469-7664, or e-mailing [morganm@yourhonor.com](mailto:morganm@yourhonor.com).

The Texas Center for the Judiciary, Inc. is located at 1414 Colorado, Suite 502, Austin, TX 78701-1627.

## In Chambers

Volume 28, Number 1  
Spring 2001

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# Nominations Committee to Meet

The fiscal year 2001 Nominations Committee will meet on or before July 1 to slate officers and new members for the fiscal year 2001 Texas Center for the Judiciary, Inc. (TCJ) Board of Directors and the Judicial Section Board of Directors.

If you are interested in serving on either of these boards or recommending a name for nomination, please notify Chief Justice Marilyn Aboussie, Chair of the Nominations Committee, in writing no later than June 1, 2001.

Justice Aboussie's address is: Honorable Marilyn Aboussie, Chief Justice, 3rd Court of Appeals, P.O. Box 12547, Austin, TX 78711. Her fax number is 512-463-1685. In addition, please provide TCJ a copy of your interest letter

(Attention: Mari Kay Bickett).

Three positions (two for a district judge and one for a county court at law judge) are open on the Judicial Section Board of Directors. Terms are for three years. The chair-elect is nominated for a one-year term. The secretary/treasurer position on the Judicial Section Board is an appointed position.

Three positions (one for an appellate judge, one for a district judge, and one for a county court at law judge) are open on the TCJ Board of Directors. The chair-elect nominee for the Judicial Section will also serve as the chair-elect of the Texas Center. The secretary/treasurer position on the TCJ Board of Directors is nominated for a one-year term. ♦

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## New Committees & Chairs

*Texas Center for the Judiciary, Inc. & Judicial Section State Bar of Texas  
FY2000-2001 Committees*

### **Texas Center for the Judiciary, Inc. Committees**

#### **Board of Directors**

Chair: Hon. Lamar McCorkle  
133rd District Court, Houston

#### **Appellate Judges Education Fund Committee**

Chair: Hon. Bonner Dorsey  
13th Court of Appeals, Corpus Christi

#### **Budget Committee**

Chair: Hon. Paula Lanehart  
County Court at Law #3, Lubbock

#### **Bylaws Committee**

No Chair

#### **Curriculum Committee**

Chair: Hon. Molly M. Francis  
283rd District Court, Dallas

#### **Fundraising Committee**

Chair: Hon. Steve Smith  
361st District Court, Bryan

#### **Judicial PEER Committee**

Chair: Hon. John J. Specia, Jr.  
225th District Court, San Antonio

#### **Long Range Planning Committee**

Chair: Hon. Rex Davis  
10th Court of Appeals, Waco

#### **Scholarship Committee**

No Chair

### **Judicial Section State Bar of Texas Committees**

#### **Board of Directors**

Chair: Hon. Lamar McCorkle  
133rd District Court, Houston

#### **Appellate Judges**

#### **Legislative Committee**

Chair: Hon. Michael Schneider  
1st Court of Appeals, Houston

#### **Bylaws Committee**

No Chair

#### **Committee on Appointment of Criminal Defense Counsel**

Chair: Hon. Phillip Martinez  
327th District Court, El Paso

#### **Committee on Judicial Ethics**

Chair: Hon. Suzanne Stovall  
221st District Court, Conroe

#### **Juvenile Justice Committee**

Chair: Hon. Jean Boyd  
323rd District Court, Fort Worth

#### **Nominations Committee**

Chair: Hon. Marilyn Aboussie  
3rd Court of Appeals, Austin

#### **Resolutions Committee**

Chair: Hon. Carolyn Wright  
5th Court of Appeals, Dallas

#### **Site Selection Committee**

No Chair

#### **Sub-Committee on Performance Measures**

Co-Chair: Hon. W.G. Arnot  
11th Court of Appeals, Eastland  
Co-Chair: Hon. Raul Vasquez  
111th District Court, Laredo

#### **Trial Judges Legislative Committee**

Chair: Hon. David L. Hodges  
County Court at Law #1, Waco

## Questions & Answers

### Ethics Opinion Number 213

#### **Multiple candidates endorsed or advertised in a single publication**

**Facts:** A political party, a political action committee (PAC), a speciality bar association, and/or an individual endorse several candidates in one publication.

**May a judge or judicial candidate contribute toward the publication of the advertisement?**

**Political Party:** Yes. A judge and a judicial candidate may contribute to a political party. If the political party uses that contribution to pay for campaign publicity and decides to include only candidates who helped pay for the advertisement, this does not violate the Judicial Code.

**PAC:** Yes. Unless the judge or judicial candidate participates in the selection of candidates promoted by the PAC, the Code of Judicial Conduct does not prohibit the judge or judicial candidate from contributing to the PAC. The Committee would draw attention to Texas Election Code Section 253.1611 which severely limits contributions by a judge or judicial candidate to a PAC.

**Specialty Bar:** Yes. Unless the judge or judicial candidate participates in the specialty bar's selection of candidates, the Code of Judicial Conduct does not prohibit the judge or judicial candidate from contributing to the specialty bar to promote the publication of the advertisement.

**Individual:** Yes. Unless the judge or

judicial candidate participates in the individual's selection of candidates, the Code does not prohibit a judge or judicial candidate from contributing to the publication.

**May two or more judges conduct a joint campaign that includes a mailed brochure and a newspaper ad? The judges invite only certain other judges to participate. The campaign is funded totally by the participating judges' campaigns. All funds are given to the political party, which actually pays the campaign expenditures. Is such a campaign permissible under the Judicial Code of Conduct?**

No. Since the judicial candidates selected the candidates with whom they advertised, it is the opinion of the committee that this constitutes an endorsement prohibited by Canon 5(3) and 2(b). Additionally, it constitutes a joint campaign as prohibited in Opinion 100.

In responding to these inquiries the Committee referred to Canons 2(b) and 5, and Committee Opinions Nos. 100, 170, and 180. Canon 2(b) provides that a judge shall not lend the prestige of office to anyone's private interest. Canon 5(3) provides that a judge or judicial candidate shall not publicly endorse another candidate for public office. Committee Opinion No. 100 prohibits joint campaigns by judges; Opinion No. 170 prohibits a judge handing out material that advertises candidates other than the judge; Opinion No. 180 pro-

hibits a judge from using the judge's name to promote a spouse's candidacy. (It should be noted that Texas Election Code Section 253.1611 sets limits on political contributions by a judge or judicial candidate.)

To avoid the appearance of impropriety, judges should request, that in any multiple candidate material, a prominent disclaimer be included that states that the inclusion of any judge or judicial candidate does not constitute an endorsement by that judge or judicial candidate of any other candidate. Any contribution permitted by this opinion that is intended as a subterfuge for joint campaigning forbidden by Opinion No. 100, constitutes an endorsement that would violate Canon 5(3).

### Ethics Opinion Number 255

#### **May a lawyer/judge accept a referral fee while in office?**

**Is a judge entitled to accept a referral fee under the following facts: A judge refers the case of a family member to an attorney who does not regularly appear before the judge. Neither the family member nor the referred attorney reside in the same jurisdiction as the judge. The referred case involves a specialty known as "fen-phen" litigation. The case has settled, and the referred attorney seeks to pay a referral fee to the judge as a "forwarding attorney." May the judge accept the fee?**

No. The Code of Judicial Conduct does not provide a direct answer to the question. Canon 4G does, however, state that: A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

Allowing a judge to receive compensation for referring a family member's case to an attorney would be inconsistent with the spirit of Canon 4G, which would disallow the judge from receiving compensation for actually working on that case.

Additionally, Canon 4D provides: 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.

In Ethics Opinion Number 210, this provision was applied to disallow a judge from accepting a referral fee for referring former clients to a realtor. The opinion noted that "[J]udges receiving money for referring business would not be seen as appropriate by the general public. There is a strong potential for the judge's position to be exploited." That rationale seems to apply to the facts of this case, too.

## **Ethics Opinion Number 256**

### **Visiting judge as member of National Committee to Prevent Wrongful Executions**

#### ***May a visiting judge who is assigned***

***only to the intermediate appellate courts accept an invitation to join the National Committee to Prevent Wrongful Executions?***

***The committee is part of the Constitution Project housed at Georgetown University Law Center. It describes itself as a bipartisan "blue ribbon" committee of former elected officials, judges, legal scholars, and journalists, including both supporters and opponents of capital punishment, which seeks to promote "greater fairness in the way the death penalty is administered." The members of the committee authorize the use of their names in connection with its work.***

Yes. Canon 4 (B) allows a judge to serve as a member of an organization devoted to the improvement of the law, the legal system, or the administration of justice.

As it describes itself, the National Committee to Prevent Wrongful Executions takes no position on the death penalty but seeks to educate the public and policy makers about ways to prevent "wrongful" executions and the need for certain constitutional protections when the death penalty is administered.

Furthermore, an active or visiting judge on the court of appeals could belong to this Committee without violating the mandate of Canon 5 (I) to make no statement that indicates an opinion on issues that may be subject to that judge's interpretation because intermediate appellate courts in Texas have no jurisdiction to hear death penalty cases.

*Ethics Opinions continued on page 11*

## **Texas Supreme Court Hears Cases in El Paso**

**T**exas Supreme Court justices heard three cases February 21 when the Court sat at the University of Texas at El Paso, the first-ever appearance by the Court in El Paso. The El Paso hearing was the seventh appearance by the Court outside Austin since Texas voters approved a constitutional amendment in 1997 giving it the authority to sit other than in the state capital.

On the day before the oral argument, members of the Court answered questions from high school students at an assembly arranged in part and conducted by Chief Justice Richard

Barajas and Justice Ann McClure of the El Paso-based 8th District Court of Appeals. Justice McClure also was instrumental in scheduling a tour later that afternoon of the El Paso County Domestic Relations Office. The office is attempting novel approaches toward child-support monitoring and custody enforcement and assistance for pro se efforts.

"When we're outside Austin we try to see the host community and learn something from students, as well as help inform them about the vital role of courts in a democracy," Chief Justice Tom Phillips told the *El Paso Times*. ♦

# Meet TCJ's New Staff

**MICHELLE GAWLIK** joined the Texas Center for the Judiciary, Inc. as the Financial Officer in July. She was born and raised in Odessa, TX, and has lived in Austin since 1994. Michelle, who “loves working with numbers,” has more than 10



*Michelle Gawlik*

years of accounting experience. Previously, she was the staff accountant and office manager for Custom Sheet Metal, Inc.

Michelle and her husband, Dennis, have a 12-year-old son, Nathan. In her spare time, Michelle enjoys reading and playing bingo.

Says Michelle of her job, “I enjoy my position here at the

Texas Center, and I really like the people I work with. This is my dream job.”

**TONRA HAYES** has served as the Conference Coordinator for the Texas Center for the Judiciary, Inc. since August. Her job duties include planning and coordinating all conferences conducted by the Texas Center as well as developing special events including spouse excursions and golf tournaments.



*Tonra Hayes*

She has a degree in Behavioral Science from the University of Southwestern Louisiana in Lafayette. Previous experience includes planning educational meetings for international cardiac surgeons conducted by a company that manufactures heart valves.

Tonra and her husband, Ben, moved to Austin about three years ago—a month after they married. Since then, they have worked on refurbishing and remodeling their 1940's home, a project which they recently completed. In her spare time, Tonra enjoys cooking, baking, and organizing. ♦

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## Commission on Judicial Conduct Reinforces the Importance of Education

As you are aware, the Rules of Judicial Education set out specific educational requirement for appellate, district, and county-level court judges. The rules are also applicable to former and retired appellate, district, and statutory county court judges “who are subject to assignment and are named on a list maintained by the Presiding Judge of the Administrative region.” The educational rules apply if a retired or former judge does not sit by assignment during the fiscal year.

The Commission on Judicial Conduct is charged with reviewing all cases in which judicial educational requirements are not being met. The Commission takes a judge's non-compliance with education rules very seriously, and it is dedicated to insuring that judges maintain competence in their official duties and judicial functions. In addition, in its

service to the judiciary, the Commission is committed to assisting judges to stay mindful of their educational requirements and help them maintain the high standards of conduct that the public expects.

If the Commission can be of assistance to you in any way, please know that its attorney staff is available to speak with you on an individual basis regarding educational and ethical concerns or regarding specific issues relative to compliance with the Texas Code of Judicial Conduct. You may contact us through our toll free number at 877-228-5750. Please note that while the Commission can address your questions regarding educational and ethical issues as they relate to the Code, questions regarding specific educational rules should be directed to the Texas Center for the Judiciary, Inc. ♦



# For Those Who Served Our State Courts

*As of March 27, 2001*

**Honorable Ray Anderson**

Presiding Judge  
9th Administrative Region, Lubbock

**Honorable Jon Barton**

Judge  
67th District Court, Fort Worth

**Honorable Berlaine Brashear**

Senior Judge  
County Court at Law, Dallas

**Honorable Carlos Cadena**

Retired Chief Justice  
4th Court of Appeals, San Antonio

**Honorable Eugene Chambers**

Judge  
County Civil Court at Law #1, Houston

**Honorable Ross Doughty**

Retired Justice  
Supreme Court of Texas, Uvalde

**Honorable Roy Engelke**

Senior Judge  
212th District Court, Dickinson

**Honorable Vic Hall**

Retired Justice  
10th Court of Appeals, Fredricksburg

**Honorable Harry Lewis**

Senior Judge  
138th District Court, Brownsville

**Honorable Oliver Kelley**

Judge  
169th District Court, Belton

**Honorable Tom Kenyon**

Senior Judge  
300th District Court, Granite Shoals

**Honorable John C. Martin**

Senior Judge  
2nd 9th District Court, Montgomery

**Honorable Grainger McIlhany**

Senior District Judge  
31st District Court, Wheeler

**Honorable J.R. Musslewhite**

Senior Judge  
County Criminal Court at Law #6, Houston

**Honorable John Keith Nelson**

Retired Judge  
78th District Court, Wichita Falls

**Honorable John Phillips**

Retired Chief Justice  
3rd Court of Appeals, Austin

**Honorable Glenn Phillips**

Retired Judge  
241st District Court, Tyler

**Honorable Charles Reynolds**

Retired Chief Justice  
7th Court of Appeals, Amarillo

**Honorable Max Rogers**

Senior Judge  
12th District Court & Former Presiding Judge 2nd Region, Huntsville

**Honorable Donald Shipley**

Senior Judge  
182nd District Court, Houston

**Honorable Earl Smith**

Retired Justice  
3rd Court of Appeals, Austin

**Honorable Earl B. Stover**

Retired Justice  
9th Court of Appeals, Beaumont

**Honorable J.W. Summers**

Retired Chief Justice  
12th Court of Appeals, Rusk

# Texas' Newest Administrators of Justice

*As of February 22, 2001*

**Hon. Gordon G. Adams**  
169th District Court, Belton  
Succeeding Hon. Oliver Kelly

**Hon. R.H. Bielstein**  
County Court at Law #4, Richmond  
New Court

**Hon. John B. Board**  
181st District Court, Amarillo  
Succeeding Hon. Sam Kiser

**Hon. Scott Brister**  
1st Court of Appeals, Houston  
Succeeding Hon. Michol O'Connor

**Hon. Frank W. Bryan, Jr.**  
403rd District Court, Austin  
New Court

**Hon. Darlene Byrne**  
126th District Court, Austin  
Succeeding Hon. Ernest Garcia

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County Civil Court at Law #1, Houston  
Succeeding Hon. Eugene Chambers

**Hon. Errlinda Castillo**  
13th Court of Appeals, Corpus Christi  
Succeeding Hon. Melchor Chavez

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43rd District Court, Weatherford  
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21st District Court, Brenham  
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**Hon. Rodolfo Gonzalez**  
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Succeeding Homero Vasquez

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12th Court of Appeals, Tyler  
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**Hon. Glenn Harrison**  
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Court of Criminal Appeals, Austin  
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**Hon. Charles Holcomb**  
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**Hon. Rae Leifeste**  
340th District Court, San Angelo  
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Succeeding Hon. Mike Westergren



**Hon. Carlos Lopez**  
116th District Court, Dallas  
Succeeding Hon. Marter Richter

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389th District Court, Edinburg  
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388th District Court, El Paso  
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405th District Court, Galveston  
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62nd District Court, Paris  
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409th District Court, El Paso  
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273rd District Court, San Augustine  
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County Court at Law #5, McKinney  
New Court

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County Court at Law, Boerne  
New Court

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County Court at Law, Texarkana  
New Court

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County Court at Law #2, Dallas  
Succeeding Hon. Carlos Lopez

**Hon. Dwight L. Phifer**  
2nd District Court, Rusk  
Succeeding Hon. Robert Adamson

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County Criminal Court at Law #5, Denton  
New Court

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163rd District Court, Orange  
Succeeding Hon. David Dunn

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407th District Court, San Antonio  
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New Court

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Succeeding Hon. John Ovard

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401st District Court, McKinney  
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**Hon. Charles W. Seymore**  
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New Court

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Succeeding Hon. Gerald Goodwin

## in|the library

These publications are now available from the TCJ library. If you would like to check out these or other materials, please contact Morgan Morrison, Publications Coordinator, at 512-463-1530.

### **American Judicature Society**

- *The Right to a Full Hearing: Improving Access to the Courts for People Who Are Deaf or Hard of Hearing*

### **The National Drug Court Institute**

- *Drug Court Publications Resource Guide, Second Edition*

### **National Judicial Education Program to Promote Equality for Women and Men in the Courts**

- *Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases*

### **State of Wisconsin Supreme Court**

- *Public Trust & Confidence in the Judicial System: Action Plan*
- *Pro Se Litigation: Meeting the Challenge of Self-Represented Litigants in Wisconsin*

# Thank you for your contributions

*Includes contributions received as of February 15, 2001*

## Contributions to TCJ

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### *Judge Ray Anderson Memorial*

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Bob Dickenson  
Drue Farmer  
Darrell Hester  
Weldon Kirk  
Pat McDowell  
Grainger McIlhany  
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Keith Nelson  
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George M. Thurmond  
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### *Judge Henry Braswell Memorial*

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## Ethics Opinion Number 257

**May a judge's staff accept payment for information regarding cases in judge's court?**

*A commercial website that publishes data about civil litigation has solicited information from a trial judge regarding cases decided in her court. The company has offered to pay \$7.50 for every jury verdict reported. The company requests the following data for each case: date, style, case number, court, and name of judge. They also ask for a case description, identity of plaintiff's attorney and defendant's attorney, plaintiff's experts, defendant's experts, and "the verdict or settlement." The company suggests that the judge's court reporter be asked to fill out the form. May the judge or her staff supply information to this commercial data base? May they receive payment for doing so?*

No to both questions. Canon 4(D)(1) says that a judge shall refrain from business dealings that exploit her judicial position. Here the judge would be exploiting her judicial position if she accepts pay for forwarding information regarding official court proceedings to a commercial enterprise.

Canon 2(B) says a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others and shall not convey the impression that others are in a special position to influence the judge. Even if the judge did not accept payment for funneling "litigation results" to the website, the judge is using her office to advance the private interests of the commercial website.

Furthermore, serving as a conduit for information to one commercial website,

but not others, could foster the impression that one business is in a special position to influence the judge. Finally, Canon 4(A)(2) directs a judge to conduct extra-judicial activities so that they do not interfere with the proper performance of judicial duties. By supplying the requested information on each case litigated in her court, or directing her court reporter to do so, the judge or her staff would be taking time away from their official duties to perform these non-judicial tasks for a commercial enterprise.

In reaching this answer we note that this commercial database has not asserted that it is collecting data in an effort to improve the law, the legal system, or the administration of justice.

## Ethics Opinion Number 258

**May a judge send letter to Bar, asking for volunteers?**

*May a Board of Judges send out a letter with the signatures of all the judges to all members of the local bar association, asking them to consider volunteering by donating time and services to the Volunteer Lawyer Project's pro bono legal clinic of Legal Services in order to supplement and/or expand the services of that organization?*

Yes, the Board of Judges may send out such a letter. The proposed letter identifies the Volunteer Lawyer's Project as a joint undertaking of the Legal Services organization and the local and area bar associations, explaining that the project's aim is to insure the administration of justice to those served by the program. Canon 4C allows the use of judicial prestige in very limited circumstances for the improvement of the law, the legal system, or the administration of justice.

## Ethics Opinion Number 259

**May a judge serve as a delegate to a party convention or serve on a state party executive committee?**

*Do the Rules of Judicial Conduct allow judges to serve as delegates to a county, state or national party convention? Do the Rules of Judicial Conduct allow judges to serve on a state Republican/Democrat Executive Committee?*

No to both questions. Canon 4 provides in part as follows: A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties. B. Avocational Activities. A judge may speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code. Canon 5 provides in part: (1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that the discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case. (2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office. Service as a delegate to a political party convention would violate both Canons 4 and 5. Delegates not only may select candidates to other offices, but they also

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adopt the party or convention platform. The platform contains positions on numerous issues that come before judges of all courts, criminal, civil, and family. Service as a member of a state party executive committee would also violate Canons 4 and 5. The political parties support candidates and positions on issues, which a judge cannot do. Opinion 53C is hereby withdrawn.

### Ethics Opinion Number 260

**May a judge preside in a case where the county judge appears as an attorney?**

*Is it appropriate under the Code of Judicial Conduct for a county court at law judge to preside over cases where the county judge appears as an attorney?*

No. Canon 2(A) says that a judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Furthermore, Canon 1 states that a judge should participate in establishing, maintaining, and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary is preserved. A county court at law judge presiding over cases where the county judge acts as an attorney would violate these two canons. The county judge has administrative authority (i.e. budget approval, etc.) over all county departments and divisions, including the county courts at law. Canon 6B 3 authorizes the county judge to practice law in this court. The county court at law judge should be mindful of the appearance of impropriety. The practice of law by the county judge in

this judicial forum may create the appearance of partiality and may call into question the integrity and independence of the judiciary.

### Ethics Opinion Number 261

**May a bail bondsman serve as a municipal judge?**

*Can a city appoint a part-time bail bondsman as an alternate municipal court judge? The part-time position does not receive a salary, but is paid a pro rata payment for the days worked. The alternate judge will not bail out any defendants with whom he has come in contact as a judge.*

Yes. Canon 4 A states that a judge shall conduct all of the judge's extra-judicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of official duties.

Canon 4D(2) and 4D(3) which restrict activities of judges are not applicable to municipal judges. Canon 4I does apply to all judges, and it states that, "A judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by the Code, 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."

Whether the municipal judge is an alternate judge or the chief judge is not material, neither is the method of compensation. When a person acts as a judge all other activities (including occupations) are considered "extra-judicial activities." The concern would be that the alternate judge, acting as a magistrate, might appear to set

bonds in a way which would result in lower payments to his competitors, and further, since the alternate judge is also a bail bondsman, defendants might use the alternate judge as a surety under the impression that they would get better treatment.

The bondsman can act as a municipal judge provided he disqualifies himself if: (i) he is hearing a matter involving a person for whom he has acted as surety or (ii) the compensation received from the extra-judicial activity of issuing bail bonds gives the appearance of influencing his performance or otherwise gives the appearance of impropriety.

### Ethics Opinion Number 262

**Is it appropriate for a judge to attend a law firm function attended by clients, prospective clients, and/or employee recruits?**

*May a judge present a legal overview of a particular type case that is handled in the judge's court to an in-house law firm seminar attended by lawyers from the firm, its clients and prospective clients? Does it matter whether the law firm currently has a case pending? May a judge attend a law firm function where only attorneys from that firm, invited clients, and legal recruits attend? May a judge participate in a law firm's attorney recruitment program?*

No to both questions. Such activities would violate Canon 2 (B) which provides that "A judge should not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge nor permit others to convey the impression that they are in a special position to influence the judge."

By presenting a legal overview of a case to an in-house law firm seminar

attended by lawyers from the firm, it's clients and prospective clients, the judge would not only be lending the prestige of her judicial office to advance the interest of that law firm, the judge would also be indirectly allowing the law firm to convey the impression to its clients and prospective clients that the firm has a special position of influence with the judge. It does not matter whether the law firm currently has a case pending in the judge's court or not.

By attending the law firm's function where only attorneys from that firm, invited clients and legal recruits attend, the judge would be lending the prestige of his office to advance the interest of that law firm in its attorney recruiting efforts.

See also Opinion 194, Opinion No. 39, and Canon 4(D)(4)(b).

### Ethics Opinion Number 263

**Does the Code permit ex parte communication between an appellate judge and a trial judge?**

*Does the Code of Judicial Conduct permit an ex parte communication between an appellate judge and a trial judge regarding a pending appeal from the trial judge's court?*

No, such a communication is clearly prohibited by the Code of Judicial Conduct. The list of prohibited ex parte communications found in Canon 3 B(8) is not an exclusive list of inappropriate ex parte communications by judges. Canon 3 requires that a judge perform his/her duties impartially and requires that every person who is legally interested in a proceeding the right to be heard. To allow a trial and appellate judge to communicate ex parte regarding an

appeal from the trial judge's court would clearly violate these requirements. The consultation between judges that is permitted in Canon 3 are conversations between judges regarding the law and its application where neither judge has an interest in the outcome of the litigation being discussed.

### Ethics Opinion Number 264

**Does the Code of Judicial Conduct permit a judge's relative to act as a CASA volunteer?**

*Is it permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a case in the judge's court?*

No. It is not permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a contested case to be heard by the judge. Canon 2 requires a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. It is the responsibility of a CASA volunteer to advocate the position of a child in a lawsuit. It seems apparent that the judge's impartiality would be questioned if a close family member of the judge appeared in a contested matter before the judge.

*Is it permissible for a judge's family member to serve as a CASA volunteer so long as the activity does not have a significant potential for requiring the volunteer to testify in court?*

Yes. As long as the judge's close relative is not testifying or in a position to have an ex parte communication with the judge about a specific case, it is appropriate.

### Ethics Opinion Number 265

**May a judge participate on a media response team?**

*May a judge participate on a media response team whose job it is to respond to negative or inaccurate media stories about the legal profession, the judiciary, and the courts?*

No. Canon 3B(10) prohibits a judge from publically commenting on pending litigation. Participation in this group would inevitably entail comment about pending litigation. A judge cannot do something as part of a group which he/she cannot do as an individual.

### Ethics Opinion Number 266

**May the sentencing judge make a recommendation to the Board of Pardons and Paroles?**

*May a judge make a recommendation for commutation of sentence pursuant to the Rules of the Texas Board of Pardons and Paroles? In relevant part the Texas Administrative Code, [Title 37, Part 5, Chapter 143, Subchapter E, Rule 143.52 Commutation of Sentence, Felony or Misdemeanor], states that the board will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials. Trial officials are defined among others as the judge in the court of offense, conviction, and release.*

Yes. Any recommendation made by the judge would be in his/her official capacity and therefore permissible. See Opinion 146 which by implication would allow this official activity.

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## Ethics Opinion Number 267

**May a judge employ a candidate for judicial office?**

*May a sitting judge hire in a staff position a lawyer who is a candidate for judicial office?*

No. The judge would violate Canon 2 A and B and Canon 5(3). Canon 2 A requires a judge to promote public confidence in the integrity and impartiality of the judiciary. Canon 2 B prohibits lending the prestige of judicial office to advance the private interest of others. Canon 5 (3) prohibits a judge from making a public endorsement of a candidate for public office.

A lawyer running for judicial office must comply with the Code of Judicial Conduct (RPC 8.02 (b) and Canon 6 (G) 1). While these rules set the standard for expected conduct of the sitting judge and the candidate, the rules do not alleviate the appearance to the public that the sitting judge holds the candidate in high esteem or the judge would not have hired the candidate. The judge should avoid the appearance of lending his/her endorsement to a political candidate.

The result would be different if a staff attorney for a judge became a candidate some time after being hired.

## Ethics Opinion Number 268

**Does the close proximity of county attorney's office and judge's office give an appearance of institutional bias and prejudice?**

*In the portion of the courthouse where mental commitments are heard, the offices for the county attorney and the judge are right next door to each other and opposite the holding area for*

*patients. There is no office provided for the attorneys for the proposed patients. Does this layout create an appearance of an institutional bias and prejudice in favor of the state?*

No. Although this is not an ideal office layout, it is understood that county commissioners are responsible for assigning office space in the courthouse and not judges. It is the position of the committee that reasonable people understand the practicalities of the often less than perfect office space allocated to government employees. Close proximity of the two offices alone does not create an appearance of institutional bias and prejudice.

## Ethics Opinion Number 269

**Discussion of judicial training director, municipal court judge, or J.P. as school board member or head of school security**

*May a municipal court judge or justice of the peace serve as a school district board member, given the fact that such judge presides over cases involving students, employees and parents of students of that school district?*

Yes. Canon 6C(1)(b) removes the restrictions set by Canon 4H which would prohibit a judge from serving on a school board. In serving on the school board, the judge should be mindful of the restrictions of Canon 4, A(1), A(2) and C(1). Section A(1) of Canon 4 requires a judge to conduct extra-judicial activities so they do not cast reasonable doubt on the judge's impartiality. Canon 4A(2) requires a judge to conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of the judge's duties. Canon 4C(1) prohibits a

judge from participating in civic activities if the organization is likely to be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court. See op. 143.

**Can a municipal court judge serve as head of security for the same school district?**

No. A municipal court judge may not serve as head of security for the school district. The duty of the head of security would be to enforce the regulations passed by the school board for the safety and welfare of the students, employees, and property of the district. V.T.C.A., Education Code Sec. 2(1)483. Since the judge has jurisdiction to hear alleged violations of those regulations, such employment would also violate Canons 2A and 4A (1).

## Ethics Opinion Number 270

**Is it a violation of the Judicial Canons of Ethics for a judge to serve on the judicial council of the Children's Assessment Center?**

*Is it a violation of the Judicial Canons of Ethics for a judge to serve on the judicial council of the Children's Assessment Center? The center is a public/private partnership whose mission is "to provide a professional, compassionate, and coordinated approach to the treatment of sexually abused children and their families and to serve as an advocate for all children in our community." The center provides various services to such children such as: 1. videotape a forensic interview with the child sexual abuse victim; 2. provide a sexual assault examination; 3. provide expert testimony in civil and criminal court; 4. provide advocacy for*



*children as they make their way through the justice system. The purpose of the judicial counsel is to open a dialogue regarding mutual concerns about the sensitivity of child sex abuse cases.*

Yes, it is a violation of the Judicial Canons of Ethics for a judge to serve on such a council. It is a judge's function to act impartially and to be seen as neutral. Canon 2 provides, "A judge...should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B provides, "A judge shall not allow any relationship to influence judicial conduct or judgement. A judge shall not lend the prestige of judicial office to advance the private interest 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." For a judge to give advice to an organization whose mission is to advocate for witnesses/parties in law suits is a violation of this Canon.

Canon 4 which requires a judge to conduct extrajudicial activities so as not to interfere with judicial duties would be violated. Membership on this council would require frequent recusal in cases in which the members of the organization were testifying.

The committee has issued several opinions regarding similar organizations and has consistently found membership in such groups to be a violation of the Canons. See Opinions 66, 86, 133, 225, and 240.

## Ethics Opinion Number 271

**May a judge broker the sale of final judgment, cash streams, or accounts receivable?**

*May a sitting district judge broker the*

*purchase and sale of final judgments, cash streams, or accounts receivable? None of the brokered transactions involve any pre-judgement matters in any Texas court. The judgments could issue from any Texas court with the exception of the court over which the judge presides.*

No. The Canons allow a judge to engage in financial and business matters with the limitation that such activity not exploit his or her judicial position or advance his private interest. The Committee believes that the nature of this business is such that it would be very difficult to conduct it without exploiting the judge's official position to advance the judge's private interests. Since the sale of judgments is inextricably intertwined with the judicial function there is at least an appearance of impropriety.

## Ethics Opinion Number 272

**Is it appropriate for a judge to send correspondence stating, "If no response, you will be listed as my supporter"?**

*Is it a violation of the Canons of Judicial Conduct for a judge to send a letter to attorneys stating, "If I do not hear from you that you do not support me, I will list you on my campaign literature as a supporter"?*

Yes, this would be a violation of the Canons of Judicial Conduct. Canon 5 (2) (ii) requires that a judge shall not knowingly or recklessly misrepresent the identity, qualification, or other fact concerning the candidate. To assume that no response is an act of support violates this Canon. Also Canon 1 requiring a judge to uphold the integrity of the judiciary would be violated.

## Ethics Opinion Number 273

**May a full-time family court associate judge preside as a municipal judge or teen court judge?**

*May a full-time associate judge hearing family law matters serve as municipal judge and supervise Teen Court for a municipality?*

Yes. There is no violation of the Canons of Judicial Conduct for an associate judge to preside as a municipal judge or supervise "Teen Court." The Committee is not considering any question of law presented by this question. ♦

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# Judicial Conference Calendar

## 2001

### Family Violence Conference

April 22-24, 2001  
Houston

### Criminal Justice Conference

May 9-11, 2001  
Austin

### The Computer: The Basics

June 4-5, 2001  
Midland

### Docket Management Program

June 10-13, 2001  
Dallas

### Professional Development Program

June 25-29, 2001  
Huntsville

### Judicial Section Annual Conference

September 23-26, 2001  
Houston

### College for New Judges 2001

November 11-16, 2001  
TBA

## 2002

### Judicial Section Annual Conference

August 25-28, 2002  
San Antonio



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