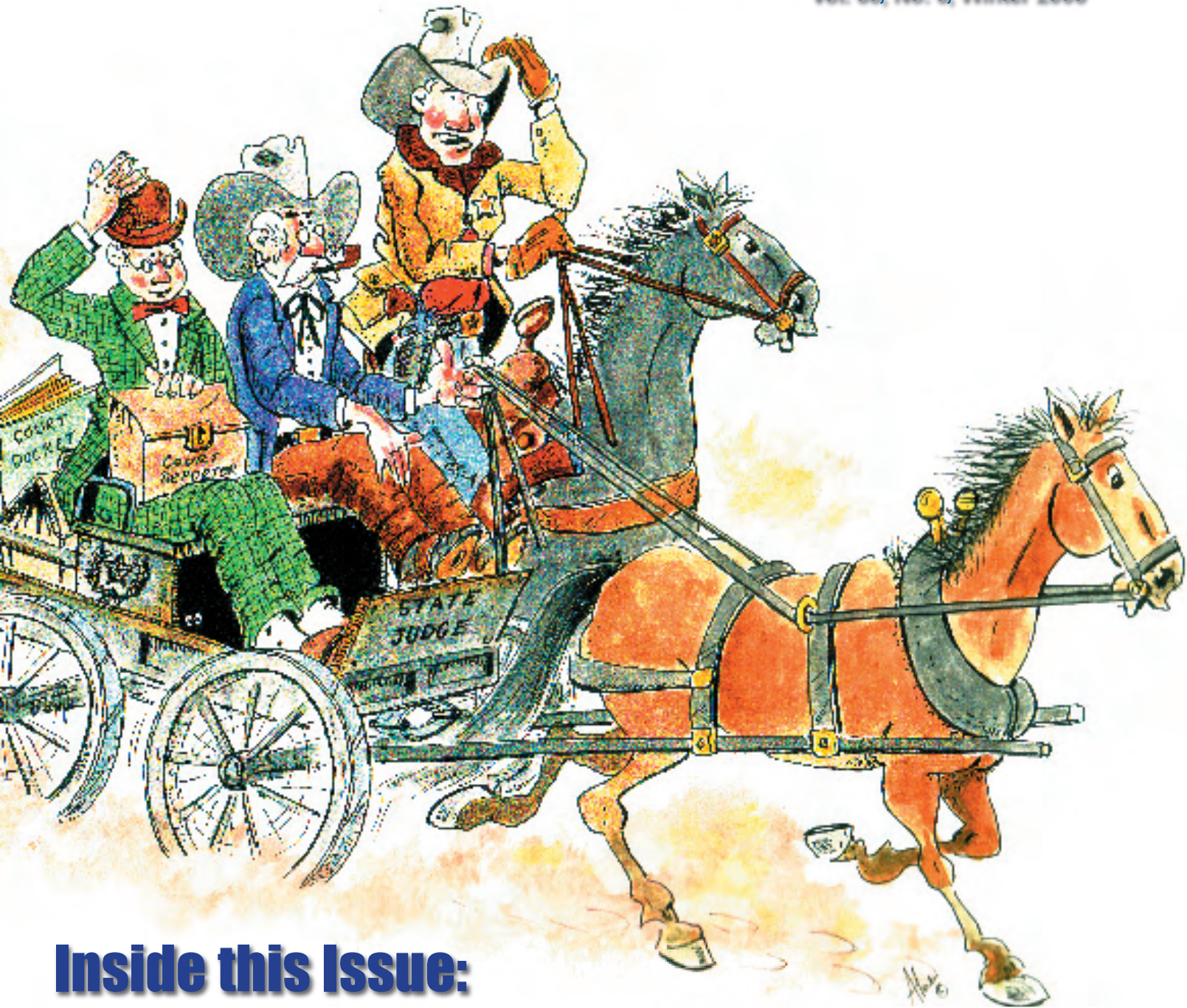


# In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.  
Vol. 33, No. 3, Winter 2006



## Inside this Issue:

- New Judiciary Leaders Elected
- State Bar of Texas Adopts New Paralegal Definition & Standards

# TABLE OF CONTENTS

## Features

Letter from the Chair . . . . .	3
Judge Mentality: Recovery Courts and Character Changes How Jail Plays a Role in Recovery (Part 1) . . . . .	4
New Judiciary Leaders Elected: Walther and Quinn to Head Texas Center & Judicial Section . . . . .	6
2006 - 2007 Board & Committee Membership . . . . .	7
Texas Center Receives National Award . . . . .	8
State Bar of Texas Adopts New Paralegal Definitions and Standards . . . . .	9
Liberato and Hittner Receive Statewide Award . . . . .	12
The Use and Appointment of Special Masters . . . . .	13
Texas Judicial Teams Receive DWI Court Training . . . . .	14
Texas Judges Make A "Good Showing" at NAWJ Annual Conference . . . . .	19
State Bar of Texas Provides Judicial Criticism "Hot-Line" . . . . .	21

## Departments

Texas' Newest Administrators of Justice . . . . .	10
Ethics Opinions . . . . .	20
In Memoriam . . . . .	21
Contributions And Memorials . . . . .	22
Looking Ahead . . . . .	24

**Special thanks to Mr. Alvin Hale**, retired Texas Department of Public Safety Trooper and Bailiff for the 51st District Court, for this issue's cover art. Mr. Hale's art has been featured in a number of DPS awards and in various publications throughout Texas. After the September 11th terrorist attacks, Mr. Hale designed and sold a special piece that raised \$2,000 for the 9-11 Fireman's fund.

*In Chambers* is the official publication of the Texas Center for the Judiciary. The magazine is published three times a year and funded by a grant from the Texas Court of Criminal Appeals.

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](mailto:stacip@yourhonor.com).

The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.

## *In Chambers*

Volume 33, Number 3, Winter 2006

### EDITORIAL BOARD

Chief Justice (Ret.) Marilyn Aboussie  
San Angelo

Judge (Fmr.) Susan P. Baker  
Fredericksburg

Judge Manuel Banales  
105<sup>th</sup> District Court, Corpus Christi

Justice Scott Brister  
Supreme Court of Texas

Justice Molly Francis  
5<sup>th</sup> Court of Appeals, Dallas

### TEXAS CENTER FOR THE JUDICIARY STAFF

Mari Kay Bickett  
Executive Director  
[mkbickett@yourhonor.com](mailto:mkbickett@yourhonor.com)

Tana J. Petrich  
Associate Director  
[tpetrich@yourhonor.com](mailto:tpetrich@yourhonor.com)

Ann Blankenship  
Program Attorney  
[annb@yourhonor.com](mailto:annb@yourhonor.com)

David Hodges  
Judicial Resource Liaison  
[dhodges@yourhonor.com](mailto:dhodges@yourhonor.com)

Amy Cook  
Financial Officer  
[amyc@yourhonor.com](mailto:amyc@yourhonor.com)

Sherry Ballance  
Conference Coordinator  
[sherryb@yourhonor.com](mailto:sherryb@yourhonor.com)

Shirley Irvin  
Assistant to the Director  
[shirleyi@yourhonor.com](mailto:shirleyi@yourhonor.com)

Lacy Jemmott  
Information Technology Administrator  
[lacyj@yourhonor.com](mailto:lacyj@yourhonor.com)

Angie A. Kreuser  
Administrative Assistant  
[angiek@yourhonor.com](mailto:angiek@yourhonor.com)

Teri Moran  
Program Administrator CIP/CJA  
[terim@yourhonor.com](mailto:terim@yourhonor.com)

Michele Mund  
Registrar  
[michelem@yourhonor.com](mailto:michelem@yourhonor.com)

Staci Priest  
Publications Coordinator  
[stacip@yourhonor.com](mailto:stacip@yourhonor.com)

Ginny Woods  
Program Attorney CIP/CJA  
[ginnyw@yourhonor.com](mailto:ginnyw@yourhonor.com)




# LETTER FROM THE CHAIR

From Judge Barbara L. Walther

The Texas Center for the Judiciary is fortunate to have not only a wonderful staff but to be supported by the best judges in the nation.

Every organization is only as great as its members. We would not be the organization that we are, without the loyal support of the judges of this great state. This year we received several awards for our outstanding educational programs but those programs would not have been possible without the hard work of our many volunteer judges. These judges manage to juggle their court dockets and their personal dockets while making time to create education programs, write papers, present courses, and attend to the many different events that are all necessary for the Texas Center for the Judiciary and the Judicial Section of the State Bar to be the success they are today. This year, because a number of judges made time to contribute their efforts to the Texas Center and the Judicial Section, we have achieved an unprecedented level of accomplishments.

While it seems so inadequate to simply say thank you, I suspect the judges that have donated countless hours of their precious time, long ago made the decision that being involved and volunteering brings its own special reward. This year when you see one of these judges listed below that has served on a committee or taught a course, please take a little of your time to say thank you! 

**HON. STEPHEN B. ABLES**

*Presiding Judge, 6th Region  
216th District Court*

**HON. DAVID EVANS**

*Judge  
193rd District Court*

**HON. DAVID KELTNER**

*Former Justice  
The Keltner Law Firm*

**HON. KELLY G. MOORE**

*Presiding Judge, 9th Region  
121st District Court*

**HON. MARK D. ATKINSON**

*Judge  
Co. Crim. Court at Law #13*

**HON. DAVID L. EVANS**

*Judge  
48th District Court*

**HON. CYNTHIA S. KENT**

*Judge  
114th District Court*

**HON. DAVID PEEPLES**

*Presiding Judge, 4th Region*

**HON. SUSAN P. BAKER**

*Former District Judge*

**HON. WILFORD FLOWERS**

*Judge  
147th District Court*

**HON. W.C. KIRKENDALL**

*Judge  
2nd 25th District Court*

**HON. DEAN RUCKER**

*Presiding Judge, 7th Region  
318th District Court*

**HON. DAVID BERCHELMANN**

*Judge  
37th District Court*

**HON. MOLLY M. FRANCIS**

*Justice  
5th Court of Appeals*

**HON. DEBRA H. LEHRMANN**

*Judge  
360th District Court*

**HON. FRANK B. RYND**

*Judge  
309th District Court*

**HON. JEAN BOYD**

*Judge  
323rd District Court*

**HON. EMILIO M. GARZA**

*Judge  
5th Circuit Court of Appeals*

**HON. MARILEA LEWIS**

*Judge  
330th District Court*

**HON. STEVE SMITH**

*Judge  
361st District Court*

**HON. HARVEY BROWN**

*Retired Judge  
Wright Brown & Close, LLP*

**HON. ROBERT GILL**

*Judge  
213th District Court*

**HON. LORA J. LIVINGSTON**

*Judge  
261st District Court*

**HON. THOMAS STANSBURY**

*Senior District Judge*

**HON. ADA E. BROWN**

*Judge  
County Criminal Court at Law #1*

**HON. MACKEY K. HANCOCK**

*Justice  
7th Court of Appeals*

**HON. PATRICIA LYKOS**

*Senior District Judge  
180th District Court*

**HON. TIMOTHY TAFT**

*Justice  
1st Court of Appeals*

**HON. HARVEY BROWN**

*Retired Judge  
Wright Brown & Close, LLP*

**HON. DEBORAH HANKINSON**

*Justice, Retired  
Law Offices of  
Deborah G. Hankinson*

**HON. PHILIP R. MARTINEZ**

*U.S. District Judge  
U.S. District Court Western  
District of Texas*

**HON. LINDA THOMAS**

*Chief Justice  
5th Court of Appeals*

**HON. CATHY COCHRAN**

*Judge  
Court of Criminal Appeals*

**HON. SUSAN HAWK**

*Judge  
291st District Court*

**HON. ANN MCCLURE**

*Justice  
8th Court of Appeals*

**HON. LAURA A. WEISER**

*Judge  
County Court at Law # 1*

**HON. LEE ANN DAUPHINOT**

*Justice  
2nd Court of Appeals*

**HON. BARBARA P. HERVEY**

*Judge  
Court of Criminal Appeals*

**HON. LAMAR MCCORKLE**

*Judge  
133rd District Court*

**HON. SHAREN WILSON**

*Judge  
Criminal District Court #1*

**HON. PAUL DAVIS**

*Senior District Judge*

**HON. DAVID L. HODGES**

*Texas Judicial Resource Liaison  
Texas Center for the Judiciary*

**HON. SCOTT MCCOWN**

*Retired Judge  
Center for Public  
Policy Priorities*

**HON. JAMES T. WORTHEN**

*Chief Justice  
12th Court of Appeals*



# JUDGE MENTALITY

## Recovery Courts and Character Changes

### How Jail Plays a Role in Recovery (Part 1)

by Judge K. Michael Mayes, 410th Judicial District Court

*Good things happen to people that do good things.*

-- Judge K. Michael Mayes

I am a trial Judge. I preside over criminal cases that involve alcohol and drug abuse. Law school taught me nothing about addiction and recovery. Neither did my 20 years as a lawyer. And yet when I was elected to be a Judge ten years ago I entered a world of addicts and alcoholics and was told that I could

try to make a difference in the lives of these Defendants but their ultimate destiny, in all

likelihood, was prison. I found out early that my work as a Judge required me to make life changing decisions on a daily basis but I also discovered that I had few answers for those offenders who abused drugs and alcohol.

Oh, yes, probation officers worked alongside me to help with the carnage. These well trained and good hearted people maintained overflowing dockets that filled bulging cabinets. They were overworked and tired. Over the years their youthful optimism had, in many cases, been replaced with an unsatisfied resignation. And, yes, I was entrusted with judicial discretion. I was told to use this tool to fashion terms of probation

to rehabilitate defendants, but what that meant for addicts and alcoholics was a mystery to me.

I vividly recall one day a decade ago when I sat on my bench and faced a 23 year old. Let's call him Jake.

"Young man, you are charged with possession of Cocaine." I started the standard colloquy.

"Yes, Judge. My mom is an alcoholic and my dad died when I was seven. Mom lives on the streets.

"I don't know," she said. That was honest. She continued.

"I watch him close, but he is 23. I can't be there all the time."

I knew the feeling. In one month on the bench I had placed thirty or so defendants on probation. And as I dictated terms of their probation, I knew it was up to them to succeed. Neither I nor the probation officer nor the family that stood next to them could be there all the time. I knew that these defendants probably

would violate probation by abusing drugs or alcohol again and I wouldn't know of it. No one would be there to know of it

or to prevent it. It would be just them and their addiction. Naturally, some would be caught violating their probation and they invariably became the subject of a Motion to Revoke their probation. I had seen some of those already.

And when I saw these violators, I wondered why it had come to this? Why had they violated and why had they been unable to sustain their sobriety? Why had I not seen them before they violated, before they relapsed? And why hadn't they called someone for help, the probation officer or their family or a professional counselor? I didn't like the feeling of hopelessness I experienced when I encountered these cases. I felt out of touch with

---

**"Hope is the companion of power, and mother of success; for who so hopes strongly has within him the gift of miracles."**

**-Samuel Smiles**

**Scottish author, 1812-1904**

---

I know I made a stupid mistake but I promise I learned my lesson. I don't want to be like them."

"Really?" I asked.

"Oh, yes, I will never use cocaine again. You can believe me."

Jake's face bore stress but was clean shaven. He wore longish hair and an earring that my bailiff had him remove. I could still see the hole in his right ear. He didn't look like an addict, not that I knew what one looked like. He did look in pain, though, and as we talked, he seemed puzzled about how he got here and what the future held for him. His grandmother stood with him.

"Ma'am," I glanced at her. She looked worn. "What do you think about all this?"

*continued on next page*

*continued from previous page*

the lives of these abusers and I wondered if I, as a Judge, could do something different? Were there some tools or answers that the law books failed to teach that would give me more ability to change this pitiful recurring scenario? I was quite sure that other Judges knew more and somehow had answers.

I have since learned that, as a rule, we Judges have little or no training in the realities of addiction or alcoholism, and yet we are called upon to deal with persons who suffer from such maladies and to decide whether to punish these abusers with prison or try to rehabilitate them through probation. We have little or no background to know the answers to the real issues of addiction but we are empowered to sentence addicts and alcoholics who violate the law. We are robed, no doubt, because others saw in us something special, something that generated hope in the justice system, but we are not educated for the task of handling alcohol and drug abuse.

My sense of justice convinced me that options had to exist other than prison time or a standard probation of simply reporting, paying money, completing community service and some general counseling. I believed that if a defendant truly was an addict or alcoholic with a substance abuse problem, and they were not simply antisocial and criminal, there had to be other answers. I also knew, however, that I would never discover these other answers unless I first understood addiction and alcoholism.



### **ADDICTS THINK ADDICTIVELY**

Much of what we now employ in our Recovery Courts mirrors what

I have learned through writings by Alcoholics Anonymous (AA), Narcotics Anonymous (NA) and experts who have spent years treating addicts and alcoholics, like Dr. Abraham J. Twerski. And while our Recovery Courts do not mandate AA or NA for every probationer, the concepts underlying the 12 steps of such support groups are invaluable in the recovery process of these Defendants. In his book "Addictive Thinking" (2d Ed. Hazelden 1997), Dr. Twerski describes in simple but dynamic terms how addicts and alcoholics think, and he explains that "addictive thinking" is another name for what AA and NA call "stinkin' thinkin'." Importantly, Dr. Twerski says that this thinking arises in virtually every instance from the addict's low self esteem (Id., Chapter 5) and is not related at all to their level of intelligence (Id., Chapter 2).

In presiding over Recovery Courts, I have learned that criminal defendants that abuse drugs and alcohol think addictively. They think irrationally and in distorted ways and yet they believe that they think normally. To not recognize this is dangerous for anyone that interacts with an alcoholic or addict, whether you are a Judge, probation officer, counselor, a loved one or simply an acquaintance or friend. Ignoring this reality allows the "other" person to be sucked into the addict's world of deception and manipulation. Once that happens, no recovery is possible because the one wanting to help the addict has been bought into a world of distorted reasoning that leads to irrational and unproductive results.

The best example of a Judge not understanding this concept of addictive thinking is shown by my handling of Jake that I introduced above, one of the first addicts I met on the Bench:

"You are charged with possession of a controlled substance. You want a jury or you want to waive that constitutional right?" I was following the Judge's book, presenting the standard stipulations and waivers.

Jake teared up, then said, "Yes, sir, I guess I waive that."

I pushed him a little at that point, "why did you do it?"

"I don't know. It was a stupid mistake," he said.

"Is that all you have to say? You don't have any other excuse?"

"I will never do it again," Jake promised.

"Of course you won't, because you will be in prison. You could have stopped had you just said no." I felt good, parroting the program I remembered from schools in years past.

You know the rest: the formal sentencing, the remand to jail, and the transfer from jail to prison. And, of course, Jake has since been released from prison and he has since used and been arrested again.

What I did not understand at Jake's sentencing was that Jake thought addictively, and if his thinking did not change he was doomed to continue failing. Expecting Jake or any addict to just say no is not a viable solution because they distort reality and deceive themselves into thinking that their use is not the problem, rather it is something or someone else. Consider a young lady I will call Regina, a pill addict that stood before me with a classic explanation derived from her addictive thinking:

"This indictment alleges that you possessed marijuana."

"Yes sir."

"And you are gonna plead guilty today and take 180 days in jail?"

Yes, my attorney told me it was

*See "Judge Mentality" continued on page 15*



# NEW JUDICIARY LEADERS ELECTED

## Walther and Quinn to Head Texas Center & Judicial Section

Judges attending the Judicial Section—State Bar of Texas' 79<sup>th</sup> annual conference, held September 10–13 in Houston, elected new leaders for the 2006–07 term. Judge Barbara L. Walther, of 51<sup>st</sup> District Court in San Angelo, will serve as Judicial Section Chair, and 7<sup>th</sup> Court of Appeals Chief Justice Brian Quinn will serve as Chair-Elect.

Formed in 1928, the Judicial Section promotes the objectives of the State Bar of Texas within the judiciary. Approximately 1,500 active and retired Texas judges compose the Judicial Section.

As Judicial Section Chair, Judge Walther will preside at all Section and Board of Directors meetings; formulate and present a report of the Section's work at the State Bar of Texas' annual meeting; and perform other duties as pertain to the office.

Judge Barbara Walther has served on the 51<sup>st</sup> District Court in San Angelo since 1992. Before joining the district court, she was a Title IV-D Family Law Master for the 7<sup>th</sup> Administrative Judicial Region from 1987-1992. In 1997, the Girl Scout Councils of Texas selected Judge Walther as one of Texas' 85 Women of Distinction. She is a member of the Criminal Justice Section Council of the State Bar of Texas and an advisory member of the Committee on Judicial Performance for the Texas Judicial Council. Judge Walther is also a member of the Texas Center for the Judiciary's Curriculum Committee and has served on the board of directors for the Judicial Section, State Bar of Texas. She received her undergraduate degree from the University of Texas at Austin and her law degree from




*Judge Barbara Walther*

Southern Methodist University Law School.

Chief Justice Brian Quinn has served on the Seventh Court of Appeals in Amarillo for over 10 years and was appointed Chief Justice in 2005. Prior to taking the bench, he was a partner with McWhorter, Cobb, and Johnson L.L.P. in Lubbock for nearly 10 years.

Chief Justice Quinn is a member of the Texas Bar Association, Amarillo Bar Association, and the Panhandle Family Law Association. He has served on the Board of Directors for the Judicial Section, State Bar of Texas, the Texas Supreme Court Advisory Committee on the Code of Judicial Conduct, and the State Bar Rules Committee. Chief Justice Quinn is a frequent speaker for local and state continuing judicial education programs. He holds an undergraduate degree from the University of Texas at El Paso and a JD from Texas Tech University School of Law.

In addition to leading the Judicial Section, Judge Walther and Chief Justice Quinn were also elected to head the Texas Center for the Judiciary, an Austin-based non-profit judicial education organization.

Chief Justice Quinn will succeed Judge Walther as Chair of the Judicial Section and Texas Center during the 2007–08 term. 

### A SPECIAL OFFER FROM JONES McCLURE PUBLISHING

Jones McClure Publishing is proud to announce their latest title, *O'Connor's Texas Family Law Handbook*. As part of a special promotion, Jones McClure is offering a FREE copy of the book any judge who wants one.

*O'Connor's Texas Family Law Handbook* is a one-of-a-kind treatise on family law. In it you will find answers to many issues that come up during a family law proceeding. From conducting a hearing on temporary orders to dividing and valuing retirement benefits, *O'Connor's Texas Family Law Handbook* walks you step-by-step through each procedural and substantive issue with confidence.

To get a free copy of this invaluable resource you can call Jones McClure Publishing at 800-OCANNOR (626-6667) or send them an email at [customer.service@jonesmcclure.com](mailto:customer.service@jonesmcclure.com) with your name and address. A free copy of *O'Connor's Texas Family Law Handbook* will be shipped to you immediately.



# 2006 - 2007 Boards & Committee Membership



## JUDICIAL SECTION - STATE BAR OF TX

### BOARD OF DIRECTORS

**Hon. Barbara L. Walther**  
**Chair**

*Judge, 51st District Court*

**Hon. Brian Quinn**

**Chair-Elect**

*Chief Justice, 7th Court of Appeals*

**Hon. Laura A. Weiser**

**Immediate Past Chair**

*Judge, County Court at Law #1*

**Hon. Thomas Bacus**

**Secretary-Treasurer**

*Judge, County Court at Law #2*

**Hon. George C. Hanks**

**Place 1 (2009)**

*Justice, 1st Court of Appeals*

**Hon. John Cayce**

**Place 2 (2008)**

*Chief Justice, 2nd Court of Appeals*

**Hon. Kelly G. Moore**

**Place 3 (2008)**

*Presiding Judge, 9th Region,*

*Judge, 121st District Court*

**Hon. F.B. "Bob" McGregor, Jr.**

**Place 4 (2008)**

*Judge, 66th District Court*

**Hon. Migdalia Lopez**

**Place 5 (2009)**

*Judge, 197th District Court*

**Hon. Carter T. Schildknecht**

**Place 6 (2007)**

*Judge, 106th District Court*

**Hon. Emil Karl Prohl**

**Place 7 (2007)**

*Judge, 198th District Court*

**Hon. Penny Roberts**

**Place 8 (2009)**

*Judge, County Court at Law #2*

**Hon. Daniel T. Robles**

**Place 9 (2007)**

*Judge, County Court at Law #3*

**Hon. Harold Gaither, Jr.**

**Place 10 (2009)**

*Senior District Judge*

**Mr. Travis Vanderpool**

**Liaison**

*Hunton & Williams*

### APPELLATE JUDGES LEGISLATIVE

Hon. Linda Thomas, Chair

Hon. John Cayce

Hon. Sherry Radack

Hon. Rickey Gene Strange

Hon. Alan Waldrop

Hon. Linda Yanez

Hon. Cathy Cochran, Ex-Officio

Hon. Wallace B. Jefferson, Ex-Officio

Hon. Sharon Keller, Ex-Officio

Hon. Brian Quinn, Ex-Officio

Hon. Barbara L. Walther, Ex-Officio

Hon. Laura A. Weiser, Ex-Officio

### TRIAL JUDGES LEGISLATIVE COMMITTEE

Hon. Lamar McCorkle, Chair

Hon. Thomas Bacus

Hon. John A. Coselli

Hon. Larry B. Ladd

Hon. Dean Rucker

Hon. Steve Smith

Hon. Brian Quinn, Ex-Officio

Hon. Barbara L. Walther, Ex-Officio

Hon. Laura A. Weiser, Ex-Officio

### COMMITTEES TO BE ANNOUNCED

SITE SELECTION COMMITTEE

COMMITTEE ON JUDICIAL ETHICS

WEBSITE COMMITTEE

RESOLUTIONS COMMITTEE

JUVENILE JUSTICE COMMITTEE

NOMINATIONS COMMITTEE

BYLAWS COMMITTEE

## TEXAS CENTER FOR THE JUDICIARY

### BOARD OF DIRECTORS

**Hon. Barbara L. Walther**  
**Chair**

*Judge, 51st District Court*

**Hon. Brian Quinn**

**Chair-Elect**

*Chief Justice, 7th Court of Appeals*

**Hon. Laura A. Weiser**

**Immediate Past Chair**

*Judge, County Court at Law #1*

**Hon. Molly M. Francis**

**Secretary-Treasurer**

*Justice, 5th Court of Appeals*

**Hon. Elizabeth Lang-Miers**

**Place 1 (2008)**

*Justice, 5th Court of Appeals*

**Hon. Dori C. Garza**

**Place 2 (2007)**

*Justice, 13th Court of Appeals*

**Hon. Vicki Isaacks**

**Place 3 (2008)**

*Judge, 393rd District Court*

**Hon. Jeffrey V. Brown**

**Place 4 (2009)**

*Judge, 55th District Court*

**Hon. Ralph Strother**

**Place 5 (2009)**

*Judge, 19th District Court*

**Hon. Janet Littlejohn**

**Place 6 (2007)**

*Judge, 150th District Court*

**Hon. Lee Hamilton**

**Place 7 (2009)**

*Judge, 104th District Court*

**Hon. David D. Garcia**

**Place 8 (2008)**

*Judge, County Criminal Court #3*

### TCJ BOARD OF DIRECTORS (CONT.)

**Hon. Robert S. Anchondo**

**Place 9 (2007)**

*Judge, County Criminal Court at Law #2*

**Hon. John T. Boyd**

**Place 10 (2008)**

*Chief Justice, Retired*

**Hon. Cathy Cochran**

**Liaison**

*Judge, Court of Criminal Appeals*

### APPELLATE JUDGES EDUCATION FUND COMMITTEE

Hon. Sue Walker, Chair

Hon. David Chew

Hon. Wanda Fowler

Hon. Alma L. Lopez

Hon. Timothy Taft

Hon. Wallace B. Jefferson, Ex-Officio

Hon. Sharon Keller, Ex-Officio

Hon. Brian Quinn, Ex-Officio

Hon. Barbara L. Walther, Ex-Officio

Hon. Laura A. Weiser, Ex-Officio

### CURRICULUM COMMITTEE

Hon. Marilea Lewis, Chair

Hon. David L. Evans, Co-Chair

Hon. Wanda Fowler

Hon. W.C. Kirkendall

Hon. Larry B. Ladd

Hon. Elizabeth Lang-Miers

Hon. Penny Roberts

Hon. Daniel T. Robles

Hon. Steve Smith

Hon. Stephen B. Ables, Ex-Officio

Ms. Mari Kay Bickett, Ex-Officio

Hon. Camile G. Dubose, Ex-Officio

Hon. David L. Hodges, Ex-Officio

Hon. Lamar McCorkle, Ex-Officio

Hon. Brian Quinn, Ex-Officio

Hon. Barbara L. Walther, Ex-Officio

Hon. Laura A. Weiser, Ex-Officio

### LONG RANGE PLANNING COMMITTEE

Hon. Elizabeth Lang-Miers, Chair

Hon. Robert S. Anchondo

Hon. John Cayce

Hon. W.C. Kirkendall

Hon. Janet Littlejohn

Hon. Lora J. Livingston

Hon. F.B. "Bob" McGregor, Jr.

Hon. Sherry Radack

Hon. Carmen Rivera-Worley

Hon. Brian Quinn, Ex-Officio

Hon. Barbara L. Walther, Ex-Officio

### COMMITTEES TO BE ANNOUNCED

JUDICIAL BENCH BOOK COMMITTEE

BUDGET COMMITTEE

BYLAWS COMMITTEE

JUDICIAL AWARDS COMMITTEE

SCHOLARSHIP COMMITTEE

CAPITAL CASES BENCH BOOK COMMITTEE



# TEXAS CENTER RECEIVES NATIONAL AWARD


On August 4, 2006, at the American Bar Association (ABA) Annual Conference in Honolulu, Hawaii, Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary, was presented with the 2006 ABA's Judicial Division Judicial Education Award. The award recognizes the Texas Center for the Judiciary as the leading judicial educator in the country.

"The impressive aspect of this award is that the selection was made by blind vote," said John D. Ellis, Jr., member of the Board of Directors for the State Bar of Texas and delegate to the American Bar Association (ABA) for the Houston Bar Association. "No one knew which state the applications came from and the Texas Center won by a unanimous vote."

Over 500 members of the Texas judiciary were in attendance for the state presentation at the Judicial Section Annual Conference, held September 10th thru 13th in Houston. Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary, received the award from Ellis. "We are honored to receive this recognition from the American Bar Association," said Bickett. "The Texas Center strives to develop exceptional continuing judicial education opportunities for the Texas judiciary. Our programs allow judges the opportunity to obtain advanced, specialized training in their jurisdictional area so they can excel on the bench and keep with our mission statement — Judicial Excellence

Through Education."

In June, the Texas Center for the Judiciary received a Presidential Citation from President Eduardo Rodriguez, President of the State Bar of Texas, for providing outstanding educational opportunities to the judges of the State. 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. 



*Mari Kay Bickett (left), Executive Director of the Texas Center for the Judiciary receives the ABA Judicial Division Judicial Education Award from John Ellis, delegate to the ABA for the Houston Bar Association at the Judicial Section Annual Conference in Houston.*



# STATE BAR OF TEXAS ADOPTS NEW PARALEGAL DEFINITION AND STANDARDS

By Judge Lora Livingston, 261st District Court, Travis County† and Michele Boerder, Paralegal\*, Hughes & Luce, L.L.P.

To fee, or not to fee, that is the question. As a judge, how do you determine whether to include work performed by a paralegal in an award of attorney's fees? Courts have been confronted with this question with increasing frequency. To find a resolution, judges have established evidentiary requirements regarding the qualifications of the paralegal involved, as well as the nature of the work at issue and the conditions under which such work was performed.

In 1988, the Dallas Court of Appeals held that a "legal assistant's"<sup>1</sup> work may be separately assessed and included in the award of attorney's fees if a legal assistant performs work that has traditionally been done by an attorney."<sup>2</sup> The Court also ruled that "in order to recover such amounts, the evidence must establish: (1) that the legal assistant is qualified through education, training or work experience to perform substantive legal work; (2) that substantive legal work was performed under the direction and supervision of an attorney; (3) the nature of the legal work which was performed; (4) the hourly rate being charged for the legal assistant; and (5) the number of hours expended by the legal assistant."<sup>3</sup> Subsequently, appellate courts in other districts such as Texarkana and Houston have issued similar rulings.<sup>4</sup>

In 2005, the State Bar of Texas Board of Directors and the State Bar of Texas Paralegal Division replaced the term "legal assistant" with the term "paralegal":

A paralegal is a person, qualified

through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such person, an attorney would be required to perform the task.

As a judge, how do you determine whether to include work performed by a paralegal in an award of attorney's fees?

On April 21, 2006, the State Bar of Texas Board of Directors approved the amendment of this definition through the inclusion of Standards intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is includable in an attorney fee award. Additionally, the Standards provide examples of what is meant by "education, training or work experience." The Standards are listed on the State Bar of Texas website, <http://www.texasbar.com>, and on the State Bar of Texas Paralegal Division website, [www.txpd.org](http://www.txpd.org).

Because there is no licensing of paralegals in Texas, nor any statutory requirement for the criteria one must possess to be called a

"paralegal," both lawyers and paralegals recognize the need for defining and recommending these Standards. Absent such guidelines, anyone may cloak themselves in the title "paralegal" without regard to qualification parameters. This ambiguity does a disservice to the practice of law and to clients who rightly have an expectation, much like the public's expectation of nurses who assist doctors, that their attorney's paralegal possesses the requisite level of knowledge and skill to assist the attorney.

Education criteria used in these Standards include paralegal education at the college level; a bachelor's degree in another field, combined with a minimum of one year of employment experience performing substantive legal work under the supervision

of an attorney, plus continuing education; completion of an American Bar Association approved paralegal training program; and paralegal certifications. Certifications are voluntary and are available through the Texas Board of Legal Specialization (in specialty areas of law), as well as both the National Association of Legal Assistants' (NALA) and the National Federation of Paralegal Associations' (NFPA) Certified Paralegal and Registered Paralegal examinations.

After employment as a paralegal, continuing legal education is encouraged (and required to maintain certifications), as is participation in the Paralegal Division of the State Bar of Texas and/or local paralegal organizations.

The Standards also recognize, however, that during the

*See "Paralegal" continued on page 20*

# Texas' Newest Administrators of Justice

## As of November 20, 2006

**Hon. Dan Mike Bird**  
46th Judicial District Court  
Succeeding Hon. Tom A. Neely

**Hon. Greg Brewer**  
366th District Court  
Succeeding Hon. Nathan White

**Hon. Barry Bryan**  
217th Judicial District Court  
Succeeding Hon. David Wilson

**Hon. Kenneth Carr**  
8th Court of Appeals  
Succeeding Hon. David Chew

**Hon. Derek Flournoy**  
County Court at Law #2  
Succeeding Hon. Barry Bryan

**Hon. Jerome Hennigan**  
324th District Court  
Succeeding Hon. Brian Carper

**Hon. Brian Todd Hoyle**  
12th Court of Appeals  
Succeeding Hon. Diane DeVasto

**Hon. Patrick A. Pirtle**  
7th Court of Appeals  
Succeeding Hon. Don H. Reavis

**Hon. Ruben Reyes**  
72nd District Court  
Succeeding Hon. Blair Cherry

**Hon. Michael Schneider**  
315th District Court  
Succeeding Hon. Graham Quisenberry

**Hon. Bill Smith**  
110th District Court  
Succeeding Hon. John R. Hollums

**Hon. John Smith**  
161st District Court  
Succeeding Hon. Tyron Lewis

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

# Judge Elects from the 2006 Elections

## As of November 20, 2006

**Hon. Charlie Baird**  
*Judge Elect, 299th District Court*  
Succeeding Hon. Jon Wisser

**James Bench**  
*Judge Elect, County Court at Law*  
Succeeding Hon. Steve Shipp

**Gina Benevides**  
*Justice Elect, 13th Court of Appeals*  
Succeeding Hon. Erlinda Castillo

**D'Metria Benson**  
*Judge Elect, County Court at Law #1*  
Succeeding Hon. Russell Roden

**Nancy Berger**  
*Judge Elect, 322nd District Court*  
Succeeding Hon. Frank Sullivan

**Laura Betancourt**  
*Judge Elect, County Court at Law #3*  
Succeeding Hon. Daniel Robels

**Lennox Bower**  
*Judge Elect, County Criminal Court at Law #2*  
Succeeding Hon. Neil Pask

**Hon. Lynn Bradshaw-Hull**  
*Judge Elect, 80th District Court*  
Succeeding Hon. Kent Sullivan

**Jerry Buckner**  
*Judge Elect, County Court at Law*  
Succeeding Hon. Debra Dupont

**Robert Burns**  
*Judge Elect, Criminal District Court #1*  
Succeeding Hon. Janice Warder

**Tena Callahan**  
*Judge Elect, 302nd District Court*  
Succeeding Hon. Frances Harris

**Roberto Canas Jr.**  
*Judge Elect, County Criminal Court at Law #10*  
Succeeding Hon. Lisa Fox

**Andy Chatham**  
*Judge Elect, 282nd District Court*  
Succeeding Hon. Karen Greene

**Lynn Cherry**  
*Judge Elect, 301st District Court*  
Succeeding Hon. Susan Rankin

**Ben Childers**  
*Judge Elect, County Court at Law #1*  
Succeeding Hon. David Hunter

**Carlos Cortez**  
*Judge Elect, 44th District Court*  
Succeeding Hon. David Kelton

**Chad Wes Dean**  
*Judge Elect, County Court at Law*  
Succeeding Hon. Darrell Hyatt

**Ana Estevez**  
*Judge Elect, 251st District Court*  
Succeeding Hon. Pat Pirtle

**King Fifer**  
*Judge Elect, County Court at Law #2*  
Succeeding Hon. John Peyton

**Craig Fletcher**  
*Judge Elect, County Court at Law*  
Succeeding Hon. Daniel Boone Childs

**Mike Freeman**  
*Judge Elect, County Court at Law #1*  
Succeeding Hon. Tom Ragland

**Elizabeth Davis Frizell**  
*Judge Elect, County Criminal Court at Law #11*  
Succeeding Hon. Diane Jones

**Bobby Galvan**  
*Judge Elect, 94th District Court*  
Succeeding Hon. Jack Hunter

**Eduardo Gamboa**  
*Judge Elect, Probate Court #2*  
Newly Created Court

**Alberto Garcia**  
*Judge Elect, County Court at Law #6*  
Newly Created Court

**Jose Garza**  
*Judge Elect, 381st District Court*  
Succeeding Hon. John Pope

**Carl Ginsberg**  
*Judge Elect, 193rd District Court*  
Succeeding Hon. David Evans

**Pedro Gomez**  
*Judge Elect, 112th District Court*  
Succeeding Hon. Brock Jones

**Randy Gray**  
*Judge Elect, County Court at Law*  
Succeeding Hon. Brenda Chapman

**Shane Hadaway**  
*Judge Elect, 39th District Court*  
Succeeding Hon. Charles Chapman

**David Hanschen**  
*Judge Elect, 254th District Court*  
Succeeding Hon. Jeffrey Coen

**Hon. Bill Harmon**  
*Judge Elect, County Criminal Court at Law #2*  
Succeeding Hon. Michael Peters

**Diane Henson**  
*Justice Elect, 3rd Court of Appeals*  
Succeeding Hon. Bea Ann Smith

**Steve Hilbig**  
*Justice Elect, 4th Court of Appeals*  
Succeeding Hon. Sarah Duncan

**Lori Chrisman Hockett**  
*Judge Elect, 255th District Court*  
Succeeding Hon. Craig Fowler

**Martin Hoffman**  
*Judge Elect, 68th District Court*  
Succeeding Hon. Charles Stokes

**Peggy Hoffman**  
*Judge Elect, County Criminal Court at Law #8*  
Succeeding Hon. Keith Anderson

**Tracy Holmes**  
*Judge Elect, 363rd District Court*  
Succeeding Hon. Faith Johnson

**Jeanine Howard**  
*Judge Elect, Criminal District Court #6*  
Succeeding Hon. Danny Clancy

**Robert Inselmann**  
*Judge Elect, County Court at Law #1*  
*Succeeding Hon. Lisa Burkhalter*

**Matt Johnson**  
*Judge Elect, 54th District Court*  
*Succeeding Hon. George Allen*

**Hon. Jim Jordan**  
*Judge Elect, 160th District Court*  
*Succeeding Hon. Nancy Thomas*

**Leora Kahn**  
*Justice Elect, 14th Court of Appeals*  
*Succeeding Hon. Richard Edelman*

**Angela M King**  
*Judge Elect, County Criminal Court at Law #6*  
*Succeeding Hon. Phil Baker*

**Hon. Janet Leal**  
*Judge Elect, 103rd District Court*  
*Succeeding Hon. Menton Murray*

**Daniel Leedy**  
*Judge Elect, County Court at Law*  
*Succeeding Hon. Gladys Oakley*

**Lena Levario**  
*Judge Elect, 204th District Court*  
*Succeeding Hon. Mark Nancarrow*

**David A Lewis**  
*Judge Elect, County Court at Law #2*  
*Newly Created Court*

**David Lopez**  
*Judge Elect, 256th District Court*  
*Succeeding Hon. Brenda Green*

**Joe Lopez**  
*Judge Elect, 49th District Court*  
*Succeeding Hon. Manuel Flores*

**Martin Lowy**  
*Judge Elect, 101st District Court*  
*Succeeding Hon. Jay Patterson*

**Rick Magnis**  
*Judge Elect, 283rd District Court*  
*Succeeding Hon. Becky Gregory*

**John Martinez**  
*Judge Elect, County Court at Law #3*  
*Succeeding Hon. Marisela Saldana*

**Amanda Matzke**  
*Judge Elect, County Court at Law #1*  
*Succeeding Hon. Bill Ballard*

**William Mazur**  
*Judge Elect, 304th District Court*  
*Succeeding Hon. John Sholden*

**Arturo McDonald**  
*Judge Elect, County Court at Law #1*  
*Succeeding Hon. Janet Leal*

**Patrice McDonald**  
*Judge Elect, County Court at Law #3*  
*Succeeding Hon. Mason Martin*

**Maria Mendoza**  
*Judge Elect, 120th District Court*  
*Succeeding Hon. Luis Aguilar*

**Michael Miller**  
*Judge Elect, Probate Court #3*  
*Succeeding Hon. Joe Loving*

**John Michael Mischtian**  
*Judge Elect, County Court at Law #2*  
*Succeeding Hon. Harry John Barina*

**Larry Mitchell**  
*Judge Elect, 292nd District Court*  
*Succeeding Hon. Henry Wade Jr.*

**Bailey Moseley**  
*Justice Elect, 6th Court of Appeals*  
*Succeeding Hon. Donald Ross*

**Hon. Orlanda Naranjo**  
*Judge Elect, 419th District Court*  
*Newly Created Court*

**Arturo Cisneros Nelson**  
*Judge Elect, 138th District Court*  
*Succeeding Hon. Rolando Olvera Jr.*

**Larry Noll**  
*Judge Elect, 408th District Court*  
*Succeeding Hon. Richard Price*

**Ray Olivarri**  
*Judge Elect, County Court at Law #6*  
*Succeeding Hon. Phil Meyer*

**Jerome Owens**  
*Judge Elect, 1 A District Court*  
*Succeeding Hon. Monte Lawlis*

**Dan Patterson**  
*Judge Elect, County Criminal Court at Law #1*  
*Succeeding Hon. Ada Brown*

**Bruce Priddy**  
*Judge Elect, 116th District Court*  
*Succeeding Hon. Robert Frost*

**Lori Rickert**  
*Judge Elect, County Court at Law #4*  
*Newly Created Court*

**John Roach**  
*Judge Elect, 296th District Court*  
*Succeeding Hon. Betty Caton*

**Ricardo Rodriguez**  
*Judge Elect, 92nd District Court*  
*Succeeding Hon. Horacio Pena*

**Yvonne Rodriguez**  
*Judge Elect, Probate Court #1*  
*Succeeding Hon. Max Higgs*

**Jeff Rosenfield**  
*Judge Elect, County Criminal Court at Law #1*  
*Succeeding Hon. Lynn Burson*

**Peter Sakai**  
*Judge Elect, 225th District Court*  
*Succeeding Hon. John Specia*

**Gloria Saldana**  
*Judge Elect, 224th District Court*  
*Succeeding Hon. Rene Diaz*

**Hon. Marisela Saldana**  
*Judge Elect, 148th District Court*  
*Succeeding Hon. Rose Vela*

**Laura Salinas**  
*Judge Elect, County Court at Law #9*  
*Succeeding Hon. Oscar Kazen*

**Randy Shelton**  
*Judge Elect, 279th District Court*  
*Succeeding Hon. Rick Williams*

**Eric Shepperd**  
*Judge Elect, County Court at Law #2*  
*Succeeding Hon. Orlanda Naranjo*

**Doug Skemp**  
*Judge Elect, County Criminal Court at Law #3*  
*Succeeding Hon. Glenn Fitzmartin*

**Gena Slaughter**  
*Judge Elect, 191st District Court*  
*Succeeding Hon. Catharina Haynes*

**Craig Smith**  
*Judge Elect, 292nd District Court*  
*Succeeding Hon. Merrill Hartman*

**Jacqueline Smith**  
*Judge Elect, County Court at Law #2*  
*Succeeding Hon. Gary Michael Block*

**Mike Snipes**  
*Judge Elect, Criminal District Court #7*  
*Succeeding Hon. Livia Liu*

**John Stevens**  
*Judge Elect, Criminal District Court #1*  
*Succeeding Hon. Charles Carver*

**Mark Stoltz**  
*Judge Elect, 265th District Court*  
*Succeeding Hon. Keith Dean*

**Linda Storey**  
*Judge Elect, County Court at Law #3*  
*Succeeding Hon. Lynn Bradshaw-Hull*

**Ken Tapscott**  
*Judge Elect, County Court at Law #4*  
*Succeeding Hon. Bruce Woody*

**Carter Thompson**  
*Judge Elect, Criminal District Court #5*  
*Succeeding Hon. Manny Alvarez*

**Fred Tinsley**  
*Judge Elect, 195th District Court*  
*Succeeding Hon. John Nelms*

**Emily Tobolowsky**  
*Judge Elect, 298th District Court*  
*Succeeding Hon. Adolph Canales*

**Teresa Tolle**  
*Judge Elect, County Criminal Court at Law #4*  
*Succeeding Hon. Ralph Taite*

**Catherine Torres-Stahl**  
*Judge Elect, 144th District Court*  
*Succeeding Hon. Mark Luitjen*

**Hon. Rose Vela**  
*Justice Elect, 13th Court of Appeals*  
*Succeeding Hon. Federico Hinojosa*

**Vanessa Velasquez**  
*Judge Elect, 183rd District Court*  
*Succeeding Hon. Joan Huffman*

**Ronald Walker**  
*Judge Elect, County Court at Law #2*  
*Newly Created Court*

**Jerry Webber**  
*Judge Elect, County Court at Law #2*  
*Succeeding Hon. William Anderson, Jr.*

**Mollee Westfall**  
*Judge Elect, 371st District Court*  
*Succeeding Hon. James Wilson*

**Denn Whelan**  
*Judge Elect, 70th District Court*  
*Succeeding Hon. Joseph Giblin*

**Ernest White**  
*Judge Elect, 194th District Court*  
*Succeeding Hon. Mary E. Miller*

**Danny Keith Wilson**  
*Judge Elect, County Court at Law #5*  
*Succeeding Hon. Greg Brewer*

**Bob Wortham**  
*Judge Elect, 58th District Court*  
*Succeeding Hon. James Mehaffey*



# Liberato and Hittner receive statewide award

Judge David Hittner, Judge of the US District Court, Southern District of Texas, and Ms. Lynne Liberato, past President of the State Bar of Texas and partner with Haynes & Boone, L.L.P. in Houston, received the Exemplary Article Award for 2005-2006 from the Texas Center for the Judiciary for their article “Summary Judgments in Texas”. The article, published in the South Texas Law Review, Spring 2006, Vol. 47, No. 3, was part of the Texas Center for the Judiciary’s award winning Texas College for Judicial Studies program.

“We are honored to receive this recognition,” said Liberato who accepted the award for both authors. “It has been a pleasure to work with the Texas Center and be part of their Texas College for Judicial Studies program.” Presentation of the award was made at the Judicial Section Annual conference, held in Houston, September 10th – 13th, before more than 550 members of the Texas Judiciary.

The Texas Center for the Judiciary received a presidential citation from President Eduardo Rodriguez, President of the State Bar of Texas, for providing outstanding educational opportunities to the judges of the State. President Rodriguez noted that exceptional recognition was deserved for the Texas Center’s leadership in increasing the specialized competence of Texas judges through establishing




*From left: Judge Lamar McCorkle, Dean of the Texas College for Judicial Studies; Judge Marilea Lewis, Chair of the Texas Center for the Judiciary Curriculum Committee; Ms. Lynne Liberato, corecipient of the Exemplary Article Award; Ms. Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary.*

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 developed the College curriculum. Judges who currently serve on the bench of a Texas county court 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.” 

# THE USE AND APPOINTMENT OF SPECIAL MASTERS

By Professor Roger Haydock, FORUM Director of Education, and Ms. Sherry Wetsh, Attorney

**M**asters are used to provide services to courts, parties and lawyers. Masters can act as mediators or conference judges; they can manage discovery; they can be assigned to pre-trial and post-trial matters; they can testify as expert witnesses; they can help coordinate multi-party, multi-jurisdictional, and multi-district litigation (MDL) cases; they can administer settlement claims; they can perform accounting or computation of damages; they can serve as technology masters; and they can monitor compliance with a court order or settlement agreement. A benefit of the use of a special master is that it allows the parties and the court the ability to rely on the expertise of a particular neutral professional.

All courts have the power to appoint a special master or other type of judicial adjunct to assist with civil and criminal cases. Fed. R. Civ. P. 53 governs the appointment of masters in Federal Court. Rule 171 of the Texas Rules of Civil Procedure (TRCP) provides Texas State courts authority to appoint a master. In addition to TRCP 171, Chapter 154 of the Texas Civil Practice and Remedies Code provides the court with authority to refer a case to an impartial third party. Other statutory authority to consider are Chapter 151 of the Texas Civil Practice and Remedies Code which governs trials by special judges, and Chapter 171 of the Texas Civil Practice and Remedies Code, which applies to cases that are referred to arbitration.

TRCP 171 allows for the appointment of a master in exceptional cases and for good

cause.

Fed. R. Civ. P. 53 (a)(1)(A) states that the court may appoint a master to perform duties consented to by the parties. The appointment order establishes the master's powers, limits and responsibilities. This order is often referred to as an "order of reference". TRCP 171 does not specifically detail what language the court should include in the order of reference. However, Fed. R. Civ. P. 53 prescribes a number of items an appointment order must include and suggests others that should be included. Therefore, this article will discuss the requirements detailed in Fed. R. Civ. P. 53.

Prior to appointing a master under Fed. R. Civ. P. Rule 53, the Court must give the parties notice and an opportunity to be heard. Parties may suggest candidates for appointment. Rule 53 gives the court authority to appoint a master to perform duties consented to by the parties. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard. The following is a check list of items pursuant to Rule 53, to include in the appointment order.

1. An appointment order must specifically direct the master to proceed with all reasonable diligence.

2. An appointment order must state the master's duties, including any investigation or enforcement duties, and any limits on the master's authority.

3. An appointment order must identify when ex parte communications may occur.

4. An appointment order must identify what records the master must maintain.

5. An appointment must describe how the master's rulings will be received and reviewed.

6. An appointment must describe clearly how the master will be compensated.

Although not required by Fed. R. Civ. P. 53, it would be considered good practice to include a statement in the appointment order that the appointment of the master is appropriate. It is also good practice to identify the source of authority for appointment.

Fed. R. Civ. P. 53 (b) states that the court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. section 455, and if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification. Attaching the affidavit to the appointment order or referencing its filing in the order is appropriate.

An appointment order should include a provision restating or modifying the master's authority to impose sanctions for failure to cooperate. Fed. R. Civ. P. 53 (c) gives the master authority to impose upon a party any noncontempt sanction provided by Fed. R. Civ. P. 37 or 45, and may recommend a contempt sanction against a party and sanctions against a non party.

When considering whether to appoint a master, one key issue of consideration is absent the parties consent, whether the judge can require the parties to pay the master's fees. Rule 53 is silent regarding this issue. TRCP 171 states that the court shall award

See "Special Masters" continued on page 20

# Texas Judicial Teams Receive DWI Court Training

By David Hodges, Judicial Resource Liaison

The National Highway Traffic Safety Administration selected the Texas Center for the Judiciary as one of only four sites nationally to host DWI Court team training during 2006. The 3 ½ day DWI Court Training was conducted July 17-20 and Texas judges received five of the 20 national team training spots. Judges from Tarrant, Bexar, Lubbock, Williamson, and Victoria brought teams to the training, and three new team members from the existing El Paso DWI Court also participated in the training.

The 3 ½ day DWI Court Training curriculum, based on the week long Drug Court model which has been so successful in reducing recidivism, was designed by the National Drug Court Institute to address the specific needs of judges who deal with alcohol impaired drivers.

Multi-disciplinary teams from each county, consisting of a Judge, Court Administrator, Prosecutor, Defense Attorney, Probation Officer, Treatment Professional, Enforcement Officer, and Program Evaluator, addressed issues encountered when dealing with alcohol addiction and were trained on the following topics:

- Overview of DWI Court -

using the power of the court to enforce the treatment model


- Psychopharmacology - how drugs and alcohol affect the brain and result in addiction
- Clinical Screening and Assessment - when to screen and which assessment tools to use
- Drug/Alcohol Testing - how and when to test, and methods used by defendants to avoid detection
- Design of an Effective Community Supervision Protocol - forcing change by using research based practices
- Court Incentives and Sanctions - designing entry incentives, entry barriers, and a continuum of sanctions for probation violations
- Sustainability - designing a program that will sustain itself financially

The training model, patterned after that used at the National Judicial College, provides a facilitator to work with individual teams immediately after a plenary session on each general subject. The judicial team facilitators, all experienced Drug or DWI team members from other states, then lead each team through the methodical process of building an individualized program. This successful model allows all team participants equal input into program design and ensures

effectiveness when the team returns home to implement the new DWI Court.

Ten judicial teams have now been trained at the Texas Center for the Judiciary, and another five judicial teams will be trained in July, 2007. Additionally, several Texas judges have previously received out-of-state National Drug Court Institute DWI Court training, or modeled their own programs after existing DWI courts in Albuquerque.

The Texas Center's ultimate goal is to have enough Texas DWI courts in operation so that the Texas Center can design a DWI Court team training program specifically for Texas judges taught by Texas judges.

The Texas Center Curriculum Committee is also planning a stand-alone seminar that will focus on DWI, license revocation, and related issues. Although dates and location for the 2007 seminar have yet to be determined, the Curriculum Committee invites your input regarding topics and issues that should be addressed. Please send your comments, suggestions, and questions to TCJ's Judicial Resource Liaison, Judge David Hodges, at [dhodges@yourhonor.com](mailto:dhodges@yourhonor.com). 



the best way to go.”

“You don’t believe you are guilty?”

“No sir, I don’t abuse it, I simply use it to help me.”

“What else do you abuse young lady?”

“I don’t abuse anything Judge. I don’t have a problem with drugs.”

“Excuse me?”

“No sir, I have a prescription for my Vicodin and since it upsets my stomach I use weed so I can eat. It helps my stomach so I will get hungry.”

“So your marijuana use helps you eat food since the Vicodin ruins your appetite?”

“Yes, sir.”

Once understood, addictive thinking can be addressed. But it cannot be addressed by the addict or alcoholic; it must be confronted by "significant others" in their lives, including those in the judicial system that handle defendants in the criminal arena.



### **ADDICTS HAVE DISTORTED THINKING- COURTS SHOULDN'T**

Addicts have distorted thinking. Part of this “distortion” is that they convince themselves that they think normally. Addicts believe that they need to use drugs and alcohol to ease their pain or to find a feeling of normalcy. Using has become normal and is the path of least resistance. Not finding real solutions is easier for the addict than addressing the underlying issues.

Our judicial system has for years engaged in addictive thinking when dealing with drug offenders. We continue to employ a failed protocol of arrest, probation, violation and ultimately prison because it is easier than the harder work of providing real solutions. It is what has become normal and it makes us feel like

we are doing our job, but the fact remains that repeating past errors and expecting different results is symptomatic of addictive thinking. This thinking is a distorted way to address the pandemic of addiction we see in the courts. It provides little or no treatment for the addict, the alcoholic and their families and it provides no preventative solutions for the future victims of those addicts that abuse and injure others. Not finding real solutions is easier than addressing the real issues underlying the addicted defendant’s behavior.

We are not the only profession that has maintained a “close your eyes” protocol in dealing with addiction. The medical profession did not deal with addiction for many years. Ask any older physician who attended medical school in the 50’s or 60’s and likely you will hear that they were not taught about addiction and there was no treatment for substance abuse. Physicians were simply trained to intervene to sober up these drunks or abusers and send them back out to deal with life as best they could.

The survival of any society is in large measure dependent upon the ability of its judicial system to find solutions to difficult issues. As a consequence, we judges are asked every day by caring people to give them real answers to real world questions. We see individuals with extensive criminal histories involving alcohol and drug abuse, or persons from dysfunctional families or abusive relationships that arise from drug and alcohol abuse, and we are urged to make a difference. We are expected to rehabilitate the abusers while they live in environments where drug and alcohol abuse are prevalent, yet we are given little money and even less training in the area of understanding the whys of

addiction and substance abuse.

In the real world of criminal behavior where alcohol and drug abuse permeates the criminal’s existence, we know that prison oftentimes is not a real solution. Prison gives a sense of satisfaction to those who have been harmed by an alcoholic or addict and it is probably deserving where injury to others has resulted directly from such conduct, but in virtually all other cases prison only serves to harden those that are scarred and to crush those that are hopeless. But while our judicial system recently has begun to accept as fact that substance abuse is a disease or syndrome, not a moral failure, our courts have not addressed addiction in a way that honestly treats the disease head on. Unless we as Judges intervene with addicts in a way that is responsive to the disease that holds them captive, we are wasting our time. The question is how do we do that? How do we provide answers where loss of integrity has joined hands with loss of trust? And is there a real solution to preventing the revolving door of defendants simply serving their time and returning to society unchanged.

I am a trial Judge and I believe there is an answer. The solution is not complex, but it is heart wrenching, it is gut clinching, it is painful and it is difficult. It requires that we first acknowledge that addicts face demons that non-addicts cannot understand without study and reflection. As Dr Twerski and others have explained, these demons include low self esteem, irrational fears, morbid expectations, inability to deal with stress, hypersensitivity, shame, unrelenting guilt, feelings of omnipotence, anger, inability to admit errors, inability to manage feelings, denial of reality, projecting

*continued on next page*

*continued from previous page*

fault onto others, and the list seems endless. The solution requires that we accept the difficult work of truly understanding the individual addict or alcoholic by digging deep with the defendant and helping them discover how they distort their thinking. This solution requires tough choices involving jail time and thereby providing a sober avenue for the beginning of a true recovery. This solution is effective because it teaches the addicted defendant a different way of thinking and a different way to "view" themselves.



### **THE ADDICTED DEFENDANT MUST FACE A LIFE CHANGING EVENT**

While there is no one answer to addressing the many issues of addiction, my experience convinces me that for an addicted defendant to obtain and maintain sobriety, they must, like every addict, (1) face a life changing event, (2) have their bodies cleansed of all offending substances and (3) commit during their abstinence to a recovery program that requires change in the addict's character. These events must all occur and they must occur in the order that is listed. Anything less will probably result in relapse and failure. We Judges are in the unique position of being able to set the stage for these events to actually happen in the sequence most favorable for success.

Addicts cannot stop using on their own. Read that again please. Addicts cannot stop using on their own. A recovering addict will admit that when they were actively using they could not have stopped. While actively using, the addicted defendant's choices are all about the drug or the drink. That is why asking an addict or alcoholic on

their first day in jail why they were using is like asking a 3 year old after a "time out" in their bedroom why they stole the proverbial cookie from the cookie jar. They don't know except to say they just wanted it, they are sorry and they won't do it again. As a result, telling an addict to "just say no" is useless.

On the other hand, divorce, loss of a job, driving over a child while drunk or waking up in vomit at an unknown location can be life changing events that cause more pain to the addict than the pain they seek to cover with their abuse. When this new pain occurs, the addict's life is disrupted to the degree that they may stop their substance abuse. If that happens, however, their sobriety will not be lasting unless they also begin to change their addictive thinking during their abstinence. A change in thinking is the beginning of a change in character that is required for a lasting recovery. When an addict begins to change their thinking and character during a period of abstinence, they have started a real recovery.

In those cases where the addict does not encounter a life changing event, the event must be brought to them and we Judges can cause that to occur; it is called jail. Not an overnight stay and maybe not even a few days lockup, but jail time that lasts as long as it takes to rid the addict's body of all mind altering drugs or alcohol, and that provides a period of total abstinence away from the triggers of the real world. While an addict is in jail and sober, a judge, probation officer or counselor can employ specific intervention techniques to give the defendant a new beginning from which a change in thinking and character can arise in a positive, effective way. Combining the sobering effects of

jail with such things as reading and writing assignments and other reflective work is a true intervention in the therapeutic sense. Used in this manner, jail creates an environment of non-use where the addict can think clearly about themselves and their choices and provides time for an honest journey into the wilderness of their very soul so that a seed of character change can be planted from which a lasting recovery can grow. Used wisely, jail can provide a period of abstinence and renewal that the addict could never create even if they wanted to.

It is critical to understand that the abstinence that jail provides cannot be provided by those that love the addict. This is true because these others love the addict too much and they have no leverage to require the addict to stay sober over time. There are exceptions but as a general rule family and loved ones are too codependent on the alcoholic or are too easily manipulated by the addict. Real sustained abstinence, the kind that starts the process of a true recovery, is critical and extended jail time provides just that.



### **BECAUSE ADDICTS RATIONALIZE, THE LIFE CHANGING EVENT MUST CAUSE THE DEFENDANT TO HIT ROCK BOTTOM**

Addicts rationalize their behavior. They truly believe that they think normally and that their daily abuse of alcohol or drugs is needed. The fact is addicts use for one of two reasons, to either (1) ease their pain or (2) make them feel normal. ("Addictive Thinking," Id. at Chapter 16). Before an addict will give up their use of drugs or alcohol, they must be confronted with a pain or

*continued on next page*

discomfort that is greater than the pain or lack of self esteem that they are "treating" with their abuse. They must suffer some life altering event that makes them believe that it is not worth using if they must endure this disruption. Dr. Twerski and others call this "hitting rock bottom." The recovering addict will tell you that some event, some disruption or some pain grabbed them so hard and shook them so violently that they were actually willing to stop using to prevent the onslaught of that newer, greater pain.

Of course, when they are actively using, the addicted defendant will claim they can stop whenever they want, and when confronted by a loved one they often promise they will stop because "you have my attention." This is rationalization at its best. These are hollow words only, what families hear every day from addicts who have been confronted and seek forgiveness by those that they love. But it is rationalization, not lying, because the addict believes at that moment that he will stop using.

Rationalization is the most significant symptom of addictive thinking that must be addressed before an addict can learn to stay clean. An addict must learn the difference between rationalizing their behavior and facing the reality of their addiction. Only by accepting the falsity of rationalized behavior and tackling the tremendous task of changing their thinking can the addict come to terms with the distorted thought processes that fuels their abuse of drugs and alcohol. A life changing event like jail can create an atmosphere in which the addict can begin an acceptance that jump-starts a recovery that will be lasting.



### **JAIL MUST PROVIDE TIME FOR ABSTINENCE, REFLECTION AND THE BEGINNING OF CHANGE**

When first jailed addicts may show remorse, but their thinking cannot be lucid until their bodies are cleansed of the altering effects of drugs and alcohol. Moreover, remorse alone has no value in recovery unless the addict literally changes their thinking and how they view themselves. That is why, to an active addict, a short stay in jail may not be life changing at all and in fact may be a relief. While actively using, a day or two in jail simply gives the addict some rest at a time when they had none, providing a welcome pause for the tired abuser. "Free food, free bed, away from the nagging family and world? Sign me up." The irrational thoughts that convinced them that the drugs or alcohol were not a problem emanate from the same brain that is telling them they do not need to change. Time is not the enemy but a part of the healing process.

But even with an extended incarceration, abstinence alone is not enough. That is why addicts and alcoholics invariably continue to use when they are released from jail and prison. Addicts who are actively using have no reason or desire to know how to change since their very existence is consumed with using. Given that change comes from a knowing and deliberate decision to be different in thought and actions, there is little chance that the required change can ensue without specific and painstaking work by the addict on their defective thinking patterns and in their emotional reactions to life itself. This change cannot happen quickly and it cannot happen overnight. As I tell defendants very often, "it took you many years to

get where you are today; change will not happen quickly or easily. If you truly want to change through a recovery that lasts, you need to take a deep breath and slow down. We are talking about saving your life, not rushing to get you back out in the world where you have been unsuccessful."

Because addictive thinkers must be taught to think differently, jail time is wasted unless it is filled with interventions in the form of reflective readings, insightful teachings and thoughtful writing assignments that address the distorted thinking patterns that exist in the addict. Working on "addiction" assignments while away from family, friends and other influences, and while in jail and sober, can mark the beginning of a real change in the addict's character that will sustain itself when the defendant is released. The approach we employ in our Recovery Courts (and often with defendants who are not assigned to these specialized caseloads) is to treat these addictive thinkers by attacking their thoughts at the basic level of their misunderstanding, within their own thinking, inside their own minds. By doing so we hope to help them change their very character.

This is a noble exercise but a necessary one because the rhetorical preaching of "quit using or suffer the consequences" does not address the addiction nor solve the problem. Consequently we utilize books and writings from many sources, including Dr. Twerski, AA, NA and others, as required readings and also as texts to use in writing assignments. As one defendant told me after reading and summarizing several resources while in jail, "I had no idea that others had the same thinking I had, or that there were

*continued on next page*



names for how I thought about stuff." Another one, who was required to read and summarize Dr. Twerski's book "Addictive Thinking," wrote that "I am surprised, but being in jail has opened up a whole new outlook to me about my life."

Jail time must also be used to convince the addict that they cannot go it alone when they are released but will need intensive therapy and counseling as well as the support of non-dependent family and friends. Many will require support from AA, NA or other instructive and supportive groups. Some will need continued cognitive behavioral therapy in an individual or group setting. And the defendant and their family must accept the reality that the defendant cannot have any contact with others that use or family members that love the addict in ways that enable them.

I see most inmates by video conference from the jail to my courtroom and I usually have the family in court with me watching the defendant on our television monitors so they all can see the defendant in jail and he can see them in court with me. Because the defendant is often unmoved at this early stage, usually because he is mad, embarrassed, still numb or unfeeling from the influence of the drugs, or a combination of all for the above, this is as much a "show" for the family as it is a hearing for the defendant. I want these important others to see and feel what their addicted loved one is experiencing. For recovery to really take hold, the entire family must learn to recognize the addictive thinking patterns of the addict and how to react or not react to such behavior. Most family members simply want the defendant out of

jail, and most believe he simply has to decide to not use. These loved ones will explain in detail their need for the defendant to return to work, to be helping with the family or to be at home. It is rare that a family member appears in court and is prepared for what they learn, that the defendant is in fact an addict, that they have been enablers of his addiction and one chief reason I do not release the defendant from jail is because the family members are codependent in their relationship with the defendant.

A week to a month later, when we video again, the addict often is crying like a baby, saying they will do anything to get out of jail and return to their family. It is the crying, the pleading, any emotion, that I am looking for to confirm that they are feeling something again. I know then that their mind is clearing and it is then that I know change is a possibility. At this stage I may release the defendant or they may be given reading or writing assignments to help them learn about and articulate these newly found inner feelings. When they ask the typical question of "when will I be released," I usually tell them that "you will never be released as long as that is a question that you want answered." I remind them that "release from jail is not the issue. Your addiction is the issue and until you address that issue we will continue to meet while you are in jail."

While I want the pain from the incarceration to exceed the gain they feel from using drugs or alcohol, it is imperative that they forget their desire for freedom and focus on what they can do to address their addiction. It is the addiction that caused them to be jailed and the pain from being jailed must create a

new passion for living, one that does not include drugs or alcohol. Only then will they have a basis upon which to build a recovery that lasts. Freedom from jail is an unimportant issue when we are dealing with the future life of an addict who has been unable to find a successful sobriety on his own. When the defendant and family have bought into that philosophy, then release from jail is immediate and it is therapeutic.


This may be the first time in ages that the defendant has had to explore how they felt about anything, much less themselves or their addiction. And this usually is the first time in years they have felt anything at all while sober. On the other hand, it may be the last time that I have enough control to set them on a path to real recovery. I do not want to blow this critical opportunity by rushing a release date. One defendant told me that he was dying in the jail, away from family, away from his job, away from the real world. My answer was swift and direct, "you were dying anyway, Steve; why would I wish to return you to the outside world to face that death. Face yourself here first, find yourself here first, and then you and I can decide together when it is time for you to find yourself out there."

This is a decisive moment for addicts, when they actually feel again, because this is when they can choose whether to be honest with themselves, the Judge and others, or to continue their game of charades, being who they aren't and saying whatever it takes to continue in their addiction. I have often denied release to defendants that claim they have gotten the point but who were unable to discuss with me in intelligent language what their thinking errors were and what their triggers for relapse are. Jail is an ally

continued from previous page

in most cases, however, because it has the obvious tendency to push an addict to be more honest than they have ever been. But this only occurs when the addict realizes that it is his work while in jail, not his words, that determines when his release date will be. They don't know when they are going to be released and neither do I. They just know that they will not be released until I believe they are ready to be honest, they have accepted the challenge of a real recovery and they have truly started to change their addictive way of thinking.

Nothing less than full, open, brutal honesty that creates an atmosphere of trust will suffice to gain their release, because anything less will be wholly insufficient for them to succeed in recovery and sobriety. When an atmosphere of trust exists, then release from jail is good. If trust doesn't exist, release is a recipe for failure. In my experience, less than 10% of inmates that I have jailed for a relapse and with whom we have engaged with therapeutic

interventions while in jail ever face a Motion to Revoke. Those that have been revoked were (1) addicts that refused to accept the reality of their addictive thinking, (2) defendants that had absconded and could not convince me that they would not stop running from their distorted thinking, or (3) defendants that stated that probation in our Recovery Courts was "too hard and I had rather just do the time." These failures are few and far between, however, and when in doubt I invariably lean toward treatment and recovery. As I say to defendants daily, "if you want help to recover, you will be given that chance; if you don't, you won't. You call it." 



#### FOOTNOTES

(1) I preside over 3 Recovery Courts (previously called Drug Courts). These are:

- SAP Adult Recovery Court (<http://www.co.montgomery.tx.us/410dc/sap.shtml>) for Defendants that originate from my criminal caseload in the 410th District Court,

- SAFP Reentry Program/Recovery Court (<http://www.mcdsc.org/Default.aspx?tabid=70>) for defendants that originate from the caseloads of 4 of Montgomery County's District Courts and who have successfully completed the inpatient portion of the Texas Department of Criminal Justice's Substance Abuse Felony Punishment Facility, and

- MC POWER Juvenile Recovery Court (<http://www.co.montgomery.tx.us/410dc/mcpowercourt.shtml>) for cases that originate from Montgomery County's Juvenile caseload.


(2) In this paper, the term "addict" includes alcoholics and those that abuse prescribed medications.

(3) For example, the SAP Program Requirements provide that a participant may attend "a cognitive based/life skills program approved by the Court or CSO." (<http://www.co.montgomery.tx.us/410dc/SAPREQUIREMENTS.PDF>).

**TO BE CONTINUED in the Spring 2007 Edition of In Chambers.**

**In Part 2, Judge Mayes will discuss how "JAIL SHOULD BECOME AN ALLY AND A FRIEND", "MANIPULATION", and other topics.**

## Texas Judges Make A "Good Showing" at NAWJ Annual Conference

The National Association of Women Judges Annual Conference was held last month in Las Vegas, NV. There was a good showing of Texas Judges and they are pleased to announce that Justice Bea Ann Smith is planning on continuing to serve as Chair of the International Outreach Committee and one of the highlights of the conference was a program for new judges that was presented by Judge Sue Kurita. They are also pleased to announce that Judge Elisabeth Earle was elected as the National Association of Women Judges District Director for Texas, Arkansas and Oklahoma. If you would like information regarding the National Association of Women Judges, please contact Judge Elisabeth Earle at 512/854-3794. Also, please calendar the next National Association of Women Judges Conference held in Philadelphia on November 7-11, 2007. 



From left: Hon. Aida Salina Flores, Hon. Susan Sheppard, Hon. Penny Roberts, Hon. Bea Ann Smith, Hon. Alma Lopez, Hon. Sue Kurita, Hon. Elisabeth Earle.


development of the paralegal profession for the past 25-30 years, some paralegals have become qualified through their training and work experience under the supervision of a licensed lawyer. Nevertheless, the Standards recommend that persons who fail to meet the educational criteria, possess a minimum of four (4) years previous work experience in performing substantive legal work, before being considered a paralegal.

Significantly, for both educational and recoverable-work requirements, substantive legal work does not include clerical or administrative work. Instead, the Standards define "substantive legal work" as including, but not being limited to: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting

investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

The Standards also give consideration to the ethical obligations of the attorney to ensure that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal's fee will be, and whether the client will be billed for any non-substantive work performed by the paralegal. Further, a paralegal is prohibited from engaging in the practice of law, providing legal advice, signing

pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.

The articulation of these Standards will provide clarification of "education, training or work experience" as delineated in the Gill Savings case and its progeny, and hopefully render less complex the courts' decision whether to fee or not to fee. 

### FOOTNOTES

- † With the assistance of Delaine J. Foss, Staff Attorney, 261st District Court, Travis County.
- \* Board Certified Paralegal – Civil Trial Law, Texas Board of Legal Specialization
- 1. Now termed "Paralegal."
- 2. Gill Sav. Ass'n v. Int'l Supply Co., Inc., 759 S.W.2d 697, 705 (Tex.—App. Dallas 1988, writ denied).
- 3. Id.
- 4. See All Seasons Window & Door Mfg. v. Red Dot Corp., 181 S.W.3d 490, 504 (Tex. App.—Texarkana 2005, no pet.); Moody v. EMC Services, Inc., 828 S.W.2d 237, 248 (Tex. App.—Houston [14th Dist.] 1992, writ denied).


reasonable compensation to be taxed as costs of court.

Several different rules and codes of professional responsibility apply or can be construed to apply to a judicial adjunct's conduct. If the judicial adjunct is a lawyer, he or she is governed by the applicable state rules of professional responsibility. Certain provisions of the Code of Conduct for United States Judges (CCUSJ), apply to special masters and commissioners. Although judicial adjuncts are not considered judicial employees, a judge may choose to impose portions of the Code of Conduct for Judicial Employees (CCJE), on a master or other judicial adjunct. 28 U.S.C. section 455 governs the disqualification of federal judges. And of course, Fed. R. Civ. P. 53 and TRCP 171 directly govern masters.

Numerous alternative dispute resolution (ADR) organizations have their own set of ethical guidelines for their neutrals. The National Arbitration Forum's Code of Conduct for Arbitrators is located at [www.arb-forum.com](http://www.arb-forum.com).

The ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes can be found at [www.abanet.org/dispute](http://www.abanet.org/dispute). JAMS Arbitrator Ethics Guidelines and JAMS Comprehensive Arbitration Rules and Procedures are available at [www.jamsadr.com](http://www.jamsadr.com).

The Academy of Court Appointed Masters (ACAM), created in 2004 at a conference sponsored by the National Arbitration Forum, has completed a handbook which contains sample appointment orders, as well as numerous useful references. The handbook may be downloaded from the ACAM website which is [www.courtappointedmasters.org](http://www.courtappointedmasters.org).

As ADR continues to grow, the use of special masters is likely to increase. For example, as discussed in the Spring 2006 edition of IN CHAMBERS, there are State Judicial District Courts that have appointed a conference judge to conduct settlement conferences/mediations for felony cases. The creative uses of a judicial adjunct are only limited by the parties and the court. 



## ETHICS OPINIONS

### Question & Answer

No new ethics opinions have been issued since July 2006. To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct (877.228.5750).

### 2006 ETHICS COMMITTEE MEMBERS

- Hon. Stephen B. Ables, *Chair*
- Hon. Caroline Baker
- Hon. Cathy Cochran
- Hon. Lora J. Livingston
- Hon. Menton Murray
- Hon. Kathleen Olivares
- Hon. Brian Quinn
- Hon. Penny Roberts
- Hon. Mark Rusch
- Hon. Melissa Goodwin
- Hon. Robin Ramsay



## STATE BAR OF TEXAS PROVIDES JUDICIAL CRITICISM 'HOT-LINE'

The administration of justice depends in large part on public confidence. Unjust criticism of judges or of the judicial system erodes that public confidence. To help educate the public, the State Bar of Texas has created a response program for judges who feel that inaccurate reporting of a court procedure or unfair criticism of a judge has taken place.

Under this response program, judges may call [1-800-204-2222](tel:1-800-204-2222), extension 2013, to be connected to a State Bar of Texas staff member in charge of Public Information. The State Bar staff will gather background information regarding the matter. The staff will then recommend an appropriate course of action to the State Bar President, who may provide advice to the judge involved, develop an appropriate public response on behalf of the State Bar of Texas or elect not to issue a public response.

The following are situations in which a public response might be warranted:

1. When the criticism displays a misunderstanding of a judge's role in the legal system and a response would enhance the public's understanding of the proper functioning of the legal system;
2. When the criticism is materially inaccurate;
3. When a report does not contain enough of the facts involved to be fair.

The following are examples of when a public response to criticism might not be appropriate:

1. When the criticism is a fair comment or opinion;
2. When the criticism arises during a political campaign and a response may be construed as an endorsement of a particular judicial candidate;
3. When the response might prejudice a pending judicial proceeding;
4. When the controversy is insignificant.

# IN MEMORIAM

## For Those Who Served Our State Courts As of November 20, 2006

**Honorable  
Jack R. Blackmon**  
Judge (Retired)  
117th District Court, Austin

**Honorable  
Bill Blanton**  
Senior District Judge  
11th District Court, Houston

**Honorable  
Thomas H. Crofts**  
Senior District Judge  
86th District Court, Terrell

**Honorable  
Robert "Bob" Dickenson**  
Senior Justice  
11th Court of Appeals, Abilene

**Honorable  
Temple Driver**  
Former District Judge  
89th District Court,  
Wichita Falls

**Honorable  
Shay Gebhardt**  
Former Judge  
County Court at Law #3,  
San Antonio

**Honorable  
Owen M. Giles**  
Judge (Retired)  
68th District Court, Dallas

**Honorable  
Arthur "Art" C. Leshner**  
Senior District Judge  
113th District Court, Houston

**Honorable  
Byron Matthews**  
Senior District Judge  
Criminal District Court #1,  
Fort Worth

**Honorable  
Edward Marquez**  
Senior District Judge  
65th District Court, El Paso

**Honorable  
Sears McGee**  
Justice (Retired)  
Texas Supreme Court, Austin

**Honorable  
Richard W. Millard**  
Senior District Judge  
152nd District Court, Houston

**Honorable  
Charles Hale Storey**  
Justice (Retired)  
5th Court of Appeals, DeSoto

**Honorable  
J.C. "Zeke" Zbranek**  
Judge (Retired)  
75th District Court, Devers



### 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](mailto:michelem@yourhonor.com).*

# CONTRIBUTIONS & MEMORIALS

Thank you for your contributions

Includes contributions received as of November 10, 2006

## CONTRIBUTIONS TO THE TEXAS CENTER

Stephen B. Ables  
Robert S. Anchondo  
Ogden Bass  
Todd Blowmerth  
Charles Carver  
Betty Caton  
F. Alfonso Charles  
Sarah Tunnell Clark  
Cathy Cochran  
Weldon Copeland  
Lonnie Cox  
John Creuzot  
John Paul Davis  
Richard W. B. Davis  
Jo-Ann De Hoyos  
Kenneth D. DeHart  
Teresa Ann Drum  
C.W. Duncan  
C.J. Eden  
John A. Ellisor  
Drue Farmer  
Aida Salinas Flores  
Wanda Fowler

Tom Fuller  
Johnny Gabriel  
Sarah Garrahan  
Guy Griffin  
Gary D. Harger  
Richard David Hatch  
Kenneth H. Keeling  
Brenda P. Kennedy  
Alvin & Dorothy Khoury  
Judge & Mrs. Weldon Kirk  
Juergen Koetter  
Abel C. Limas  
Susan Lowery  
Richard Mays  
Samuel Medrano, Jr.  
Donald Metcalfe  
Daniel Mills  
Charles Mitchell  
Fred J. Moore  
Marvin Moore  
Robert Moore  
Rick Morris  
Robert Newsom

Jay Patterson  
Pete Perez  
John B. Peyton  
Mark Price  
Brian Quinn  
Charles Ramsay  
Felipe Reyna  
Jane Roden  
Dean Rucker  
Rebecca Lynn Simpson  
Susan R. Stephens  
Robert H. Trapp  
Stacy W. Trotter  
Robert Vargas  
Raul Vasquez  
James Walker  
Lee Waters  
Jay Weatherby  
Jimmy White  
Darlene Whitten  
James T. Worthen  
Jack Young

### *IN MEMORY OF JUSTICE CHARLES BARROW*

A contribution in memory of Justice Charles Barrow was made on behalf of the following Charles W. Barrow Award Recipients

Bob Wessels - 1981  
Martin Allen - 1985  
Debra Coffey - 1986  
Terri Stone - 1990

Dottie McDonald - 1996  
Patrice Eubanks - 1997  
Mikah Mitchell - 1999  
Aurora Zamora - 2000

Cynthia De Jean - 2002  
Ed Wells - 2004  
Tommy Munoz - 2005  
Cathy Burnett -2006

The Charles W. Barrow award, created in 1981, recognizes individuals for "Extraordinary Contributions in Promoting Court Administration in Texas". Justice Barrow was a strong advocate for court administration and for the continuing education of those who serve the courts. His leadership encouraged the founding of the Texas Association for Court Administration whose primary purpose is providing continuing education for Court Coordinators and Court Administrators of our State's Trial Courts. As a member of the Board of the Texas Center for the Judiciary, both during and after his service on that Board, he continued his interest and encouragement for the Association's programs and it's partnership with the Center in establishment of the Professional Development Program. It seems fitting this being the 30th anniversary of the Texas Association for Court Administration and the year of his passing, that we honor him in this way.

# MEMORIAL CONTRIBUTIONS

**Hon. Charles W. Barrow  
Memorial**

James E. Barlow  
Robert R. Barton  
Harold Entz  
George M. & Jeanie Thurmond

**Hon. Pat M. Baskin Memorial**

Marilyn Aboussie

**Hon. Jack R. Blackmon  
Memorial**

Robert Blackmon

**Hon. Henry Braswell  
Memorial**

Jim Lovett

**Hon. Sam J. Day, III Memorial**

Daryle Coffey

**Hon. Charles "Bob" Dickenson  
Memorial**

Charles & Judith Chapman  
Gary Harger  
Judge & Mrs. Weldon Kirk  
Dean Rucker

**Ms. Deborah Ellis Memorial**

Bob Dickenson

**Hon. R. Temple Driver  
Memorial**

Judges of the 8<sup>th</sup> Administrative  
Judicial Region  
Robert P. Brotherton  
Mitizi Brotherton  
Jack Hampton  
Marilyn Aboussie

**Hon. Clarence Ferguson  
Memorial**

H.D. Black, Jr.

**Hon. Owen M. Giles Memorial**

Joe B. Brown

**Hon. Lee Sledge Green  
Memorial**

Barbara C. Clack  
John Hyde  
Bob Parks

**Hon. Mack Kidd Memorial**

Marilyn Aboussie

**Hon. Sam Kiser Memorial**

Larry B. "Rusty" Ladd

**Hon. Steve Lotham Memorial**

Judge & Mrs. Bob McGregor

**Hon. J.R. "Bob" Musslewhite  
Memorial**

Pat Shelton

**Hon. Keith Nelson Memorial**

Robert P. Brotherton  
Mitizi Brotherton

**Hon. Bill Logue Memorial**

Ralph Strother

**Hon. Miron Love Memorial**

Robin Brown

**Hon. Edward Marquez  
Memorial**

Angie Juarez Barill

**Mr. Edward P. Snead Memorial**

Ada Brown

**Mr. John Specia, Sr. Memorial**

Gladys Oakley

**Hon. Jim Thompson Memorial**

Jim Lovett

**Ms. Sarah Elisabeth Worley  
Memorial**

Carmen Rivera-Worley

**Hon. J.C. "Zeke" Zbranek  
Memorial**

Carroll E. Wilborn, Jr.

# "IN HONOR" CONTRIBUTIONS

**In Honor of**

**Ms. Mari Kay Bickett**

William S. Lott  
Carter T. Schildknecht

**In Honor of**

**Hon. John R. Carter**

Billy Ray Stubblefield

**In Honor of**

**Hon. Carl E.F. Dally**

W.C. Kirkendall

**In Honor of**

**Hon. Robert Duncan**

Weldon Kirk

**In Honor of**

**Hon. Molly Francis**

Carmen Rivera-Worley

**In Honor of**

**Hon. William S. Lott**

Billy Ray Stubblefield

**In Honor of**

**Hon. Lamar McCorkle**

Weldon Kirk

**In Honor of**

**Hon. Edward T. McFarland**

Barry Bryan

**In Honor of**

**Hon. Richard Millard**

Pat Shelton

**In Honor of**

**Hon. Dean Rucker**

Weldon Kirk

**In Honor of**

**Hon. William R. Powell**

Don Ritter

**In Honor of**

**Hon. B.B. Schraub**

W.C. Kirkendall

**In Honor of**

**Hon. Gus J. Strauss**

W.C. Kirkendall

**In Honor of**

**Hon. Linda Thomas**

Weldon Kirk

**In Honor of**

**Hon. Harold R. Towslee**

Reva L Towslee Corbett

**In Honor of**

**Hon. Jack D. Young**

Gordon H. Green

**In Honor of**

**Hon. Laura A. Weiser**

Carmen Rivera-Worley

**In Honor of the Staff of the  
Texas Center for the Judiciary**

Dennis Wayne Bridewell  
Tana Petrich  
William S. Lott



# LOOKING AHEAD

## Judicial Conference Calendar

### 2006

College for New Judges  
December 2 - 8, 2006  
Austin

### 2007

Regional Conference (Regions 2, 3, 4 & 5)  
January 21 - 23, 2007  
Fort Worth

Regional Conference (Regions 1, 6, 7, 8 & 9)  
February 11 - 13, 2007  
Dallas

Family Violence Conference  
March 26 - 28, 2007  
Galveston

Texas College for Judicial Studies  
April 23 - 27, 2007  
Austin

### 2007 (continued)

Criminal Justice Conference  
May 21 - 23, 2007  
Dallas

Professional Development Program  
June 18 - 22, 2007  
Dallas

Judicial Section Annual Conference  
September 16 - 19, 2007  
Galveston

### 2008

Judicial Section Annual Conference  
September 14 - 17, 2008  
Dallas



Texas Center for the Judiciary  
1210 San Antonio, Suite 800  
Austin, TX 78701

Presorted  
First Class Mail  
U.S. Postage  
PAID  
Austin, TX  
Permit No. 1390