CHAMBERS

Volume 36, Number 2 Spring, 2009

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This is the printable version of ***In Chambers*** online, the official publication of Texas Center for the Judiciary. *T*he magazine is published four times a year and funded in part by a grant from the Texas Court of Criminal Appeals. ***In Chambers*** strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center's mission of "Judicial Excellence Through Education" as our guiding premise.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for *In Chambers*. To do so, please contact Kimber Cockrill, Publications Coordinator, at 512.482.8986 or toll free at 800.252.9232, or via email at kimberc@yourhonor.com.

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Spring, 2009 ● Volume 36, No. 2

Letter from the Chair

The Honorable Suzanne Stovall

Dear Judges,

With spring's arrival, our thoughts turn to fresh starts and new beginnings. In keeping with this theme, please think about doing something new in your judicial career. The election of new board members will be held at the Annual Judicial Conference August 30-September 2, 2009, in Grapevine, Texas. This is your opportunity to serve in some capacity on either the Judicial Section or the Texas Center boards of directors.

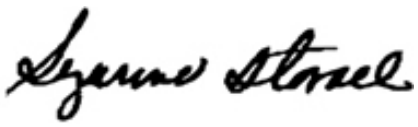
Both boards need new ideas, fresh perspectives, and positive energy; and these are best accomplished when the boards are composed of a real diversity of judges. I think most current and past board members, if asked, would say that their time on the board was hard work, rewarding, and fun. So if you have never served, please consider putting your judicial hat in the ring this year. We need you, and you'll make new judicial friends that you'll keep for the rest of your career.

Just let the Chair of the Nominations Committee, Judge Barbara Walther (51st Judicial District, 112 W. Beauregard, San Angelo, Texas 76903, 325-659-6569) know you are willing to do your part.

The lead article in this issue of In Chambers is about drug courts in a family court setting. I hope you will read this article with some thought as to how such a court might work in your county. Even if your particular jurisdiction does not lend itself to a drug court, please consider supporting efforts to bring such a court to your county. I was "The Drug Court Judge" in Montgomery County for several years and saw some amazing changes in defendants that had never before been contributing, tax-paying members of our community.

On a procedural note, we have continued to have cordial and productive conversations with the Court of Criminal Appeals regarding Fund 540, the source of funding for much of our educational programming. It appears that we have come to some substantial agreements that will benefit all of us and will prevent an increase in registration costs for our annual conference, at least for the time being.

Looking forward to seeing you all at the Criminal Justice Conference in Dallas.



Hon. Suzanne Stovall

HONORS & Achievements

THE HONORABLE DARLENE BYRNE, 126th District Court, Austin, was awarded the Texas CASA Judge of the Year award. Byrne has long supported CASA and its work, and was featured in their newsletter in Spring 2008.

"CASAs give the child a sustaining voice in court about everything from where they go to sleep at night, where they go to school and what their therapy needs are," Byrne said. "Sometimes [the CASA] is the one constant, mature, and nurturing adult that children in foster care have. It is really a beacon in the system."

Congratulations to Judge Byrne.

Information and photo courtesy: Texas CASA Heartbeat.

New Administrators of Justice

As of March 15, 2009

Hon. Marialyn Price Barnard

Justice, 4th Court of Appeals
San Antonio

Hon. Jill R. Willis

Judge, 429th Judicial District Court
McKinney

Partnership of Hope

Child Protective Services Cases and Family Drug Courts

By Judge Oscar G. Gabaldón, Jr.

"A journey of a thousand miles begins with a single step."

This Chinese saying embraces the idea of what drug courts are all about. They are about helping people to take one step at a time in the direction of sobriety, which often involves a lengthy journey of recovery. While drug courts may, in part, be meant to hold people accountable for their substance abuse, they are primarily there to lift the spirits of men and women enslaved by the lure and powerful attraction of illicit drugs and alcohol. Drug courts serve as tools of therapeutic jurisprudence and as problem-solving systems; they are designed to help enable and empower those dehumanized by substance abuse to achieve a drug-free lifestyle and to obtain a new lease on enjoying a fruitful, meaningful, and worthwhile existence.

Substance abuse is perhaps one of the most destructive forces. It often leads to the break up of families and irreparable harm to children. Substance abuse infiltrates the lives of many families, and frequently triggers a devastating storm that leads to child abuse and neglect.

Recognizing this reality, the 65th Judicial District Family Court, which is a designated Victims Act Model Court of the National Council of Juvenile and Family Court Judges, created two types of drug courts to exclusively serve the needs of parents with substance abuse issues involved with Child Protective Services ("CPS"). At the present time, over 80 percent of court cases brought by the Child Protective Services division of the Texas Department of Family and Protective Services involve one or more parents with substance abuse issues. Family drug courts are essential partners with CPS in carrying out the federally mandated preservation and reunification efforts that the state agency is required to pursue. The two El Paso family drug courts for Child Protective Services cases have proven to be innovative and trail blazers, helping to reunify families successfully and expediently, and helping to maintain a low recidivism in substance abuse reoccurrences.

The first of the 65th Judicial District Family Court's drug courts is referred to as the Intervention Track Family Drug Court. It is designed to provide a full range of drug court services to parents with substance abuse issues who have an active CPS court case. The drug court program entails an intensive array of services which include, among other things, inpatient and outpatient services, random drug testing, counseling and therapy on a wide spectrum of areas, parenting classes, and other services deemed necessary and appropriate for the individual participants.

The judicial supervision of the drug court also involves the professional support of a treatment team, composed of CPS staff, drug court staff, treatment providers, and other professionals, which closely reviews each participant's needs and progress in the program. The judge and the treatment team work diligently to consistently assure that drug court participants are afforded quality assistance, training, and services at every stage of the program.

There are three phases which participants must successfully complete before graduating from the drug court program. Generally, the duration of the program is from six months to one year. There are also support groups and other post-drug court services available to the participants upon graduation, so that the drug court graduates continue to have access to support systems to help them maintain sobriety.

The second drug court managed by the 65th Judicial District Family Court is referred to as the Preservation or Preventive Track Family Drug Court. This is a relatively new type of family drug court. Very few presently exist nationwide. As jurisdictions become more aware and familiar with this type of family drug court, it is expected that they will become more popular.

The Preservation or Preventive Track Family Drug Court mirrors all aspects of the Intervention Track Family Drug Court, except that the participants of this drug court do not have an active Child Protective Services "court case." Basically, it is a drug court that seeks to preserve the family by affording the full gambit of services offered in the Intervention Track Drug Court. Its objective is not only to protect and keep children safe but also to help prevent the removal of the children from their homes. That is, the goal is to provide the necessary professional assistance to families with substance abuse issues so that those families never have to come into the court system through the institution of a lawsuit filed by CPS, and have their children removed. Those coming into this family drug court are people referred to the program by the CPS Family Based Safety Services (FBSS) case workers and supervisors.

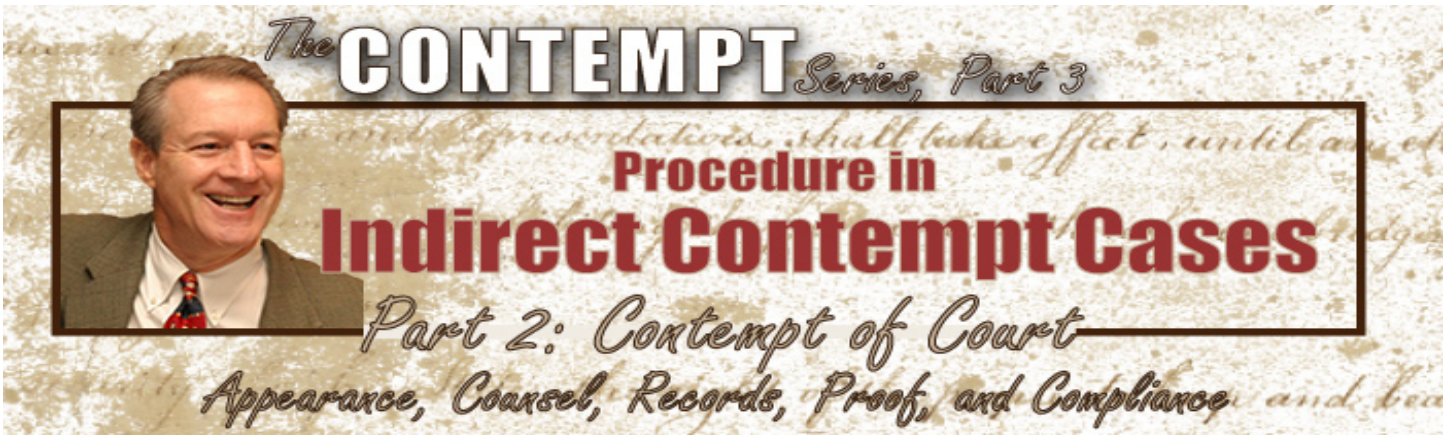
(Continued next page)

Partnership
(continued)

People join these family drug courts on a voluntary basis. Prospective participants are asked to first observe some of the drug court sessions before deciding whether to enter or not enter the program. Additionally, prospective participants can ask questions and receive information prior to making their decision to become part of the drug court program. The idea is for the individuals to make an informed decision and to have ample time afforded to them to recognize the tremendous advantages and benefits of joining what many consider to be a very promising substance abuse program.

In essence, drug courts are about second chances. They are about people helping people. Asa Hutchinson, the Under Secretary for Border and Transportation Security and Former Administrator with the Drug Enforcement Administration, sees drug courts as an avenue of opportunity. He states: "Through drug courts, we have an opportunity to build an era of responsibility…Everyday you are giving people a second chance at a new future. That is what America is about. We are a nation of second chances."

And so it is that we all have a stake in this. We all have a responsibility to help lift others, for as the celebrated American businessman, William Pollard, observes, "It is the responsibility of leadership to provide opportunity, and the responsibility of individuals to contribute." Drug courts do precisely that. They contribute the gift of opportunity.



By Judge Paul Davis

In part two of this series, published in the Winter 2009 issue of *In Chambers*, we explored various due process requirements in the indirect contempt proceeding. We focused on the underlying order, the requirements of notice to the respondent, and the necessity of a hearing. In this Part III, we will explore additional due process obligations in the contempt hearing, including the right to counsel and jury trial, the burden of proof, defenses, and attorneys fees.

The time has come…

When we last tuned in, the respondent was missing. Despite being served with a clear and timely notice of the contempt hearing, the respondent failed to show up for the hearing. In order to persuade respondent to appear, you issued a capias, or writ of attachment, for the arrest of the respondent. This capias has now been executed, and there in court before you appears the respondent, the movant and her attorney. At this point, you must give the appropriate warnings to the respondent, including right to counsel and right to a jury trial.

Right to Counsel

As in criminal cases, due process requires the right to assistance of counsel in contempt cases. [1]

Family Code – Right To Counsel

The first thing the court must do in a contempt proceeding is determine if incarceration "is a possible result of the proceedings."[2] What "the proceedings" are is not answered in the statute. What if movant only requests a suspended commitment or probation at the particular hearing; is an indigent respondent not entitled to an appointed attorney until the hearing on whether a term of the suspension or probation has been violated? No cases have been found which clarify this issue.

The court must notify an unrepresented respondent of his or her right to an appointed attorney if he or she is indigent. If respondent claims indigency and asks for an attorney, the court conducts an inquiry into the respondent's indigency.[3]

If the court finds indigency, an attorney shall be appointed unless the court determines the respondent will not be incarcerated as a result of the proceedings. Failure to follow this procedure deprives the court of authority to hold a respondent in contempt.[4]

Respondent's ability to borrow money from relatives to hire an attorney is not a factor to measure a claim of indigency.[5]

The appointed attorney is entitled to 10 days to prepare for the hearing unless respondent is in custody, in which case it is five days from the time the respondent was arrested. The times may be shortened or extended by a written waiver.[6]

General Cases - Right To Counsel

The procedure set out in Family Code, Section 157.163 is largely a codification of a series of cases examining the constitutional due process right to counsel.[7]

The Ft. Worth Court of Appeals has stated: "Once the question was raised as to [respondent's] ability to employ an attorney to represent him on this contempt matter, it was incumbent upon the [trial judge] to advise [respondent] of his right to the appointment of counsel if he were indigent and, if he then requested the appointment of counsel, to appoint one for him upon a determination by the [trial judge] that he was in fact indigent and, therefore, not able to afford counsel."[8]

More delay

Respondent requests a court appointed attorney and demands a jury trial. In the indigency hearing, you decide that respondent is in fact indigent and appoint an attorney to represent him. As described above, this newly appointed attorney must be granted some time to prepare for the hearing. Once again, the hearing has to be postponed. But what about the jury trial that respondent has demanded?

Right to Jury Trial

Generally, there is no right to a jury trial in contempt proceedings unless the charge is "serious."

Serious vs. Petty Offenses

The United States Supreme Court has declared that the Sixth Amendment right to a jury trial extends only to "serious" offenses and does not apply to "petty" offenses.[9]

Six months imprisonment and/or a $500 fine has been used by the courts as a somewhat arbitrary line to distinguish petty offenses from serious offenses, although this does coincide with the prior statutory definition of a petty offense in Federal criminal law. [10]

The general Texas contempt statute, § 21.002 Tex. Gov't Code, is in accord with this, setting the maximum punishment for a contempt at a fine of $500 and/or six months confinement in the county jail for each separate violation.

The punishments for multiple acts of contempt may be aggregated. If the aggregated imprisonment for multiple contempt allegations would exceed six months, the offense is considered serious and the contemnor has an absolute right to a jury trial. [11] However, if aggregated fines greater than $500 are contemplated, a case-by-case analysis must be made to determine if the offense is petty or serious. [12]

It is the duty of the trial judge to advise the respondent of his right to a jury trial if the potential punishment is in the "serious" range. [13] Of course, the right to a jury trial may be waived, but evidence of such waiver must be clear from the record. [14]

Finally, the hearing

You have determined that a jury trial is not necessary, and have given respondent's newly appointed attorney time to prepare for the hearing. Finally, we come to the hearing itself.

Record of the Proceedings
Required in Family Law Cases

Except for agreed orders, a record of an enforcement proceeding is required in all cases where incarceration is requested.[15]

Advisable in Other Cases

In non-family law contempt, the making of a record is advisable but necessary only on request.[16]

Burden of Proof
Generally Beyond a Reasonable Doubt

As a general rule, the burden of proof in any contempt proceeding, family or non-family law, is beyond a reasonable doubt.[17]

Less for Civil Contempt?

There is some authority that the burden of proof in civil contempt cases is by clear and convincing evidence.[18]

More facts

The respondent contends that the claims of the movant are barred by the statute of limitations.

Statute of Limitations

Sections 157.004 and 157.005 of the Family Code govern the time limitations on enforcement of a possession order and enforcement of a child support order. Under both sections, a court has jurisdiction to enforce an order of support or possession by contempt if the motion is filed within six (6) months after:

1. The child becomes an adult; or
2. The support obligation or right to possession terminates under the order or by operation of law.

With respect to arrearages, the court retains jurisdiction to confirm the total amount of child support arrearages and render judgment for past-due child support until the date all current child support and medical support and child support arrearages, including interest and fees and costs, have been paid. [19]

The respondent is called as a witness

During the hearing, the respondent is called as a witness by the movant. Hmmm, you wonder, isn't there something about double jeopardy, or is that just in criminal cases? Do I as the judge, need to say anything?

Privilege Against Self-Incrimination
Applies in Contempt Cases

Whether in a family or non-family matter, a respondent in a contempt action cannot be compelled to give testimony against himself or herself.[20] In a "serious" contempt case, the court must advise the contemnor of the right against self-incrimination.[21]

May Be Waived

The privilege against self-incrimination in contempt cases has been held not to be self-executing and it must be timely invoked or it will be waived.[22] Of course, a respondent in a contempt matter has the right to testify, if he or she desires.

Violation May Be Harmless Error

If sufficient evidence has already been admitted which proves up contemptuous conduct, then any error in compelling a witness to give testimony against himself has been held to be harmless. In one case,[23] the court of appeals held that where competent evidence proving an arrearage in child support payments was already before the court, the error of compelling the husband to testify was harmless.

Double Jeopardy

The respondent also contends that many of the allegations against him have already been the subject of prior contempt proceedings, and claims that to proceed against him again on those same allegations constitutes double jeopardy.

Double Jeopardy Applies in Contempt Cases

A court has no authority to hold a person in contempt a second

time for the same offense when the person has purged himself or herself of the original contempt and no new acts of contempt have occurred in the intervening time. [24]

May Bar Subsequent Criminal Prosecution

If the offense is the same, double jeopardy may cause a criminal contempt prosecution to bar a subsequent criminal prosecution.[25] In Dixon, the United States Supreme Court applied the Blockburger test which "inquires whether each offense contains an element not contained in the other; if not, they are the 'same offense' and double jeopardy bars additional punishment and successive prosecution." [26]

Coercive Confinement

Double jeopardy principles generally do not apply to an order assessing solely coercive confinement when a contemnor can obtain release by purging contempt.[27] Additionally, a finding of criminal contempt may not bar a subsequent coercive/civil contempt proceeding. [28]

…more facts…

"But it was impossible for me to pay that much!" exclaims the respondent. "My client was unable to comply with the order" explains the respondent's counsel.

Involuntary Inability to Comply With Order

Family Law Cases

Family Code Sections 157.006 and 157.008 provide that inability to pay is an affirmative defense on which the obligor has the burden of proof by a preponderance of the evidence. [29]

General

Outside the family law context, inability to comply is also an affirmative defense. [30]

Relevance of When Inability to Comply Occurs

If the inability to comply occurs at the time of the required act, the court may not make a punitive or criminal contempt order. [31] If the inability to comply exists at the time of the contempt hearing, the court may not make a coercive or civil contempt order. [32] Where the inability to comply arises during coercive confinement, the respondent may be ordered released. [33]

"In closing..."

"...I request that the respondent be held in contempt of court, that my client be awarded her attorneys fees, that the respondent be confined for six (6) months in the county jail, and that his confinement continue thereafter until he has purged himself of contempt by paying the full amount owed and all attorneys fees." Does a court have the right to assess attorneys fees against a contemnor and confine him until he pays those fees?

Attorneys Fees

Family Law Cases

Child Support

Pursuant to the Family Code, on a finding of contempt for non-payment of child support, a court "shall" order attorneys fees and costs unless the court finds good cause not to and states the reasons supporting such.[34] Additionally, the court can order a respondent incarcerated until such fees are paid.[35] An attempt to use contempt to collect attorney's fees taxed as child support in suits to enforce child support is not an unconstitutional attempt to use contempt to collect a debt.[36]

Modification Proceeding

In a suit to modify the parent-child relationship, attorney's fees and costs characterized as child support may not be enforced through a contempt judgment.[37]

Conservatorship and Visitation

While the court has the power to award attorneys fees in actions to enforce conservatorship provisions, a respondent may not be confined pending payment.[38]

Suit to Enforce Decree

The court may award attorneys fees in an action to enforce a decree of divorce or annulment. [39]

General Civil Cases

Generally, attorney's fees may not be collected through contempt proceedings. To do so would be to imprison a person for debt. [40]

It's finally over, isn't it?

After a long day on the bench in this contentious hearing, you find the respondent in contempt and assess his punishment. Now, finally, back in chambers, after returning many phone calls, you are ready to go home. Surely you can, can't you?

In the next issue of In Chambers, we will discuss the requirements for the written judgment and the commitment order. Additionally, we will explore probation (community supervision) and appeal.

Footnotes

[1] Cooke v. United States, 267 U.S. 517 (1925); Ex parte Hiester, 572 S.W.2d 300 (Tex. 1978); Ridgway v. Baker, 720 F.2d 1409 (5th Cir. 1983)
[2] Tex. Fam. Code § 157.163(a)
[3] Tex. Fam. Code § 157.163(b)
[4] Ex parte Gunther, 758 S.W.2d 226 (Tex. 1988)
[5] In re Luebe, 983 S.W.2d 889 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding)
[6] Tex. Fam. Code § 157.163(f), (g)

[7] See Ex parte Hiester, 572 S.W.2d 300 (Tex. 1978)
[8] Ex parte Hamill, 718 S.W.2d 78 (Tex. App.—Fort Worth 1986, orig. proceeding)
[9] Muniz v. Hoffman, 422 U.S. 454 (1975)
[10] Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).
[11] See Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976)
[12] See Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976) ($1,000 fine held petty; no right to jury); Ex parte Griffin, 682 S.W.2d 261 (Tex. 1984) ($104,000 fine, $500 for each of 208 separate violations, held to be serious; entitled to a jury).
[13] See Ex parte Griffin, 682 S.W.2d 261 (Tex. 1984).
[14] Ex parte Griffin, 682 S.W.2d 261 (Tex. 1984); Ex parte Suter, 920 S.W.2d 685 (Tex. App.—Houston [1st District] 1995, orig. proceeding).
[15] Tex. Fam. Code § 157.161
[16] Tex. Gov't Code § 52.046.
[17] Ex parte Chambers, 898 S.W.2d 257 (Tex. 1995); Ex parte Carson, 641 S.W.2d 537 (Tex. Crim. App. 1982).
[18] Travelhost, Inc. vs. Blandford, 68 F.3d 958 (5th Circuit 1995)
[19] Tex. Fam. Code § 157.005(b)
[20] Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).
[21] Ex parte York, 899 S.W.2d 47 (Tex. App.—Waco 1995, orig. proceeding).
[22] Ex parte Tankersley, 650 S.W.2d 550 (Tex. App.—Fort Worth 1983, orig. proceeding).
[23] Ex parte Snow, 677 S.W.2d 147 (Tex. App.—Houston [1st Dist.] 1984, orig. proceeding)
[24] Ex parte Payne, 598 S.W.2d 312 (Tex. Civ. App.—Texarkana 1980, orig. proceeding); Ex parte Brown, 574 S.W.2d 618 (Tex. Civ. App.—Waco 1978, orig. proceeding).
[25] U.S. vs. Dixon, 509 U.S. 688 (1993); Ex parte Busby, 921 S.W.2d 389 (Tex. App.—Austin 1996, orig. proceeding).
[26] Dixon, 509 U.S. at 696, Blockburger v. United States, 284 U.S. 299 (1932).
[27] Ex parte Jones, 36 S.W.3d 139 (Tex. App.—Houston [1st Dist.] 2000, orig. proceeding).
[28] In Ex parte Englutt, 619 S.W.2d 279 (Tex. Civ. App.—Texarkana 1981, orig. proceeding), the first contempt was a criminal contempt and he served his time and thereafter a coercive contempt was commenced. Further, additional child support became due in the period following his criminal non-support conviction and adjudication. The Court found that double jeopardy did not bar the second contempt proceeding.
[29] See Ex parte Rosser, 899 S.W.2d 382 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding) for an analysis of the inability to comply defense in visitation cases.
[30] See Ex parte Chambers, 898 S.W.2d 257 (Tex. 1995).
[31] Ex parte DeWees, 210 S.W.2d 145 (Tex. 1948); Ex parte Hart, 524 S.W.2d 365 (Tex. Civ. App.—Dallas 1975, orig. proceeding).
[32] Ex parte Ramzy, 424 S.W.2d 220 (Tex. 1968); Ex parte Rohleder, 424 S.W.2d 891 (Tex. 1967); Ex parte Townsley, 297 S.W.2d 111 (Tex. 1956).
[33] Ex parte Barnes, 730 S.W.2d 46 (Tex. App.—San Antonio 1987, orig. proceeding).
[34] Tex. Fam. Code § 157.167.
[35] Ex parte Helms, 259 S.W.2d 184 (Tex. 1953); Ex parte Chacon, 607 S.W.2d 317 (Tex. Civ. App.—El Paso 1980, orig. proceeding).
[36] IMMO Moers, 104 S.W.3d 609 (Tex. App.—Houston [1st Dist.] 2003, no. pet.); see Tex. Const. Art. I, § 18
[37] IMMO Moers, 104 S.W.3d 609 (Tex. App.—Houston [1st Dist.] 2003, no pet.).
[38] Ex parte Rosser, 899 S.W.2d 382 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding).
[39] Tex. Fam. Code § 9.014.
[40] Wallace v. Briggs, 348 S.W.2d 523 (Tex. 1961).

By Sherry Wetsch

In the Spring of 1998 edition of In Chambers, Judge Jerry Sandel published the results of the use of mediation of criminal disputes in the 278th Judicial District. At that time, the use of mediation for the felony docket was successful, but new. In the Spring of 2006 edition of In Chambers, Judge William McAdams wrote a follow up discussion to the Spring of 1998 article, as the use of mediation for felonies had expanded from the 278th Judicial District, to the 12th Judicial District.

Attorney Sherry Wetsch co-authored both publications, as she has served as the mediator or conference judge in both Judicial Districts. The gist of both pieces was that the use of settlement conferences for felonies has been effective. During that period of time, the cases assigned to mediation were currently on the courts dockets. This article is an update to the two prior pieces, and is written with the input of the Walker County District Attorneys Office, which has been instrumental in ensuring the success of the felony mediation program.

In the last two years, the files that have been sent to mediation were sometimes referred upon volition of the Court. However, some of the files that are sent to mediation are referred at the request of the District Attorneys Office, and/or the Defense Attorneys. Most of the files that are sent to mediation are currently on the Court's docket. However, mediations have been conducted on pre-indictment matters. Post sentencing files have not yet been ordered to a settlement conference. That said, if a Defendant is on probation from another case, any related issues will be addressed during the settlement conference. The Court Coordinators serve as the mediation docket administrators. The costs of the mediation are paid by the Court.

The Court continues to refer cases to the Alternative Dispute Resolution process pursuant to Chapter 154, of the Texas Civil Practice and Remedies Code. The issue of confidentiality of the settlement conference is addressed in the Order of Referral. The Order expressly notifies the parties that unless they agree in writing to waive their right to confidentiality, all matters, including the conduct and the demeanor of the parties and their counsel during the settlement process, will remain confidential and will not be disclosed to anyone including the Court. The Order instructs the conference judge to advise the Court when the process was conducted, whether the parties and their counsel appeared as ordered, and whether a settlement was reached. Addressing the issue of confidentiality in the Order of Referral is critical to the success of the settlement conference.

The settlement conferences continue to be conducted in an available court room. The parties use the jury room for breakout sessions. The use of the court house as the location has proven to be the most convenient for the parties, attorneys, and witnesses. The use of the court room provides for a neutral location that lends authority to the proceeding. It also allows the mediator and the parties to have easier access to any related court files that may be needed. Additionally, sometimes the parties need to consult with the probation department, law enforcement officials, or need access to court personnel. On occasion, the Defendant is in custody. As a result, the court house has proven to be the most efficient location to conduct the settlement conference.

The types of cases that are being referred to mediation include but are not limited to the following: Injury to a Child, Aggravated Assault, Sexual Assault, Intoxicated Assault, Aggravated Sexual Assault of Child, and Theft.

Defendants are always represented by counsel during the settlement conferences. If a defense attorney has not been retained, the defendants are provided with a court appointed attorney. Victims and their family members rarely appear with counsel of their own. There are occasions when a pending civil matter, such as a personal injury claim or divorce, is pending. Participants are always given opportunities to consult with their personal attorney during the settlement conference if they desire to do so. Occasionally a case needs more than one mediation session, as the parties sometimes need to conduct further investigation into issues, such as the amount of restitution.

It is not uncommon for the victim, and members of the victim's immediate family, to attend the mediation. Members of the Defendant's immediate family also periodically attend the mediation. Witnesses have also attended and participated in the settlement conferences. This community approach has been one of the benefits of conducting settlement conferences for criminal disputes. Allowing the victim and defendant to attend the conference and be heard, helps ensure a successful settlement of outstanding issues. It also helps both the defendant and victim to understand the reality of each situation and appropriate options. During each mediation, a reality check as well as risk analysis, is conducted with the parties. One of the advantages of mediating a criminal dispute is that the parties can be creative when generating options. This helps the victims feel more comfortable about the situation. It also allows the defendant to be more confident and successful with post mediation responsibilities that they incur. The

parties and participants have an opportunity to take some sort of ownership of the outcome.

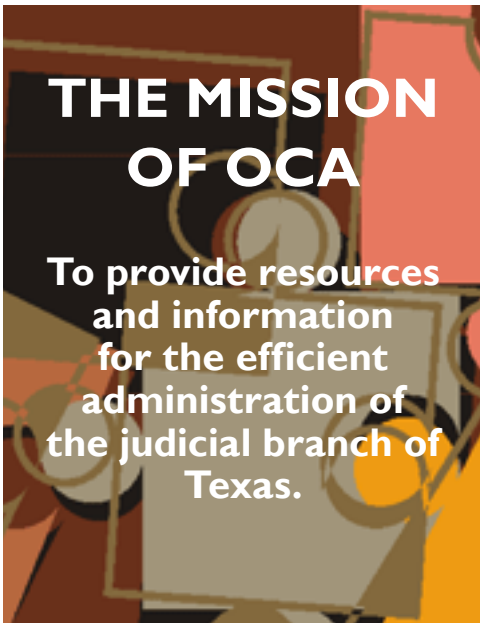
One of the reasons that these settlement conferences are successful is that the conferences provide all interested parties, with an opportunity to have a frank discussion. Given the nature of the circumstances, this discussion is essential to resolving conflict which won't be resolved through a traditional plea bargain agreement. This communication allows the parties to clear up misunderstandings and allows the victims and defendants to move forward.

There have been no identifiable reasons not to consider the use of mediation for felonies. That said, not every file is appropriate for a settlement conference. If the victim is fearful of the Defendant, that file is not appropriate for a traditional settlement conference. Additionally, the attorneys and the conference judge need to use discretion as to who is to be allowed in the room at any given time during a settlement conference. Each case is different. Therefore, there are no hard rules as to what is the most workable.

Settlement agreements cover issues such as community service, counseling, employment, education, restitution, court costs, and restitution. Settlement agreements are signed by the Defendant, defense attorney, and Assistant District Attorney. With the consent of the parties, the original settlement agreement is usually filed with the court by the conference judge.

The use of settlement conferences for felonies continues to be a successful method of addressing criminal disputes in Walker County. The 258th Judicial District in San Jacinto County, as also successfully utilized the use of a settlement conference to address a criminal dispute. Ms. Wetsch has served as the ADR provider there. The logistics and style of the settlement conference were consistent in San Jacinto County with those utilized in Walker County.

OCA: Judges' Assistance Necessary in Implementation of New Monthly Case Activity Report Changes for District and County-Level Courts



The monthly case activity reports for the district and county-level courts, which are submitted by the district and county clerks to the state Office of Court Administration (OCA), have been changed to more accurately reflect the work of those courts. The changes are effective September 1, 2010.

For some items on the new reports, the clerk may not have the required information and will have to rely on the judge or the judge's staff to provide it. Examples include the number of:

- Civil cases ordered to or returned from arbitration or collaborative law proceedings;
- Probate and mental health hearings held;
- Regular status hearings held in drug courts or family violence courts; and
- Release or transfer hearings held (determinate sentence proceedings) in juvenile cases.

The judges who worked on the multi-year project to review and recommend changes to the monthly reports decided to include these items because they were considered critical to accurately reflect court workload. These new items will require collaboration between the clerks, judges, court staff, and case management software vendors or county information technology staff to determine the best methods to collect, compile, and report the required information. If this information is not provided to the clerks, they will not be able to report it and show all the work that your court is performing. The arrangements and processes developed for obtaining the information from the courts will likely be unique in each county.

OCA staff have repeatedly communicated to the district and county clerks at conferences and meetings, as well as in memorandums, the importance of planning for and working on the implementation of the reporting changes now. While September 1, 2010 may seem far in the future, a project of this magnitude requires clerks to start working on the implementation now, rather than waiting until the summer of 2010. **The clerks will need your assistance in developing processes and procedures to capture the required information that they do not currently have.**

In May 2008, the Texas Judicial Council, the policymaking body for the judiciary, approved the changes to the monthly case activity reports and instructions, and adopted new reporting rules (Sections 171.1 through 171.6 of Title I of the Texas Administrative Code) for the district and county-level courts.

The changes to the reporting forms will:

- Provide more detailed, useful information about court workload and activity, particularly in family law, juvenile and probate cases, where little information is currently collected and the information that is collected is of limited usefulness;
- Allow policymakers and other interested parties to track important, growing caseloads in child protection, guardianship and mental health cases, which require long-term court involvement and satisfaction of statutorily-mandated timelines; and
- Provide a more accurate picture of a court's pending caseload by indicating how many cases are "active" cases (i.e., cases under the court's control) versus "inactive" cases (i.e., cases not under the court's control, such as a criminal case where a defendant has absconded and warrant has been issued for a defendant's arrest, or a civil case in which one of the parties has filed for bankruptcy and the case is subject to an automatic stay). This enables a court to measure the age of its pending caseload more accurately and to determine meaningful case-processing times.

The new reporting forms and instructions and further information about them are posted on the OCA website at: http://www.courts.state.tx.us/oca/required.asp.

Board Adopts New Levels of Giving Program

The Board of Directors of the Texas Center for the Judiciary is pleased to announce its new Donor Recognition Program. The new "Levels of Giving" will be recognized in future issues of In Chambers and with badge ribbons at conferences. (See graphic at left for depiction of the different levels of giving). Instead of the blue contributor ribbons given in the past to all donors, ribbons will be color-coded and indicate giving level for the current fiscal year. Diamond Gavel donors will receive special recognition each year at the Judicial Section Annual Conference.

Ribbons were first given out at the Family Violence Conference held at the end of March in Galveston.

As a nonprofit entity, the Texas Center for the Judiciary graciously accepts contributions from its constituents in support of the many judicial education and training programs that it offers throughout the year.

Does The Texas Center for the Judiciary Have Your Current Email Address?

The Texas Center frequently sends out important information via email. To ensure you receive this information in a timely manner, please keep your email address current with us. To submit or update your email information, please contact Michele Mund, Registrar, at (512) 482-8986, or michelem@yourhonor.com.

Special Notice! Nominations Committee prepares for FY 2009-2010

The Nominations Committee is preparing to slate new officers and members for the 2009-2010 Judicial Section Board of Directors and the 2009-2010 Texas Center for the Judiciary Board of Directors. This is an opportunity to serve the Texas judiciary in a unique and rewarding way. Following are the positions which need to be filled.

Chair-Elect

The chair-elect position is currently open and must be filled by a district judge for 2009-2010. The chair-elect nominee for the Judicial Section will also serve as the chair-elect for the Texas Center for the Judiciary. This position is for a one-year term, beginning September 1, 2009.

Texas Center for the Judiciary

Three positions will be open for the Texas Center for the Judiciary's Board of Directors.

- District Judge, Place 4
- District Judge, Place 5
- District Judge, Place 7

These terms are for three years, beginning September 1, 2009. The secretary/treasurer position on the Board of Directors for the Texas Center for the Judiciary is an appointed position.

Judicial Section Board

Four positions are open:

- One Appellate, Place 1
- One District, Place 5
- One County Court at Law, Place 8
- One Former/Retired, Place 10

These terms are also for three years, beginning September 1, 2009. The secretary/treasurer position on the Judicial Section Board is an appointed position.

What You'll Need

The 2009 Nominations Committee has established an application process that requires all nominees to accomplish the following by May 15, 2009:

- Review the Section bylaws or Texas Center bylaws pertaining to chair-elect and board member duties;
- Review the appropriate job description (chair-elect, board member);
- Submit a letter of interest;
- Submit an up-to-date resume;
- Submit a completed application.

Candidates for any open position must submit their letter of interest, resume, and completed application by U.S. Mail or fax to:

MAIL:

Honorable Barbara Walther
51st District Court
112 West Beauregard
San Angelo, TX 76902
FAX: (325) 658-8046

In addition, please provide the Texas Center for the Judiciary with a copy of your letter of interest and your completed application via U.S. Mail or fax to:

MAIL:

Ms. Mari Kay Bickett
Texas Center for the Judiciary
1210 San Antonio Street
Suite 800
Austin, TX 78701
FAX: (512) 469-7664

If you would like to recommend someone for nomination, please notify Judge Barbara Walther, Chair of the Nominations Committee (info above), no later than May 15, 2009.

Slated officers' names will be announced in the Summer 2009 edition of In Chambers. At the Judicial Section's Annual meeting in September, the greater Texas judiciary will be able to vote for their candidates of choice.

In Memoriam

Our hearts go out to the families of those honorable souls who have passed before us and served the bench so well. Please join us in remembering:

Hon. O'Neal Bacon

Senior Judge
Newton, Texas

Hon. George Crowley

Senior District Judge
Ft. Worth, Texas

Hon. Gordon Gray

District Judge (Ret.)
Ft. Worth, Texas

Hon. William S. Lott

Senior District Judge
Georgetown, Texas

Hon. Stephen F. Preslar

Chief Justice (Ret.)
El Paso, Texas

Hon. Bill Sheehan

Senior District Judge
Dallas, Texas

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2009

Beyond the Bench
May 3-5
Dallas

Blow 'n' Go: An Interlock Practical Workshop
May 18
Dallas

Writs Training Workshop: Back to Basics
May 18
Dallas

Criminal Justice Conference
May 18-20
Dallas

CPS Judges Conference
June 3-5
Dallas

Professional Development Program
June 14-18
Austin

Associate Judges Conference
July 6-8
Austin

DWI Court Team Training
July 13-16
Austin

DWI College
July 27-30
Austin

You Asked for It, You Got it!
August 5-7
Austin

Judicial Section Annual Conference
August 30 - September 2
Grapevine

College for New Judges
December 6-9
Austin

2010

Assigned Judges Conference
January 10-12
Austin

Family Violence Conference
March 22-24
Galveston

Texas College for Judicial Studies
April 28-30
Austin

Judicial Section Annual Conference
September 21-24
Corpus Christi

College for New Judges
December 5-10
Austin

2011

Judicial Section Annual Conference
September 18-21
Dallas

More conferences await confirmation.
Look for announcements on
www.yourhonor.com
and in future editions of *In Chambers*.