

In Chambers



The Official Publication of the Texas Center for the Judiciary, Inc.
Vol. 33, No. 2, Summer 2006

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- Supreme Court Task Force on Child Protection Case Management and Reporting
- Survey of Texas Judges Who Hear Misdemeanor DWI Cases

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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

Volume 33, Number 2, Summer 2006

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JUDGE MENTALITY

Check The Math In Default Judgments

by Judge Alex R. Hernandez, Calhoun County Court at Law

In uncontested cases, where defendant fails to answer, plaintiff attorneys invariably ask for default judgment but fail to request a setting. An original petition will be accompanied by a Request for Admissions, which remains unanswered. Alleging liquidated damages the plaintiff attorneys expect judgment on damages "deemed admitted." All without as much as a docket call.

TRCP 241 deals with default judgment when damages are liquidated. The liquidated damages

cases appearing in my court are, e.g., the sworn accounts, the credit card cases and the like.

This article will discuss TRCP 241 in default judgments.

Two salient issues have come up lately in my court with respect to default judgments. The first issue is whether the court should place the case on a docket at all. Does TRCP 241 allow the court to sign a default judgment without placing the matter on the docket? The second issue is whether an unanswered request for admissions is sufficient evidence for purposes of assessing damages when these admissions are conclusory in nature.

Courts have agreed that TRCP 241 does not call for a hearing on damages. TRCP 241 speaks of what the court must do after default

judgment: "the court must assess damages." On the other hand, its counterpart, TRCP 243, requires a hearing on damages in cases of unliquidated damages.

However, the fact that no hearing is required with respect to damages does not mean that the case should not be placed on the docket for an initial default judgment on the matter of liability or breach. TRCP 241 provides that "when a judgment by default is rendered...the court must assess damages." It is only after a default judgment is rendered

judgment, the court should instruct the clerk to set the matter on the next available docket; to keep things manageable, this can be placed on a submission docket.

Default judgment can be entered as to liability based simply upon the unanswered petition, since the allegations contained in the petition are considered true. The court can assess damages thereafter by looking at the pleadings and the evidence in the file. Evidence will normally consist of the petition, affidavits, and/or the unanswered Request for

Admissions.

The second issue raised above is whether an unanswered request for admissions will

be sufficient to establish damages when the admissions are conclusory. A request for admissions will ask that the defendant admit that defendant is in breach and that defendant owes a certain dollar amount. For example, the request will ask for an admission that \$25,000 is the damages. Can the court enter judgment based upon an unanswered request for admissions which, by law, is deemed as true? The logic, of course, is that following an unanswered request for admissions the damages are no longer in dispute. Yet, if there is simply nothing more than a conclusion, it is not sufficient to support a judgment.

The courts have consistently held that conclusory affidavits are insufficient to support a default

"Alleging liquidated damages the plaintiff attorneys expect judgment on damages 'deemed admitted.' All without as much as a docket call."

-Hon. Alex Hernandez

that a court must assess damages. Default judgment with respect to liability must be distinguished from default judgment with respect to damages.

The first issue, whether the court should place the case on the docket, is addressed by TRCP 238. TRCP 238, in pertinent part, provides that "On the appearance day... and at the hour named in the citation...the court or clerk in open court shall call, in their order, all the cases on the docket in which such day is appearance day or...any case shall be so called on the request of the plaintiff's attorney." Therefore, when plaintiff's attorney writes the clerk asking that the judge enter a default

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2006-07 Leadership Nominations

On May 12, 2006, the 2005-06 Nominations Committee chaired by the Honorable Dean Rucker, slated the following judges for nomination for the 2006-07 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors.



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If you are interested in serving on any committees during the 2006-07 term, please contact Hon. Barbara L. Walther at 325-659-6569 or Mari Kay Bickett at 512-482-8986 or mkbickett@yourhonor.com. 

Supreme Court Task Force on Child Protection Case Management and Reporting

By Justice Harriet O'Neill, Texas Supreme Court

Every year, Child Protective Services removes more than 11,000 abused or neglected Texas children from their homes. These kids then face what seems to them a lifetime in foster care —9 months, 18 months, even 36 months or more—waiting for a permanent home. Many spend their entire childhood in the system, aging out when they turn 18.

Foster children are usually placed in multiple homes during their stay in the system. The lucky ones will move only twice while they are in foster care. Those who are not so lucky might move five to ten times.

While foster care can be a lifesaver for many vulnerable children, for others the consequences of growing up knowing only the instability of a transient home can be devastating. Recent studies demonstrate that youth raised in foster care fare dramatically worse in education, economic stability, physical and mental health, and social “connectedness” than peers with the greater stability of permanent families.

Texas judges are committed to improving our foster care system. Recently, I worked with a Texas team of judges and child-welfare professionals who joined the National Center for State Courts in releasing a “Call to Action”—advocating a comprehensive approach to strengthening court oversight.

And oversight is critical. Courts

play a gatekeeping role in the lives of foster youth. No child enters or leaves foster care without a judge’s approval. Courts decide whether children should remain in foster care or can safely return home; where they will live while in foster care; whether they will see their siblings and other family members while in care; and when and how they will leave the system. These decisions profoundly impact the lives of foster children and their families.

But Texas judges dedicated to improving the lives of children in foster care face many hurdles. According to a report by the national, nonpartisan Pew Commission on Children in Foster Care, courts lack sufficient tools, information, and support to ensure that children transition quickly from foster care to safe, permanent homes.

As outlined by the national call-to-action plan, Texas can strengthen its courts and foster care system by:

- Fostering collaboration;
- Providing judicial leadership;
- Improving legal representation of both children and parents; and
- Creating case management and tracking systems.

We as judges need to make sure courts and child-protection professionals are on the same page, figuratively and literally, in assessing whether abusive or neglectful parents are in fact straightening out their


lives. If they aren’t, transitioning the children to a stable family able to assure a safe and loving home should not be needlessly delayed.

Right now, Texas has no statewide system that monitors the legal status of these serious cases. That is why the Texas Supreme Court recently appointed a special task force to develop a unified system of managing and tracking child-protection cases. Such a system will help stretch limited child-protection resources and keep the more than 28,000 kids who live in foster care in Texas from falling through the cracks.

Congress understands the very important role of state courts and recently authorized more than \$100 million in available grants to state courts to develop best-practices measures and to train judges, attorneys, and other personnel who oversee these specialized proceedings.

Texas judges are engaged and out front on these issues. With the continued backing of both state and federal legislators, I am confident that we can continue to improve our foster-care system. We owe our children nothing less.

ABOUT THE AUTHOR

Harriet O'Neill is a Justice of the Texas Supreme Court and Liaison to the Supreme Court Task Force on Foster Care. You can find the “National Call to Action” at www.ncsconline.org. 



MAKING NEWS

Honors & achievements of Texas Judges

State Bar of Texas President Eduardo Rodriguez awarded **147 Texas judges** a Presidential Commendation for leadership in improving justice in Texas and for being among the first judges in the state who have met the standards of certification of special competence as graduates of the Texas College for Judicial Studies. The Commendations were presented at the State Bar of Texas Annual Meeting held in Austin, June 15th and 16th.

Judges who received a Presidential Commendation are:

Hon. Amado Abascal	Hon. Elma Salinas Ender	Hon. Susan Lowery	Hon. Robin Sage
Hon. George Allen	Hon. Drue Farmer	Hon. Alan Mayfield	Hon. Marisela Saldana
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Hon. Charles Carver	Hon. Jess Holloway	Hon. Lauren Parish	Hon. Rose Vela
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Hon. Steven R. Emmert	Hon. Jim D. Lovett	Hon. Dean Rucker	

Judge Russell Austin of Harris County Probate Court No.1 was awarded the Adjunct Professor Excellence Award for the academic years 2005-2006 by the South Texas College of Law Student Bar Association. He has received this honor twice before for the academic years 2001-2002 and 2003-2004.

Judge Laura A. Weiser, Chair of the Texas Center for the Judiciary Board of Directors, has appointed **Hon. Dori C. Garza**, Justice of the 13th Court of Appeals, to the Texas Center Board. Justice Garza succeeds Hon. Diane DeVasto in Place 2 and will serve for the remainder of the term.

Judge Patricia A. Macias, Presiding Judge of the 388th Family District Court in El Paso, Texas, was elected Vice President of the National Council of Juvenile and Family Court Judges during the organization's 69th Annual Conference held July 16-19, 2006 in Milwaukee, Wis.

NAWJ to Meet at Judicial Section Annual Conference

The Texas Chapter of the National Association of Women Judges will hold its annual dinner at the Judicial Section Annual Conference in Houston on Monday, September 11, 2006. All judges are invited—women judges, men who support women judges, spouses and other guests. The dinner will be held in the Royal Suite of the Westin Galleria on the 24th floor overlooking the city.

The guest speaker will be The Honorable Vanessa Ruiz, President of the National Association of Women Judges. Judge Ruiz sits on the Court of Appeals for the District of Columbia. She is a celebrated speaker both in the United State

and in her native home of Puerto Rico. Judge Ruiz recently led a delegation of thirty-eight members of NAWJ members to the International Association of Women Judges Conference in Sydney, Australia. Judge Marisela Saldana, County Court at Law #3 in Corpus Christi, and Justice Bea Ann Smith of the Third District Court of Appeals in Austin were among those attending.


Judge Ruiz will address issues concerning the independence of the judiciary at home and abroad. She will also discuss the highlights of NAWJ's programming this year, including the first NAWJ conference ever held in Texas, which presented an impressive program of judicial education in Houston in October

2005. That was followed by the highly successful Gala honoring Justice Sandra Day O'Connor held at the National Museum of Women and the Arts in Washington, D.C. in March, and the first meeting between the Congressional Caucus for Women's

venue that draws many members.

Another highlight of the year in Texas was the Color of Justice program sponsored by NAWJ at the University of Texas Law School. In April twenty high school students heard Chief Justice Wallace Jefferson, Judge Fortunado Benavides and other distinguished judges, lawyers, and professors urge them to consider a career as a lawyer and as a judge. An Access to Justice Scholarship was presented to second year law student Ciara Williams.

The NAWJ-TX dinner is a welcome opportunity for women judges and their friends to visit in a relaxed setting for a reception and dinner at the annual judicial conference. You may sign up by checking the dinner

on the conference registration form, or by sending a check for \$65 to the Texas Center for the Judiciary. A limited number of walk-up places will be available when you register at the conference. Please make your plans to join us and bring a friend! 



Judge Marisela Saldana, Corpus Christi, and NAWJ President Vanessa Ruiz attended the International Women Judges Conference in Sydney, Australia. Judge Ruiz will speak at the NAWJ-Tx dinner in Houston, Monday, September 11, 2006.

Issues and women Chief Justices, Chief Judges and other prominent members of the judiciary to be held this summer in Washington, D.C. Judge Ruiz will also invite the Texas judges to sign up for the 2006 NAWJ Conference to be held October 4-8, 2006 in Las Vegas, a very popular



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 Michele Mund, Registrar, at (512) 482-8986 or michelem@yourhonor.com.

Texas College for Judicial Studies Class of 2006 graduates

The third graduating class of The Texas College for Judicial Studies celebrated their achievement during the College held April 24-28 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 topics.

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 2006

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Hon. Raul Vasquez
Hon. Brenda G. Green


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 22, 2006. Submit resolutions to: Honorable Carter T. Schildknecht, Resolutions Committee Chair, 106th District Court, P.O. Box 1268, Lamesa, TX

79331 or fax to 806-872-7810.

Proposed bylaw amendments should be submitted in writing by Tuesday, August 22, 2006 to: Honorable Dean Rucker, Bylaws Committee Chair, Presiding Judge, 7th Region, 318th District Court, 200 W. Wall, Suite 200, Midland Texas 79701 or fax 432-688-4924.

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 CENTER RECEIVES PRESIDENTIAL CITATION

State Bar of Texas President Eduardo Rodriguez presented the Texas Center for the Judiciary with a Presidential Citation for providing outstanding educational opportunities to the judges of the State at the State Bar of Texas Annual Meeting held in Austin, June 15th and 16th.

President Rodriguez noted that exceptional recognition was deserved for the Texas Center's leadership in increasing the specialized competence of Texas judges through establishing standards of certification in the fields of Appellate, Civil, Criminal, Family, Juvenile, and General Jurisdiction through the Texas College for Judicial Studies.


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, an Austin-based non-profit judicial education group, developed the College curriculum. Judges who currently serve on the bench of a Texas county court



From Left: Ms. Mari Kay Bickett, Hon. Laura A. Weiser, President Eduardo Rodriguez, and Hon. Lamar McCorkle.

at law, district, or appellate court with four years of judicial experience were invited to apply for admission to the College.

"We are honored to receive this recognition from President Rodriguez and the State Bar of Texas," said Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary. "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." 



BOOGIE ON THE BAYOU! *Dinner & Dance*

2006 JUDICIAL SECTION
ANNUAL CONFERENCE
Westin Galleria, Houston
September 10 -13, 2006

Come boogie the night away down on the bayou! Live music will be provided by Texas law-rockers, DBI.



SURVEY OF TEXAS JUDGES WHO HEAR MISDEMEANOR DWI CASES

By David Hodges, Judicial Resource Liaison

The Texas Center for the Judiciary has received a three year grant from TxDOT to increase the effectiveness of DWI adjudication in Texas through improved training, technical assistance, and support for judges who preside over impaired driving cases. Pursuant to the grant, a new staff position at the Texas Center was created and Judge David L. Hodges was selected to serve as the Texas Judicial Resource Liaison. One of the grant goals was to survey judges who hear DWI cases to determine how DWI cases are being handled across the State.

The surveys were sent to 223 judges, geographically dispersed throughout the State, from both rural and urban areas, with a widely varying caseload. Responses were received from judges who had from five months to twenty years on the bench and who disposed of from fifty to 1800 cases per year. Needless to say, this survey does not have the requisites of a standard statistical sample and some answers are more anecdotal than empirical (based on a judge's experience and observations). Keeping that caveat in mind, on average, the judge hearing misdemeanor DWI cases had seven years on the bench and disposed of 440 cases per year.

This article outlines some of the parameters of DWI cases Texas judges are currently hearing and reflects judicial attitudes toward and use of sentencing, sanctions, treatment, license suspensions and provisional licenses, and breath interlock devices.

The average judicial DWI docket is comprised of 85% first time DWI offenders and 15% repeat offenders. Ninety percent first time DWI offenders received a probated sentence while seventy-five percent repeat DWI offenders received probation. Please see Table I: Summary of Case Mix and Sentence Responses above.

	First Offender	Repeat Offender
Defendant Characteristics	85 %	15 %
Sentenced to Probation	90 %	75 %
Sentenced to Jail	10 %	25 %

	First Offender	Repeat Offender
Average Probation	120 day probated for 18 months with \$400 fine	9 months probated for 24 months with \$750 fine
Lowest Probation	60 day probated for 12 months with \$100 fine	6 months probated for 24 months with \$500 fine
Highest Probation	180 day probated for 24 months with \$750 fine	12 months probated for 24 months with \$3,000 fine

The average negotiated plea for first offenders accepting probation was 120 days, probated for eighteen months, with a \$400 fine. The average negotiated jail plea for first offenders was fifty days and costs. It is interesting to note that the lowest negotiated plea was sixty days in jail probated for twelve months with a \$100 fine and the highest was 180 days in jail probated for twenty-four months and a \$750 fine. Likewise, the lowest negotiated jail plea for first offenders was three days and the highest was ninety days. Please see Table II: Summary of Probation Sentence Responses above.

The average negotiated probation plea for repeat offenders was 9 months in jail, probated for 24 months, with a \$750 fine. The average negotiated jail plea for repeat offenders was 108 days. The lowest negotiated probation plea was 180 days probated for 24 months and a \$500 fine while the highest was 12 months in jail probated for 24 months

with a \$3,000 fine. Jail sentences ranged from 30 to 365 days. See Table III: Summary of Jail Sentence Responses - Judges Who Hear Misdemeanor DWI Cases on the next page.

Sentencing Incentives:

Judges were questioned about the need for additional incentives they would like to have available when sentencing DWI defendants. The options presented were:

- (1) Suspension of all or a portion of the "civil penalty" for successful completion of probation terms.
- (2) Ability to order probation of the mandatory driver's license suspension as long as conditions of probation are successfully complied with.
- (3) Deferred adjudication of guilt, with the provision that, even if successfully completed, the offense could be used for enhancement for any subsequent offenses.

Seventy-five percent of the respondents checked one or more of the incentives.

continued on next page

Number two was checked most often followed by number one, and then number three. All but one of the respondents checked number two along with either one or three, and 20% checked all three.

When questioned about additional incentives they would like to have available, the judges responded as follows:

- affordable/available alcohol and substance abuse treatment
- state-sponsored alcohol rehabilitation, 30-day inpatient
- treatment other than Alcoholics Anonymous
- availability of early release as an incentive
- mandatory inpatient treatment if two or more DWIs within five years
- deferred adjudication with court supervised intensive supervision and mandatory jail time
- inpatient treatment for indigents
- deferred adjudication for DWI should be available because many cases are being reduced or pled to some other offense (like obstructing a highway); deferred would be better since the ramifications for violations would be greater and the judge would have greater control.

Driver's License Issues:

The judges were questioned about the perceived effectiveness of driver's license suspensions. Three out of four judges answered this question; their most common response was current laws are "ineffective."

Additional comments are as follows:

- need codification- too confusing
- need to have ability to deny ODL for safety (currently can only deny if no essential need is shown)
- with the surcharge in place, there is no incentive for a person to validly get their license back
- sanctions are too severe economically
- inability to pay reinstatement fees and civil penalties creates a whole new class of offenses... my court is swamped with DWL's
- not effective; most just continue to drive and get charged time after time
- ineffective - no public transportation and defendants can not afford ODL so

they drive anyway

- ODL should be made part of the criminal case (not a separate civil matter) so it can be incorporated into the plea agreement and granted when defendant is in court

- worthless- possibly the biggest waste of judicial resources and total waste of effective deterrent ever created by a legislative body

With regard to occupational driver's licenses, only 5% of the petitions are denied. When granting an occupational driver's license, 85% percent of the judges allow more than the four-hour minimum. Most judges reported they had established policies but very few were reduced to writing. Stated policies are as follows:

- require copy of prior criminal history in writing before granting order
 - require verification of employment in writing
 - require written permission from employer to drive company vehicle
 - require hearing in open court with defendant present and sworn testimony regarding employment
 - require logbook be kept in car with copy of order (especially when there are no set working hours)
 - rarely allow under age 21 to have ODL; applicant must be present at hearing
- All judges reported that they require alcohol counseling and ignition interlock if required by statute, and some judges impose additional requirements such as random urinalysis and the maintenance of written driving logs to be kept with the occupational license or filed monthly with the clerk of the court.

DWLI Issues:

The number of Driving With License Invalid cases has increased exponentially over the past several years. In most courts the number of DWLI cases now equals or exceeds the number of the DWI cases, and in several courts there are 50% more DWLI cases than DWI cases. One judge's response was "too many to count!"

A question about the average disposition of a DWLI case had the widest range of response. Many jurisdictions granted deferred for the first offense with a \$300 - \$500 fine. Others simply imposed three days and \$100 fine. Deferred and pretrial diversions are used extensively because a conviction results in a subsequent suspension. In one jurisdiction, if a clearance letter is received from DPS, the case is reduced to failure to display a valid license. In those jurisdictions where deferred is granted, standard probation or jail are the only options for any subsequent offenses.

Sanctions:

Judges were asked if any intermediate sanctions were being used before or in lieu of the filing of a Motion to Revoke. Intermediate sanctions being used are:

- intensive supervision and extension of probationary period
- weekend jail time
- extending probationary period
- weekly reporting
- show cause hearings held by Judge before Motion is filed
- converting fine and court costs to community service
- modification agreed to by defendant
- additional jail time as a term of probation

continued on next page

TABLE III: SUMMARY OF JAIL SENTENCE RESPONSES JUDGES WHO HEAR MISDEMEANOR DWI CASES		
	First Offender	Repeat Offender
Average Negotiated Jail Plea	50 days + costs	108 days
Lowest Negotiated Jail Plea	3 days + costs	30 days
Highest Negotiated Jail Plea	90 days + costs	365 days

- interlock device

In all but one jurisdiction, revocations are disposed of by plea recommendations. In most cases the original sentence is reduced in exchange for defendant's plea of true, and the average reduction is 50%.

Very few judges reported problems regarding the use of breath interlock devices. The problems that were reported were:

- reliability
- costs too much
- lack of reporting
- too many false readings
- provider cannot say low positive is attributed to alcohol consumption
- only have one local provider

Behavior Change Options:

When asked to rank the effectiveness of probation, jail time and fines, and driver's license suspension in changing behavior, 73% of respondents chose probation as the most effective; 20% chose jail as most effective; 7% chose driver's license suspension.

Additional methods used by judges to change behavior included:

- educational programs
- counseling support groups (AA,NA)
- job skills training
- mandatory inpatient treatment
- condition of probation order and appearance bond that defendant may

not refuse intoxilizer test if stopped by law enforcement or probation officer.

Systemic Change Recommendations:

Judges were asked the question: "What in your experience is working and/or not working with our current system of impaired driving statuses?" A representative sample of the responses follows:

- increase penalty for refusal
- use evidentiary search warrants for refusals and draw blood
- consider interlock on all vehicles
- if subsequent offender, impound vehicle at arrest and refuse ODL
- civil penalties do not work
- we need intensive treatment options and close supervision in the context of deferred adjudication
- treat symptoms, not causes

When asked what would help dispose of DWI cases more efficiently, the judges responded:

- getting offense reports more promptly and quicker filing by District Attorney
- the state needs more Technical Supervisors; my trial scheduling is next to impossible
- deferred with mandatory alcohol rehabilitation
- deferred with judicial oversight of civil penalties
- deferred with mandatory jail time as a condition and intensive supervision

When asked how the system could be changed to more effectively deal with the repeat offender, judges responded:

- we need more DWI courts
- SCRAM and other dependable monitoring needs to be more affordable or provided by state
- allow misdemeanor courts to handle felony DWIs
- take away the right to jury trial on sentencing phase
- seize repeat offenders car upon arrest, do not charge storage fee
- make second offense a felony (this was the most common response)

One of the expressed purposes of the survey was to determine the educational needs of judges to hear DWI cases. As a result of the survey, DWI-specific education will be offered at this year's Criminal Justice Conference (August 2-4, 2006), and Judicial Section Annual Conference (September 10-13, 2006). Topics will include the proper administration of Standardized Field Sobriety Testing (including Horizontal Gaze Nystagmus); defense objections and cross-examination techniques; training specific to the breath interlock device, including its proper installation and operation, interpreting the written reports, and most common methods used by defendants who attempt to defeat the device. Our intention is to design the training to allow for more discussion and less lecture so that we can learn from each other and address common problems in these areas.

If you have any questions or suggestions concerning the survey, educational subject matter, or method of instruction, please contact:

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Texas' Newest Administrators of Justice As of July 10, 2006

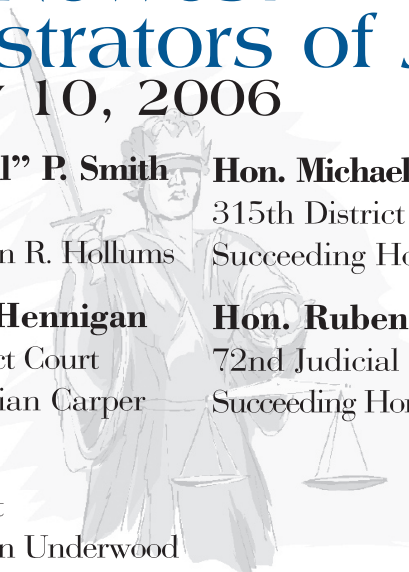
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Hon. Ruben Gonzales Reyes
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 Succeeding Hon. J. Blair Cherry, Jr.

Hon. Cara Wood
 284th District Court
 Succeeding Hon. Olen Underwood



judgment. In *Freeman v. Leasing Associates, Inc.*, there were two lease agreements, one for a car and another for machinery, with a monthly payment for the lease of each. The court, however, received a conclusory affidavit essentially stating that defendant was in default and owed \$5,075.


The conclusory affidavit failed to provide the day of the breach. Applying TRCP 241, Freeman frames the issue as follows: “The question presented is whether a claim in default judgment is liquidated for the purpose of dispensing with proof under Rule 241, TEX.R.CIV.P, when the amount of damages cannot actually be determined from the instrument sued upon and the facts alleged.” The court, therefore, was unable to verify the dollar figure claimed for damages. The court in Freeman says “The issue is whether a seemingly liquidated claim is unliquidated for the purposes of Rules 241 and 243 when the petition

alleges insufficient facts.” The court must be able to “check upon the accuracy of a plaintiff’s claim in a default proceeding.” Freeman 503 S.W.2d 406, 408.

Another related question is whether a request for admissions is a “written instrument” for purposes of TRCP 241. I don’t think so. Apparently, the “written instrument” must be the initial contract entered into by defendant and not a pleading in litigation. In *Hughes v. Jones*, 543 S.W.2d 885, the court held that plaintiff’s sworn petition was not a “written instrument” required by TRCP 241. See *McCluskey v. State*, 64 S.W.3d 621. If we follow Hughes on this question, an unanswered request for admissions cannot be the “instrument in writing” for purposes of TRCP 241.

CONCLUSION

In liquidated damages cases, plaintiff attorneys invariably attach a request for admissions to their petition and then, failing an answer,

request a default judgment without a hearing. An unanswered request for admissions is deemed true, as is the petition. When there is no answer, nothing is in dispute. So, why should the attorney ask the clerk to set the matter on a docket? Why not simply ask the clerk to have the judge sign a default judgment? Well, because TRCP 238 requires that the case be called; of course, this can be on the submission docket or on a regular docket. Failing an answer, the court may enter a default judgment. Thereafter, TRCP 241 requires that the court verify the amounts claimed. As stated in *Freeman v. Leasing Associates, Inc.*, the court must “check upon the accuracy of a plaintiff’s claim in a default proceeding.” Obviously, the court must do more than accept plaintiff’s conclusions in matters of default. The court must critically analyze the presentation of the evidence and the conclusions reached by plaintiff. In short, the court must be able to check the math. 

District Judges to Meet at Judicial Section Annual Conference


By Judge Julie Kocurek, 390th District Court

The Texas Association of District Judges will hold a business meeting at the Judicial Section Annual Conference Monday September 11, 2006, at 4:00 p.m. at the Westin Galleria in Houston, Texas. 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 provide the Association with your e-mail address by e-mailing me at the address below. Should you have any questions, please call me, Judge Julie Kocurek, at (512) 854-4885 or vote4julie@aol.com. 

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Thank you for your contributions

Includes contributions received as of July 10, 2006

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ETHICS OPINIONS

Question & Answer

ETHICS OPINION #292 Solicitation of Wedding Business

QUESTION: May a judge directly contact couples as they leave a county clerk's office with their marriage license for the purpose of soliciting a marriage ceremony for pay?

ANSWER: No. Canon 2A states in part "A judge.... should act at all times in a manner that promotes public confidence in the integrity ...of the Judiciary." It is the belief of the Committee that a judge's active solicitation of wedding business in this manner does not promote public confidence in the judiciary.

The judge should also be mindful of the restrictions of Canons 2B and 4D. Canon 2B prohibits using the "prestige of judicial office to advance the private interests of the judge or others." Canon 4D requires judges to "refrain from financial and business dealings that tend to ...exploit his or her judicial position." Solicitation of wedding business in this manner is a use of the prestige of judicial office to advance the judge's private interests and constitutes financial and business dealings that exploit the judge's judicial position.

Canon 4I (1) provides, "A judge may receive compensation...for the extra-judicial activities permitted by this Code, if the source of such payment does not...give the appearance of impropriety." The committee believes that the acts described above give the appearance of impropriety. ⚖️

To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct (877.228.5750).

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LOOKING AHEAD

Judicial Conference Calendar

2006

Judicial Section Annual Conference
September 10 - 13, 2006
Houston

College for New Judges
December 2 - 8, 2006
Austin

2007

Regional Conference (Regions 2, 3, 4 & 5)
January 21 - 23, 2007
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Regional Conference (Regions 1, 6, 7, 8 & 9)
February 11 - 13, 2007
Dallas

Family Violence Conference
March 26 - 28, 2007
Galveston

Judicial Section Annual Conference
September 16 - 19, 2007
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2008

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