In Chambers

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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.

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

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Questions & Answers

Ethics Opinion Number 286

Summer Internship Program

May a judge receive the benefits of a law student serving as a summer judicial clerk/intern who receives a monetary stipend from money raised and distributed by a local bar association's foundation scholarship program funded by contributions from local law firms, businesses, private individuals, and fundraisers sponsored by the bar association.

Yes, with certain qualifications regarding implementation of the program.

Canon 4B provides considerable latitude to a judge regarding activities to improve the law. The Committee perceives this summer internship program to be primarily an educational endeavor which furthers the administration of justice and should be permitted. However, the judge should avoid participating in any of the fundraising activities that might violate Canon 4C(2). Additionally, although the summer interns will not officially be employees of the judge to whom they are assigned, the Committee views them as court personnel who would be subject to all the provisions of the Code. Thus, the judge would be responsible for instructing the interns about their obligations and responsibilities under the Code. ◆

To ask an ethics question, contact Justice Mack Kidd, Chair of the Judicial Section's Committee on Judicial Ethics, (512-463-1686) or the State Commission on Judicial Conduct (877-228-5750).

Nominations Committee to Meet

The Fiscal Year 2003 Nominations Committee will meet on or before July 1, 2003, to slate officers and new members for the Fiscal Year 2004 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors.

If you are interested in serving on either of these boards or recommending a name for nomination, please notify Judge Mark D. Atkinson, Chair of the Nominations Committee, in writing no later than May 15, 2003.

Judge Atkinson's address is: Honorable Mark D. Atkinson, County Criminal Court at Law #13, 1201 Franklin, 7th Floor, Houston, TX 77002. His fax number is 713-755-4874. In addition, please provide the Texas Center with a copy of your interest letter (Attention: Mari Kay Bickett).

Four positions (one for an appellate judge, one for a district court judge, one for a county court at law judge, and one for a retired or former 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 (all for a district judge) are open on the Texas Center for the Judiciary 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 Texas Center Board of Directors is nominated for a one-year term. ◆

FY 2003 Nominations Committee Members

Mark D. Atkinson, Chair
Wilford Flowers
Darrell Hester
Mickey Pennington
Jane Roden
Catherine Stone
Earl Stover, III
Juan Velasquez
Roger Jeffrey Walker

From the 2002 College for New Judges

More than 100 new judges attended the College and evaluated the program highly—4.8 out of 5.0

"For the first time, I felt like a judge."

"Good use of humor as a teaching tool."

"The education was excellent both in and out of the lectures. I learned much from the faculty, as well as my fellow judges."

"Most interesting and useful seminar I have been to. Answered many questions and raised others I need to think about."

"Practical and useful—gave me confidence."

"Wonderful speakers and presentations."

Time Limits on Jury Voir Dire

By Hon. Jack Hampton
Judge (Retired), 283rd District Court

At a recent family gathering, a nephew mentioned that he had appeared for jury service three times. Each time, he hoped to be selected or, at least, excused promptly. However, each time, he sat through an entire day of voir dire before being excused. Not surprisingly, he felt his time had been wasted and was frustrated with losing three days of work.

Jury selection takes too long in most cases. Sometimes it is unavoidable because of the complexity of the case, the unusual issues presented, or because the jury panel has a high number of unqualified persons. However, the average felony case is not complicated. Voir dire should not consume more than half a day.

I have questioned some fellow judges. They agree. One stated that she always advises the lawyers that voir dire will be finished before lunch. During the lunch break, attorneys can strike their lists, the jury can be sworn in, and testimony can then begin in the afternoon of the first day.

Case law clearly shows that control of voir dire is within the sound direction of the trial judge, who can impose reasonable time limits (*Caldwell v. State*, 818 SW 2nd 790). Furthermore, the trial judge can announce time limits, which the court will impose. Thereafter, error occurs only when the trial judge fails to grant additional time after a request based upon a showing of need (*Carmell v. State*, 784 SW 2nd 138). When parties prolong the voir dire, the simple remedy is to call the attorneys to the bench and instruct them (*McCarter v. State*, 837 SW 2nd 117).

Since the court can impose reasonable limits, how little or how much time is reasonable? In *Gather v. State*, 848 SW 2nd 881, the trial court limit of 45 minutes per side was held reasonable. But in *Morris v. State*, 1 SW 3rd 336, a 45-minute limit imposed by the court was considered an abuse of discretion, even though the defense counsel used 20 minutes to discuss religion when his defense was based upon "devil worship."

The *Morris* case also set out three tests of whether the time limits allowed showed an abuse of discretion:

1. Did the attorney unduly prolong voir dire?
2. Were the questions that the attorney was not permitted to ask proper questions?
3. Was the attorney not permitted to question jurors who actually served?

I limit voir dire of the panel to 10–15 minutes—much less than some courts that consume an hour or more explaining the jury's role. I then allow the lawyers 45 minutes per side, advising them at the start of their time limits. Most attorneys are happy with the limit.

After voir dire is complete, I ask the lawyers to agree on obviously disqualified jurors. This practice usually reduces time spent ruling on qualifications. By following these procedures, testimony can usually begin in the afternoon of the first day. Jurors are happy with the time saved. ◆

Investiture of Steven Wayne Smith and Dale Wainwright

On January 6, 2003, Associate Justice Sandra Day O'Connor, Supreme Court of the United States, administered the oath of office to Texas' new Supreme Court justices, Steven Wayne Smith and Dale Wainwright.

Justice O'Connor also administered the oath of office to Chief Justice Thomas R. Phillips, Justice Wallace Jefferson, and Justice Michael Schneider, who were reelected to the Court in November 2002. ◆

Using Today's Technology to Comply with the Fair Defense Act (and Other Uses)

By Hon. K. Michael Mayes
Judge, 410th District Court

Can we use the "magic" of today's technology when appointing attorneys to represent indigent inmates as required under the Fair Defense Act (FDA)? Can today's world of instant information be used to improve the efficiency of our indigent appointment system? Can this technology improve the access that an indigent defendant has to our judicial system?

In short, yes, yes, and you bet it can.

What was the Problem?

In Montgomery County, as in all counties, the FDA is managed under Rules adopted by the courts that handle the criminal cases in the county. In Montgomery County, this includes the five District Judges and four County Court at Law Judges. As mandated by the FDA, our local FDA Rules require the almost immediate appointment of an attorney once an indigent defendant is arrested. Since our jail is a five-minute drive from the Courthouse, the real issue for our Judges was how to avoid delays in the appointment of an attorney and, at the same time, devise a plan that did not require the Judges or our newly hired Appointment Designee (AD) Genoveva Perez to leave the courthouse or courtroom and travel to the jail to interview the inmates and appoint them an attorney.

One alternative to our dilemma was to continue bringing all the inmates before a Judge or Ms. Perez at the courthouse. This procedure had been used for years for unindicted felons that needed a bond set, but with the advent of the FDA and the additional responsibilities placed upon us, we were anxious to find an easier solution. This "drive 'em to the courthouse" procedure also took one or more deputies away from their normal jailhouse duties and required the use of a van from the jail to the courthouse.

Another alternative was for the Judge or Ms. Perez to travel to the jail once each day and meet with the inmates there. This, of course, took them away from their courtroom and office obligations and was time consuming. It was obvious to us that the best alternative was to use technology to accomplish the stated objectives, if it could be done effectively and for a reasonable cost.

Video Conferencing—The Next Best Thing to Being There

With monies obtained from the State under the auspices of the State FDA Task Force, the County purchased multiple video-conferencing "centers." Each of these centers contained a television monitor, a camera, microphones and additional supporting equipment. One center was installed in each of the nine courtrooms, in the jail, in the Juvenile Justice Center and in the Office of Court Administration (OCA).

We also purchased two "roving" video-conference centers for use wherever needed. In the 410th District Courtroom, we have two microphones installed in the ceiling, one above the attorneys tables and one above the Judge's bench. The image obtained from the "far" end of the video-conference connection is shown on all seven TV monitors in our courtroom (one on the bench, one for our reporter, one for the witness, one extra large monitor for the courtroom spectators, and three for the jury box).

With the video-conference equipment, the Judges or Ms. Perez can interview and appoint attorneys for indigent inmates by video conference, that is to say, by "live television" from our courtroom to the jail, or from the AD's office to the jail. The Judges and AD never leave their courtroom or office. The inmates never leave the jail. This saves time and increases the security surrounding the inmates. The Judges and AD talk to the inmates and conduct the necessary interviews over the television. The interviews are "in person" and in real time. We are able to see the inmates, administer an oath to them and judge their demeanor and honesty as we interview them. Likewise, the inmates can see the Judge or Ms. Perez on their monitor at the jail and ask any questions they may have. If the attorney being appointed is in the courtroom at the time of the appointment, the inmate can actually see his new attorney and speak to him at that moment.

4-way Video Conferencing—Unbelievable!

Recently, we utilized "4-way" video conferencing to interview a probationer

who had turned herself in to the probation department. This young woman had relapsed on drugs and wanted help. I spoke to her by video conference from the 410th courtroom while she was in the jail's arraignment room. I realized that we needed to amend her conditions of probation immediately to send her to the state's substance-abuse felony-probation program. To do this, I needed input from the District Attorney's office and her probation officer.

We connected by video conference with both the D.A. and the probation department, making a 4-way video-conference connection. As required by the FDA, I asked the defendant if she desired or could afford an attorney, and I interviewed her to decide if she was indigent. After she freely waived her right to an attorney, and while we were all on the monitor together, the probation officer added input on the probationer's eligibility for the substance abuse program, when the defendant would be transferred to the program and the length of the program. After the defendant asked several questions and we all were satisfied with the "agreed" amendment, I requested the prosecutor to prepare an Order transferring her to the state program.

By using the 4-way video, we saved time and dramatically expedited the process. I never left my courtroom, the probation officer never left her facility, the prosecutor never left his building and the inmate never left the jail. Unbelievable!

4-way video-conferencing equipment connects the courtroom, the appointment designee's office, the prosecutor's office, and the jail.

Video-Conference Testimony

In the 410th District Court, we also use our video-conference equipment for testimony by a witness that, for one reason or another, does not testify personally in court. For example, in a recent capital-murder case, a young 8-year-old witness testified from the court's chambers over the video-conference connection into the courtroom. This young boy had been present when his father, the defendant, shot and killed his mother and her boyfriend. A state and defense attorney, as well as the court reporter and I, were in my chambers with the young witness when he gave his testimony. The defendant, the jury, another state and defense attorney and all spectators watched the examination in the courtroom on our multiple monitors. The testimony was relatively painless, and was certainly easy to do. The young boy was much more comfortable sitting in my office (with a candy bar given to him from my "secret" drawer), than having to talk in court in front of his father, the jury, the spectators and the media.

Utilizing the video-conferencing equipment, Genoveva Perez, Appointment Designee, interviews a jailed inmate from her office.

Video Conference Mediation

We have even set up video conferencing to allow a defendant in our jail to mediate his civil lawsuit. This defendant was charged with capital murder, and since he was not allowed to leave the jail because of the severity of the charges, we arranged to have him connected by video conference from the jail's arraignment room to our AD's offices, where the attorneys and other parties were present. As it turned out, the case settled immediately prior to the mediation, and the actual video conference was not needed, but we had the video connections in place and ready to roll. No doubt this is a benefit to a defendant under the FDA that even the legislators could not have imagined nor would they have required!

Computerized Retrieval and Appointment of Qualified Attorneys

With the help of Montgomery County's Communication Information Services (CIS) Department, our courts have devised a computer program that automatically retrieves the name of an attorney from the revolving appointment lists (required by the FDA) whenever

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I've Said It Before, Now I'll Say It Again

By Hon. Bonnie Sudderth
Judge, 352nd District Court

Most judges know exactly what to do with a prior inconsistent statement—let it in! More troublesome, however, are those pesky prior *consistent* statements. What should be done when a witness keeps telling the same story, the same way, over and over again?

Offered for the truth of the matter asserted, a prior consistent statement is blatantly inadmissible hearsay. It is an out-of-court statement offered for the truth of the matter asserted, and no matter how many times a witness has said it before, frequency will not change that basic analysis.

Setting aside the hearsay problem, most prior consistent statements will not even meet a threshold test of relevancy. Why? Because most prior consistent statements do not tend to prove or disprove a material fact in issue. This is because, at best, the probative value of a prior consistent statement requires a leap of faith. In order for a prior consistent statement to be relevant, you must believe that if a person has said something enough times, it is probably true. Common sense and experience tells us that just because grandpa's been telling that same story for the last fifty years, it does not make the story true. Luckily, our rules of evidence reflect that basic reality. Otherwise, *that's-my-story-and-I'm-sticking-to-it* would become the test for admissibility under our rules.

So, for reasons of relevancy and hearsay, the general rule is that a prior consistent statement is inadmissible:

> TRE 613 (c): A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).

However, there may be circumstances when a prior consistent statement becomes admissible, not for the truth of the matter asserted, but for other reasons. Rule 801(e)(1)(B) was promulgated to address those rare circumstances, providing a limited exception to the general rule:

> TRE 801(e)(1)(B): A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is *consistent with the declarant's testimony* and *is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive*.

Some attorneys will argue that Rule 801(e)(1)(B) opens the door for the admission of prior consistent statements. It does no such thing. Rule 801(e)(1)(B) narrowly tailors an

making|news

Honors & Achievements for Texas Judges

JUSTICE JAN PATTERSON of the Third Court of Appeals in Austin was honored as the University of Texas' Friar Society's 2002 distinguished alumna. The Friar Society is UT's oldest and most prestigious honor society and has recognized students who have made significant contributions to the university since 1911. Justice Patterson was a member of the first class of women to be admitted into the society in 1973.

JUDGE SUSAN P. BAKER, formerly of the 306th District Court in Galveston, recently had her second book published. *Heart of Divorce: Advice from a Judge*, a how-to guide for divorcing couples, was released in December 2002. Judge Baker's third book, *Murdered Judges of the 20th Century*, includes 42 stories of American judges who were murdered or died mysteriously. It will be released later this summer. Pale Horse Publishing (www.palehorsepublishing.com) is the publisher of both of Judge Baker's new books. ◆

exception unique to particular factual circumstances. In order to be admissible, there must be: (1) an express or implied charge (2) against the declarant (3) of recent fabrication or improper influence or motive.

In order for the prior consistent statement to come into evidence, the other side must open the door to this testimony. They do so by making either an express or implied charge of recent fabrication, improper influence, or improper motive against the declarant. If the other side has not attacked the declarant's testimony, either expressly or impliedly, on the basis of recent fabrication, improper influence or improper motive, then Rule 801(e)(1)(B) never comes into play. The statement remains inadmissible.

The language of the rule is highly restrictive. For example, a prior consistent statement will remain inadmissible if the express or implied charge is one of fabrication and nothing more. A charge of fabrication alone will not make the statement admissible. The charge must be of *recent* fabrication. Merely impeaching a witness or calling into question a witness's veracity will not invoke the narrow exception of Rule 801(e)(1)(B).

The express or implied charge must be made against the declarant himself, as opposed to the party calling the witness. In other words, interrogatory responses which are contrary to a non-party fact witness's testimony will not constitute a charge of recent fabrication by the declarant. It may open the door to a prior consistent statement by the party, but not a prior consistent statement by the witness.

Likewise, the express or implied charge must be more than influence or motive. The charge must be *improper* influence or motive. So, a suggestion that a witness is lying is insufficient—there must be some suggestion of improper influence or motive allegedly causing the witness to lie before the prior consistent statement will come into evidence. Before a prior consistent statement is admissible, the opponent must make one of two arguments, either expressly or impliedly: (1) "That is not what you said last week (or last month)," or (2) "You are just saying that because (improper influence or motive)." When either of those two allegations has been made, then the door is opened to the prior consistent statement to rebut the charge.

In order for a prior consistent statement to be relevant, you must believe that if a person has said something enough times, it is probably true.

Even with that, appellate courts will not require a trial judge to be a mind-reader. Unless it is painfully obvious from the context, rules of procedure and evidence require that an attorney articulate to the judge the purpose of any offer of evidence. More particularly, the express language of Rule 801(e)(1)(B) requires the attorney seeking the admission of a prior consistent statement to tell the judge the reason why the exceptions embraced in Rule 801(e)(1)(B) apply. It is not the judge's burden to figure out that the statement would rebut the opponent's charge. The statement must be "offered" into evidence for that purpose. If the attorney fails to lay the proper predicate for the prior consistent statement's admissibility, then the judge may rightfully reject it.

When presented with an offer of a prior consistent statement, the judge should apply a two-part test: First, has the proponent offered the statement generally or for a limited purpose? If the proponent of the statement simply offers the statement generally, without more, it should be excluded, because until the attorney has offered it as an 801(e)(1)(B) exception, the judge will commit no error in excluding it. The judge may rely on the well-accepted principle that when evidence which is admissible only for a limited purpose is offered generally, there is no error in excluding it.

Second, has the attorney articulated a proper exception to the general rule? Just like with any other piece of evidence, a judge is not required to read an attorney's mind to figure out whether the statement is being offered to rebut charges of recent fabrication, to rebut a charge of improper influence, or to rebut a charge of improper motive. The statement only comes into evidence when the proper predicate has been laid—when the proponent of the prior consistent statement articulates the limited purpose for offering the statement and proceeds to offer it into evidence only for that limited purpose.

I have said all of this before, and now I am saying it again. It has just got to be true. And, admissible. Well, maybe not. ◆

The Case for Assigned (Visiting) Judges

By Hon. Susan P. Baker
Former Judge, 306th District Court

The utilization of retired, senior, and former judges has saved Texans a lot of grief over the years. From a financial standpoint, it would take many more dollars to create and staff new courts than to bring in visiting judges to help with the overflow. 2002 statistics from the Office of Court Administration show that throughout the state, cases tried by visiting judges were equivalent to those of 113 full-time sitting judges. An assigned district judge receives 85% of a sitting judge's pay. For the sake of argument, at the rate of 85% pay and benefits, 113 assigned judges would receive $12,425,508, while 113 sitting judges would receive $14,618,245, a difference of over $2 million in state funding alone.

In Harris County, the most populous county in Texas, per the District Court Administrator, the annual cost of a district court, (with county courts being roughly the equivalent), factoring in the cost of such things as office space, staff (including, but not limited to, court reporter, court coordinator, bailiff, prosecutors, deputy district clerks), equipment, supplies, and other expenses is as follows:

- Civil: $785,000
- Criminal: $2,244,150
- Family: $1,353,522
- Juvenile: $3,589,640

In addition to the monetary savings of judges sitting by assignment, there are more esoteric reasons to have the program, many experienced only by those individuals either employed within the court system or citizens with cases before the courts. The Honorable Stephen B. Ables, Chair of the Texas Center for the Judiciary Board, Chair of the Judicial Section of the State Bar of Texas, Presiding Judge of the 6th Administrative Judicial Region, and Judge of the 216th District Court, explained the need for judges sitting by assignment this way:

Just as the myth of "one riot, one ranger" has disappeared into the morass of modern society, so has the concept of "one bench, one body." It is an impossibility in today's world for an elected judge to appropriately handle every case on the court's docket. There are too many cases. The cases are exceedingly complex. There is intense scrutiny on the propriety of a judge sitting in certain cases and by statute there are innumerable situations where a judge is precluded by law from presiding.

Cases tried by visiting judges were equivalent to those of 113 full-time sitting judges.

From a fiscal and due process perspective, the most efficient method of addressing docket control in Texas is the use of a trained and experienced pool of former judges who are willing to work as needed on a per diem basis.

The caseload of the average district or county court judge has gotten out of control in our litigious society, yet government can ill afford to create enough new courts and fund support staff for those courts to keep up with the growth. The problem is not restricted to a single area of the law.

In the criminal justice system, although reports reveal a declining per capita crime rate, as the population grows, so does the number of crimes. More people equals more crimes. Criminals, as a rule, beget criminals. With no real rehabilitative programs available, many criminals re-offend until old age. These individuals re-cycle through the system, further reducing the time and funds available to deal with new offenders who have reached their majority.

On the family side, the divorce rate blossoms like weeds in a vacant field. Additionally, litigious parties return to court continuing the fight over their children by way of Motions to Modify and Motions for Contempt of prior orders. Some litigants file annually, until the children are grown or dead. Even the death of a minor child can bring feuding parents back to court. In one case in my court last year, the parents could not agree on funeral services for their child. A quick judicial decision was required to lay the child to rest.

In the juvenile justice system, more children are abused and neglected than ever. As unemployment increases and parents can't provide for their families, children's needs are not met. Higher stress creates more incidents in the home. Needy children come into the foster care system and, thus, into the

court system. Juvenile delinquents, a product of oh so many societal ills, offend and re-offend, swirling through that revolving door until they work their way into the adult system.

On the civil side, the population increase may make it seem that everyone sues everyone, but that doesn't need to be true for the number of lawsuits to multiply. More people beget more lawsuits. The constitution entitles people to a redress of grievances.

In olden times, courts did not work all day, every day. The idea of a court convening daily was foreign to people. I recall, after taking the bench twelve years ago, being asked, "What days do you hold court?" I would reply, "Every day, except, of course, Saturday and Sunday." To which the questioner would express astonishment, finding it unfathomable that anyone would have such a schedule. Following that would come the often rhetorical question, "When do you have time to keep up with the law, the mail, the paperwork, and the administrative meetings?"

Not surprisingly, though, when one wants his own case heard, he expects the judge to take the bench eight hours a day, continuously, until the conclusion of his case and damn all the other people seeking their day in court.

Briefly, to give insight into a judge's life, the pressure is often unbearable. There are three kinds of politics going on at all times: political politics between the two major political parties, political politics within one's own party, and courthouse politics among the many personalities who work in that habitat. The daily dealings with attorneys, their staffs, and parties to lawsuits is often aggravating, to say the least, particularly if one wants to run an orderly court and enforce local and state rules. Pro se litigants are on the increase and increase the burden on each judge and her staff. Demands on judges to attend public and political functions are on the rise as people desire more visibility and accountability of their elected officials. Eccentric litigants attempt to pressure judges by filing complaints with the Commission on Judicial Conduct, Motions to Recuse judges who they fear may rule against them, lawsuits in state and federal courts, and letter writing campaigns to state and federal legislators. I even had one litigant threaten to go to the FBI if I did not do what he wanted.

To all of the above, add the emotionality of some lawsuits and the evidence judges must bear witness to, day in and day out: man's inhumanity to man, violence in the home against the weak, crimes of violence in the streets and workplace, cruelty, meanness, hate, greed, and avarice; the breakdown of families and other relationships; the breach of agreements; intentional and unintentional bodily harm inflicted on our fellow human beings; sexual assaults of every kind and nature on persons of every age, sex, race, and nationality. The list could go on ad infinitum as there are as many types of criminal and civil lawsuits as there are people with active imaginations.

Judges have conflicts, recuse themselves, or are recused. Complicated lawsuits must be tried. Judges must attend judicial education programs. Job pressure has to be relieved through vacations. Judges get sick, have heart attacks, cancer, babies, and are injured in accidents. They must have physicals, dental appointments, and attend to other medical needs.

Should courtrooms sit vacant when the duly elected judge is unavailable? Or should there be a pool of experienced jurists available to keep the flow of thousands of cases moving like the waters of the Guadalupe River? Just imagine if the river were dammed. Regarding multi-complex cases, if one

Assigned Judges continued on page 15

in|memoriam

For Those Who Served Our State Courts

As of March 15, 2003

Honorable William E. Junell
Justice
14th Court of Appeals, Houston

Honorable E. James Kazen
Senior District Judge
49th District Court, Laredo

For recognition in In Memoriam*, please forward the names of recently deceased judges to Morgan Morrison, Publications Coordinator (telephone: 512-463-1530 or e-mail: morganm@yourhonor.com).*

Using Today's Technology continued from page 7

one is needed. This is normally done by our AD in her office when she is interviewing the inmates by video conference with the jail. As she is talking with the inmates, she simply logs onto her computer. There she is greeted with a link on her computer to the appropriate list with the next five names in that category. For example, if the inmate is charged with a second degree felony, she links to the list for qualified attorneys in that category. With a click, an attorney is then selected and appointed from that list as required by the FDA.

Once the attorney is selected, the computer simultaneously generates an Order appointing the attorney. As discussed below, the Order includes the name of the defendant, what he is charged with, his pin number, his phone number(s) and the Court in which the case is pending. Quick, simple, no paper.

Computerized Orders are E-mailed to Attorneys

The attorneys under our FDA Rules are required to provide us with their e-mail address. As the appointment is made on the County computer, the computer automatically and simultaneously generates an e-mail (with the Order attached) that is immediately sent to the attorney advising of the appointment. The FDA Order advises the attorney of his client's name, their pin number, their cause number, what crime they are charged with, the phone number(s) for his client and other relevant information. The AD or Judge can print a hard copy of the Order if needed for the Clerk's file.

The Order is saved on a hard drive under a folder that is named for the appointed attorney. In other words, our AD keeps a folder for each attorney that has within it a copy of all appointment Orders issued for that attorney. This is a great device to retrieve a list of appointments for the various attorneys that practice in our courts.

This computerized process allows appointments to be made without the AD or Judges ever having to touch a piece of paper. Yes, there are times we and our AD have to do it "the old fashioned way," because of an error in the computer or some other unexpected glitch, but that is becoming the exception rather than the rule.

We are moving toward a paperless appointment process that is benefitting all concerned.

Our FDA appointment process is expedited by this instantaneous selection, appointment and notification of the appointment. In most cases the attorney knows of the appointment at virtually the same time the inmate has "video contact" with the Judge or AD. Yes, we still do appoint attorneys for defendants in the courtroom when they have not yet been appointed one. This may happen, for example, when a defendant bonds out of jail so quickly they do not get an appointment at the jail or where the defendant does not initially seek an appointment because they want to retain their own attorney. But we are moving toward a paperless appointment process that is benefitting all concerned.

Unindicted Felons—90-day Bond Hearing

When a defendant has been arrested on an unindicted felony, the OCA office also saves the Appointment Order on their computer by date so they can follow up on whether the defendant has been released from jail and/or indicted within 90 days. Our attorneys are quickly learning that our OCA office is "ensuring" that the attorneys represent their clients diligently (see below). This calendaring system is one way our AD and OCA verify that unindicted felons get the statutorily required bond hearing if they are still in jail after 90 days, pursuant to Code of Criminal Procedure, Art. 17.151. The FDA does not specifically require this monitoring, but if you have the technology to do so easily, why not?

Statistics, Statistics, Statistics

Our OCA office also maintains information on each appointment for easy retrieval of categorical data, such as the number of appointments per attorney, the number of defendants receiving appointments, the number of cases receiving appointments in each court, and so on. This information will be used to aid the County Auditor in supplying to the FDA Task Force the data they need at the end of each year. It can also be used to answer individual Judge's questions concerning their Court, attorneys that practice before them and their Court's compliance with the FDA. This data is updated periodically and can be retrieved at any given moment.

The 410th District Court maintains data reflecting payments made to all attorneys, average payment per defendant, average payment per cause

number, and the ultimate disposition of each case . This information is compiled at the end of the year into a summary that is posted on our website under the link called "Fair Defense Act" (www.co.montgomery.tx.us/410dc/index.shtml).

The website of the 410th District Court even publishes the attorney's actual appointments by name of defendant and the date of appointment. This information is updated daily. Our 410th District Court website and the OCA website (www.co.montgomery.tx.us/oca/index.shtml) also publish our FDA Rules, all Exhibits and forms that accompany the Rules, and the Appointment Lists of attorneys approved for the various categories of cases.

Helping Attorneys Do Their Jobs

As set out in the FDA and our Local Rules, attorneys in Montgomery County are required to contact their new clients immediately and interview them within a reasonable time after appointment. The immediacy of our appointment system and e-mail notice to the attorneys help them comply with their obligations. As mentioned above, our AD and the OCA office monitor the attorneys' compliance with these obligations as the FDA tells the courts of our state that we must "ensure" that the attorneys comply with the Act.

Besides following up on the 90-day bond hearing mentioned above, the Judges are advised if any attorney receives multiple complaints from their clients such as failing to contact them timely. If necessary, we can and have called an attorney before us to discuss any problems. Our computerized system is a tremendous aid in gathering and keeping information on the work performed by our attorneys.

Uh...Beaumont, We Have a Problem

We have found additional benefits in our use of technology. In a recent case involving a civil commitment proceeding of a paroled sexual offender (these cases are all tried in Montgomery County pursuant to statute, Texas Health and Safety Code, Section 841.041(a)), the defendant appealed an adverse verdict. Unfortunately, the appeal was perfected after our District Clerk transferred the complete record to the County where the Defendant was to be "supervised," and the supervising county had misplaced the entire file. The Beaumont Court of Appeals ordered me to hold a hearing on the lost records and reconstruct a file.

Fortunately, a few years ago our District Clerk began scanning or "imaging" all records filed in civil cases. As a result, it was a simple matter to have her download the imaged records and certify them as the Court's file. Without this use of technology, I would have been relegated to relying on copies from the attorneys' files or telling my friends in Beaumont that indeed we had a problem! No doubt they would have ordered a new trial.

And So, Is It Worth It?

This technological "magic" has saved our Judges hours of time and effort in complying with the FDA mandates. It has opened our courthouse doors to extremely efficient proceedings that make our judicial system better for all and it has helped us comply with the mandate to timely appoint counsel for those individuals otherwise unable to afford one.

Is technology worth it? Oh, yeah! ◆

Texas' Newest Administrators of Justice

As of March 15, 2003

Hon. Ralph K. Burgess
5th District Court, Texarkana
Succeeding Hon. Jack Carter

Hon. James T. Campbell
7th Court of Appeals, Amarillo
Succeeding Hon. Phil Johnson

Hon. George Hanks
1st Court of Appeals, Houston
Succeeding Hon. Sherry Radack

Hon. Patrick O. Keel
345th District Court, Austin
Succeeding Hon. Scott McCown

Hon. Sherry Radack
1st Court of Appeals, Houston
Succeeding Hon. Mike Schneider

Hon. Richard A. Roman
346th District Court, El Paso
Succeeding Hon. Jose Baca

Hon. Phylis J. Speedlin
4th Court of Appeals, San Antonio
Succeeding Hon. Alma Lopez

looking|ahead

Judicial Conference Calendar

2003

Texas College for Judicial Studies
May 5–9, 2003
Austin

Computer Program
June 2–5, 2003
Midland

Professional Development Program
June 16–20, 2003
Austin

Associate Judge/IV-D Master Conference
July 9–11, 2003
Austin

Law & Literature *(tentative)*
July 2003
TBA

Judicial Section Annual Conference
September 14–17, 2003
Corpus Christi

College for New Judges
November 9–14, 2003
TBA

2004

Regional Conference (Regions 1, 6, 7, 8, & 9)
January 25–27 2004
Corpus Christi

Regional Conference (Regions 2, 3, 4, & 5)
February 2004
Dallas

Texas College for Judicial Studies
April 25–30, 2004
Austin

College for New Judges
December 5–10, 2004
Austin

2005

Regional Conference (Regions 2, 6, 7, & 9)
February 27–March 1, 2005
Galveston

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