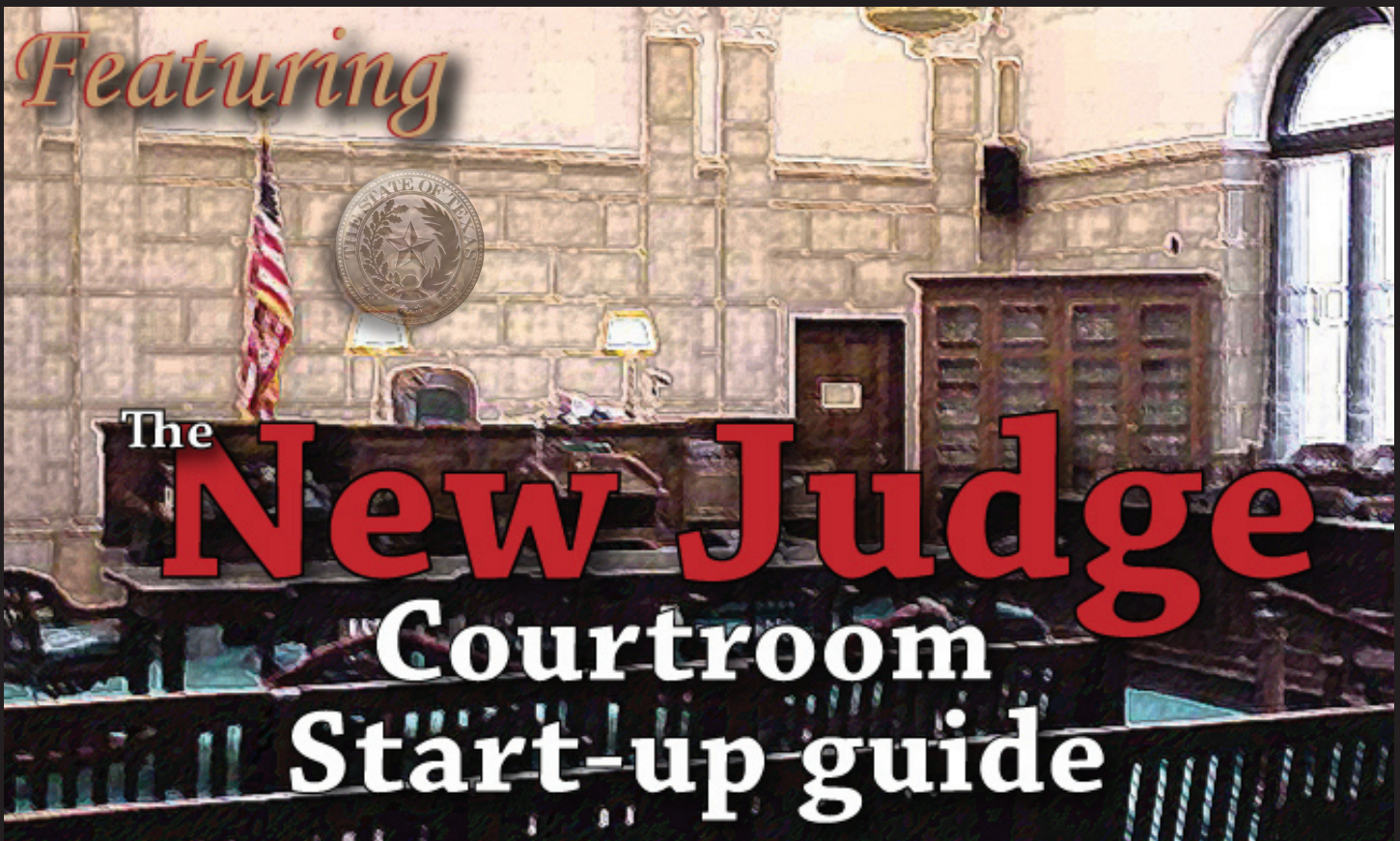


# CHAMBERS

Volume 36, Number 1

Winter, 2009



**With Special Contempt Feature  
by Hon. Paul Davis**

*Procedure in Indirect Contempt Cases, Part I*

# Table of Contents

## DEPARTMENTS

Letter from the Chair, Judge Suzanne Stovall	2
Honors and Achievements	3
New Administrators of Justice	4
Judicial Section Annual Conference Wrap-Up	6

## FEATURES

The New Judge: An Indispensable Start-Up Guide to Your New Courtroom, Judge Albert McCaig, Jr.	8
Contempt: Procedure in Indirect Contempt Cases, Part I	12
2008 Judges DWI Survey and Summary	16
OCA's New Automatic Registry	20

## BUSINESS

In Memoriam	21
Contributions to the Texas Center	22
Upcoming Training Events	24

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This is the printable version of *In Chambers* online, the official publication of Texas Center for the Judiciary. The magazine is published four times a year and funded in part by a grant from the Texas Court of Criminal Appeals. *In Chambers* strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center's mission of "Judicial Excellence Through Education" as our guiding premise.

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

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

# etter from the Chair

*The Honorable Suzanne Stovall*

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At the beginning of the new year, I think it is appropriate to count our blessings. As Chair of the Texas Center I am thankful for the many, many judges and Texas Center staff that have made my job easier, fun, and worthwhile. If I list everyone who has been supportive, there would be nothing in *In Chambers* but this letter. Of the many who should be named, here are a few:

I am thankful for Justice Liz Lang-Miers, Judge David Garcia, and Texas Center Financial Officer Amy Cook for the untold hours they have spent working on the Texas Center budget and business plan for this year.

I am thankful for the peaceful relationship between the conference committee working on Fund 540 issues—both those from the Center and the Court of Criminal Appeals. I am thankful for Chief Justice Linda Thomas and her devotion to the Texas Judiciary, judicial education, and legislative issues affecting the judiciary.

I am thankful for the Curriculum Committee members (past chair Judge Steve Ables and current chair Judge Marilee Lewis) who are responsible for planning and executing the premier education programs that the Texas Center will be presenting this year.

I am thankful for Judge Lee Hamilton and his fund-raising committee for their enthusiasm and quick response to our fund-raising needs.

I am thankful for the Texas Center Board of Directors who have cheerfully and energetically responded to all that has been asked of them. I am particularly thankful for the Texas Center staff, headed by our Executive Director Ms. Mari Kay Bickett. The Texas Center staff have a particularly challenging job. Not only have they meticulously coordinated all of our conferences, they have accomplished this under different management each year!

Let there be peace, and best wishes to all!



Hon. Suzanne Stovall

# HONORS & Achievements

## Chief Justice David Wellington Chew Named 2008 NAPABA Trailblazer



The Eighth Court of Appeals is pleased to announce that the National Asian Pacific American Bar Association (NAPABA), the national association of Asian Pacific American attorneys, judges, law professors and law students, announced the 2008 recipients of NAPABA's highest honor, the NAPABA Trailblazer

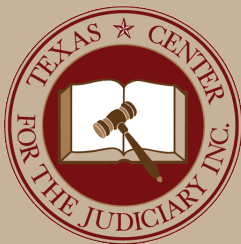
Award, at an awards ceremony on Friday, November 22, at the Experience Music Project during its 20th Annual Convention in Seattle, Washington. Chief Justice Chew was honored as one of the nine trailblazers for 2008.

The Trailblazer Award recognizes the outstanding achievements, commitment, and leadership of NAPABA lawyers who have paved the way for the advancement of other Asian Pacific American attorneys. Each year, NAPABA honors a member from each of

its nine membership regions who meets these criteria. Awardees are selected by the regional governors and the affiliates of each region and represent diverse paths and achievements. Each of the award recipients has demonstrated vision, courage, and tenacity in their careers, and has made substantial and lasting contributions to both the Asian Pacific American legal community and the broader Asian Pacific American community.

*Hon. David Wellington Chew – Southwest Region.*

*Chief Justice Chew is the first Asian Pacific American justice (1995) and chief justice (2006) of the court of appeals of Texas. He is the highest ranking Asian Pacific American elected official in Texas. Chief Justice Chew is the son of Wellington Yee Chew, the first Asian Pacific American to be licensed to practice law in Texas.*



## DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT EMAIL ADDRESS?

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



# **New Administrators of Justice**

*As of December 15, 2008*

Hon. Regina Arditti  
Judge, 448th District Court  
El Paso

Hon. Antonia Arteaga  
Judge, 57th District Court  
San Antonio

Manuel Barraza  
Judge, Criminal District Court #1  
El Paso

Hon. Carlos Barrera  
Judge, County Court at Law #8  
Austin

Hon. Alfred H. Bennett  
Judge, 61st District Court  
Houston

Travis B. Bryan  
Judge, 272nd District Court  
Bryan

Hon. Carlos Carrasco  
Judge, County Criminal District Court #3  
El Paso

Hon. Kyle Carter  
Judge, 125th District Court  
Houston

Hon. Solomon Casseb, III  
Judge, 288th District Court  
San Antonio

Hon. Eric Clifford  
Judge, 6th District Court  
Clarksville

Hon. Gary Coley  
Judge, 74th District Court  
McGregor

Hon. Jesus Contreras  
Judge, 449th District Court  
Edinburg

Hon. Jim Coronado  
Judge, 427th District Court  
Austin

Hon. Rex Davis  
Justice, 10th Court of Appeals  
Waco

Hon. Camile G. Dubose  
Judge, 38th District Court  
Uvalde

Hon. Christopher Duggan  
Judge, 423rd District Court  
Bastrop

Hon. Mike Engelhart  
Judge, 151st District Court  
Bellaire

Hon. Trentin Farrell  
Judge, 52nd District Court  
Gatesville

Hon. Enrique Fernandez  
Judge, 63rd District Court  
Houston

Hon. Kevin Fine  
Judge, 177th District Court  
Houston

Hon. Brian Gary  
Judge, 397th District Court  
Sherman

Hon. Gary Gatlin  
Judge, 1st District Court  
Jasper

Hon. Tracy Gilbert  
Judge, 418th District Court  
Conroe

Hon. Michael Gomez  
Judge, 129th District Court  
Houston

Hon. Ruben Guerrero  
Judge, 174th District Court  
El Paso

Hon. Yahara Gutierrez  
Judge, 65th District Court  
El Paso

Hon. Jesus Herrera  
Judge, County Criminal District Court #4  
El Paso

Hon. Daniel Hinde  
Judge, 269th District Court  
Houston

Hon. Robert Hinojosa  
Judge, 312th District Court  
Houston

Hon. William Hughey  
Judge, 71st District Court  
Marshall

Hon. Rhonda Hurley  
Judge, 98th District Court  
Austin

Hon. Maria Jackson  
Judge, 339th District Court  
Houston

Hon. William Jennings  
Judge, 124th District Court  
Longview

Hon. Hazel Jones  
Judge, 338th District Court  
Houston

Hon. Woodie Jones  
Justice, 3rd Court of Appeals  
Austin

Hon. Christi Kennedy  
Judge, 114th District Court  
Tyler

Hon. Patricia J. Kerrigan  
Judge, 190th District Court  
Houston

Hon. Steven Kirkland  
Judge, 215th District Court  
Houston

Hon. Donald Kraemer  
Judge, 12th District Court  
Huntsville

Hon. James Lagomarsino  
Judge, 13th District Court  
Corsicana

Hon. Gracie Lewis  
Judge, Criminal District Court #3  
Dallas

Hon. Elia C. Lopez  
Judge, 404th District Court  
Brownsville

*In Chambers - Winter 2009*

Hon. Sylvia A. Matthews  
Judge, 281st District Court  
Houston

Hon. Jaclanel McFarland  
Judge, 133rd District Court  
Houston

Hon. Bill Meier  
Justice, 2nd Court of Appeals  
Fort Worth

Hon. David Mendoza  
Judge, 178th District Court  
Houston

Hon. Stuart Messer  
100th District Court  
Clarendon

Hon. Mike Miller  
Judge, 11th District Court  
Houston

Hon. Kenneth Molberg  
Judge, 95th District Court  
Dallas

Hon. Eric Moye  
Judge, 14th District Court  
Dallas

Hon. Mary Murphy  
Justice, 5th Court of Appeals  
Dallas

Hon. J. Rolando Olvera, Jr.  
Judge, 445th District Court  
Brownsville

Hon. Scott Ozmun  
Judge, 353rd District Court  
Austin

Hon. Judy Parker  
Judge, County Court at Law #3  
Lubbock

Hon. Israel Ramon, Jr.  
Judge, 430th District Court  
Edinburg

Hon. Dion Ramos  
Judge, 55th District Court  
Houston

Hon. Ronald Rangel  
Judge, 379th District Court  
San Antonio

Hon. Shawna Reagin  
Judge, 176th District Court  
Houston

Hon. Josefina Rendon  
Judge, 165th District Court  
Houston

Hon. Herb Ritchie  
Judge, 337th District Court  
Houston

Hon. Guadalupe Rivera  
Justice, 8th Court of Appeals  
El Paso



Hon. Douglas Robison  
Judge, 393rd District Court  
Denton

Hon. Randolph Roll  
Judge, 179th District Court  
Houston

Hon. David Sanchez  
Judge, 444th District Court  
Brownsville

Hon. Ravi Sandill  
Judge, 127th District Court  
Houston

Hon. Robert Schaffer  
Judge, 152nd District Court  
Houston

Hon. Mark Seiler  
Judge, 435th District Court  
Conroe

Hon. Terry Shamsie  
Judge, County Court at Law #5  
Corpus Christi

Hon. Jim Sharp  
Justice, 1st Court of Appeals  
Houston

Hon. Patrick Simmons  
Judge, 77th District Court  
Teague

Hon. Alexandra Smoots-Hogan  
Judge, 164th District Court  
Houston

Hon. Ketih Stewart  
Judge, County Court at Law #5  
Conroe

Hon. Kathleen Stone  
Judge, Probate Court #1  
Houston

Hon. Kent Sullivan  
Justice, 14th Court of Appeals  
Houston

Hon. F. Duncan Thomas  
Judge, County Court at Law #2  
Greenville

Hon. Jeremy Warren  
Judge, County Court at Law #3  
Angleton

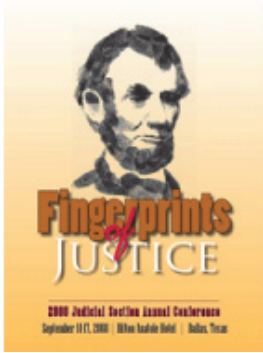
Hon. Larry Weiman  
Judge, 80th District Court  
Houston

Hon. Melody M. Wilkinson  
Judge, 17th District Court  
Fort Worth

Hon. N. Keith Williams  
Judge, 216th District Court  
Kerrville

Hon. Douglas Woodburn  
Judge, 108th District Court  
Amarillo

Hon. Suzanne Wooten  
Judge, 380th District Court  
McKinney



# The 2008 Judicial Section Annual Conference

## Wrap-Up

Despite the impending arrival of Hurricane Ike into the Gulf Coast area, nearly 500 Texas judges and 200 guests and faculty attended the Judicial Section's 80th Annual Conference in Dallas from September 14-17, 2008.

The conference theme was "Fingerprints of Justice," exemplifying the significant impact Texas judges make on the cases they hear. Just some of the keynote topics included: The Foundations of Law; Leadership Lessons from our Commanders in Chief; Fourth Amendment Satisfaction; The Transitional Judge; Needs of Children Exposed to Family Violence; Adolescent Drug Trends; Neuroscientific Evidence; and case law and legislative updates.

The Honorable Brian Quinn, Chief Justice of the 7th Court of Appeals in Amarillo and 2007-2008 Chair of the Judicial Section of the State Bar of Texas, presided over the conference until transferring leadership to the 2008-2009 Chair, Judge Suzanne Stovall from the 221st District Court in Conroe.

We had a hot item for this year's raffle: an all-terrain Segway. Attendees took turns trying out their balancing skills by taking the Segway for a brisk ride through the Hilton Anatole and drawing many spectators. The total amount raised was \$15,700, and the lucky winner was 218th District Court Judge Stella Saxon. Congratulations, Judge!

Receiving awards this year are:

**Hon. Lamar McCorkle**  
**Mari Kay Bickett Judicial Excellence Through Education**

**Hon. Marilea Lewis**  
**Exemplary Judicial Faculty**

**Professor Joseph Hoffmann**  
**Exemplary Non-Judicial Faculty**

**Hon. Harvey G. Brown, Jr.**  
**Exemplary Article**

Many thanks from the staff of the Texas Center to our fabulous faculty, special guests, and exhibitors who gave so much of their valuable time to make this conference a success.

We think those who attended will agree that our talented, well-respected faculty provided a diverse program of useful, relevant, and interesting information to all judges. Following are just a few of the terrific photos taken of the four-day event, along with some of the comments we received.

To see more photos, check out the online edition of the Winter 2008 *In Chambers* at [www.yourhonor.com/iccurrent.htm](http://www.yourhonor.com/iccurrent.htm).

"There were many different subjects covered so I got a lot of theory as well as nuts and bolts."

"I discovered that there is a lot of digital media I didn't even know existed."

"I came to this conference to learn; to continue contacts with friends and meet new judges; to find out what is going on in our world."

"As a result of this conference, I re-learned that the Fourth Amendment is very far reaching."

"As a result of this conference, I learned symptoms of trauma in children exposed to domestic violence – very useful in custody cases."

"Small presentations that foster discussion with participants was good."

"Good spread of info. Staff handled problems with Hurricane Ike very well – very professional with notice of cancellation of Sunday activities, etc. – really rolled with the punches."



Chief Justice Brian Quinn, 2007-2008 Chair of the State Bar of Texas Judicial Section and Texas Center for the Judiciary, receives his unique award for outstanding leadership from Texas Center's Executive Director, Ms. Mari Kay Bickett -- accompanied here by Judge John Boyd.



The Board of Directors' incoming leadership take time out for a picture with Mari Kay Bickett. From left: Chair-elect David Garcia (2009-2010), Mari Kay, and the 2008-2009 Chair, Honorable Suzanne Stovall.



Hon. Marilea Lewis received the Exemplary Judicial Faculty award for excellence in judicial education through her personal commitment and service with distinction as a Texas Center faculty member. Here Judge Lewis is accompanied by Judge Stephen Ables.



After competing in the 2008 Olympic games in China, Nancilea Foster delivers the keynote address to judges attending the Memorial Breakfast. Here, Ms. Fisher signs autographs.

Judge Lamar McCorkle, unable to attend the annual conference due to Hurricane Ike traversing his hometown of Houston, was the recipient of the 2008 Mari Kay Bickett Judicial Excellence Through Education Award.



Judge Stella Saxon, from the 218th District Court in Karnes City, is the lucky winner of the raffle drawing, taking home a brand new, all-terrain Segway, seen here with Mari Kay Bickett.





# The New Judge

**An indispensable start-up guide for your new courtroom.**

**By Judge Albert McCaig, Jr.  
506th Judicial District, Hempstead, Texas**

You're in! You've made the cut through either a gubernatorial appointment or an election and now you are the judge of a **newly created court** for the great State of Texas. Once the initial joy wears off, you realize that you have to (a) shut down or sell your law practice; and (b) figure out how to take office and make it work. Establishing a newly created state court requires planning, organization, support and, above all, patience, both before you take the oath of office and certainly afterwards. The first thing you should do is read, understand, and apply the Code of Judicial Conduct. Once you have been identified to the judiciary, it all becomes applicable to you.

The following information is certainly applicable to any new judge anticipating taking the bench, but mostly reflects my experiences in establishing a new district court in a multi-county district. I have found that urban districts or those counties with multiple, single-county courts have excellent support systems in place for new judges. That is usually not the case in rural, multi-county district, or county courts-at-law that are being newly established. Regardless of the type of bench involved, and no matter whether it is rural or urban, long-range planning and detailed organization will be required.

The most fascinating bit of knowledge I gained, soon after hearing from Governor Perry's appointments director that I was the new judge of the 506th Judicial District Court, was that there is no single "package" of information for new judges. No nice box of materials and books telling you what to do, how to do it, and where to find information. For example, how do you hire your court reporter and court coordinator? Where do you buy a robe, and who pays for it? What legal research resources do you have? Who provides stationery and business cards, and where do you get them? Where do you get an official state seal for imprinting on your stationery materials? Who provides your website? Who pays for it and how?

Those are about a tenth of the questions you'll have, or should have, as you set out on this journey of becoming a functioning, effective state judge. The good news is that many helpful people are ready to assist you. All you have to do is ask, and in most cases you'll get it. This article is simply a guide to a few of those people and places and the resources available to you.

## **Leaving Your Practice**

Before you can focus on being a state judge, you have to leave the practice of law. If you are a prosecutor, you are fortunately leaving your case load in the good hands of other prosecutors. You won't worry so much about how files will be handled by your successor. On the other hand, if you have a private practice, whether in a firm or as a solo practitioner, you have to provide a smooth transition for your clients, provide substitutions on your litigation files, and either sell or close your practice. Because judges come from such diverse backgrounds, this article does not include the process of closing your practice. However, my one offer of advice is to take your time, if you can. If you are taking office by way of an election, your time line is already established. What we do in the private sector of law is complicated and many of our clients are very dependent upon our professional advice and competence. Leaving those trusting folks is not easy and is not to be done too quickly or lightly. Having said that, set a realistic time goal, organize yourself to meet it, and stick to it. Simply put, for the clients you are leaving behind, bad news does not get better with time.

## **Chambers: Your New Office**

Hopefully, your home county realized early in the process that there was going to be a new set of offices in the courthouse. Planning for adequate chambers can be complicated as many of the court facilities in Texas are already overcrowded, unfunded, or subject to historical commission renovation standards. Very quickly after your appointment or election, contact your facilities manager in your home courthouse. In most rural counties that will be the county judge. Find out what is planned for you and what is available. As a minimum, you should have office space for your court coordinator, your court reporter, and yourself.

You will soon find, if you don't already know from your private practice, that your court coordinator is the center of the universe in the flow of information. Therefore, in an ideal situation, the coordinator's office should not be the reception area. Budget permitting, either a separate receptionist or at least reception area is ideal. Provide plenty of desk-top space, at least one filing cabinet, and room for a good computer, printer and fax machine. You will quickly find that restricting your court coordinator's ability to function through limited space or furnishings will cost you a great deal in efficiency.

Your official court reporter has storage needs you may not realize. The reporter will need secure storage for evidence, records, sealed material, and all that very expensive equipment that is usually personally owned by the reporter. If at all possible, provide a separate office area with secure storage for the reporter.

Remember that you are a public servant. While you represent and sit on one of the highest level trial courts in the state, you have not been anointed, ordained, or crowned. You are still a mere mortal. Your office should be dignified, suitable for meetings, and represent the state of Texas and your county with decorum, yet dignity. Frankly, your personal office should reflect the Judicial Code of Responsibility. Having said that, make it personal to you, your personality, and your character. One strong recommendation is that you get any renovations done before you move in. Once you are in place, getting governmental services, at any level, to take action is more difficult than those of us from the private sector are accustomed to dealing with. Again, be patient, but be persistent.

### **Your Staff**

Much to my chagrin, I found that the personal staff members of a state district judge are not state employees, but employees of the county. If you have a multi-county district, I suggest that you work with your counties to enter into an inter-local agreement to have the home county manage all personnel activities, such as pay, benefits, and record keeping. You will find it incongruous to be asking your commissioners courts to fund your office, pay your staff, and provide your supplies while at the same time a district judge will have some degree of oversight responsibility for that same commissioners court. Does that system need fixing? Absolutely! For now, however, that is the way it is.

Your court coordinator should be classified as an exempt employee under the federal Fair Labor Standards Act (29 C.F.R. Section 541, et. seq.) and free from some of the mundane time keeping and reporting requirements of most regular county employees. You will not find a good job description for your court reporter, so you will need to write one. The coordinator is the key member of the district judge's personal staff and is required to maintain a sensitive and close working relationship with the judge in matters of discretion, confidentiality, and security. Contact me for a copy of the job description that I developed for that position.

Your human resources office and the county auditor will be able to provide some information on salary for your coordinator, especially in multi-court counties. The Office of Court Administration (OCA) can give you a schedule of the range of salaries paid to court coordinators. Eva Walla at OCA has compiled an excellent salary survey. Being a court coordinator is a really tough job – probably more difficult than that held by most legal secretaries.

Your court reporter's duties are covered by several statutes and a couple of opinions out of the Office of the Attorney General. Authority for compensation and expenses for court reporters is covered in Chapter 52 of the Texas Government Code. Feel free to be aghast at what you read under Section 52.055 in terms of expenses and reimbursement, especially if you serve a multi-

county district. I have requested my state representative to amend Section 52.057 of that law dealing with reimbursement for expenses. Contact me directly and I will provide you a copy of my proposed legislation.

Salary scales for court reporters run the gamut of low to high, and a great deal of it depends on whether you require your court reporter to be in the office every day with regular hours. The federal Fair Labor Standards Act does not provide for reporters to be exempt employees; thus they are often subject to time reporting standards. Texas AG Opinion No. GA-0155 appears to take the opposite view that court reporters do not work typical eight-hour days, but rather perform specific duties in service to the courts that appoint them.

Urban area district court reporters make near \$84,000 annually and more. Rural CCL reporters often make in the low \$30s. Expect a court reporter for a rural, multi-county district court to make between \$55,000 and \$65,000 annually, plus other employee benefits. The website for Texas Court Reporters ([www.tcra-online.com](http://www.tcra-online.com)) has a wealth of information on court reporters. You can also find information on the website for the Texas Association of District Judges ([www.tadj.dcourt.org](http://www.tadj.dcourt.org)). You will need to become a member to have access. Judge Gil Jones handles this website and you will find it quite helpful.

### **Computers, Website, Letterhead, Stationery**

If you are lucky, your home county has an Information Technology (IT) Department. Even if they do, you may find yourself on your own in figuring out the type of computers, printers, and other office equipment you will need. In my multi-county district, I have a good laptop computer that goes with me, and each county is equipped with identical docking stations. My coordinator has the same setup. You will always have your electronic calendar, forms, research, passwords, files, and internet connections with you, regardless of where you are. Certainly, having all that on a flash drive will work, but I find it beneficial to always have the same computer. A Blackberry is a great asset, but I find that I want the entire computer most of the time.

In a single-county district court, and certainly in a CCL, having your website hosted by the home county is a good thing. You don't have to build it, maintain it, and keep it hosted and updated as that is mostly done through your IT folks. In a multi-county district, I found that I did not want my outlying counties to have to use my home county email and website. Therefore, I set up and maintain a website using a very simple program called WordPress (see [wordpress.com](http://wordpress.com)). Web.com is also fairly simple to use and much more versatile. There are other simple sites available. You can see what I have at [www.court506.com](http://www.court506.com).

I use the website to post my annual calendar, local rules, court quirks, and other procedures. Having a good website with well-organized information is a great asset to attorneys, your district clerks, and your staff. It also provides a level of consistency in that you can always have folks refer to the website. The state does not pay for your domain name or the website hosting fees; that will be a county expense.

In deciding on my letterhead, I found that I needed an official seal of the state of Texas that I could place in my word processor and also provide to our local printer. Download that from the Secretary of State's official website. Also, your local printer may already have such a seal. Since I produce letterhead directly from my computer (in black and white) I have the seal on my computer.

Unlike many counties where a purchasing agent exists to handle things like cards, stationery, business materials and robes, in a newly created court there may be no such official source. You will need to find the best local supplier and do business there. There is no set design for stationery, business cards, envelopes, or other paper products. Design your own items unless you are subject to rules from your local administrative judge.

### **Case Management and Calendars**

Multi-county district courts and most CCLs are general jurisdiction courts. Thus, you will have the joys of organizing and managing criminal, civil, family, and, in some instances, juvenile matters. We developed our setting procedures based on the needs of the two counties in my district, the case load, and courtroom availability dates. As we share both counties and courtrooms with other district judges, simply picking a date and setting a matter is not an option.

If you share your counties with other judges, get their calendars and begin the process of laying out your own schedule. First take into consideration the shared facilities. For instance, in both my counties, I share facilities with another district court, the constitutional county court, commissioners court meetings, the AG court, the CPS court, and one county court at law. Get a master calendar of all of those dates before you begin setting matters. We use a large blotter-style calendar for our initial planning because we can place all of the items on one page to de-conflict the settings more readily. That can also be done on Microsoft Outlook or another commercial calendar program.

For our criminal cases, we developed a four-month protocol of arraignment, motions, pretrial, and trial. It works for about 80 percent of the cases. Our scheduling order form is multi-part, fill-in-the-blank, and includes a written waiver of arraignment. I will be glad to send you a copy if you want to see what we use. Those are locally produced by our printing contractor.

The College for New Judges provides some great forms for your civil and family law settings. The docket control order that we use came in large part from there (originally from Harris County). It seems to work, but in order to be effective you will need to have a calendar in place that reaches out at least a year, preferably two. Rather than repeat what you will get at the College, I simply urge you to shop, copy, and adapt.

An additional concern is that there is little uniformity in software for case management. You will probably be required to deal with the software used by your district clerk or the county overall. In my case, each of my two counties uses different software. You will once again learn to adapt.

### **Research and Library**

Just as you relied on your research library in your law practice, you will need access to a good library as a judge. My counties do not have a central library, and I have an aversion to hard-book research in any event. I like online research. The OCA has a general contract with LexisNexis that allows Texas state judges to subscribe to a very complete library, including statutes, rules, cases, digests, law reviews, and other materials for about \$40 a month. Your counties will have to pay for it, but it is well worth it. Contact the LexisNexis representative in your area for information on subscribing, or contact the OCA or me for the website and contract particulars.

The Texas Center for the Judiciary provides an online version of the Bench Book that is of tremendous value. Access it and adapt it to your own needs. For example, from the materials in the Bench Book I have built separate 3-ring notebooks for voir dire and empaneling civil juries and a separate notebook for criminal juries. I recommend that to you. We've all tried cases as attorneys, but your role as a judge is much different. The scripts provided in the Bench Book are invaluable.

### **Grand Juries**

District court judges empanel grand juries. For example, I am responsible for setting the January term in both of my counties. You can use either the jury wheel system or the commissioner system for selecting your grand jury. I prefer the commissioner system. I begin the process two months out by selecting my grand jury commissioners. One month out, the commissioners meet and nominate names for the grand jury venire. My district clerks send out jury notices and then, on the first meeting date, I actually select and empanel the grand jury. Coordinate that empaneling day with your district attorney and the district clerk.

Talk to the district clerk about what has been done in the past. If your district attorney has some experience in office, get some insight on what has worked in the past. The Bench Book has most of the information you will need, including oaths of office. There is no set way to do this, so simply read the statutes and devise a system that works. I will be glad to send you copies of the letters I use in the process.

### **Your Role with the County Auditor**

District judges appoint the county auditor and set the salaries for the auditor and the auditor's staff. Refer to Chapter 84 of the Local Government Code. You are not the direct supervisor of the auditor, and I doubt you would want to be. The office of the auditor is established to be independent of local politics. Under the Local Government Code you will see what duties you have relative to the auditor, salaries, and oversight. Read that fairly soon.

Talk to your auditor. Learn how the budget process works in your counties and what is available to you. If you have a truly new court, you'll find that you need the auditor to transfer funds, set the initial budget, and provide funding to get you into business. If you are the only district judge in the county or are the local administrative judge, you will need to learn about posting the auditor's position,

salary schedules, and hearings. The auditor's office should help you with this, but in the event you want the forms that I use, please contact me.

### **The Commissioners Court**

Government Code Section 24.020 reads as follows: "The district court has appellate jurisdiction and general supervisory control over the commissioners court, with the exceptions and regulations prescribed by law." You will need to balance the requirement of going to the commissioners court for your personnel, budget, office space, and other sustaining resources, while at the same time understanding your supervisory control over that body.

Supervisory control does not mean you run the commissioners court. Most new judges are savvy enough to know the difference, but you do need to be aware of the dynamics involved.

### **Networking**

What we do as judges can have periods of isolation as we sit in judgment of very significant matters. When all is said and done, we are often the final agents of reality and the law. At the same time, a large network of judges exists, most of whom are very willing to give you time, counsel, and information about their experiences.

Attend the College for New Judges. Go to your regional conferences. Attend courses sponsored by the Texas Center for the Judiciary. You will find that sharing your problems and experiences with other judges helps you maintain a positive outlook in the face of often overwhelming difficulty. I have begun cultivating good contacts throughout this great state that have helped me in dealing with myriad issues.

The good folks at the Texas Center for the Judiciary have always gone out of their way to help me, to provide information or direct me to resources and, in general, to professionally and personally help me find my way in this new endeavor ([www.yourhonor.com](http://www.yourhonor.com)).

Eva Walla, at the Office of Court Administration, has a reservoir of information and ideas for new courts and new judges. You can find her through the OCA's the website.

Your court coordinator should join the Texas Association of Court Administrators ([www.mytaca.org](http://www.mytaca.org)). Schedule your coordinator for their annual conference and other seminars as soon as you can. There is also a great network of coordinators who will share information.

The Texas Association of District Judges is a great resource.

The Judicial Section at the Texas Comptrollers Office has been very helpful. Generally, they will contact you before you have a chance to contact them. They will help you with travel and expense vouchers, payroll, insurance and benefits, judicial license plates, and much more.

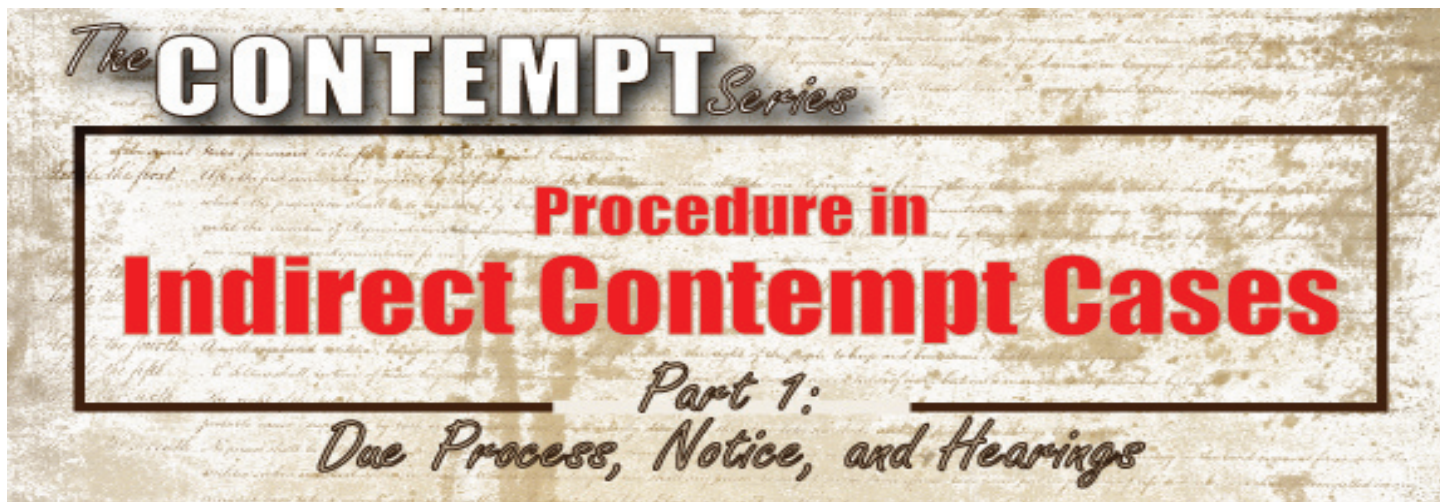
### **In Conclusion**

Congratulations on your new position. Contact me if you need help; and I look forward to meeting you at a conference in the near future.

### **Albert M. McCaig, Jr.**

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By Judge Paul Davis

In part one of this series on contempt, published in the April, 2008, issue of *In Chambers*, we talked about the power of a court to hold someone in contempt. We covered the waterfront generally, including broad discussions of the two categories of contempt, specifically *indirect contempt* (conduct occurs out of the presence of the court) and *direct contempt* (conduct occurs in the presence of the court).

Over the course of the next several installments in this series, we will discuss indirect contempt in more detail. Generally, due process of law considerations control contempt of court proceedings. In part two of this series, specific due process requirements will be explored in the indirect contempt proceeding.

#### Just the facts....

One afternoon, you are in your office reviewing the docket sheet for the next day's hearings. You notice there is a contempt case set. You immediately grab your copies of *In Chambers* and your Bench Book (recently updated and accessible through the yourhonor.com website) and realize you have a lot of questions that need to be answered before you complete the hearing. Fundamental questions arise in your mind, grounded in the very fabric of Constitutional law, and the fear that accompanies each of us as we wade into these murky waters of contempt law: being reversed. You realize, immediately and obviously, that you have an indirect contempt case...

#### Indirect Contempt

Direct contempt occurs within the presence of the court, and the court knows firsthand all the facts constituting the contemptuous conduct. Constructive contempt (also known as "indirect contempt") occurs outside the presence of the court.<sup>1</sup> The importance of distinguishing whether or not the contempt is direct or constructive is that, with the exception of court officers, direct contempt may be punished summarily when there are exigent circumstances. Constructive contempt, because of due process requirements, requires notice and hearing to the contemnor.<sup>2</sup>

#### More facts...

And you know, of course, that contempt is a quasi-criminal proceeding...

#### Procedure In Indirect or Constructive Contempt Cases

A contempt proceeding is quasi-criminal in nature.<sup>3</sup> Proceedings in contempt cases should conform as nearly as practical to proceedings in criminal cases.<sup>4</sup>

However, contempt proceedings are not criminal within all the rules and definition of criminal law. Since motions for contempt are somewhat criminal in nature, the standard to be applied is the standard of due process which requires that the contemnor be accorded notice and a fair hearing.<sup>5</sup>

#### More facts...

Instantly you remember that due process requires there be a valid written order that clearly, specifically, and without ambiguity sets out the duties imposed on the alleged contemnor...

#### Due Process Requirements

##### The Order Must Be Written

The Texas Supreme Court has stated that oral orders do not meet the specificity required by *Ex parte Slavin*.<sup>6</sup> A respondent cannot be held in contempt for actions taken after an oral rendition of an order but prior to the time the order is reduced to writing.<sup>7</sup> This is so notwithstanding the clarity of the oral order, nor the shortness of time between the oral rendition of the order and the signing of the written order.

##### The Respondent Must Have Knowledge of the Order

It is a fundamental due process requirement that the respondent must have knowledge of a court order before a court may hold that person in contempt for failing to obey the order.<sup>8</sup>

##### The Court Must Have Had Jurisdiction to Enter the Underlying Order

A person may not be held in contempt for violating an order which the court had no power to enforce, and may not be imprisoned to compel obedience of that order.<sup>9</sup>

Absence of jurisdiction of a court to render a particular judgment makes the judgment subject to collateral attack.<sup>10</sup>

After a case is dismissed for want of prosecution, the court no longer has jurisdiction to conduct a contempt hearing.<sup>11</sup>

### **The Order Sought to Be Enforced Must Be Clear, Specific and Unambiguous**

To meet due process requirements, the person bound by the order must be able to look to the order to know exactly what duties or obligations are imposed.<sup>12</sup> The *Slavin* standard has been interpreted in countless cases. In each case the court looks to the particular language of the underlying order to see if it is sufficient to meet the standards.

A corporate officer may be held in contempt of an order directed solely at the corporation.<sup>13</sup> There must be evidence that the corporate agent was personally connected with the contemptuous conduct.<sup>14</sup>

#### **More facts...**

**“But,” your ever curious judicial mind wonders, “what exactly does the motion for contempt say and what notice has been given to this alleged contemnor?” As you examine the file, you remember...**

### **The Charges Must Be Stated With Specificity**

Due Process requires full and complete notification of the charges.<sup>15</sup> There is a specific requirement in the Family Code that the motion for enforcement must in plain language identify the provision of the order allegedly violated and sought to be enforced, the manner of the noncompliance, and the relief sought.<sup>16</sup>

### **Verification**

Verification is not a requirement for valid contempt unless one is proceeding under some statute or rule of civil procedure specifically requiring it.<sup>17</sup>

An affidavit is required under Texas Rule of Civil Procedure 692 for disobedience of injunctions. The Family Code does not contain a requirement that the motion for enforcement be verified. It does, however, require that the motion be signed by the movant or the movant’s attorney.<sup>18</sup>

## **Special Exceptions**

### **Family Law**

In an indirect contempt case under the Family Code, pleading deficiencies may be challenged by special exceptions prior to a hearing on the motion for enforcement. If an exception is sustained, the court shall permit movant an opportunity to replead and continue the hearing to a designated time and date without the requirement of additional service.<sup>19</sup>

### **Waiver**

There is some authority for the proposition that a claim of lack of specificity in a motion is waived if the contemnor fails to specially except.<sup>20</sup> However, more recent decisions have concluded that waiver would not apply to notice claims, reasoning that the Family Code does not *require* special exceptions or other objections as a predicate for a complaint about inadequate notice, it merely allows them.<sup>21</sup>

## **There Must Be Notice to Respondent**

### **Actual and Sufficient Notice Required**

The Texas Supreme Court has set forth fairly comprehensive due process standards regarding notice in a constructive contempt case. To satisfy due process, the alleged contemnor must have full and complete notification of the subject matter of the charges. The show cause order or other equivalent means of notification must contain full and unambiguous notice of when, how and by what means the respondent has been guilty of the alleged contempt. A respondent must be personally served with a valid order to show cause or it must be established that he or she had knowledge of its contents.<sup>22</sup>

### **Length and Contents of Notice**

Due process requires that a respondent be given sufficient notice of the proceedings to allow time to employ counsel, gather evidence, subpoena witnesses and prepare for trial.<sup>23</sup>

## **Family Law Notice Requirements Codified**

### **Personal Service Required**

It is mandatory in a contempt proceeding under the Family Code that personal service be made on the respondent of a notice directing the respondent to appear at a set time and place for a hearing.<sup>24</sup> Section 157.065 allows notice by first class mail to the respondent’s court ordered last known address, but failure to appear following mail notice may not result in a *caipias*.<sup>25</sup>

### **Length of Notice**

At least ten days notice of the hearing is required when enforcement of child support or child possession or access is sought.<sup>26</sup> The statutory ten-day notice requirement has been held to be mandatory.<sup>27</sup> However, failure to give the full ten days notice is not, by itself, a denial of due process.<sup>28</sup> The contemnor must object before the hearing or show harm by the shortened notice period to make a successful denial of due process claim.<sup>29</sup>

If “other claims” are joined to a family law contempt motion, the notice period is the normal citation period.<sup>30</sup>

### **Contents of Notice**

In addition to the due process requirements set out above, the Family Code contains some additional provisions about the notice in a family law contempt proceeding. The show cause order or notice of hearing need not “repeat the matters pleaded or prayed for in the motion for enforcement.”<sup>31</sup>

However, if the show cause order does not set out in full the allegations to which the respondent is required to answer, we are back to due process, which demands that it be clear from the record that the respondent has also received the motion, and that the motion is sufficient to put the respondent on notice of the charges.<sup>32</sup>

#### **More facts ...**

**The next day, you call the case. The movant is there, wanting at least a pound of flesh. The movant’s attorney is there, charging many**

hundreds of dollars an hour for her time. The respondent's attorney is there, also charging hundreds of dollars per hour. (Note to self: once again, you are the lowest-paid attorney in the courtroom...) But, alas, the alleged contemnor is not present. Movant's counsel urges you to proceed. You want to proceed also, since it seems clear from the motion and attached affidavit that you are dealing with a respondent who seems to be intentionally thumbing his nose at the movant, the dignity of the orders of the court, and the clear and timely notice he received. However, something about due process surfaces in your mind, and you pause, remembering...

### **A Hearing Is Required**

Unless the contempt punishment is for a direct contemptuous act requiring immediate action by the court, a hearing is required in order to adjudge contempt.

## **When the Respondent Does Not Appear**

### **Due Process Requires Presence**

In contempt cases, the right to be present at trial and confront witnesses is fundamental and essential to a fair trial.<sup>33</sup> In *Ex Parte Johnson*, the Texas Supreme Court stated:

“We perceive no meaningful distinction between an individual's rights which are at stake in a constructive criminal contempt hearing under article 1911a and those at stake in an ordinary criminal trial when confinement is a possible penal sanction. Accordingly, we hold persons charged with criminal contempt pursuant to article 1911a are constitutionally guaranteed the right to be present at trial and confront witnesses.” (at page 421)

The right to be present applies in both coercive (civil) contempt and punitive (criminal) contempt cases.<sup>34</sup>

### **Movant's Burden to Show Waiver**

A contempt judgment entered in the absence of the contemnor violates due process unless the movant affirmatively demonstrates that the contemnor had sufficient notice to appreciate the criminal nature of the proceeding against him and that he knowingly, intelligently and voluntarily waived his right to be present and participate in the trial.<sup>35</sup>

### **Writ of Attachment**

When the respondent fails to appear after actual notice of the hearing, the court should issue a writ of attachment.<sup>36</sup> Usually, the court cannot be certain that the respondent received actual notice unless the respondent was personally served or personally signed a certificate of receipt. (Notice to anyone else, including the respondent's attorney does not assure actual notice to the respondent.) If actual notice is uncertain, the court should not issue a writ of attachment but should instead direct the movant to reset the hearing and personally serve the respondent with notice of the hearing.

### **Family Law Cases**

The required procedure in family law contempt default cases is codified in Chapter 157 of the Texas Family Code, Subchapters B and C.

Upon the respondent's failure to appear after personal service, the court may issue a capias for respondent's arrest with respect to the contempt charge, and may default the respondent on any other relief sought. However, the court may not adjudicate the respondent in contempt.<sup>37</sup>

If, however, the respondent was served by mail pursuant to section 157.065, a capias may not be issued, and the court should order personal service.<sup>38</sup>

If a capias is ordered, the court shall simultaneously set an appearance bond.<sup>39</sup>

The bond is to be set in a reasonable amount.<sup>40</sup> There is a rebuttable presumption of \$1,000 bond or \$250 cash. This presumption is rebutted if arrears exceed \$1,000, if the respondent has attempted to evade service or has a previous contempt finding.<sup>41</sup>

Condition of bond to be respondent's promise to appear at the hearing on the motion for enforcement without further notice.<sup>42</sup>

Cash bond should be applied to any arrearage found.<sup>43</sup>

The capias is to be treated by law enforcement personnel as arrest warrant for a criminal offense.<sup>44</sup>

If respondent is arrested and not released on bond, the court is required to conduct a release hearing on or before the first working day after respondent's arrest to determine if respondent's court appearance can be assured by a method other than posting bond.<sup>45</sup>

If respondent is not released following this hearing, the contempt hearing “shall be held as soon as practicable” but not later than five days after arrest, unless the accelerated hearing is waived.<sup>46</sup>

### **Suspended Commitment**

A second hearing is required if a contemnor was previously found guilty of contempt but punishment was suspended (probated) on the condition of compliance.<sup>47</sup> The second hearing is required to determine whether a breach of the conditions has occurred, at the conclusion of which the court must issue an unconditional order of commitment.<sup>48</sup>

The simple filing of an affidavit of noncompliance to “trigger” the commitment is insufficient to take the place of a hearing. A second hearing must be held even if the conditional commitment order states that failure to comply will result in confinement “without any further notice to the respondent.”<sup>49</sup>

### **Enough already...**

**Over the strenuous protestations of movant's counsel, you issue a capias for apprehension of the alleged contemnor and recess the case, knowing they all (even the respondent) will return on another day.**

In the next issue of *In Chambers*, we will explore additional due process requirements in indirect contempt cases when the respondent appears, including the right to counsel, records, proof, and compliance with the contempt order.



For more information, contact:

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## Endnotes

<sup>1</sup> *Ex parte Chambers*, 898 S.W.2d 257 (Tex. 1995); *Ex parte Ratliff*, 3 S.W.2d 406 (Tex. 1928)

<sup>2</sup> *Ex parte Werblud*, 536 S.W.2d 542 (Tex. 1976); *Ex parte Daniels* 722 S.W.2d 707 (Tex. Crim. App. 1987)

<sup>3</sup> *Ex parte Cardwell*, 416 S.W.2d 382 (Tex. 1967); *Ex parte Davis*, 344 S.W.2d 153 (Tex. 1961).

<sup>4</sup> *Ex parte Scott*, 123 S.W.2d 306 (Tex. 1939); *Ex parte Stanford*, 557 S.W.2d 346 (Tex. Civ. App.—Houston [1st Dist.] 1977, orig. proceeding).

<sup>5</sup> *Ex parte Jackman*, 663 S.W.2d 520 (Tex. App.—Dallas 1983, orig. proceeding).

<sup>6</sup> *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967) See *Ex parte Wilkins*, 665 S.W.2d 760 (Tex. 1984); *Ex parte Padron*, 565 S.W.2d 921 (Tex. 1978)

<sup>7</sup> *Ex parte Price*, 741 S.W.2d 366 (Tex. 1987)

<sup>8</sup> *Ex parte Conway*, 419 S.W.2d 827 (Tex. 1967); *Ex parte Stone*, 72 S.W. 1000 (Tex. Crim. App. 1903)

<sup>9</sup> *Ex parte Lillard*, 314 S.W.2d 800 (Tex. 1958); *Ex parte Helle*, 477 S.W.2d 379 (Tex. Civ. App.—Corpus Christi 1972, orig. proceeding)

<sup>10</sup> *Ex parte Limoges*, 526 S.W.2d 707 (Tex. Civ. App.—Austin 1975, orig. proceeding)

<sup>11</sup> *Ex parte Olivares*, 662 S.W.2d 594 (Tex. 1983).

<sup>12</sup> *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967).

<sup>13</sup> *Ex parte Chambers*, 898 S.W.2d 257 (Tex. 1995).

<sup>14</sup> *Id.* at 261.

<sup>15</sup> See *Ex parte Edgerly*, 441 S.W.2d 514 (Tex. 1969); see also *Ex parte Adell*, 769 S.W.2d 521 (Tex. 1989).

<sup>16</sup> Tex. Fam. Code § 157.002 (a)

<sup>17</sup> *Ex parte Winfree*, 263 S.W.2d 154 (Tex. 1953)

<sup>18</sup> Tex. Fam. Code § 157.002(a)(4)

<sup>19</sup> Tex. Fam. Code § 157.064.

<sup>20</sup> See e.g., *Ex parte Occipenti*, 796 S.W.2d 805 (Tex. App.—Houston [1st Dist.] 1990, orig. proceeding); *Ex parte Stephens*, 734 S.W.2d 761 (Tex. App.—Fort Worth 1987, orig. proceeding); *Ex parte Blackmon*, 529 S.W.2d 570 (Tex. Civ. App.—Houston [1st Dist.] 1975, orig. proceeding)

<sup>21</sup> *Ex parte Barlow*, 899 S.W.2d 791 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding) and *In re Mann*, 162 S.W.3d 429 (Tex. App. Fort Worth 2005)

<sup>22</sup> *Ex parte Edgerly*, 441 S.W.2d 514, at 516 (Tex. 1969), *Ex parte Gordon*, 584 S.W.2d 686 (Tex. 1979), *Ex parte Blanchard*, 736 S.W.2d 642 (Tex. 1987), *Ex parte Adell*, 769 S.W.2d 521 (Tex. 1989)

<sup>23</sup> *Ex parte Gordon*, 584 S.W.2d 686 (Tex. 1979).

<sup>24</sup> Tex. Fam. Code § 157.062.

<sup>25</sup> Tex. Fam. Code § 157.066.

<sup>26</sup> Tex. Fam. Code § 157.062(c).

<sup>27</sup> See *Ex parte Hoover*, 520 S.W.2d 483 (Tex. Civ. App.—El Paso 1975, orig. proceeding)

<sup>28</sup> *Ex parte Sturdivant*, 551 S.W.2d 144 (Tex. Civ. App.—Texarkana 1977, orig. proceeding) (citing *Ex parte Davis*, 344 S.W.2d 153 (Tex. 1961))

<sup>29</sup> *Id.*

<sup>30</sup> Tex. Fam. Code § 157.062(d)

<sup>31</sup> Tex. Fam. Code § 157.062(b)

<sup>32</sup> In *Ex parte Combs*, 638 S.W.2d 540 (Tex. App.—Houston [1st Dist.] 1982, orig. proceeding), the court held that the show cause order did not give adequate notice of the charges since it did not specify how the father allegedly failed to comply with the order. Although the show cause order made reference to the motion for contempt, there was no indication that a copy of the motion was attached. But see *Ex parte Gray*, 654 S.W.2d 68 (Tex. App.—Eastland 1983, orig. proceeding), where the notice was held sufficient since it was clear the motion for contempt was attached to the show cause order.

<sup>33</sup> *Ex parte Johnson*, 654 S.W.2d 415 (Tex. 1983)

<sup>34</sup> *Ex parte Alloju*, 907 S.W.2d 486 (Tex. 1995)

<sup>35</sup> *Ex parte Johnson*, 654 S.W.2d 415 (Tex. 1983)

<sup>36</sup> *Ex parte Byram*, 662 S.W.2d 147 (Tex. App.—Fort Worth, 1983, orig. proceeding)

<sup>37</sup> Tex. Fam. Code § 157.066

<sup>38</sup> *Id.*

<sup>39</sup> Tex. Fam. Code § 157.101

<sup>40</sup> Tex. Fam. Code § 157.101(a)

<sup>41</sup> Tex. Fam. Code § 157.101(b)

<sup>42</sup> Tex. Fam. Code § 157.104

<sup>43</sup> Tex. Fam. Code § 157.106.

<sup>44</sup> Tex. Fam. Code § 157.102.

<sup>45</sup> Tex. Fam. Code § 157.105(a).

<sup>46</sup> Tex. Fam. Code § 157.105(c).

<sup>47</sup> *Ex parte Mackie*, 727 S.W.2d 129 (Tex. App.—San Antonio 1987, orig. proceeding)

<sup>48</sup> *Ex parte Byram*, 679 S.W.2d 762 (Tex. App.—Fort Worth 1984, orig. proceeding)

<sup>49</sup> *Ex parte Hart*, 520 S.W.2d 952 (Tex. Civ. App.—Dallas 1975, orig. proceeding).





**By Dr. Ann Blankenship**

**Research and Grant Program Manager, Texas Center for the Judiciary**

For the past several years, the Texas Center for the Judiciary has received a grant from the Texas Department of Transportation (TxDOT) to help educate judges who hear DWI cases.

One of the goals during the first year of the TxDOT grant was to survey judges to determine how DWI cases are being handled across the state and inquire into the judges' attitudes toward sentencing, sanctions, treatment, license suspensions and provisional licenses, and breath interlock devices. In 2006 the first survey was sent to 223 misdemeanor judges across the state, and their responses have been previously summarized and reported.

One of the goals of our current TxDOT grant is to re-survey judges to determine how DWI cases are being handled across the state, inquire about their impaired driving concerns, and find out how to better meet their educational needs in relation to impaired driving cases, alcohol monitoring devices (interlock, SCRAM, etc.), occupational licenses, and intensive supervision dockets (DWI Courts).

In 2008, surveys were sent to 376 Texas judges who hear criminal cases. The survey population was selected because there are 222 constitutional county courts in Texas that hear all civil, criminal, and original and appellate actions prescribed by law. In addition, the 445 Texas District courts have original jurisdiction in all felony criminal cases, juvenile matters, divorce cases, cases involving title to land, election contest cases, civil matters exceeding \$200 or \$500 in which the amount in controversy is greater than \$200, and any matters in which jurisdiction is not placed in another trial court.

Although there are 13 designated criminal district courts in Texas, 154 district court judges in the Texas Center judicial database were coded as hearing criminal and civil cases. You can review the individual comments and responses to many of the questions on *In Chambers Online* (see "DWI Survey" link to Appendix A). All responses are summarized in the following article.

# 2008 DWI JUDGES SURVEY SUMMARY

**By Dr. Ann Blankenship**

**Research and Grant Program Manager, Texas Center for the Judiciary**

It should be noted that the survey does not have the requisites of a standard statistical sample. Completed responses were received from 70 judges, a response rate of 18.6%. Since only one follow-up email was sent, it is possible that participation might have increased with additional follow-up requests. Likewise, it is also possible that some judges receiving the survey did not respond because they did not hear DWI cases or that DWI cases comprised a small percentage of their docket. In addition, some of the answers are more anecdotal than empirical (based on the judges' experience and observation). Keeping these caveats in mind, the following responses outline some of the parameters of DWI cases that Texas judges are currently hearing, breath interlock concerns and practices, views regarding DWI legislation, and their educational needs.

## **Demographics of Judges Surveyed**

The survey respondents were geographically dispersed throughout the state, from both rural and urban areas, with a widely varying caseload. Length of service on the bench ranged from one year to 28 years with the average being nearly 10 years. Number of DWI cases disposed of annually ranged from 15 to 2000, with the average being 327. More than three out of four (approximately 77%) of first-time DWI offenders are being sentenced to jail instead of probation, with a range of answers from 3% to 99%.

## **Problem Areas in Dealing with DWI Defendants**

Judges were asked what the three most troublesome or frustrating problem areas were when dealing with DWI defendants. They were also requested to prioritize those areas as first, second, and third most troublesome or frustrating. This question generated numerous open-ended responses, and it is speculated that individual experience and situations contributed to common areas being rated as first, second, or third most troublesome.

Problem areas ranked as Number One (i.e., most troublesome or frustrating), dealt with ineffective officer testimony, weak prosecutorial efforts, jury skepticism of scientific testimony, indigent defendants, long wait times for blood results, recidivism, interlock issues, lack of providers and/or treatment facilities, suspensions and surcharges, and lack of individualized punishment options.

In the Number Two place for troublesome or frustrating problem areas were defendants' situations (i.e., their failure to understand alcoholism or acknowledge addiction, language barriers, and financial problems); followed by frustrations caused by continuances and delays, lack of training, improper administration of tests, and poor quality videos; interlock and monitoring concerns; recidivism; surcharges; and probation issues.

Problem areas ranked as Number Three were also related to defendants – their recidivism and failure to comply with terms of probation; cultural backgrounds that support drinking; public sympathy and jury empathy for defendants, trial issues such as delays, lack of treatment and supervision resources; ineffective officer testimony, weak prosecutorial efforts, jury skepticism of scientific testimony, and the necessity of making written findings in every motion to suppress; DPS surcharges, and occupational driver's licenses.

## **Breath Interlock Devices and Practices**

Judges were asked to select which of eight listed problems were more frequently encountered when ordering breath interlock devices. The most frequently selected problem was "defendants who cannot afford the cost." This was closely followed by "knowing what to order when the defendant says that he/she has no car." The third most frequently selected problem was "defendants' attempts to circumvent the operation of the unit." The remaining problems, in order of selection, were "knowing which car/s to order installation on;" "probation officers not having time to monitor compliance;" "written reports of violations being inconsistent or hard to understand;" "the unavailability of written violation reports;" and "finding an available vendor."

Judges were next asked, "What is your biggest worry or concern when imposing a breath interlock order?" Responding judges were overwhelmingly concerned about defendants:

- saying they have no vehicle
- driving another vehicle other than the one on which the device was installed; and
- circumventing or tampering with the ignition interlock device.

A secondary concern was the cost of the device and hardships imposed to the defendant's family. Monitoring, compliance and accuracy issues, and lack of local vendors were also mentioned.

When judges were asked what percentage of time they issued a breath interlock order when not required by statute, 81% reported having issued a breath interlock order when not required by statute.

Judges who reported having issued a breath interlock order when not required by statute were asked to estimate the percentage of time they did so. Answers ranged from 3 to 99%, with an average of 77%.

Judges reported that written interlock reports were two-and-one-half times more likely to be sent to probation rather than to the court or judge. Thus it was not surprising that most judges reported they reviewed an individual defendant's written interlock report less than 25% of the time. Judges rated their confidence level with the written reports provided by interlock providers as 7.5 (on a scale of 1 through 10, with 1 indicating "not at all" and 10 indicating "extremely confident"). Judges who did review the written interlock reports were three times more likely to use that information to increase the terms of the order in the event of repeated violations rather than to decrease the term if no or limited violations were reported. Although a few judges employed progressive sanctions or looked at the totality of the circumstances, the most frequent consequence for probationers caught driving with a suspended license was the filing of a motion to revoke probation.

**Reducing Recidivism**

Judges were asked to rate the effectiveness of various options in reducing recidivism (changing behavior) on a scale of 1 through 5, with 1 being the least effective and 5 being the most effective. DWI courts were rated as most effective (4.3), and DPS civil penalties were least effective (2.0).

**Field Sobriety Tests**

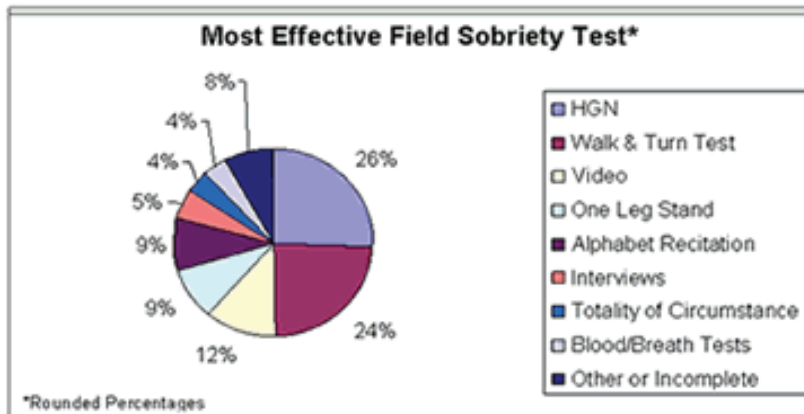
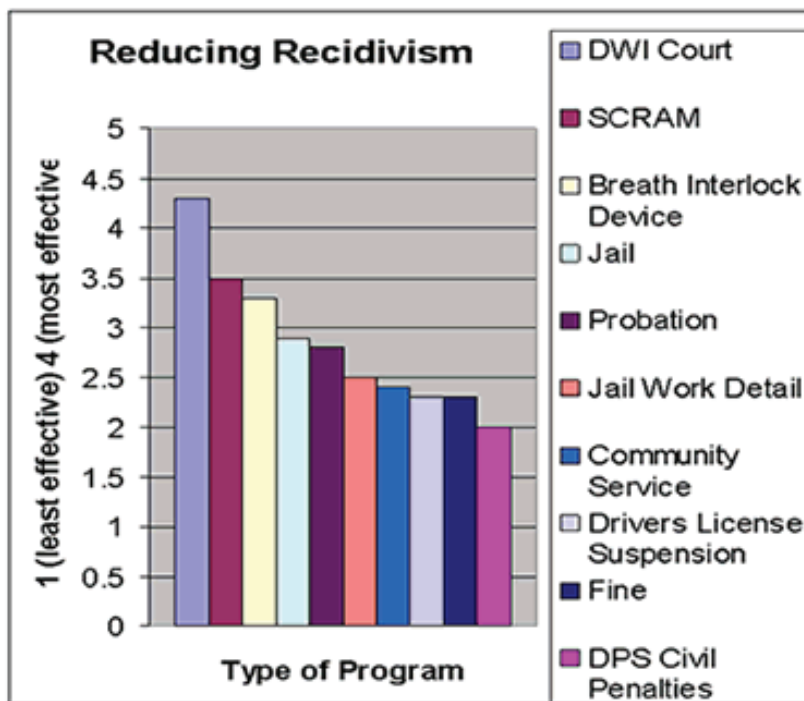
Judges were asked to rate, on a scale of 1 through 4, with 1 being the most effective and 4 being the least effective, which field sobriety tests they found most useful in their role as fact finder. Horizontal gaze nystagmus was rated as most effective by more than one-fourth of the responding judges (25.8%), followed closely by the walk and turn test (23.9%). Video was rated more useful (12.1%) than the one-leg stand (9.4%) and alphabet recitation (9.0%). Interviews (4.5%), totality of the circumstance (3.9%), blood/breath tests (3.9%), recording of driving facts (0.02%), and finger touch and count tests (0.02%) were also mentioned, and 7.36% of the responses were incomplete.

**Drug Recognition Expert Testimony**

Judges were asked if a drug recognition expert had ever testified in their court. Slightly less than two-thirds of the judges (64.18%) replied that a drug recognition expert had never testified in their court, while slightly more than one-third of the judges (35.8%) reported a drug recognition expert had testified in their court.

**Impaired Driving Statutes**

Judges were asked to give their input as to what was working and/or not working within the current system of impaired driving statutes. They were encouraged to comment about the range of punishment, probation and sanctioning alternatives, driver's license suspension statutes, alcohol monitoring devices, treatment alternatives, sentencing alternatives, etc. The general consensus was that first offenders were being handled appropriately to prevent recidivism. However, judges felt there was not enough emphasis on repeat offenders and there was insufficient funding for treatment options and alternatives. Judges decried DPS suspensions and surcharges; the lack of sentencing options and alternatives; scattering of DWI laws throughout the statutes; and specimen refusals. They mentioned the need for better law enforcement, increased traffic safety officer



training; and state provided alcohol monitoring devices. Concern was expressed about the subjectivity of field testing; lack of public support or sympathy for alcohol concentration of 0.08 equaling intoxication; shortening of jail times; and ineffective legislation. It was commented that courts should have a more active role in ensuring that probationers comply with conditions of probation, such as DWI court participation. The suggestion was made for changes in the law to make a breath test refusal a rebuttable presumption of intoxication and to make it a legal presumption that a breath test result within two hours of the stop is presumed to be the alcohol level at the time of the stop.

### **Needed Changes**

When judges were asked what options they would like to see available to help dispose of impaired driving cases more efficiently, deferred adjudication was the most frequently mentioned option, followed by the need for more treatment options and programs, quicker lab response time, larger budgets, and more intensive supervision of offenders.

Judges were asked what changes were needed with regard to how the system deals with the repeat offender/high risk offender. Higher punishment ranges and mandatory jail time were the most frequent changes needed. Alternatives to incarceration such as mandatory DWI courts, intensive supervision, treatment programs, and standardized forms and procedures, and educating the legislature were also requested.

### **DWI Courts**

Twenty-four judges expressed interest in DWI Court Training that would help establish a DWI court. Fifteen judges who had an existing DWI court expressed interest in advanced DWI Court Training for their team members. Twelve of those judges expressed interest in having access to a visiting DWI court judge who has been trained by the National Drug Court Institute and would be available free of charge to sit by assignment. Judges who had an existing DWI court were asked for specific additional tools/incentives/resources/training needed for their DWI court. Responses included the need for training regarding the funding for case management; information regarding treatment resources; resources for DWI court team development; provision of SCRAM units for the first 90 days; Violent Criminal Apprehension Program screens for non-drivers; and forms, checklists, and incentives used by other DWI Courts.

### **Improving Impaired Driving Judicial Education**

Judges suggested a variety of ways to improve educational courses offered in the area of impaired driving and related subjects. More DWI-specific courses taught by trial judges with large DWI dockets or skilled practitioners were requested – including statutory requirements for interlock as condition of bond, condition of probation, or condition of occupational driver's license; alternative sanctions and treatment, and explaining complex DWI laws. Training in trying a DWI case (i.e., dealing with expert testimony, SFST, and breath testing issues, suppression issues, officer testimony) was requested as well as the availability of online judicial education courses. The inclusion of DPS training courses was also mentioned as well as live alcohol workshops.

Training that allowed more discussion time, sharing of tips and advice, and learning “tricks of the trade” employed by overzealous attorneys were also requested. Other requested topics included effective treatment programs and alternatives – especially for rural judges – guidelines for interactive judicial admonishments, and grants training.

When asked if they had visited the Texas Center's DWI-specific web site, slightly less than half (42%) of the responding judges replied that they had visited the website. Reasons for not visiting the website included not knowing about it, forgetting the password, and having no need to visit. One judge wrote that he/she would now visit it. Judges who reported visiting the Texas Center's DWI-specific web site were asked which topics had been found helpful and to suggest additional topics they would like included. Topics listed as most helpful were legislative updates, CCA case summaries, and statutes. Other helpful topics (in descending order) were publications; links to continuing education articles; judicial resource information; DWI newsletter archives; and videos. Forms were another judicial resource requested to be added to the website.

### **What will the Texas Center do with the Judicial Survey results?**

One of the expressed purposes of the survey was to determine additional education and resources needed by judges who hear DWI cases. Thoughtful comments and suggestions were contributed by all judges who participated in the survey. The Texas Center appreciates this valuable input in helping achieve its mission of “Judicial Excellence Through Education.” As a result of the Judicial Survey, the following changes are being made:

- The DWI website has been redesigned;
- The DWI website will be publicized and promoted at all Texas Center conferences;
- The highly secure judicial listserv portion of the DWI website is being updated to allow the attachment of forms for exchange;
- Caselaw and statutory updates relating to DWI will be maintained and electronically updated by Freelance Enterprises, Inc., publisher of Baker's Texas Drugs & DWI Handbook ;
- Online educational training for new DWI court team members will be developed ;
- A CD explaining DWI courts and how they operate will be developed for use by judges who wish to generate local community support for DWI courts;
- An interactive DWI trial will be developed;
- The DWI College will include many of the requested topics;
- An optional one-half-day ignition interlock update session will be offered prior to the Criminal Justice Conference;
- DWI Court Team Training will be offered;
- The Texas Judicial Resource Liaison will be available to sit as a visiting DWI court judge;
- Additional impaired driving education will regularly be offered at the Regional Conferences, Texas College for Judicial Studies, and the Annual Judicial Conference;



- Topics will include the proper administration of standardized field sobriety testing (including horizontal gaze nystagmus) as well as defense objections and cross-examination techniques, and training specific to the breath interlock device, including its proper installation and operation, interpretation of the written reports, and the most common methods defendants use to attempt to defeat the device;
- Training will accommodate various learning styles with varied methods of delivery;
- Training will offer more discussion time so judges can learn from each other and address common problems and concerns.

If you have any further suggestions concerning the survey or our proposed changes, please contact:

Judge David L. Hodges, Judicial Resource Liaison, or  
Dr. Ann Blankenship, Research and Grant Program Manager  
Texas Center for the Judiciary

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# OCA's

## **New Automated Registry**

During the 80th legislative session, the Office of Court Administration (OCA) received \$3 million in funds to create and maintain an “automated registry” system to coordinate the sharing of information from various state agency databases and the judicial system. OCA will use \$2 million for a contract with Unisys to develop the Automated Registry (AR) system, and the remainder for infrastructure and staffing needed to support it. OCA worked with a number of stakeholders from the Texas judiciary to flesh out a vision for the AR system to provide criminal, family and juvenile judges with real time access to certain state agency databases for the purpose of providing a consolidated view of information about a defendant/litigant appearing before court.

Access to the state agency systems is through a secure, Internet-based software application. The data flows one-way only, from the state agency to the court. The AR system does not retain any of the response data after it has been viewed. The AR user enters identifying information for the individual appearing before the court and selects the reason the person is appearing before the court. Based on each state agency’s business rules and restrictions for the data access, the AR system will determine which state agency systems to query depending on the type of court event.

The Department of Public Safety and the Texas Department of Criminal Justice will be the first agencies to provide data through the Automated Registry. The Department of Public Safety (DPS) systems provide information related to state and national criminal history, state and national warrants, concealed handgun licenses, citizenship status, state and national driver’s history, vehicle registration, sex offender alerts, probation violators, protection order status, and threat to law enforcement alerts. The Texas Department of Criminal Justice (TDCJ) system provides current and historical information on probation, parole, and incarceration for an individual. The DPS and TDCJ data will be available for criminal cases and is envisioned as a tool to complete pre-sentencing investigation reports.

OCA is currently in discussion with the Texas Workforce Commission, the Department of State Health Services and the Department of Family and Protective Services about receiving data from their systems.

The Texas Workforce Commission (TWC) system contains wage information for people employed in Texas. The wage information could be used for verification of indigence.

The Department of State Health Services (DSHS) mental health system contains information on people who have been in the state mental health system at some time. This information could be used in criminal cases to ensure that continuity of care is provided to defendants with mental health needs. The DSHS vital statistics systems contain information on the court of continuing jurisdiction, as well as information related to acknowledgement of paternity.

The Department of Family and Protective Services (DFPS) system contains information on child support cases. The data from this system would be limited to child protection and/or child support cases.

OCA will pilot the initial version of the AR system in February 2009 in the counties of Blanco, Burnet and Llano. Once the remaining agencies have been added to the AR system, a second pilot will occur in May 2009 in still to be determined counties. Once the pilots have been completed and OCA has approved the system, OCA will begin implementing the AR system across the state in the fall of 2009.

Questions about the Automated Registry project can be directed to the Automated Registry Project Manager, Thomas Sullivan, at [Thomas.Sullivan@courts.state.tx.us](mailto:Thomas.Sullivan@courts.state.tx.us). More information on the AR project can be found at the project website.

# **In Memoriam**

**Our hearts go out to the families of those honorable souls who  
have passed before us and served the bench so well.**

**Please join us in remembering:**

**Robert L. "R. L." Eschenburg II**

Judge  
Floresville, Texas

**Hon. Andrew Jefferson**

Judge  
Houston, Texas

**Hon. Carol Haberman Knight-Sheen**

District Judge (Ret.)  
San Antonio, Texas

**Hon. Carl Lewis**

Judge  
Corpus Christi, Texas

**Henry G. Schuble**

Judge  
Houston, Texas

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# UPCOMING CONFERENCES

## 2009

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### WINTER REGIONAL CONFERENCE (1,2 & 8)

January 25-27  
San Antonio

### WINTER REGIONAL CONFERENCE (3, 4, 5, 6, 7 & 9)

February 23-25  
El Paso

### FAMILY VIOLENCE CONFERENCE

March 30 - April 1  
San Antonio

### TEXAS COLLEGE FOR JUDICIAL STUDIES

April 19-24  
Houston

### CRIMINAL JUSTICE CONFERENCE

May 18-20  
Dallas

### PROFESSIONAL DEVELOPMENT PROGRAM

June 14-18  
Austin

### ASSOCIATE JUDGES CONFERENCE

July 6-8  
Austin

### DWI COLLEGE

July 27-30  
Austin

### JUDICIAL SECTION ANNUAL CONFERENCE

August 30 - September 2  
Grapevine

### COLLEGE FOR NEW JUDGES

December 6-9  
Austin

## 2010

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### JUDICIAL SECTION ANNUAL CONFERENCE

September 21-24  
Corpus Christi

### COLLEGE FOR NEW JUDGES

December 5-10  
Austin

## 2011

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### JUDICIAL SECTION ANNUAL CONFERENCE

September 18-21  
Dallas

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**More conferences await confirmation.  
Look for announcements on  
[www.yourhonor.com](http://www.yourhonor.com)  
and in future editions of *In Chambers*.**

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