

# In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.  
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- 2005-06 Leadership Nominations
- Supporting educational needs of youth in foster care

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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 Staci Priest, Publications Coordinator, by calling 800-252-9232, faxing 512-469-7664, or e-mailing stacip@yourhonor.com.

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## In Chambers

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# JUDGE MENTALITY eFiling for Courts – Bringing Efficiency to the Courtroom

by Judge John Specia, 225th District Court

**A**s a Judge in a busy courtroom, I am heartened at the progress Texas is making with the electronic filing of court documents. The efficiencies gained from the filing and storing of these documents electronically simplify the day-to-day business of the court system for all attorneys, clerks and judges involved.



## What is eFiling for Courts?

TexasOnline eFiling for Courts is a statewide electronic filing solution that was developed to lessen the burden and expense that paper documents place upon court personnel and facilities. The filing, tracking and processing of paper pleadings spreads inefficiency and expenses throughout the system. The eFiling for Courts service was developed and provided in conjunction with the Supreme Court's Judicial Committee on Information Technology (JCIT), the Office of Court Administration (OCA), and the TexasOnline Authority. The Texas Supreme Court has standardized local rules for all participating counties.

Bexar County, where my court is located, was the largest of five original pilot counties to implement eFiling. The service went "live" in June 2003. Since then, we've made slow, but steady progress in affecting a culture change on the part of attorneys and their staff. It's been quite an adjustment to shift from the decades-old habit of sending a courier to the courthouse with paper filings to now hitting a button that sends digital documents instantly. Despite these challenges, electronic filing is here to stay and the Bexar County District Clerk currently receives electronic filings from all over Texas.



## Getting There

In conjunction with electronic filing, Bexar County is developing a vision for a major upgrade to our internal court management processes. We have been working closely with the Conference of Urban Counties to develop a Common Integrated Justice System (CIJS) for use by multiple counties across the state. Our vision for such a system includes providing a searchable, electronic repository of all filings and pleadings. The combination of an integrated justice system with eFiling will spearhead some truly dramatic efficiencies over the old, paper-based processes.

Forexample, imagine the possibility of improved foster care through these technological advances.

- An attorney ad litem files a pleading for a foster child through the eFiling system and simultaneously serves the pleading electronically to all other parties.
- The filing is automatically uploaded to the CIJS,
- The Judge can immediately access the pleading electronically from the bench, in chambers, at home, or, with the appropriate security, on the road.
- The Clerk could make the orders and filings from the CIJS accessible and searchable to all parties in the case, including attorneys, family members and CPS caseworkers, again with the appropriate security and access controls.

Today, it can take months a significant amount of time for numerous filings surrounding one case to be searched and retrieved in paper form by all parties. With

this information available online, we can address the child's welfare in a fraction of the time and move on to protect the next child in need.



## What's the Cost?

TexasOnline eFiling is paid for by filing fees to the attorney that are, in most cases, cheaper than the cost of processing paper. Any direct costs to the County are recoverable under provisions of Section 2054 of the Texas Government Code, which allows local governments to charge a cost-recovery fee. Any costs for acquiring an eFiling interface might be included as part of the cost recovery fee.




## Benefit to Judges

The greatest benefit to judges that I foresee coming from the marriage of eFiling for Courts and the CIJS system is the ability to issue orders electronically and the ability to instantaneously access information. For example, with these systems in place, if an attorney files a document an hour before a trial starts, that document appears on my screen at the bench. Now that is progress! With our eFiling for Courts and CIJS this will become a reality.



## For More Information

If you'd like more information on eFiling for Courts go to [www.TexasOnline/eFiling.com](http://www.TexasOnline/eFiling.com) or contact Mike Griffith with TexasOnline eFiling for Courts at 512-542-8022. The CIJS project is being conducted by the Conference of Urban Counties at [www.cuc.org](http://www.cuc.org) or you may contact Charles Gray, CUC project manager, at 512-476-6174. 





# Supporting the educational needs of children and youth in foster care:

## Tools and resources for educational advocacy

**F**or youth in foster care, education has the potential to be a positive counterweight to abuse, neglect, separation and impermanence instability. Positive school experiences enhance their well being, help them make more successful transitions to adulthood, and increase their chances for personal fulfillment and economic self-sufficiency, as well as their ability to contribute to society. Studies have shown that education is a significant factor in determining the success of youth as they exit the foster care system and beyond. (see results from the “Northwest Foster Care Alumni Study” at <http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm>).

Helping youth in foster care achieve a successful education is a cornerstone of practice at Casey Family Programs. In 2004, they developed a framework for education practice called, *A Road Map for Learning: Improving Educational Outcomes in Foster Care*. *A Road Map for Learning* was designed to provide a practical and an educational tool by anyone who works with the education needs of youth in foster care. It also serves as a resource for informing others about the unique education needs of youth in out-of-home care.

The framework addresses

eleven key education objectives that are imperative for contributing to the success of educational outcomes for youth in care. They include:

- (1) provide school placement stability,
- (2) secure and maintain accurate and accessible school records,
- (3) facilitate collaboration and training among all involved systems,
- (4) train caregivers to be education advocates at school and at home,
- (5) provide education advocates and education specialists/advocates,
- (6) give youth access to supplemental education supports and services,
- (7) address special education needs as appropriate to the youth,
- (8) decrease disparate outcomes for youth of color,
- (9) ensure that youth are literate, acquire basic skills, and have extracurricular opportunities,
- (10) prepare youth to achieve their postsecondary education, training and career goals; and
- (11) promote public policies that support education during and after care.

The third objective, facilitate collaboration and training among all involved systems, addresses the pivotal role that

judges play in insuring that the educational needs of youth are being addressed. In December 2002, TeamChild, with support from Casey Family Programs, produced an education checklist for use by judges within the state of Washington. To ensure the applicability of this checklist as a resource to courts around the country, Casey Family Programs provided the National Council of

*continued on page 9*



## ETHICS OPINIONS

### Question & Answer

No new ethics opinions have been issued since April 2005. To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct (877.228.5750).

### 2005 ETHICS COMMITTEE MEMBERS

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Hon. Thomas Bacus  
Hon. Cathy Cochran  
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Hon. Robin Ramsay

# 2005-06 Leadership Nominations

On May 13, 2005, the 2004-05 Nominations Committee chaired by Justice Molly M. Franis, slated the following judges for nomination for the 2005-06 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors.



## JUDICIAL SECTION BOARD OF DIRECTORS

Chair: Hon. Laura A. Weiser  
County Court at Law #1, Victoria

Chair-Elect: Hon. Barbara L. Walther  
51<sup>st</sup> District Court, San Angelo

Secretary-Treasurer: Appointed by Chair

Place 2: Hon. John Cayce  
2<sup>nd</sup> Court of Appeals, Fort Worth

Place 3: Hon. Kelly Moore  
Presiding Judge 9<sup>th</sup> Administrative Judicial Region  
121<sup>st</sup> District Court, Brownfield

Place 4: Hon. F. B. "Bob" McGregor, Jr.  
66<sup>th</sup> District Court, Hillsboro



## TEXAS CENTER FOR THE JUDICIARY BOARD OF DIRECTORS

Chair: Hon. Laura A. Weiser  
County Court at Law #1, Victoria

Chair-Elect: Hon. Barbara L. Walther  
51<sup>st</sup> District Court, San Angelo

Secretary-Treasurer: Appointed by Chair

Place 1: Hon. Elizabeth Lang-Miers  
5<sup>th</sup> Court of Appeals, Dallas

Place 3: Hon. Vicki Isaacks  
393<sup>rd</sup> District Court, Denton

Place 8: Hon. David D. Garcia  
County Court at Law #3, Denton

Place 10: Hon. John T. Boyd,  
Chief Justice, Retired, Amarillo

## JUDICIAL SECTION COMMITTEES

*Legislative (Appellate, Criminal Justice, Trial Judges)*

*Bylaws*

*Conference Fund*

*Ethics*

*Juvenile Justice*

*Nominations*

*Resolutions*

*Site Selection*

*Website*

## TEXAS CENTER FOR THE JUDICIARY COMMITTEES

*Appellate Education Fund*

*Awards*

*Budget*

*Bylaws*

*Capital Cases Bench Book*

*Curriculum*


*Fundraising*

*Judicial Bench Book*

*Long Range Planning*

*Nominations*

*Scholarships*

If you are interested in serving on any committees during the 2005-06 term, please contact Hon. Laura A. Weiser at 361-575-4550 or Mari Kay Bickett at 512-482-8986 or [mkbickett@yourhonor.com](mailto:mkbickett@yourhonor.com). 


## NAWJ to Meet at Annual Conference



*Dr. Sarah Weddington*

The Texas members of the National Association of Women Judges will be hosting their annual Membership Dinner during the Texas State Bar Judicial Section Annual Conference in Austin. The dinner will be held at Carmelo's on Monday, September 19th from 6:00PM to 9:00PM.

Dr. Sarah Weddington will speak on Leadership Issues and Gender Based Discrimination. Currently Dr. Weddington is an adjunct professor at the University of Texas. Dr. Weddington was a Special Assistant to former President Jimmy Carter and advisor to him on women's issues.

Tickets to the dinner are \$50. Men, as always, are welcome to attend the dinner and join the NAWJ. 


# Resolutions and Bylaw Amendments

The Judicial Section Resolutions Committee will meet in conjunction with the Judicial Section Annual Conference in September.

As stipulated in the Judicial Section bylaws, resolutions must be submitted to the chair of the Resolutions Committee no later than 20 days prior to the date set for the annual meeting. Therefore, the deadline for submitting resolutions is Tuesday, August 30, 2005. Submit resolutions to: Honorable F.B. McGregor, Jr., Resolutions Committee Chair, 66th District Court, PO Box 284,

Hillsboro, TX 76645-0284 or fax to 254-582-4010.

Proposed bylaw amendments should be submitted in writing by Tuesday, August 30, 2005 to: Honorable Molly M. Francis, Bylaws Committee Chair, 5th Court of Appeals, 600 Commerce, Dallas, TX 75202-4658 or fax (214) 745-1083.

Please send copies of any resolutions or proposed bylaw amendments to the Texas Center for the Judiciary, 1210 San Antonio, Suite 800, Austin, TX 78701 or fax to 512-469-7664. 

## Texas' Newest Administrators of Justice

AS of July 20, 2005

**Hon. Mackey Hancock**  
Justice, 7th Court of Appeals  
Succeeding Hon. Brian Quinn

**Hon. Brian Quinn**  
Chief Justice, 7th Court of Appeals  
Succeeding Hon. Philip Johnson

**Hon. Dan Moore**  
Judge, 173rd District Court  
Succeeding Hon. Jack Holland

**Hon. Rebecca Simmons**  
Justice, 4th Court of Appeals  
Succeeding Hon. Paul Green



# SPORTS LEADERS HELP UNVEIL NEW PLAYBOOK AT “FOUNDING FATHERS” EVENT

*Dear Judge,*

*While attending a planning meeting for the National Judicial Institute on Domestic Violence in Washington D.C., I came across this excellent initiative against family violence. Not only is this guide an asset for coaches, it contains valuable information for fathers and anyone working with adolescent boys. The following article explains the booklet and how it was developed.*

*You can obtain a copy by contacting the Family Violence Prevention Fund at <http://endabuse.org>. Downloads of the brochure are available in the "Public Education" section. I hope you will join me in spreading the word about this excellent resource.*

*Sincerely,*



*Mari Kay Bickett*

*Executive Director*

*Texas Center for the Judiciary*


Aggression may win you points on the field or on the court, but outside of sports that behavior is not tolerated. Now, coaches from every level and every major sport are coming off the sidelines to play a pro-active role in preventing violence and sexual assault in dating relationships.

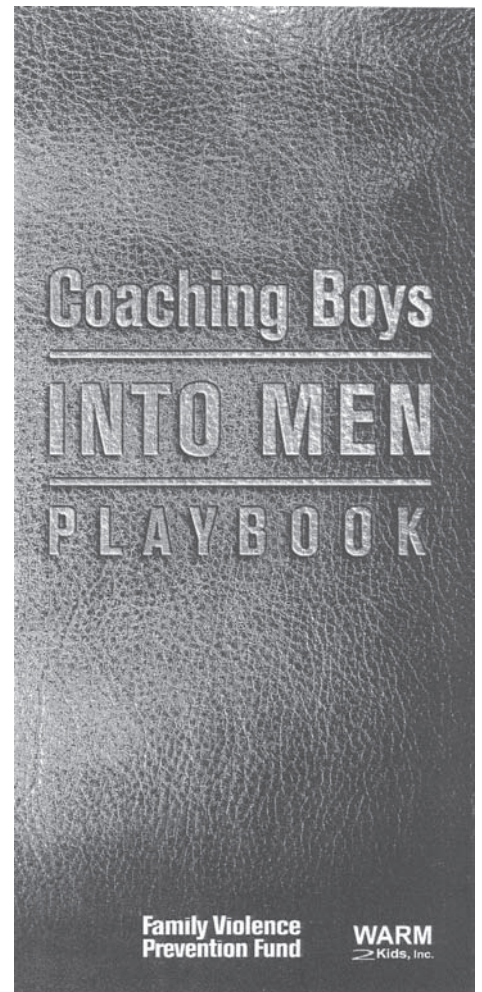
With help from the new *Coaching Boys into Men Playbook* - the first tool to engage both coaches and young athletes in efforts to prevent violence - coaches are giving student and professional players messages about the importance of rejecting violence in all its forms.

Developed with input from coaches and athletes, the Playbook gives coaches a step-by-step approach to discussing dating violence and sexual assault with players. From the pre-season motivational speech to post-season activities, it offers tips on how to incorporate anti-violence messages

in season or practice plans, and identify teachable moments that can be used to approach players in locker rooms, practice and play. It slides easily into a coach's pocket and reads like a sports playbook.

The Playbook was unveiled at a “founding fathers” campaign event in New York City on June 14. It will be distributed to high school sports coaches nationwide in partnership with the National High School Athletic Coaches Association. Leading sports figures including Duke University basketball coach Mike Krzyzewski, New York Yankees Manager Joe Torre and two-time national champion Pete Carroll from USC have endorsed it.

It was developed by Family Violence Prevention Fund (FVPF) and the Boston-based WARM2Kids. The Playbook is one of several initiatives that the FVPF has pioneered to engage men and boys in violence prevention. 




# Texas College for Judicial Studies Class of 2005 graduates

The second graduating class of The Texas College for Judicial Studies celebrated their achievement during the College held May 2 - 8 at the Austin Marriott at the Capitol in Austin.

The Texas College for Judicial Studies is a multi-year program curriculum designed to provide advanced educational opportunities to judges who desire to improve their adjudication skills and acquire more knowledge in their jurisdictional specialization. The Texas Center for the Judiciary's Curriculum Committee developed the College curriculum.

This year's conference featured a two-and-a-half-day core education program. Sessions covered topics relating to jurisprudence, evidence, decision-making, ethics, and time management. The conference then featured four, day-and-a-half specialty education programs. The four specialty curriculums included appellate, civil, criminal, and family/juvenile.

Some of Texas' most respected and experienced judges taught these classes, along with a diverse faculty of attorneys and other well-informed professionals in various fields.

"We developed the Texas College for Judicial Studies to allow judges to have the opportunity to obtain advanced, specialized training in their jurisdictional area so they can excel on the bench. The creation of the College is in keeping with our mission statement at the Texas Center—*Judicial Excellence Through Education*," said Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary. 



## CLASS OF 2005

- |                         |                         |
|-------------------------|-------------------------|
| Hon. Stephen B. Ables   | Hon. Delwin McGee       |
| Hon. George Allen       | Hon. James Mehaffy      |
| Hon. Manny Alvarez      | Hon. Jack Miller        |
| Hon. Ernie Armstrong    | Hon. John Miller        |
| Hon. Terry D. Bailey    | Hon. Andy Mireles       |
| Hon. H.D. Black         | Hon. Mike Mitchell      |
| Hon. J.A. Bobo          | Hon. Sally Montgomery   |
| Hon. Lynn Bradshaw-Hull | Hon. Kelly Moore        |
| Hon. Jan Breland        | Hon. Alvino Morales     |
| Hon. Wayne Bridewell    | Hon. Robert Newsom      |
| Hon. Gerald M. Brown    | Hon. Kathleen Olivares  |
| Hon. Burt Carnes        | Hon. Bob Parks          |
| Hon. Joe Carroll        | Hon. Sam Paxson         |
| Hon. J. Blair Cherry    | Hon. Michael A. Peters  |
| Hon. Jim Crouch         | Hon. Nelda Rodriguez    |
| Hon. Diane DeVasto      | Hon. Mary Roman         |
| Hon. Charles G. Dibrell | Hon. Dean Rucker        |
| Hon. John Donovan       | Hon. Marisela Saldana   |
| Hon. Stephen Ellis      | Hon. Stella Saxon       |
| Hon. Drue Farmer        | Hon. Steve Shipp        |
| Hon. Wanda Fowler       | Hon. Carol M. Siebman   |
| Hon. Molly M. Francis   | Hon. Amy Smith          |
| Hon. Patrick Garcia     | Hon. Ralph Strother     |
| Hon. David Garner       | Hon. Bonnie Sudderth    |
| Hon. Alejandro Gonzalez | Hon. Carter Tarrance    |
| Hon. Sergio J. Gonzalez | Hon. Don Taylor         |
| Hon. Ray F. Grisham     | Hon. Roger Towery       |
| Hon. Buddie Hahn        | Hon. Rose Vela          |
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| Hon. Brenda P. Kennedy  | Hon. Carroll Wilborn    |
| Hon. Alvin Khoury       | Hon. James T. Worthen   |
| Hon. Susan Lowery       |                         |



Juvenile and Family Court Judges (NCJFCJ) with funding to seek the input, testing, and evaluation of the Checklist by Model Court judges and to create a Technical Assistance brief that would support the use of the Checklist by the judiciary. Additionally, feedback was obtained by NCJFCJ from young people who are or were a part of the foster care system. Judges were given the opportunity to field-test the Checklist, in its original form, and tailor the instrument to suit the needs of their jurisdiction. Feedback from the judges who tested the Checklist, revealed several outcomes:

- **Change in practice** – judges reported that after using the Checklist over time, caseworkers, attorneys, GALs and CASA volunteers began to regularly include educational information in their reports to the courts in anticipation of those questions being asked.

- **Use of the Checklist as a reminder** – judges reported that the Checklist serves as a valuable tool for guiding and reminding them of appropriate questions to ask with regard to education.

- **Use of the Checklist as an accountability mechanism** – children and parents realized that by asking the questions from the Checklist, judges placed education as a high priority.

- **Use of the Checklist as a collaborative tool** – judges highlighted the importance of making the education connection a priority by persuading school representatives to become key stakeholders in the court

process.

The Checklist offers a promising tool to support the educational advocacy of youth in foster care and the Casey Family Programs are looking forward to learning more about its impact on the educational outcomes of youth in care when the tool is implemented. The Checklist, accompanied by a Technical Assistance Brief, is now available on line at [www.ncjfcj.org](http://www.ncjfcj.org) and hard copies will be disseminated to judges across Texas in late July. Further, NCJFCJ has made available a Word version of the Checklist so that jurisdictions can adapt to state law if appropriate and incorporate into ongoing court practice.

No matter what education services or advocacy provided, youth must remain at the heart of the work. It is their needs, dreams, and aspirations that continue to drive efforts to support and facilitate positive education outcomes for youth in care. What has been learned is that their voices need to be heard, and that for too many youth in care, the expectations, especially regarding school, have been set far too low with little encouragement or acknowledgement of strengths and success.

By engaging in collaborative relationships that cross multiple systems including the child welfare, education and judicial systems, and employing promising tools such as the Checklist, the important work that needs to be done will be accomplished. Watch your mailbox for a copy of this valuable tool. ✍️



## Meet The Texas Center Staff

### Amy Cook Financial Officer

Amy Cook serves as Financial Officer for the Texas Center for the Judiciary. She handles all financial aspects of the Center and the management of multiple grant funds. Prior to joining the Texas Center in June of 2004, Ms. Cook worked as an accountant for faithHighway in Tulsa, OK. That job transferred her to Austin in 2003. Outside of the office, Ms. Cook is very involved in her church and likes to be outside doing everything from kayaking, to hiking, to walking the beautiful trails at Town Lake and Zilker Park. ✍️



# SUPREME COURT SEEKS INPUT FROM TEXAS JUDGES ON PROPOSED CHANGES TO CODE OF JUDICIAL CONDUCT

by Lisa Bowlin Hobbs

The Texas Judiciary is in the second phase of amending its Code of Judicial Conduct following the United States Supreme Court’s ground-breaking opinion in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002). *White*, as you recall, held that a Minnesota prohibition against judicial candidates from announcing their views on disputed legal and political issues was an unconstitutional restriction on free speech.

The first phase was quick. When the *White* opinion issued, a general election was just around the corner. Thus, the Supreme Court of Texas wasted no time appointing an advisory committee of nationally recognized experts in the area of judicial ethics and free speech to study the impact of *White* on the Texas Code, and, based on the committee’s recommendations, amended certain provisions of the Code of Judicial Conduct to cure any obviously unconstitutional provisions. Order - Approval of Amendments to the Texas Code of Judicial Conduct, Misc. Docket No. 02-9167 (August 22, 2002).

The second phase has had the luxury of longer deliberation. The Court appointed another group, the Task Force of the Code of Judicial Conduct, “to review [the Texas Code of Judicial Conduct] to ensure that the integrity and independence of our judiciary is preserved.” Order Creating Task Force on Code of Judicial Conduct, Misc. Docket No. 03-9148 (August 29, 2003). The Task

Force’s charge was broad: “to make recommendations to the] Court for revisions required by law, to make suggestions on improving the effectiveness of existing cannons, and to suggest other modifications consistent with the Code’s broad purpose of upholding the integrity, independence and competence of the judiciary.” *Id.* In January, the Task Force issued its final report.

This report did not end the second phase. Rather, the Court has issued the Task Force’s Final Report for public comment. Now it’s time for all Texas judges to participate in the process. It is imperative that the Court receive informed feedback from those most affected by the proposed revisions. To that end, this article attempts to summarize the more significant of the proposed changes.



## PROPOSED CHANGES RELATED TO POLITICAL ACTIVITIES

After much debate and careful analysis of the *White* decision, the Task Force felt compelled to retain the restrictions on political activity contained in Canon 5. Recognizing the state’s compelling interest in having a judiciary that is fair, independent, and impartial, the Task Force proposed little substantive revisions to Canon 5. Instead, the Task Force proposed revising Canon 5 to contain an introductory section— taken in part from the Comment to Canon 5 in the August 2002 revisions to the Code— that is not mandatory but is an admonishment

to judges and judicial candidates that sets out core values that the Court hopes judges and judicial candidates will voluntarily seek to achieve. The Task Force believes that this self-regulation is necessary so that the candidate is able to fulfill his or her duties once in office but does not intend for this aspirational provision to form the basis of any disciplinary proceeding against a judge or judicial candidate.

The Task Force proposes amendments to the “endorsement provision” of Canon 5. Compare Current Canon 5.(2) with Proposed Canon 5.(3). Specifically, the Task Force recommends adding an introductory phrase to the provision to clarify the compelling state interest in prohibiting such endorsements. The Task Force feels that there is substantial justification for this limitation, as judicial candidates should not be intimidated or forced to make political contributions and endorse candidates as a means of keeping their job, particularly where these same public officials frequently appear before the judge or their work product and policies are challenged in the judge’s courtroom. The Task Force also believes such endorsements violate Canon 2’s prohibition against a judge from using the prestige of judicial office to advance the private interest of others.



## PROPOSED CHANGES RELATED TO EXTRA-JUDICIAL ACTIVITIES

The Task Force proposes several substantive changes to the provisions


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in Canon 4 relating to a judge's activity as a member of civic or charitable organizations. First, the Task Force proposes a change to the provision on membership in frequent-litigation organizations. See Canon 4.C. Currently, a judge "should" resign from an organization "if it is likely" that the organization will be a frequent litigant. The proposed rule requires ("shall") a judge to resign from that organization "if it becomes clear" that the organization will be a frequent litigant.

Second, the Task Force recommends consolidating the rules on fundraising by judges—currently divided between 4.B., on activities to improve the law, and 4.C., on other activities—in a new section D that provides more detail than the current Texas Code. The Task Force Report explains that the most of the proposed changes simply clarify existing law. There are, however, several noteworthy changes:

- The proposed Code limits a judge's ability to be a guest of honor or speaker at a fundraising event to only those organizations dedicated to improving the law, as opposed to any charitable organization under the current Code. See Proposed Canon 4.D.(2)(b).

- The proposed Code retains a current prohibition against personally soliciting funds for organizations. See Proposed Canon 4.D.(1). This prohibition is explicit in current Canon 4.C.(2) for charitable organizations and implicit in Canon 4.B.(2) on law reform organizations. The proposed amendments carve out a small exception in allowing a judge, for the first time, to solicit funds from another judge over whom the soliciting judge exercises neither



## How Can I Comment on the Proposed Rules?

*The Court is hosting several forums over the next couple months to give our judges ample opportunity to contribute to the process:*

- *The Court has scheduled four public hearings this summer. The first hearings were on July 11, 2005, at South Texas College of Law in Houston and July 21, 2005 at Texas Tech University School of Law in Lubbock. The next hearings are July 28, 2005, at St. Mary's University School of Law in San Antonio, and August 11, 2005, at Southern Methodist University Dedman School of Law in Dallas. All hearings will begin at 1:30 p.m. Any interested person may submit testimony orally or in writing at these hearings.*
- *The Court has been given special time during the Annual Conference in September to present possible changes and to solicit electronic votes on particular provisions from Texas' judges. Time limitations will not allow oral testimony at this conference.*
- *The Court will be distributing—in both electronic and paper formats—a formal survey to every Texas judge. These surveys can be submitted anonymously.*

supervisory nor appellate authority. See Proposed Canon 4.D.(2)(a).

- The proposed Code adds more specificity to the ability of a judge to "be listed as an officer, director, delegate, or trustee of . . . an organization," see Canon 4.C.(2), by prohibiting a judge's name from being listed more prominently than the names of similar-situated persons and a judge's title from being listed unless the occupations of similarly-

situated persons are listed (and listed with equal prominence). See Proposed Canon 4.D.(2)(c).

- The proposed Code expressly prohibits a judge from using his or her name or the prestige of office to raise money or solicit members and recruiting new members for an organization if the recruiting efforts are really just fundraising for the organization or if the solicitation could be reasonably perceived

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as coercive. See Proposed Canon 4.D.(1). Both prohibitions are implicit in current Canon 2.

Third, the proposed changes also include new regulation of personal finances. Most notable is the proposal on family businesses. The current Code prohibits a judge from being “an officer, director or manager of a publicly owned business” and defines a publicly owned business as “a business having more than ten owners who are not related to the judge”. See Canon 4.D.(2). The proposed change to the Code narrows the definition of “publicly owned business” to “a business having one or more owners who are not related to the judge”. See Proposed Canon 4.E.(2). In short, if the proposal is adopted, a judge will no longer be able to be an active owner of a business (an officer, director, or manager) if even one co-owner is not a relative.

And, finally, the proposed Code prohibits a judge from knowingly holding membership in an organization that practices “invidious” discrimination, as opposed to discrimination “prohibited by law” under the current Code. See Canon 2.C. The new language more closely tracks the ABA’s Model Code. The Task Force Report explains that an invidious discrimination is an arbitrary one made on an illegitimate or offensive basis. Membership discrimination is invidious if the reasons for the restrictions fail to reflect legitimate, generally accepted values. The Task Force concluded that invidious discrimination is broader than discrimination that is unlawful under federal or state law. For example, a private club may lawfully

discriminate against a certain class of persons, and the Task Force was concerned that the language in the current code may not prohibit a judge from patronizing that club.



### **OTHER NOTEWORTHY PROPOSED CHANGES**


The proposed Code has several other noteworthy changes:

- The proposed Code requires a judge to resign to become a candidate for any non-judicial race, not just a contested race as in the current Code. See Proposed Canon 5.(4).
- The proposed Code expressly prohibits a judge from testifying as an expert witness, a prohibition already established in a judicial ethics opinion. See Canon 2.B.
- The proposed Code expressly allows a judge to participate in educational programs and scholarly studies, such as the American Law Institute or the Supreme Court Advisory Committee, so long as the participation does not interfere with a fair hearing in a case. See Canon 3.B(10). The proposed change is meant to provide assurance and comfort to judges who are weary about talking about issues that might arise in their courtrooms.
- The proposed Code more clearly articulates a judge’s duty to report

another judge or attorney to the State Commission on Judicial Conduct or to the Chief Disciplinary Counsel of the State Bar when the judge knows the individual is impaired due to mental illness or chemical dependency. See Canon 3.D. The proposed Code permits the judge to attempt “other corrective action,” such as an intervention or a referral to assistance programs, before reporting the individual.

\* \* \* \* \*

This article is a summary of the proposed changes to the Code of Judicial Conduct that seemed most significant in the mind of the Court’s Rules Attorney, Lisa Bowlin Hobbs. Reasonable minds may differ on the provisions she has deemed significant, as well as her characterization of the proposed changes. The Court encourages each of you to visit the Court’s website, [www.supreme.courts.state.tx.us](http://www.supreme.courts.state.tx.us). The website contains the Task Force’s Final Report, as well as the various subcommittee reports, transcripts from all the Task Force’s meetings, and a link to the ABA’s Joint Commission that is, coincidentally but simultaneously, evaluating the Model Code of Conduct.

Take the time to know the issues and let the Supreme Court hear from you! 



### **DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT E-MAIL ADDRESS?**

*The Texas Center frequently sends out important information via e-mail. To ensure you receive this information in a timely manner, please keep you e-mail current with us.*

*To submit or update your e-mail address, please contact Lacy Jemmott, Registrar, at (512) 482-8986 or [lacyj@yourhonor.com](mailto:lacyj@yourhonor.com).*

# District Judges to meet at Judicial Section Annual Conference


by Hon. John A. Coselli, 125th District Court

The Texas Association of District Judges will hold a business meeting at the Judicial Section Annual Conference Monday September 19, 2004, at 4:30 p.m. If you are a District Judge, please plan to attend. The goal is to have every active Texas District Judge become a member of the Association.

The Texas Association of District Judges was established as a non-profit association at the 1993 Annual Judicial Conference. It is a voluntary organization for active Texas District Court Judges. Annual

membership dues are \$10.

We wish to plan a social hour/reception for the District Judges to immediately follow our September business meeting. If we raise sufficient contributions, refreshments may be provided. To adhere to the judicial canons and ethics rules, sources for contributions are very restricted. A contribution over and above your regular membership dues is appreciated. Contributions from officeholder accounts are permitted to be made to the Texas Association of District

Judges. If you would like to remit your annual dues or a contribution to the Association, please send a check payable to: The Texas Association of District Judges, c/o Judge Stella Saxon, P.O. Box 308, Karnes City, Texas 78118. Please also provided the Association with your email address by emailing me at the address below. Should you have any questions, please call me, Judge John Coselli, at (713) 755-5577 or [john\\_coselli@justex.net](mailto:john_coselli@justex.net). 

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# Serving as an Attorney ad Litem Appointed under Rule 244

by Judge Bob McGrath, 342nd District Court, Cecilia A. Thomas,  
and Marilyn Shell

**R**ule 244. **On Service By Publication:** *Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit on behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs.*

Rule 244 applies to the appointment of all attorneys ad litem for parties served by publication. It does not matter whether they are appointed in a family matter, a probate matter, or just any old civil matter.

The plain language of Rule 244 provides that the attorney ad litem should not be appointed until after appearance day, which is fixed by Rule 114. However, these appointments are frequently made prior to appearance day.

residence notice, as the case may be, before granting any judgment on service by publication. The basis for the issuance of a citation by publication is an affidavit by the requesting party stating that due diligence has been taken in attempting to locate the missing party, but that his location remains unknown. Clearly, under Rule 109, it is the responsibility of the plaintiff to attempt to find the missing party, and it is the responsibility of the court

to determine that the steps taken to attempt to locate the party were adequate.

The attorney ad litem does owe a duty to the client to attempt to locate

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***"Many assumptions are made about the attorney ad litem's duties and immunities."***

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## CAVEAT

Cases dealing with Texas Rule of Civil Procedure 244 are few and many of those deal with issues not covered by this article. Many assumptions are made about the attorney ad litem's duties and immunities. These assumptions often lack support from the meager case law and fly in the face of thoughtful analysis of Rule 244. For that reason, the reader is warned that the bulk of this article is just the opinion of the three authors.

## APPOINTMENT

An attorney ad litem is appointed when a party cannot be found. When missing or unknown people are served by publication, the appointment of an attorney ad litem is mandated by Tex.R.Civ.P. 244.<sup>1</sup>

## DUTY TO FIND THE PARTY

Some judges and many plaintiff's attorneys hold the opinion that it is the duty of the attorney ad litem to attempt to find the party and, if found, to report their location to the Court and opposing counsel. When unknown heirs have been served by publication, some of these judges and attorneys also expect the attorney ad litem to file a report detailing the efforts they made to find the client and certifying that all correct parties are before the court. These are not the duties of the attorney ad litem.

Tex.R.Civ.Proc.109 provides that it is the duty of the court to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain non-

him under the Rules of Professional Responsibility. It is the attorney ad litem's duty to protect the client's best interest by making him aware of the litigation and the opportunity to participate in it.<sup>2</sup> The ad litem need not take on the role of a private investigator but only assure himself that the missing party cannot easily be found.

In the event the missing party is found, it is not the attorney ad litem's duty to reveal the party's location to the court and opposing counsel, particularly if the client expresses a clear desire that his location not be disclosed. A duty of confidentiality is owed to the ad litem's client, and there is no special circumstance in these cases relieving the ad litem of this duty.<sup>3</sup> Making a report detailing the attempts made

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to find the defendant and stating that he was actually found, even if it doesn't state where he is, is a violation of this duty as it gives opposing counsel guidance on how to look for him.

The expectation that a report certifying the correct parties are before the court occurs in suits against unknown heirs, stockholders, and owners or claimants of interests in land served under Tex.R.Civ.Proc. 111 and 113. It is an impossibility for the ad litem to give such a certification. In cases involving unknown heirs, it might be possible to ascertain the names of heirs under the laws of intestate succession, but it is not possible to identify the heirs under a potential will. If such an assurance is important to the plaintiff, then the estate should be probated or a determination of heirship in probate court should be made. Similarly, in the case of unknown stockholders and owners or claimants of interests in land, it is impossible to determine who these people are. There is simply no way to determine the names of parties who have acquired an interest in stock or land and failed to file the documents necessary to transfer title.

If the defendant files an answer, the attorney ad litem may no longer act as his attorney without permission.<sup>4</sup> Rather than simply ceasing all activity, the ad litem should request that he be released from the appointment.

In *Anderson v. Anderson*<sup>5</sup>, the Court of Civil Appeals stated: . . . the duties of the attorney ad litem after being appointed by the court were 1) to locate the petitioner and give notice of the pending suit or 2) if unsuccessful in locating her to zealously defend petitioner in her absence. . . . Since the

attorney ad litem's duty to defend is contingent on inability to locate the defendant, then the attorney ad litem must cease acting on his behalf immediately upon locating the defendant, whether he enters an appearance in the case or not. The ad litem must report to the court that the defendant has been found and given the opportunity to participate in the case and request that the attorney ad litem be released.

### **ADDITIONAL DUTIES**

The Family Code and the Probate Code impose additional duties and grant immunities that are not covered by Rule 244. When appointed in those cases, it is incumbent upon the attorney to determine what additional duties are owed to the client. However, the client is still owed all of the duties set out herein if he was served by publication.

The attorney ad litem owes the missing or unknown party all the duties owed to other clients under the law and the Rules of Professional Conduct.<sup>6</sup>

Rule 244 states that no default judgment can be entered against parties served by publication. Therefore, it would appear that the filing of an answer on behalf of the missing parties is not required. However, the ad litem's duty to defend the suit requires that one be filed.<sup>7</sup>

Rule 244 states that the attorney ad litem will "defend the suit on behalf of the defendant." The purpose of this portion of Rule 244 is to provide the missing or unknown defendant who cannot be found effective representation.<sup>8</sup>

The attorney ad litem must ascertain any possible defenses the party might have.<sup>9</sup> All available affirmative defenses, limitations, and other possible bars to plaintiff's cause of action, in whole or in part,

must be pled. Admittedly, this will be difficult to accomplish without a communicative client, but the ad litem must do the best he can from the record, discovery, and the plaintiff's evidence.

Plaintiff's attorneys frequently expect the attorney ad litem to rubber-stamp their evidence and orders. To do so is highly improper. Objections to relief to which the plaintiff is not entitled must be asserted.<sup>10</sup> Objections to defects in the evidence must be made.<sup>11</sup> The attorney ad litem may not agree to the entry of a judgment--without a client's approval this is always beyond the authority of any attorney representing a party in litigation.<sup>12</sup>

The plaintiff must put on a prima facie case. If a prima facie case is not made, the attorney ad litem must make a record that he did not think that one had been made and asking for dismissal or judgment in favor of the defendant.<sup>13</sup>

All that being said, the ad litem should not go berserk. Turning the case into World War III is not necessary. Jury trials are not warranted. There is no need to object to evidence that is clearly admissible. Do what needs to be done to protect the client, but be reasonable.<sup>14</sup>

Request a court reporter for every hearing in the case. It is the ad litem's responsibility to make a record of all activity in the case to facilitate the filing of a motion for new trial or bill of review if the party ever shows up.<sup>15</sup>

Rule 244 requires that a statement of evidence be signed by the judge and filed with the papers of the cause. Failure to file this statement is a basis for overturning the judgment should the party show up within the next two years. If the plaintiff or court fail to see that this statement is filed, the ad litem adversely affects

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his client's interests by taking any action to have it filed.

If the ad litem is not competent to represent the party because the area of law is completely foreign to his practice, the ad litem must attempt to have another attorney ad litem appointed in his place.

## IMMUNITY

It is commonly believed that attorney ad litem's are cloaked in judicial immunity because they are officers of the court. This is incorrect. The attorney ad litem has no immunity from anything.

Although the attorney ad litem is an officer of the court<sup>18</sup>, he has no immunity from future claims of malpractice or negligence in the event the party surfaces. The key consideration in determining whether an attorney ad litem is entitled to judicial immunity is whether his conduct is a normal function of the appointing judge.<sup>19</sup> It is not a function of the presiding judge to defend the suit on behalf of any party. Therefore, the attorney ad litem has no judicial immunity.

## FEES

Taxing the attorney ad litem's fees as costs is mandatory under Rule 244.<sup>20</sup>

It is generally assumed that the attorney ad litem fees are taxed to the plaintiff. While this is not required by the rule, it is the generally accepted practice. The supreme court has held that good cause exists for assessing these fees against the successful parties.<sup>21</sup>

When filing an answer, it is wise to request in the prayer that the attorney ad litem be awarded his attorney's fees through trial and appeal and that they be taxed as costs against the plaintiff.

Frequently, the order presented by the plaintiff simply states that the

fees are to be taxed as costs without stating who they are to be taxed against. It is in the best interest of the attorney ad litem to see to it that the judgment clearly states that his fees are to be taxed against the party who requested citation by publication. If the fees are not promptly paid and an execution is needed, the constable or sheriff must be able to determine who is responsible.

In the event the case is appealed, the attorney ad litem is entitled to reasonable attorney's fees and expenses on appeal.<sup>22</sup> However, the only way to ensure that appellate attorney's fees are assessed and paid, is to make a request in the trial court for those fees, to include a prayer for appellate attorney's fees in the brief on appeal, and then to specifically request the appellate court to remand that issue to the trial court for a hearing and award. If this procedure is followed, the appellate court must grant the request to remand.<sup>23</sup>

If the Defendant makes an appearance prior to appearance day, an interesting question arises as to whether the attorney ad litem is entitled to recover fees for work done prior thereto. There is no case law on this. Logically, the plaintiff should be taxed with those fees if he requested the appointment of the ad litem prior to appearance day.

If the party served by publication enters an appearance after appearance day, but after the appointment of the attorney ad litem, the attorney ad litem is entitled to recover its reasonable fees under Rule 244 for services rendered prior to the appearance. These fees should be taxed against the plaintiff.<sup>24</sup>

If the party shows up, wishes to participate in the case and wants the ad litem to represent him, the ad litem should assure himself that the party can afford to pay and have

him sign a fee agreement before proceeding in his behalf. There is no guarantee that the plaintiff will have to pay the ad litem for any services rendered after the defendant's appearance in the case.

Some plaintiffs seek a nonsuit under Tex.R.Civ.Proc. 162 once it becomes apparent that the attorney ad litem is going to force them to properly prove their case. This tactic will not allow them to avoid payment of the attorney ad litem's fees. It has been recognized that allowing this practice would be manifestly unjust and would de facto defeat the purpose of the rule by denying the defendant effective representation.<sup>25</sup>

Dismissals pursuant to Rule 162 do not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under 162 has no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court.<sup>26</sup> Any dismissal pursuant to this rule which terminates the case authorizes the clerk to tax court costs against dismissing party unless otherwise ordered by the court.

Filing interim applications for the approval of ad litem's fees is a reasonable course of action given the possibility of dismissal and imperative when it becomes apparent the plaintiff intends to dismiss.

## CONCLUSION

In closing, we paraphrase the San Antonio Court of Civil Appeals, from a 1926 decision:

We should add that our observations in this article are not made with any intention to censure or reflect upon the learned and honorable trial judges of this state or attorneys practicing in this area, for

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whom we have the highest regard and respect, but rather in concern over an apparent and growing custom upon the part of the courts and attorneys in this state to treat too lightly and perfunctorily the obligation placed upon them by law to protect the rights of parties who, cited by publication alone, are given no opportunity themselves to protect those rights.

## FOOTNOTES

1. *Barnes v. Domain*, 875 S.W.2d 32, (Tex.Civ.App. - Hous. [14th Dist.] 1994); *Albin v. Tyler Production Credit Assoc.*, 618 S.W.2d 96, (Tex.Civ.App. - Tyler 1981); *McCarthy v. Jespersen*, 527 S.W.2d 815, (Tex.Civ.App. - El Paso 1975); *Villegas v. Shane-Michael Optical Co.*, 443 S.W.2d 571, (Tex. Civ.App. - El Paso 1969); *Madero v. Calzado*, 281 S.W. 329 (Tex.Civ.App. - San Antonio 1926).

2. *Anderson v. Anderson*, 698 S.W.2d 397, (Tex.Civ.App. - Hous. [14th Dist.] 1985, writ dismissed w.o.j.); Disc.R.Prof.Cond. 1.03

3. Disc.R.Prof.Cond. 1.05

4. *Anderson v. Anderson*, *Supra.* note 3

5. *Id.*

6. *Executors of Estate of Tartt v. Harpold*, 531 S.W.2d 696, (Tex.Civ. App.- Hous.[14th Dist.]

1975); *Madero v. Calzado*, *Supra.* note 1.

7. Disc.R.Prof.Cond. 1.02

8. *Isaac vs. Westheimer Colony Association, Inc.*, 933 S.W.2d 588, (Tex.App.- Hous.(2 Dist.)1996); *Terry vs. Howard*, 546 S.W.2d 66, (Tex.Civ. App-Dallas 1976);*Executors of Estate of Tartt v. Harpold*, *Supra* at note 6, (Tex.Civ.App.- Hous.[14th Dist.] 1975); *Madero v. Calzado*, *Supra.* note 1.

9. *Anderson v. Anderson*, *Supra.* note

3; Disc.R.Prof.Cond. 1.02 and 3.01; *Madero v. Calzado*, *Supra.* note 1.

10. Rules of Professional Conduct 1.02 and 3.01.

11. *Id.* and *Madero v. Calzado*, *Supra.* note 1.

12. Rule of Professional Conduct 1.02, Comments 2 and 3

13. *Id.*

14. Rule of Professional Conduct 3.02

15. Same as note 14.

16. *Montgomery v. R.E.C. Interests, Inc.*, 130 SW3d 444 (Tex.App.- Texarkana 2004)

17. Rules of Professional Conduct 1.01 and 6.01

18. *Estate of Tartt v. Harpold*, 531 SW2d 696, 698, (Tex.Civ.App. 1975, writ ref.,n.r.e.

19. *Byrd v. Woodruff*, 891 S.W.2d 689 (Tex.App.--Dallas 1994, writ denied)

20. *Wolters v. White*, 659 S.W.2d 885, (Tex.App.-San Antonio 1983)

21. *Rhodes vs. Cahill*, 802 S.W.2d 643, 647, (Tex. 1990)


22. *Cahill vs. Lyda*, 826 S.W.2d 932, 933 (Tex. 1992)

23. *Harris County Children s Protective Services vs. Olvera*, 971 S.W. 2d 172, 176 (Tex.App.- Hous [14 Dist.] 1998).

24. *Rhodes vs. Cahill*, *Supra.* note 23

25. *Terry vs. Howard*, 546 S.W.2d 66, (Tex.Civ.App-Dallas 1976)

26. *Ghandi v. Ghandi*, 564 S.W.2d 388, (Tex.Civ.App. [1 Dist.] 1978

27. *Madero v. Calzado*, *Supra.* note 1 at 331. 



## PROFESSIONAL DEVELOPMENT PROGRAM CELEBRATES 25 YEARS

The Texas Center for the Judiciary sponsored the 25th Professional Development Program (PDP) held at the Hyatt Regency Hotel in Austin. Court coordinators, managers, and administrators from district and county court at law courts across the state attended the conference held June 20-24, 2005.

PDP's core curriculum is designed to guide individuals in planning for their future education as court professionals. The program has a tiered structure made up of three professional development tracks: Trial Court Coordination, Trial Court Management, and Trial Court Administration. Each year, participants apply to the appropriate track and are selected based on their qualifications and current responsibilities to best meet the educational needs of Texas courts.

"The court professionals find



Photo courtesy of John Warren, TACA

*Mr. Bob Wessels, Court Manager for County Criminal Courts at Law, Houston has been with the Professional Development Program since it's beginning in 1980.*

mentoring opportunities with some of the state's most experienced judges and court managers," says Mari Kay Bickett, Executive Director of the Texas Center. "They learn from the experts what works best and how to get there."

After attending PDP, participants return to their courthouse ready to implement new systems and apply new knowledge, according to Ms. Bickett.



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## MAKING NEWS

### Honors & achievements of Texas Judges

The Kerrville Tivy High School Mock Trial team, which is coached by **Judge Steve Ables** and **Judge Karl Prohl** along with a number of Kerrville attorneys, won the 2005 State Mock Trial Competition in Dallas. The Texas High School Mock Trial Competition is sponsored by the Dallas Bar Association. **Judge Lana McDaniel** and **Judge Jay Patterson** are officers and directors of the Mock Trial Board. Numerous Dallas Judges participated as Judges at the April State finals. The

Kerrville Tivy Team now journeys to Charlotte, NC to participate in the National finals.

**Judge Sue Kurita** appeared in the May 16th, 2005 issue of USA Today. The special story, "100 Women Explore On-The-Job Bliss" by Barrington Salmon, is a book review of Joanne Gordon's "Be Happy At Work: 100 Women Who Love Their Jobs and Why". Judge Kurita's story is featured in the book and highlighted in the article.

## IN MEMORIAM

### For Those Who Served Our State Courts

AS of July 20, 2005

**Honorable Edward G. Aparicio**

Judge

92nd District Court, Edinburg

**Honorable Pat McKinney Baskin**

Senior District Judge

142nd District Court, Midland

**Honorable George H. Hansard, Sr.**

Senior District Judge

106th District Court, Lamesa

**Honorable Robert Lee Lowry**

Senior District Judge

313th District Court, Houston

**Honorable William "Bill" L. Peek**

Judge (Retired)

202nd District Court, Texarkana

# LOOKING AHEAD

## Judicial Conference Calendar

### 2005

You Asked For It, You Got It  
August 3–5, 2005  
Horseshoe Bay

College for New Judges  
November 13–18, 2005  
Austin

Judicial Section Annual  
Conference  
September 18–21, 2005  
Austin

### 2006

Winter Regional Conference  
(Regions 3, 4, 5, 6, 7 & 9)  
January 22–24, 2006  
San Antonio

Texas College for Judicial Studies  
April 23–28, 2006  
Austin

Judicial Section Annual  
Conference  
September 10–13, 2006  
Houston

Winter Regional Conference  
(Regions 1, 2 & 8)  
February 12–14, 2006  
Horseshoe Bay

Professional Development  
Program  
June 19 - 23, 2006  
Austin

College for New Judges  
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