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FEATURES

Social Networking and Judicial Ethics

by Hon. Craig Estlinbaum

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I. INTRODUCTION

Historians will likely mark the first decade of the twenty-first century as the dawn of the Social Media Age.[2] Memberships on social network sites ("SNSs") like Facebook,[3] Twitter[4] Google+[5] YouTube,[6] and LinkedIn[7] increased exponentially each year since their humble beginnings, rooted in the late 1990s.[8] Recently, the Pew Research Center reported that 65% of adult Internet users use social media websites, whereas in 2008 that number stood at only 29%.[9] Social network use transcends normal social and economic boundaries, crossing age, racial, educational, and geographic lines.[10] Social media is also catching on among older Americans. In 2009, only 13% of Internet users age sixty-five or older used social media, yet by 2011, that number grew to 33%.[11] Not surprisingly, judges are using SNSs too. A recent study by the Conference of Court Public Information Officers showed that 40% of responding state court judges use SNSs.[12] That same study, however, showed that almost half of the judges surveyed "disagreed . . . with the statement 'Judges can use social media profile sites, such as Face- book, in their professional lives without compromising professional conduct codes of ethics.'"[13] This conflict between the desire to use a popular technological communication tool and judicial ethics restrictions is cause for judges and the wider legal community to closely re examine judicial codes of conduct as they apply to SNSs. [14]

Various state judicial ethics committees' earliest forays into the arena of judicial SNS usage led to two distinct approaches to the questions of whether and how judges may utilize social media.[15] One commentator defined these approaches as the integrative approach and the restrictive approach.[16] The integrative approach does not specifically restrict SNS use by judges, but it does require that any such use conform to the applicable judicial canons of conduct.[17] The restrictive approach limits a judge's SNS activity by forbidding judges from designating and identifying attorneys and others who may appear before her as a friend because this designation is believed to convey to others the impression that the person befriended is in a special position to influence the judge. [18]

To date, few judicial ethics missions have expressed an opinion on the matter, and the opinions that do exist provide no clear guidance or consensus.[19] The lack of guidance, however, is not surprising. Social media presents complex challenges for judges and the legal community at large because the personal relationships displayed through social media are often complex and easily misinterpreted. Judges function in a world where they must not only maintain propriety in public, but must also be aware that even innocent

conduct may present an appearance of impropriety, warranting disclosure or recusal in a case.[20]

In Part II, this Essay defines social media and social networking and illustrates how a judge's participation in these communities raises potential ethics questions. Part III surveys the decisions released by judicial ethics committees to date and seeks to understand how those committees have applied the applicable rules to the social media questions presented. Finally, Part IV draws conclusions and suggests methods where the judicial use of SNSs might conform to ethical obligations while promoting public confidence in the judiciary.

II. MAKING ACQUAINTANCES: JUDICIAL ETHICS OF ONLINE SOCIAL NETWORKING

A. Facebook Foundations

The terms "social media," "social network," and "social networking" are used interchangeably in this Essay to refer to "web-based services that allow individuals to: (1) construct a public or semi-public profile within a bounded system[;] (2) articulate a list of other users with whom they share a connection[;] and (3) view and traverse their list of connections and those made by others within the system."[21]

The potential categorization of SNSs is seemingly endless. Indeed, one commentator identified twenty-three social media sub-categories.[22] The New Media Committee, commissioned by the Conference of Court Public Information Officers, identified seven types of "new media technology."[23] These new media include social media profile sites, such as Facebook; [24] microblogging sites, such as Twitter;[25] smartphones, tablets, and notebooks, such as the iPad and the Blackberry;[26] monitoring and metric sites, such as SocialSeek;[27] news categorizing and sharing sites, such as Digg;[28] visual media sharing, such as YouTube;[29] and online encyclopedias, such as the Wikis.[30]

The most popular form of SNSs are social profile sites, namely Facebook.[31] Facebook allows members to create their own profile page and network within the Facebook community.[32] Members may invite others to become friends and can link their profile to those of their friends, compiling lengthy contact lists.[33] Users may also report their status and location, post public messages, videos, and photographs on friends' profiles, and send private messages to other users.[34] Because Facebook is so widely used, the judicial ethics opinions issued to date centered on Facebook use and even adopted Facebook's nomenclature, including the term "friend," to describe the linking function between users.[35] Facebook's general features, including the friend feature, are common among SNSs, even if the specific terminology is different.[36]

SNSs offer the benefit of allowing users to communicate staggering amounts of information in real time to millions of people.[37] Reports reveal that about one-half of Facebook's 500 million users worldwide access their Facebook account each day, sending nearly 3 million messages in a twenty-minute period.[38] This volume is representative of only one SNS. In late 2011, Twitter averaged 230 million tweets daily.[39] Similarly, "60 hours of video are uploaded every minute."[40] Virtually every subject imaginable is being discussed at any given moment on SNSs around the world. Thus, the potential for judicial use and misuse of such a tremendous tool is readily apparent.

B. SNSs and The Model Code of Judicial Conduct

To understand the parameters of SNS usage by the judiciary, certain canons of conduct must be briefly discussed. The primary purpose of the ABA Model Code of Judicial Conduct (Judicial Code) is to maintain the public's confidence in the judiciary.[41] Given the swiftness of SNSs as a social phenomenon and the lengthy process of amending the Judicial Code, the pace set by SNSs cannot be matched by the Judicial Code, which has yet to specifically address social media use.[42] Instead, a judge's social media use is analyzed under the same Judicial Code rules that govern a judge's ability to socialize and communicate by any other medium.[43]

Canon 1 requires a judge to "uphold and promote the[] independence, integrity, and impartiality of the judiciary, and [to] avoid impropriety and the appearance of impropriety."[44] The appearance of impropriety standard is violated when a reasonable person would perceive the judge's conduct as violating the "law, court rules[,] or provisions of [the Judicial] Code" or when behavior "reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."[45] The rules under this canon prohibit judges from using the office to obtain

"personal advantage or deferential treatment of any kind."[46]

Canon 2 requires judges to perform their duties impartially, competently, and diligently.[47] This canon entails numerous rules, including: (1) the duty to be fair and impartial;[48] (2) the obligation to perform all official "duties[] without bias or prejudice;"[49] (3) the duty to prevent externalities, both public and private, from influencing "the judge's judicial conduct or judgment;"[50] (4) the requirement to accord every litigant "the right to be heard according to law;"[51] (5) the duty to avoid improper ex parte communication;[52] and (6) the duty to avoid making public statements on pending cases that might affect the outcome of the ultimate decision.[53]

Canon 3 requires judges to conduct their personal and extrajudicial activities in a way that minimizes "the risk of conflict with" official obligations.[54] Judges may engage in lawful extrajudicial activities provided those activities do not: (1) "interfere with the proper performance of the judge's judicial duties";[55] (2) "lead to frequent disqualification";[56] (3)"appear to a reasonable person to undermine the judge's independence, integrity, or impartiality";[57] or (4) "appear to a reasonable person to be coercive."[58] Additionally, Canon 3 prohibits "use of court premises, staff, stationary, equipment[,] or other resources, except for incidental . . . activities that concern the law."[59] Essentially, while judges are allowed to engage in extrajudicial activities, they never shed their judicial duties.[60]

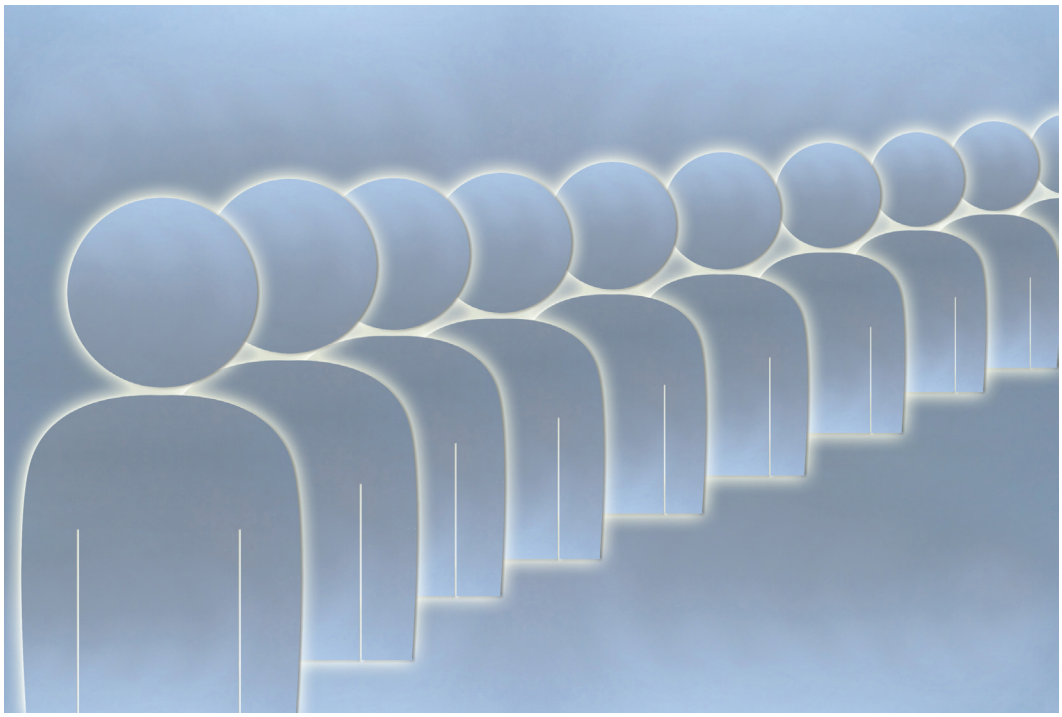
Despite these limitations, the canons do not act to deprive judges of the joys incident to human existence. Indeed, the Judicial Code observes that participation in extrajudicial activities "integrate[s] judges into their communities, and furthers public understanding of and respect for" the judiciary.[61] Judges simply must remain vigilant to avoid allowing personal relationships to influence or impair judicial conduct.[62] Judges may participate in the arts, sports, social, political, and recreational activities, but must avoid activities that detract from the dignity of the office or interfere with the performance of judicial duties.[63] In short, the Judicial Code does not exist to insulate judges from society; rather, it serves to preserve the impartiality required by judicial office amid the realities of being a public official. [64]

C. Judicial Misbehavior Through SNSs

Though offline conduct remains the primary source of violations of the Judicial Code,[65] judges are equally susceptible to violations while participating on SNSs. For example, a Georgia judge recently resigned his position after newspapers reported that he contacted and established a Facebook relationship with a woman who was appearing before him as a criminal defendant.[66] During the relationship, the judge met the defendant for lunch, she accepted a loan from the judge, and they discussed her case.[67] The reports further revealed that the judge visited the defendant in her apartment and signed an order releasing her on her own recognizance.[68] It is noteworthy that the judge's conduct in this case would warrant sanctions whether the relationship began on Facebook or by some face-to-face method.[69] The nature of the relationship between the judge and the defendant, the content of their communication, and the judicial actions on the defendant's behalf violated the Judicial Code without reference to the online nature of the communications.[70]

What if the judge's relationship with the defendant followed a different path? Suppose the judge and defendant were Facebook friends before criminal charges were filed. Alternatively, suppose the judge and defendant friended each other for an innocent

reason, such as if their children played on the same recreational volleyball team. Furthermore, imagine there was no online or offline ex parte contact between the two, other than the fact that each could view the other's Facebook profile page. Would this Facebook relationship be a violation of the judge's ethical duties? Would the judge violate the canons by continuing to preside in the case despite the Facebook relationship? This hypothetical scenario, compared to the facts as they actually unfolded, suggests that the actual nature of the judge's relationship, not the online manifestation of that relationship, caused the ethical problems for the judge.



In another highly publicized case, a North Carolina judge faced a reprimand when he became Facebook friends with an attorney trying a divorce and custody case before him.[71] The Judicial Standards Commission reprimanded the judge for conducting ex parte communications with that attorney when the judge read and posted comments about the pending case on the attorney's Facebook page.[72] Here again, the fact that improper ex parte communications occurred, not the fact that the judge and attorney were Facebook friends or that the ex parte communications occurred in the virtual world, served as the basis for the sanction.[73] The ex parte communication would have been just as improper had it occurred over the telephone[74] or via face-to-face communication.[75]

These cases illustrate that judges can use social media to violate the Judicial Code, just as they can when using any other communication medium. The aforementioned violations arose from the content, not the medium. It is important to observe, however, that in these cases the fact that improper communications were memorialized on social media allowed parties to become aware of and to prove the communications much easier than if they were made through other channels.

D. The Permissive and Restrictive Approaches

1. The Permissive Approach to SNSs

The New York State Commission on Judicial Ethics, the first judicial ethics committee to render an opinion on a judge's social media use, found nothing "inherently inappropriate about a judge joining and making use of a social network."[76] Relying on a prior opinion, the commission noted that judges may generally socialize with attorneys that appear in the judge's courtroom, subject to the Judicial Code.[77] The commission also noted that there was nothing per se unethical about communicating via social networking technology versus any other form, such as phones or a web page.[78] The commission concluded, "the question is not whether a judge can use a social network but, rather, how he/she does so."[79]

Similarly, the Ethics Committee of the Kentucky Judiciary and the Ohio Board of Commissioners on Grievances and Discipline also released opinions that followed the New York commission's conclusions.[80] These opinions allow judges to participate on SNSs and to establish friend connections with attorneys that may appear before them because SNS friendships alone do not violate the Judicial Code.[81] However, both opinions cautioned that judges may not use social media in the same manner as the public at large because their use is governed by the canons of conduct.[82]

In 2009, the South Carolina Advisory Committee on

Standards of Judicial Conduct also weighed in on the effect of SNSs on judicial ethics.[83] It concluded that "[a] judge may be a member of Facebook and be friends with law[-]enforcement officers and employees . . . [so] long as they do not discuss anything related to the judge's position."[84] The committee reiterated a judge's obligation to act "in a manner that promotes public confidence in the" judiciary,[85] but also noted it is neither wise nor possible to insulate oneself from the larger community.[86] Therefore, "[a]llowing a Magistrate to be a member of a [SNS] allows the community to see how the judge communicates and gives the community a better understanding of the judge."[87]

2. The Restrictive Approach to SNSs

Two months after the New York commission's decision, the Florida Judicial Ethics Advisory Committee considered a similar question and took a much more restrictive position.[88] The committee held that judges could become members of social media networks, but could not list attorneys appearing before the judge as a friend.[89] The Florida committee reasoned that identifying an attorney as a friend violates judicial canons that prohibit judges from "convey[ing] the impression that [others] are in a special position to influence the judge."[90] The committee did not conclude that social networking friends were in a special position to influence the judge, but rather that their designation created the impression that they were specially situated.[91]

In 2011, the Committee of Judicial Ethics for the Supreme Judicial Court of Massachusetts and the Oklahoma Judicial Ethics Advisory Panel followed Florida's restrictive approach.[92] The Oklahoma panel issued an opinion prohibiting judges from identifying "court staff, law[ ]enforcement officers, social workers, attorneys[,] and others who may appear in his or her court as 'friends'" on their account.[93] The panel agreed with the Kentucky committee's observation that social media participation was "fraught with peril for [j]udges" and determined that "public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril.'"[94] While the Massachusetts committee allowed judges to use social media generally, it prohibited judges "from associating in any way on [SNSs] with attorneys who may appear before them."[95] The committee noted that a Massachusetts judge may friend an attorney only when that judge would recuse themself if the friended attorney were to appear before her.[96]

3. Specific Limitations and Exceptions to SNSs

One Florida committee opinion distinguished a judge's personal social media activity from social media activity completed on the judge's behalf.[97] For example, persons conducting a campaign for a judge may establish a social networking page and allow attorneys who appear before the judge to list themselves as the judge's fans, friends, or supporters.[98] However, neither the judge nor the campaign committee could elect to accept or reject those who chose to identify themselves as a fan or supporter.[99] Under these circumstances, the Florida committee concluded that such listing does "not convey the impression that [the listed attorney would be] in a special position to influence the judge."[100]

Two subsequent Florida committee opinions refined this initial restrictive approach.[101] In the first opinion, the committee stated that the prohibition against judges designating attorneys who may appear before them as friends does not apply to judicial candidates.[102] The second opinion, released a week later, further defined the limitations on a sitting judge's social media activities.[103] There, one inquiring judge considered an SNS designation of friend to mean only that the person so designated is acquainted with the judge, not that he is a friend in the traditional sense.[104] To that end, the judge intended to post a disclaimer on his Facebook profile page.[105] The committee unanimously determined that such disclaimers would not effectively "dispel the impermissible message" that a friend could still be in a position to influence a judge.[106] Additionally, the committee noted that there was no guarantee that a reader would locate or read the disclaimer.[107] Consequently, even if visitors read the disclaimer, it could not overcome the impression of impropriety created by the designation.[108] Sticking to the view that judicial SNS use would be unethical, the committee "reject[ed] any contention that a judge can engage in unethical conduct so long as the judge announces at the time that the judge perceives the conduct to be ethical."[109]

The opinion also addressed whether judges could create a social network "safe harbor" by modifying the procedures by which they accept friends.[110] The committee rejected the proposed safe harbors because

the friend description would establish a special class of lawyers who could appear to the public as having a special relationship with the judge, as opposed to lawyers that did not request friend status or did not participate in the particular SNS at all.[111] The "right and the practice of selectivity and exclusivity[,]" which is inherent in the acceptance or denial of an SNS friend, is what conveys the impression of impropriety prohibited by the canons of judicial conduct.[112]

The minority stressed, however, that Florida precedent established that a judge's friendship with an attorney is not grounds for disqualification in and of itself.[113] For example in In re Estate of Carlton,[114] the Supreme Court of Florida noted that if a judge's friendship with a lawyer was the sole basis for disqualification, most judges in rural areas and some in urban areas would frequently be subject to disqualification.[115] The minority further observed that there was "no discernible difference between a judge's friendship with an attorney on [SNSs] and a judge having lunch with an attorney, playing tennis with an attorney, or engaging in a myriad of other activities with attorneys who appear before the judge." [116] While the majority held that a judge's exclusivity in selecting friends on a Facebook account conveys the appearance of being in a position to influence the judge, the minority opinion suggests that judges engaging in exclusivity and selectivity on SNSs is no different from judges deciding who to spend time with in real life.[117]

III. SUGGESTIONS FOR THE ETHICAL JUDGE ONLINE

Judicial ethics opinions on the use of SNSs are divided between the permissive[118] and the restrictive approaches.[119] The restrictive approach, when taken to its logical endpoint, could amount to a virtual ban on any social networking.[120] A ban on friending or interactively connecting with attorneys or others who may appear before the judge could theoretically include an extensive cross-section of people, as practically anyone could potentially appear before a judge at one time or another.[121] A restrictive approach does exactly what it purports—it potentially restricts judges' use of social networking so much that inadvertent conflicts could become the norm rather than the exception.[122]

A. Public Confidence in the Judiciary

Prohibiting judges from participating in social media arguably serves to promote public confidence in the judiciary.[123] Close inspection of the publicized cases in Georgia and North Carolina reveal nothing extraordinary about the judicial misconduct, other than the fact that an SNS memorialized the unethical behavior.[124] There are many less publicized examples of inappropriate relationships between judges and litigants,[124] judges and lawyers,[126] and court staff that may have been front-page news if the evidence of the relationships was broadcasted on SNSs. In addition, there are numerous examples where judges improperly engaged in inappropriate ex parte communication without making national news.[127] Judicial misconduct is a serious offense when it occurs in private, but when such evidence is memorialized across an SNS, it does little to promote confidence in the judiciary.

B. Allowing SNS Use with Caution

States adopting the permissive approach strongly caution judges about the dangers associated with SNS use.[128] The New York commission's opinion encourages judicial awareness of social media as a public forum and emphasizes that anything he or she places on SNSs may be viewed by persons beyond the intended audience.[129] The public nature of posts or links within the social networking profiles of attorneys or litigants appearing in the judge's court is distinguished from a judge maintaining that same information in her Rolodex or phone directory because the link is announced publicly.[130] One opinion notes that when a judge posts personal information to specific individuals, the public may draw a conclusion that the judge has a stronger bond with those individuals, regardless of whether a bond truly exists.[131] While the New York commission eschews a per se ban on SNS participation, its opinion suggests there is much more to managing SNSs than meets the eye.[132]

Furthermore, perhaps the pitfalls identified by the New York commission's opinion gave rise to the Kentucky committee's conclusion that SNS participation by judges is "fraught with peril."[133] The Kentucky committee's opinion advises judges to be mindful of whether an online connection on SNSs, in combination with other facts, establishes close social relations that require disclosure or recusal.[134] Videos, photographs, personal information, and commentary are commonly displayed on profile

pages, yet when the same information is displayed by judges, those expressions could be problematic.[135] The Kentucky committee warns that while SNSs offer the "aura of private, one on one conversation," matters posted online are much more public and are created in a medium that may never disappear.[136]

The Ohio Board of Commissioners on Grievances and Discipline clearly addressed the difficulty judges face when using SNSs by imposing eight restrictions required for compliance with local judicial conduct rules:[137]

1. A judge must maintain dignity in every comment, photograph, and other information shared on the social network.[138]

2. A judge must not foster social networking interactions with individuals or organizations if such communications erode confidence in the independence of judicial decision making.[139]

3. A judge should not make comments on a social networking site about any matters pending before the judge—not to a party, not to counsel for a party, not to anyone.[140]

4. A judge should not view a party's or witnesses' pages on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge.

5. A judge should avoid making any comments on a social networking site about pending or impending matters in any court.[141]

6. A judge should disqualify himself or herself from a proceeding when the judge's social networking relationship with a lawyer creates bias or prejudice concerning the lawyer for a party.[142]

7. A judge may not give legal advice to others on a social networking site.[143]

8. A judge should be aware of the contents of his or her social networking page, be familiar with the social networking site policies and privacy controls, and be prudent in all interactions on a social networking site.[144]

These restrictions, however, are not in the rules but are applications of the relevant Ohio rules as to SNSs.[145] Nevertheless, they should serve to remind judges to pause before joining and utilizing SNSs.[146]

standards.[147] It may be easy to argue that when a judge's conduct creates an appearance of impropriety, it impairs public confidence in the judiciary.[148] Post hoc, fact-based inquiries would require judges to reveal not only publicly displayed matters from the SNS, but also other facts regarding relationships the judge might prefer to keep from the public eye. At a time when there are vigorous challenges to public confidence in the judiciary,[149] Kentucky's warning that SNS use is "fraught with peril"[150] is not one to take lightly.

C. Alternative Uses Within the Permissive Approach

The permissive approach leaves judges susceptible to post hoc, fact based inquiries about whether the judge's SNS use violated the general appearance of impropriety or public confidence standards. Those judges permitted to use social media, however, may be able to minimize risks by utilizing available technology to avoid potential conflicts. Facebook, for example, not only allows users to create personal pages that include the friend function, but also allows users to create "fan" pages, which may be maintained

for informational purposes only.[151] Using Facebook or other forms of SNSs in such a limited fashion could significantly restrict the site's interactive utility, but it could also avoid the appearance of impropriety created by friending attorneys or others who may appear in the judge's court.[152]

Alternatively, judges can create blogs or microblogs[153] that are generally available for the public to view. A microblog is a form of blogging, such as Twitter, that allows a user to post or transmit brief updates online.[154] This form of social media does not include the troublesome friending problem caused by Facebook and other proprietary SNSs.[155] Judges can use blogs and microblogs as forums for information about the court or to provide more personal and expressive information about the judge while minimizing the risk that readers could be perceived as persons in a special relationship with the judge. Moreover, to avoid problems associated with ex parte communication, judges can disable comment functions by altering privacy settings.[156]

Finally, judges should be vigilant in monitoring and updating any SNS profiles they create. Technology changes at a rapid pace, and websites such as Twitter and Facebook update privacy applications on their own schedules. [157] These updates provide judges with additional means of protecting against unwanted disclosures, but only with a proactive approach to engaging in the new privacy settings as they are released.[158] Ultimately, when a judge creates the potential for two-way communication on SNSs, it is paramount to ensure the communications are proper and do not raise a matter that requires disclosure or recusal.[159]

IV. CONCLUSION

The Social Media Age shows no signs of abating.[160] Rapid technological developments in the SNS field increase the likelihood that more Americans will join the social networking revolution in upcoming years in some form.[161] For judges and those concerned about public confidence in the judiciary, this development presents seemingly irreconcilable conflicts. On one hand, it is unwise to keep judges from the forefront of technological change because some consensus indicates that both judges and the public are best served when judges are actively integrated into their communities.[162] With the sheer volume of Americans using SNSs daily, judges risk becoming increasingly isolated from an important part of the community when completely avoiding SNSs. This choice could ultimately impair the judiciary's ability to preside in cases where technological knowledge, or at least familiarity, is critical.

PHOTO: Author, Hon. Craig Estlinbaum

On the other hand, when a judge participates in social media, the judge confronts a virtual minefield because seemingly innocent activities may have serious and perhaps irreversible consequences if the activities appear improper.[163] The ethical requirements demand that judges examine SNS participation not as it is, but as it appears to a reasonable person.[164] Because the canons are imprecise and subject to fact-based applications post hoc, judges must use extraordinary caution and judgment before participating in an online community.

While a path that strikes a reasonable balance between draconian restrictions and lax guidelines is the aspirational goal, the law is only slowly establishing that path.[165] The earliest forays by judicial ethics committees have merely identified the risks associated with SNS use by judges.[166] The next step is for state judicial committees to draft guidance that incorporate the reality of a judiciary that is fully engaged in the Social Media Age.

Improving the Quality of Court Interpreter Services

Marco Hanson, OCA Staff Interpreter[1]

FEATURES

This amateur interpreter's abbreviated rendering may have been efficient, but it is clearly impermissible both as a matter of due process and of interpreter ethics. A professional interpreter renders the speaker's complete thought into the second language without edits or distortions and without regard to the outcome of the proceeding. A court interpreter must be fluent in two or more languages, but mere bilingualism is only a prerequisite, and there are other factors that have far-reaching implications for Texas courts.

> The cobbler in a small Texas town was the only Spanish-speaker that the judge could find to interpret in a criminal case. This bilingual craftsman appeared to interpret verbatim a few exchanges between the judge and the defendant, but kept glancing at his watch restlessly. After the judge's next question elicited an extended response from the defendant, the "interpreter" sighed, turned to the bench and summed it up: "Judge, he says he's guilty."[2]

Currently, almost 15% (3.36 million) of Texans identify themselves as having

limited English proficiency (LEP), and the constant need for interpretation has caused some counties to employ licensed court interpreters as staff. The Texas judicial system now grapples with a shortage of these interpreters as well as increased pressure to treat interpreter costs as a "basic operating expense rather than an ancillary cost" to be taxed to a party.[3] In the large urban areas, the hourly contract rate of a licensed court interpreter is often $75 an hour, with a two-hour minimum and sometimes mileage fees. (These costs vary widely, and the figures cited here were compiled informally.)

The number of licensed court interpreters in Texas (those who have passed the state's oral and written examination in one or more languages) is woefully small, having declined to 524 as of January 2012.[4] Not surprisingly, these interpreters live and work mostly in the larger urban areas. Because approximately 200 Texas counties do not have a licensed court interpreter in residence, just scheduling one for a court hearing is a challenge in many locales. Although courts in counties under 50,000 in population may use unlicensed interpreters in civil proceedings, the demands of court interpretation are such that to use a non-professional is to risk a due process violation or a misunderstanding of critical evidence.[5]

Whether physically in the courtroom or appearing by telephone, voice over internet protocol (VOIP), or videoconference, an interpreter will change the dynamics of a hearing significantly. When using a language interpreter, the judge can help improve the quality of the services by: using a licensed court interpreter; respecting the interpreter's proper role in the proceeding; and being sensitive to the complexities of cultural and regional differences in language.

The state Office of Court Administration (OCA) began its Texas Remote Interpreter Project (TRIP) early in 2011, to improve access to licensed court interpreters and the quality of interpretation services in civil family violence proceedings in rural counties. The TRIP is funded by a grant from the U.S. Department of Justice's Office on Violence Against Women.[6] It offers courts free Spanish interpretation services by licensed court interpreters via telephone, voice over internet protocol (VOIP), or videoconferencing. Limited grant funds are also available to pay for non-Spanish interpretation by a commercial service telephonically. Although the grant-funded project's scope is limited to providing services in civil cases involving intimate partner violence in district and county-level courts, OCA hopes that the TRIP can also serve as a demonstration of the value of telephonic interpretation in other types of cases.[7]

> "The process of setting up the [TRIP] remote Spanish interpretation was very easy once we had a speaker phone set up in the Courtroom. I was very pleased with the interpretation and the court reporter also reported that she was impressed with the result. This is a wonderful resource."
> Deborah L. Richardson, Travis County Associate Judge (Ret.)

For court interpretation needs that fall outside the scope of TRIP, a county-wide systematic approach may be helpful. To help address the allocation of court interpreter resources overall, some courts have adopted LEP plans. These plans provide a framework for the provision of language assistance to LEP persons who come in contact with the court system, both inside and outside of the courtroom. The LEP plan should include consideration of document translation, community outreach, bilingual customer service, etc. An example of an LEP plan is the one approved by the Lubbock County Board of Judges, which is available at: www.co.lubbock.tx.us/egov/docs/1314285856_540679.pdf.

USING A LICENSED COURT INTERPRETER

The following briefly describes the obstacles to accurate interpretation that may prevent the judge from understanding critical evidence. It is also a guide to assist judges in securing the services of an ethical and competent interpreter and understanding the roles and responsibilities of the interpreter and the judge. **Find a licensed interpreter.** Bilingual attorneys or courtroom staff do not obviate the need for a licensed court interpreter. If the county does not employ or have a contract with a licensed court interpreter, the court can find the list of current licensees on the website of the Texas Department of Licensing and Regulation (TDLR): www.license.state.tx.us/LicenseSearch.

The court may also use, after making a finding of fact that a local interpreter is not available, a commercial service that provides legal interpretation by telephone.

To earn the state license, a court interpreter must pass TDLR's oral and written examinations. This testing culls 90% of applicants.[8] Interpreters who pass the examination generally have postgraduate proficiency in two languages, training in legal concepts, and extensive practical experience. Licensed court interpreters also swear to uphold a code of ethics. An overview of the qualifications required of interpreters in Texas courts is available in Chapter 16 of OCA's *Texas Family Violence Benchbook,* available at: www.courts.state.tx.us/oca/DVRA/tfvbb. (Note: Other states and the federal court system use the term "certified interpreter" instead of "licensed interpreter." In Texas, a "certified" interpreter is one that has passed the state examination to interpret for deaf and hard of hearing persons.)

Help everyone to understand interpreter neutrality. A court interpreter acts as a conduit for accurately transmitting information between parties, not to simplify, explain, or engage in any type of advocacy. This neutrality allows interpreters to serve more than one party in a case, and is an important reason for not using an amateur interpreter brought by someone involved in the case. There have actually been cases in which the bilingual spouse in a divorce or child custody proceeding was asked to interpret for the LEP spouse. Needless to say, the case was decided in favor of the bilingual spouse. Although he can interpret for any party to a case, an interpreter should not be asked to also serve as an expert witness in that same case.

Address the party or witness, not the interpreter. Some parties may need to be reminded that it creates confusion in the record to speak directly to the interpreter during the proceeding. Rather than instructing the interpreter, "Ask him what his date of birth is," an attorney should look at the witness and ask that person, "What is your date of birth?" When it is necessary to speak during the proceeding, a good interpreter will ask for clarification using a third-person sentence like, "The interpreter requests a repetition of the question." This allows the court reporter to clearly indicate who is speaking.

Check for mutual comprehension. There are over 7,000 languages in the world. China alone is home to 292 different languages, so it is not enough to ask for a "Chinese interpreter." An LEP party from the former Soviet Union might struggle to communicate through the Russian-English interpreter if his first language is one of that region's 120 indigenous tongues, and he only studied Russian for a few years in school. While literate Arabic speakers may all be able to read the same newspaper, they will speak one of several regional varieties that are vastly different. It may be hard to tell how much an LEP party understands when that person is intimidated, or ashamed of speaking only a minority dialect. Just as an American visiting Scotland can be confused by exchanges like, "Foo ur ye aye daein'? Nae bad ava, min. Yersel'?,"[9] an interpreter who studied entirely in Spain may have real difficulty communicating with someone from the Texas border.

Court interpreters are trained to remain as inconspicuous as possible by interpreting everything they hear, so as not to be accused of carrying on private conversations with parties to the trial. When the judge was busy with a bench conference, a certain defendant turned to his interpreter and said in romantic tones, "Qué ojos verdes tan preciosos tienes." The interpreter dutifully announced to the courtroom at large, "What beautiful green eyes you have." It was the last time the embarrassed defendant tried to flirt with her.

Culture affects communication styles. In many parts of the world, it is rude to look someone in the eye if the person "outranks" you socially. A witness who looks at the ground might appear evasive, while only trying to be

polite according to his culture's practices. A rape victim may refuse to answer questions or deny facts that she perceives as shameful to herself or her community. Using an interpreter from the same immigrant community as the LEP witness may risk bias if the interpreter perceives socio-economic (or "class") differences with the witness. Cultural concepts or assumptions may not be expressed verbally, and so may not be subject to interpretation, or those concepts may not have an exact or easily translatable analogue in English. In such situations, the subtext of the witness's statement may be either misinterpreted or missed. Even when aware of the subtext, the interpreter is generally barred from interrupting testimony to provide such context. The judge should be alert to any indication of missing context and seek clarification when necessary.

Be aware of the different modes of interpretation. Whenever someone is speaking in English to the LEP person or the LEP person is responding, the speaker should pause after every couple of sentences to allow the interpretation. This interpretation mode, which is loud enough for all participants to hear, is called consecutive interpretation, and generally takes twice as long as uninterpreted proceedings. Simultaneous interpretation occurs when the interpreter continuously renders the statements into the LEP person's language for the benefit of the LEP person only (usually by speaking in a low tone of voice that only the LEP person can hear distinctly). This mode is almost as fast as uninterpreted proceedings.

A Vietnamese mother admitted to burning her child's back with hot coins, which the jury automatically equated with child abuse. The interpreter did not interject any cultural explanation, but was relieved by subsequent expert testimony that this "coining" practice is a normal home remedy in some Asian cultures, and may unintentionally result in burns.

The third mode, sight translation, means studying a written document and "reading aloud" in the other language. Sight translation is not always possible, depending on the type of document, and it is better to have written translations prepared in advance of the hearing. Furthermore, it is never a good idea to play an audio or video recording in court and ask an interpreter to render an English version on the spot. Due chiefly to issues of sound quality, such work often requires a dozen repetitions of each sentence to transcribe and translate accurately.[10]

Control speed, segment length, and crosstalk. As speed of speech increases, the accuracy of the interpretation decreases. To pass the licensing test, interpreters must demonstrate accuracy at speeds up to 120 words per minute, but many people speak faster than this in court. During consecutive interpretation, each segment should include a complete thought and break at a logical point, but not contain more information than the interpreter can hold in short-term memory (no more than 2-3 sentences of average length). Also, if someone interrupts or two people speak at once, the interpreter may lose important information. To get a feel for the challenge of keeping up with high-speed speakers, try watching the news and repeating everything the journalist says (in English) without missing any details. When you are able to do that, try paraphrasing everything that is said, "interpreting" it into other words whose meaning is as close as possible to the original.

Understand that some ideas don't translate well. Some judges enjoy using colorful figures of speech that simply don't work in the other language. Jokes and puns are often impossible to translate, as are references to pop culture or historical personalities. Some sentences that are clear and specific in one language will be vague and ambiguous in the other, requiring close attention to context. For example, "*Le pegó*" in Spanish means "He hit her," "He hit it," "He hit him," "She hit him," "She hit her," "She hit it," "It hit him," "It hit her," or "It hit it." An interpreter has to pay close attention to context and background knowledge to make sense of a phrase like this.

Don't blame the messenger. An attractive, professional-looking Texas interpreter tells of the courtroom erupting into laughter and gasps when she let loose a stream of filthy profanity. The judge glared at her over his glasses and said, "I thought you were more of a lady, ma'am." The interpreter pointed

Once at trial, a Cantonese-speaking witness said (according to his interpreter) "Oh that iron pear, he fried my squid!" Later analysis by someone else familiar with the witness's colloquial dialect gave a much better translation: "Oh that bastard, he fired me!"[11]

Statistics indicate that each year in Texas, up to 20,000 victims of family violence have limited English proficiency; many of these victims will need a court interpreter when they seek a civil protective order or other relief. To help alleviate the shortage of licensed court interpreters, OCA's TRIP provides free, licensed Spanish court interpreters to district and county-level courts handling civil cases involving intimate partner violence. Interpretation services in 170 other languages are available by telephone from a commercial service. See www.courts.state.tx.us/oca/dvra/trip or call (512) 463-5656.

helplessly at the witness, who had muttered a sentence exactly that offensive in the other language, not expecting it to be repeated. Apparently, the court's usual interpreter had been censoring such vulgarities and no one, especially the witness, expected to hear such language. Accuracy requires that if a witness makes a mistake, the interpreter will reproduce that mistake in the other language rather than correct it. If an attorney asks a vague or misleading question, the interpreter will attempt to reproduce the ambiguity in the other language. An incoherent and rambling narrative in the LEP's language should sound incoherent and rambling in English. And if a witness continues using a response like "uh huh" in her native language, after being admonished to reply "yes" or "no," a professional interpreter will not "fix" this type of expression in the interest of a smoother examination.

Interpreters need to prepare. Oral arguments made in court are often the culmination of long research and preparation by the attorneys, who refer to their documents as they cite facts for the record. When any party reads quickly from printed materials that have not been given to the interpreter, especially involving numbers, proper names or other specific details, the risk of poor interpretation increases. Expert witness testimony often uses highly technical language, and the interpreter may need to study the subject in depth to prepare for a trial. If DNA testimony will be presented, for example, the interpreter will probably use a printed scale to convert large numbers between language families. Depending on the language pair, 10^9 may be a billion or a milliard; 10^{12} may be a trillion or a billion; 10^{18} may be a quintillion or a trillion, and so forth. The principle of interpreter preparation also means that effort should be made to have the same interpreter work all phases of a given case.

Other bilinguals in the courtroom may be a mixed blessing. All interpreters are prepared to have a rendering challenged in open court and will admit to legitimate mistakes. A bilingual jury member, however, should not tell the rest of the jury, "That interpreter got everything wrong. What the witness was really saying is ..." An attorney who continually challenges the interpreter for irrelevant matters of word choice will quickly undermine the interpreter's credibility. For example, some Spanish speakers habitually begin a sentence using "No ..." as a verbal pause while they ponder their answer, even though the answer to the question is positive. Semantically, this "no ..." equates to "um ..." or "well ..." in English, but because anyone can hear that the witness's response began with "no," this verbal crutch can result in unneeded challenges to the interpretation.

An emerging solution to a complex issue. As key players in any trial of record, court reporters have a long tradition of high standards, and judges understand what the reporter needs in order to function effectively. Because foreign-language interpreters are fewer, and their trade has been professionalized more recently, the adjustments required during interpreted trials may be less familiar. But judges who understand the statutory requirements governing interpretation and the principles outlined above find that interpreters, like court reporters, can be smoothly integrated into any proceeding.

The examples given above demonstrate obstacles to accurate interpretations that may prevent the judge from understanding critical evidence. Use of licensed court interpreters can help reduce these obstacles and ensure quality interpretation in the courtroom.

PHOTO: Author, Marco Hansom

Texas Election Law in the *Aftermath of Citizens United*

By: Courtney Gabriele

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The United States Supreme Court's decision in *Citizens United v. Federal Election Commission* was one of the most controversial decisions in recent years, invalidating dozens of state laws and resetting the entire election law landscape. The decision calls into question fundamental principles of democracy, constitutional protections, and the scientific theory of "what is a human?" Okay, maybe it doesn't *actually* call that last one into question, but that issue certainly does provide some comic relief for a serious issue. For instance, in an article joking about whether a corporation is a human by asking outlandish questions such as whether one can be married, the author notes the famous punch line: "A corporation is not a person until Texas executes one."[1] Now that's funny, even if it is at Texas' expense.

All joking aside, there is no doubt that the *Citizens United* decision has had an impact on many states' laws, including Texas. During the 82nd legislative session, House Bill 2359 was introduced to amend the Election Code to comply with the new precedent. many states' laws, including Texas. During the 82nd

legislative session, House Bill 2359 was introduced to amend the Election Code to comply with the new precedent.

> Interested parties have argued that the Texas prohibition of corporate direct campaign expenditures is unconstitutional in light of the Supreme Court's decision in *Citizens United v. Federal Election Commission*... [I]nterested parties also argue that the state's prohibition of direct campaign expenditures is unenforceable and could lead to costly litigation. H.B. 2359 seeks to address the prohibition on direct campaign expenditures by removing certain references to political expenditures in the Texas Election Code and by adding and clarifying reporting requirements for certain direct campaign expenditures.[2]

The bill was passed and several provisions of the Election Code have either been amended, repealed, or added. The Texas Ethics Commission has also addressed the new precedent by repealing conflicting rules and adding new rules, as well as issuing two advisory opinions.

I. To Be or Not to Be? Allowable Expenditures vs. Prohibited Contributions

Before delving into the new statutes and rules, it is important to understand the difference between a campaign expenditure and a direct campaign expenditure. Beginning with the basics, an "expenditure" is a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment."[3] A "campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.[4] Then there are direct campaign expenditures, which are the subject of most of the new statutes. A "direct campaign expenditure" means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure[5] because the expenditure was made without prior consent or approval of the candidate it benefited.[6] Thus, a "campaign expenditure" made by a corporation which provides something of value to a candidate or officeholder is a prohibited campaign contribution, unless it is a direct campaign expenditure made without that candidate or officeholder's prior consent or approval.

II. The Texas Election Code

The amendments made by House Bill 2359 to the Election Code were conservative - the minimum that could be done to comply with the holding of *Citizens United*. The legislature even added new reporting requirements for corporations in what was most likely an effort to compete with the potentially negative effects of allowing corporations to make direct political expenditures. However, even these small changes have the potential to completely change the landscape of Texas elections. See full bill text.

A. Amendments: Texas Election Code §§ 253.094, 253.036 and 254.061

Section 253.094 previously prohibited both political contributions and political expenditures by corporations and labor organizations that were not authorized by the subchapter. House Bill 2359 amended this section by deleting the words "political expenditure" wherever they appeared, and the section now only prohibits political contributions by corporations and labor organizations.[7] However, this does not give corporations free reign to go on a spending spree for a candidate's or officeholder's campaign. The expenditure must be a "direct campaign expenditure" made without the prior approval or consent of the benefited candidate/officeholder or it qualifies as a prohibited political contribution.[8]

Section 254.036 requires reports under chapter 254 to be filed by computer disc, modem, or other means of electronic transfer. Previously, there were three exceptions to this requirement, but the exception for individuals filing reports with the commission in connection with a direct campaign expenditure to which Section 253.062 applies has been repealed.[9] Thus, these reports must now also comply with the requirement of 254.036. Only two exceptions to the electronic filing of reports remain.[10]

Section 254.061 was amended with the deletion of subsection (4), which required candidate reports to include the full name and address of each individual acting as a campaign treasurer for a political committee which accepts political contributions or makes political expenditures, including direct campaign expenditures, for which the candidate received notice.[11] Reporting requirements are now governed by the newly added Subchapter J.

B. Additions: Texas Election Code §§ 254.261, 254.262

Sections 254.261 and 254.262 comprise the newly added Subchapter J to Chapter 254, which regulates the reporting of direct campaign expenditures. Section 254.261 subjects any person, not acting in concert with another person, who makes one or more direct campaign expenditures exceeding $100, to the reporting requirements of Section 254.001(b). In summary, a person making a direct campaign expenditure must maintain a record of all reportable activity as if he or she were a campaign treasurer of a political committee.[12] Section 254.262 carves out an exception for certain travel expenses.

JUSTICE KENNEDY, OPINION OF THE COURT: SPEECH IS AN ESSENTIAL MECHANISM OF DEMOCRACY, FOR IT IS THE MEANS TO HOLD OFFICIALS ACCOUNTABLE TO THE PEOPLE... THE RIGHT OF CITIZENS TO INQUIRE, TO HEAR, TO SPEAK, AND TO USE INFORMATION TO REACH CONSENSUS IS A PRECONDITION TO ENLIGHTENED SELF-GOVERNMENT AND A NECESSARY MEANS TO PROTECT IT. THE FIRST AMENDMENT " 'HAS ITS FULLEST AND MOST URGENT APPLICATION' TO SPEECH UTTERED DURING A CAMPAIGN FOR POLITICAL OFFICE"... [P]OLITICAL SPEECH MUST PREVAIL AGAINST LAWS THAT WOULD SUPPRESS IT, WHETHER BY DESIGN OR INADVERTENCE."

C. Repealed: Texas Election Code §§ 253.002, 253.097, 254.036(f), 253.61, 253.062 and 253.063

Section 253.002 previously prohibited persons from making or authorizing direct campaign expenditures, with some exceptions, a violation of which was a Class A misdemeanor.[13] This entire section has been deleted. Section 253.097, now repealed, allowed corporations and labor organizations not acting in concert with another person to make direct campaign expenditures in connection with an election on a measure.[14] Sections 253.061-.063 restricted contributions and expenditures relating to individuals. In summary, these sections required an individual, not acting in concert with another person, making a direct campaign expenditure exceeding $100, to file a report as if he or she were the campaign treasurer of a political committee. This subchapter has been repealed and replaced by Subchapter J.[15] Section 254.036(f) was also repealed because it related to electronic filing of reports subject to 253.062.

III. Amendments to the Texas Ethics Commission Rules in Response to Citizens United

In October of 2011 and April of 2012, the Texas Ethics Commission (TEC) adopted and repealed various rules relating to corporations and labor organizations in response to the *Citizens United* decision.[16]

A. Changes from October 2011 Meeting

- Repealed: Rule §24.3 prohibiting political contributions and expenditures by corporations and labor organizations.[17]
- Repealed: Rule §24.9 allowing corporations and labor organizations to make direct campaign expenditures for an election on a measure as if it were an individual.[18]
- Added: Rule §22.6 reiterating the new reporting requirement of Section 254.261 (Subchapter J) of the Election Code requiring persons, not acting in concert with another person, to report direct campaign expenditures from their own property that exceed $100.[19]

B. Changes from April 2012 Meeting

- Repealed: Rule §24.7 allowing corporations and labor organizations to make campaign contributions in connection with an election on a measure to political committees for supporting or opposing such measures.[20]
- Repealed: Rule §24.11 allowing corporations to make direct campaign expenditures for the purpose of communicating with stockholders, members of family of stockholders and members.[21]
- Repealed: Rule §24.13 allowing corporations and labor organizations to make political expenditures to finance the establishment and administration of a general purpose committee, and solicitation of political contributions to a general purpose committee.[22]
- Repealed: Rule §24.14 identifying an expenditure made by a corporation to deliver a political contribution as an administrative expenditure.[23]

- Repealed: Rule §24.19 allowing corporations and labor organizations to make contributions to a political party to be used according to Chapter 20, Subchapter H, as long as it was not within 60 days of a general election for state and county officers.[24]
- Added: Rule §24.1(a)(2) was amended to make Chapter 24 of the Commission Rules also applicable to corporations organized under the Texas For-Profit Corporation Law and the Texas Non-Profit Corporation Law.[25]
- Added: Rule §24.1(a)(3) was amended to identify the following associations, whether incorporated or not, as corporations for the purposes of Chapter 24 of the Commission Rules: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies.[26]

- Added: Rule §24.15 was amended to require corporate discounts for good or services to a candidate, officeholder or specific-purpose committee to comply with §253.041(b) of the Election Code.[27]

IV. TEC Advisory Opinions Issued in Response to Citizens United

Prior to the statutory and commission rules being repealed and amended as noted above, many candidates and officeholders questioned the effect *Citizens United* would have on Texas election law. Since the Supreme Court's decision was handed down, the TEC has issued two advisory opinions addressing corporate political contributions and expenditures under the new precedent. Although Advisory Opinion 489 was later superseded by the passage of House Bill 2359, both opinions are worthy of note.

A. EAO No. 489: Whether, in light of the United States Supreme Court ruling in Citizens United v. Federal Election Commission, the Texas Ethics Commission can enforce the prohibition on direct campaign expenditures, whether the Texas Ethics Commission can enforce the requirements to include certain disclosures on political advertising, and whether disclosure of certain direct campaign expenditures is required.

In Texas election law, a "direct campaign expenditure" is the equivalent of federal election law's "independent a expenditure" for the limited purposes of determining the effects of Citizens United. These are expenditures that are made without the prior consent or approval of the candidate or officeholder whom the expenditure benefits.[28] In *Citizens United*, the Supreme Court held that the federal prohibition on corporations making independent expenditures violated the First Amendment and was therefore unconstitutional.[29] In Opinion 489, the TEC noted that the Texas Legislature's intent is that statutes be enforced constitutionally. [30] With that in mind, TEC determined that Sections 253.094 nd 253.002 of the Election Code could no longer be enforced to prohibit direct campaign expenditures by corporations or any other person. "*Citizens United* does not, however, impede us from continuing to enforce the restrictions on corporations or labor organizations making political contributions to candidates or officeholders. Furthermore, *Citizens United* does not impede us from continuing to enforce the political advertising disclosure requirements under chapter 255 of the Election Code. In addition, title 15 requires a corporation, labor organization, or other person that makes one or more direct campaign expenditures from its own property in connection with an election of a candidate to comply with the reporting requirements that apply to an individual as set out in section 253.062 of the Election Code." The holdings from Opinion 489 were later codified by House Bill 2359.[31]

B. EAO No.503: Whether a corporation makes a campaign contribution to a candidate by making a campaign expenditure that benefits the candidate, to a vendor shared by the corporation and the candidate?

Short answer: No. Simply sharing a vendor does not mean the corporation has made a campaign contribution to the candidate or officeholder.[32] The opinion points out that simply using the services of the same law firm is not prohibited. But when you begin adding more layers, the answer becomes more complex. "[I]f a corporation uses general treasury funds to make any campaign expenditure to a vendor for services to benefit a candidate, and the vendor is concurrently providing campaign services to both the corporation and the candidate, this is evidence that the expenditure may constitute a prohibited contribution to the candidate."[33] There are several examples provided by the opinion:

Example 1: The shared vendor is an individual who concurrently produces an advertisement for a corporation and candidate. The advertisement created for the corporation benefits the candidate. TEC would find this to be strong evidence that the corporation's expenditure on the ad may constitute a contribution to the candidate. Furthermore, if the shared vendor was required to seek the candidate's approval or consent before providing production services to the corporation, there would be a presumption that the expenditure is a prohibited contribution. If the ad is developed with the prior consent or approval of the candidate, it is a prohibited contribution.

Example 2: If the shared vendor is providing non-strategic services to a candidate and a corporation, then whether the expenditure constitutes a contribution is determined by whether it is a transfer of anything of value for the candidate to use in his or her campaign.[34] A corporation using a vendor to file its direct expenditure report while a candidate concurrently uses the vendor to file his or her campaign finance report would not be a prohibited contribution to the candidate.[35]

Example 3: If a shared vendor establishes a "firewall policy" to prevent the sharing of public and non-public information, and the firewall policy is implemented and followed and no information is shared, then a corporation's expenditure would not be a prohibited contribution.[36] However, TEC notes that this opinion only extends to a firewall policy containing all the facets of the firewall policy described in the opinion, which are substantial.[37]

Example 4: The fact that a vendor has previously provided services to a candidate does not by itself make a corporation's campaign expenditure to that vendor a prohibited contribution to the candidate it benefits.[38] It does not matter if the candidate was using that vendor 4 years prior or 15 days prior. The determining factor is whether the corporation's expenditure was made with the prior approval and consent of the candidate it benefited.[39]

CHIEF JUSTICE ROBERTS, CONCURRING:
...[W]E MUST KEEP IN MIND THAT STARE DECISIS IS NOT AN END IN ITSELF. IT IS INSTEAD "THE MEANS BY WHICH WE ENSURE THAT THE LAW WILL NOT MERELY CHANGE ERRATICALLY, BUT WILL DEVELOP IN A PRINCIPLED AND INTELLIGIBLE FASHION." [CITE OMITTED]. ITS GREATEST PURPOSE IS TO SERVE A CONSTITUTIONAL IDEAL—THE RULE OF LAW. IT FOLLOWS THAT IN THE UNUSUAL CIRCUMSTANCE WHEN FIDELITY TO ANY PARTICULAR PRECEDENT DOES MORE TO DAMAGE THIS CONSTITUTIONAL IDEAL THAN TO ADVANCE IT, WE MUST BE MORE WILLING TO DEPART FROM THAT PRECEDENT.

The opinion makes it clear that regardless of the specific facts, the ultimate question is whether the candidate gave prior consent and approval for the corporation's expenditure. That is a fact determination to be made by TEC.[40] As noted in the opinion, there are some fact scenarios which will lend themselves to a presumption that the candidate gave prior consent or approval, and some fact scenarios (i.e. a shared vendor implementing a comprehensive firewall policy) which can be used as evidence that the expenditure was not a prohibited contribution.

If you're interested in reading other recent TEC Advisory Opinions unrelated to *Citizens United*, please see the Ethics Docket section of this issue of *In Chambers*.

FEATURES

Juvenile Justice System Solutions for Texas-Things to Consider

By: Mark D. Steward, Director of Missouri Youth Services Institute

For decades, many of the country's juvenile justice systems have failed miserably. They have failed citizens who can't rely on the security of the facilities. They have failed youth, by not equipping them with the skills they need to turn from a life of crime toward becoming responsible, productive citizens. And, they have failed taxpayers, by training far too many youth to become hardened criminals--ultimately costing taxpayers as juveniles go through a revolving door in the juvenile system and ultimately "graduate" to adult prisons.

Those failures are no surprise considering that for more than a century, the predominant model for the incarceration of juvenile offenders has been static, featuring confinement in large correctional facilities operated primarily under a punitive system rather than a supportive, rehabilitative one. The 1990s were particularly destructive to juvenile justice as unfounded stories of "super predators" drove many states to increasingly harsh measures with facilities resembling adult prisons featuring barbed wire, guards and isolations cells.

Although only 27 percent of the country's incarcerated youth have been found guilty of a violent felony and the rate of juvenile violent crime has consistently decreased since 1994, few states have opted for meaningful reforms. Each year, more than 100,000 youth are committed to state juvenile justice systems. When released, far too many of them will walk through that revolving door. But, it's possible for states to alter that bleak picture by shifting from a correctional, punitive approach to a therapeutic, rehabilitative one. It's worked successfully for decades in Missouri and is a model for jurisdictions across the country that are primed to demand better outcomes from their juvenile justice systems.

In recent years, Texas has initiated efforts to make changes in their juvenile justice system. These include legislative reforms such as establishing the Texas Juvenile Justice Department, reducing the number of youth in secure facilities and making efforts to rehabilitate youth in their communities, closer to home. Certainly, these kinds of changes help—particularly in the short-term—but the benefits for Texas will fall short without making major changes to the system. To achieve long-term, positive results requires a fundamental shift in the state's approach to rehabilitating its youth.

As Texas considers additional improvements in its juvenile justice system, the state might want to explore systems across the country that have experienced success. Given the complexity and critical nature of juvenile justice, it makes good common sense not to re-invent the wheel when solid, evidence-based approaches with positive results are working in other parts of the country and could be utilized in Texas.

In Missouri, the state's juvenile justice system has a proven track record of keeping

youth from returning to a life of crime. Texas may want to examine its nearby neighbor's current approach and its strikingly similar history. Missouri's long-standing success is the result of a commitment and process that began years ago in response to a severely, failing system in shambles—and a juvenile court judge who refused to continue with the status quo.

For decades, Missouri's juvenile justice system operated under a correctional approach that was plagued with physical and emotional abuse by both staff and youth. Rampant rapes, murders, suicides and escapes finally caused such an uproar that a juvenile court judge in St. Louis refused to commit any more juveniles to the Training School for Boys that housed more than 600 youth at the time in the small town of Boonville.

Following a series of legislative hearings and public inquiries, the state of Missouri began searching for solutions to its juvenile "injustice" system. That search culminated in 1970 with the opening of a pilot program based on a therapeutic approach rather than the failed correctional one used by the state for more than a century. The new pilot program utilized a peer approach guided by a trained staff that worked together in teams with the same youth groups in a positive rather than punitive environment.

This new approach went beyond typical behavioral compliance to training and equipping youth with skills and accountability to make internal, long-standing changes. A drastic reduction in escapes and violence combined with significant improvements in education and recidivism prompted Missouri's juvenile system to close the original Training School for Boys and begin establishing a network of small facilities utilizing the new approach throughout the state to treat youth closer to their communities—and their families.

During the past four decades, Missouri has utilized this same basic approach with gradual improvements along the way. Its evidence-based results are unbiased and nonpartisan. As such, it has been successful under both Democratic and Republican administrations including Governors Christopher "Kit" Bond, John Ashcroft, Mel Carnahan, Bob Holden, Matt Blunt and Jay Nixon.

As Texas explores potential reforms or approaches, it should consider the results it wants from its juvenile justice system. In Missouri, the recidivism rates have been consistently low since the system was transformed from correctional to rehabilitative more than 40 years ago. Year in and year out, only about 7% of youth released from its juvenile system are recommitted to it and about 7% are incarcerated in one of Missouri's prisons three years following release. These outcomes far exceed those of other states that measure recidivism similarly and range from around 20 to 30% and in some cases, as high as 70%.

Missouri Director of Corrections George Lombardi has said, "The success of Missouri's juvenile justice system has prevented our prison system from building and operating at least one prison, housing thousand of inmates, which is a savings to taxpayers in the millions of dollars."

Additionally, the Missouri system addresses the safety and security concerns that are paramount in Texas. A recent report released by The Annie E. Casey Foundation showed that youth in Missouri's juvenile system are 4 ½ times less likely to be assaulted and staff members are 13 times less likely to be assaulted than in other juvenile system programs across the country. No suicides have occurred since the approach was adopted more than 40 years ago, which goes hand-in-

hand with Missouri 's low use of isolation—200 times less than other programs.

Due to its tremendous success, more than half of the states in the country have visited Missouri's juvenile justice system (Division of Youth Services) to tour the facilities and observe the program at work. Many of these opportunities for states to examine Missouri's approach have been made are possible through a grant from The Annie E. Casey Foundation, a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States.

In October 2007, *The New York Times* published an editorial, "The Right Model for Juvenile Justice," that reinforced Missouri as an example for the country: "With the prisions filled to bursting, state governments are desperate for ways to keep more people from committing crimes and ending up behind bars. States that want to change that are increasingly looking to Missouri, which has turned its juvenile justice system into a nationally recognized model of how to deal effectively with troubled children."

The Missouri approach provides a framework for other states to customize and develop their own individualized service delivery systems utilizing this team-driven approach in a positive, therapeutic environment. That environment is no pushover for youth; it requires them to be accountable and helps them develop the skills to become productive, responsible citizens rather than repeat juvenile offenders and ultimately, hardened criminals.

Missouri's youth are treated in small, regional facilities close to their communities and their families. They participate in highly structured activities and remain in small groups with consistent, active staff supervision throughout the program. The activities help youth address their history and family dynamics, take responsibility for their actions and develop the skills and relationships to produce long-lasting changes. In Missouri, even the most delinquent serious offenders have become solid citizens. And, the rates for high school graduation and earning GEDs are near double the national average.

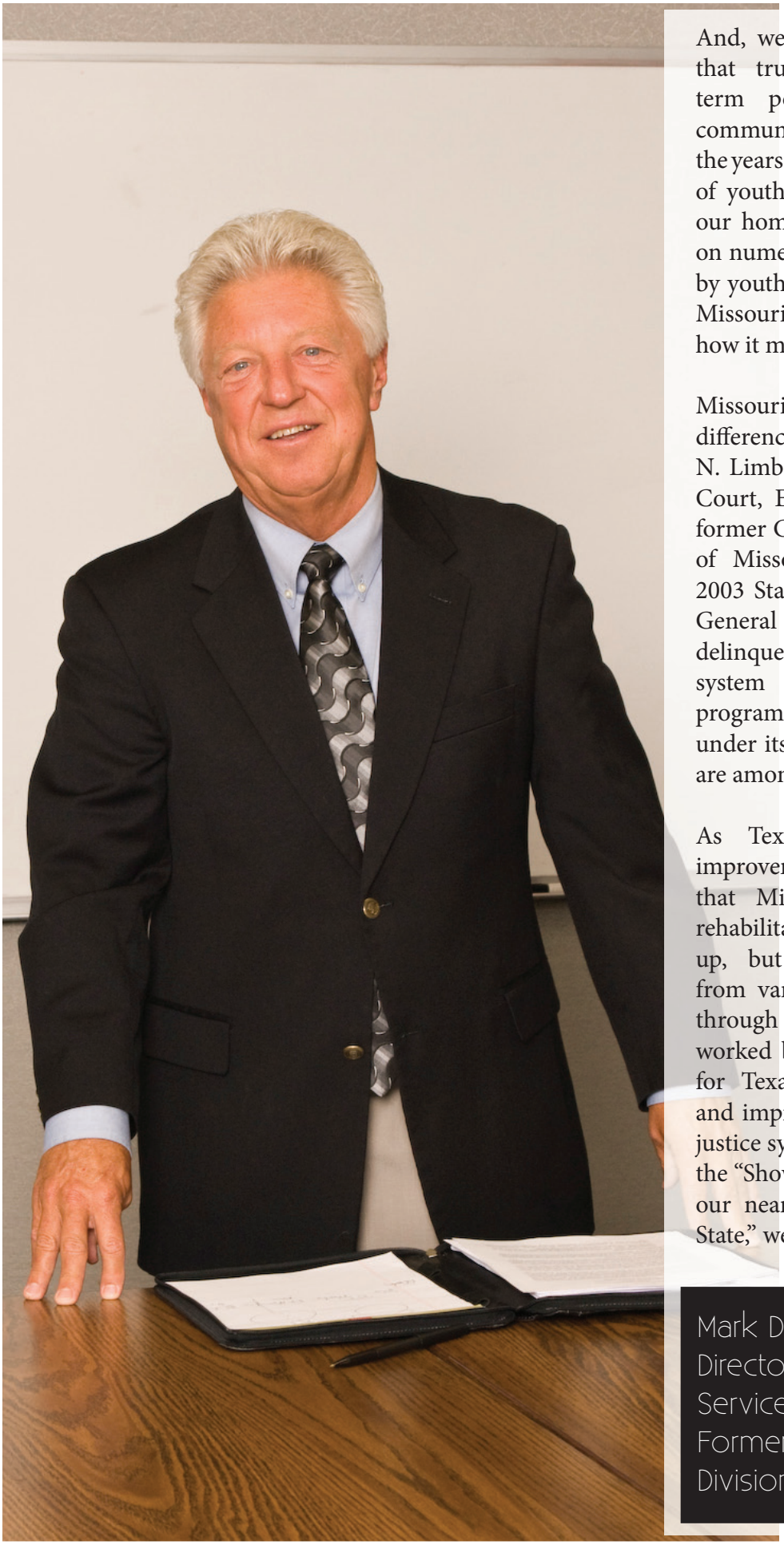
While the Missouri Division of Youth Services is more than willing to host site visits and share its valuable experience with other states, it has neither the authorization nor the resources to provide the necessary in-depth, ongoing assistance to jurisdictions that want to implement the Missouri approach. Due to the significant need to improve the conditions and programs in various states and jurisdictions across the country, the Missouri Youth Services Institute (MYSI) was founded in 2005 to fulfill that role.

The nonprofit organization has an impressive team of more than a dozen seasoned staff with decades of experience in youth services—and specifically with the Missouri approach. MYSI works with states and jurisdictions across the country to design and implement customized approaches based on key components of the Missouri juvenile justice system to achieve the desired outcomes.

Shortly after its launch in 2005, the MYSI team began working with the troubled juvenile systems in Louisiana and Washington, DC. Both systems were under review by the US Department of Justice, with Louisiana under a settlement agreement and Washington, DC under a consent decree. With assistance from MYSI, each jurisdiction developed its own unique model utilizing components of the Missouri approach, and both were removed from the US Justice Department's oversight.

MYSI also worked with the state of New Mexico to address issues that helped remove them from a lawsuit and continues to partner with them to develop their own rehabilitative juvenile justice model. Additionally, the MYSI team's efforts and partnerships include numerous jurisdictions in the states of California and New York, including Los Angeles County and New York City, respectively.

The consistently successful outcomes of the Missouri approach speak for themselves, but I take a great deal of pride in being part of this journey in Missouri for most of the past 40 years. From my experience as one of the first counselors in the pilot program that opened in 1970 that helped set Missouri on a course for change, to my 17 years as Director of the Division of Youth Services, I have been privileged to play an integral role in the development and implementation of the Missouri approach. Following my state retirement as Director in Missouri and founding MYSI in 2005, I've been able to continue fulfilling my passion for helping troubled youth.



And, we've done it through an approach that truly works and produces long-term positive results—for youth, for communities and for taxpayers. Through the years, my family has hosted many groups of youth from throughout our system in our home for holidays and cookouts and on numerous occasions, we've been visited by youth who completed their program in Missouri's system and were eager to tell us how it made a difference in their lives.

Missouri judges have recognized the difference, too. The Honorable Stephen N. Limbaugh Jr., Judge of the US District Court, Eastern District of Missouri, and former Chief Justice of the Supreme Court of Missouri, said the following in his 2003 State of the Judiciary address to the General Assembly: "In fact, the juvenile delinquency side of the juvenile justice system and especially the innovative programs of the Division of Youth Services under its longtime director Mark Steward, are among the finest in the nation."

As Texas considers its options for improvement, it should also realize that Missouri didn't invent its youth rehabilitation model from the ground up, but utilized different components from various systems across the country through the years to figure out what worked best. This is truly an opportunity for Texas to make substantive changes and improvements to its troubled juvenile justice system. So, if there is anything from the "Show Me State" that we can share with our nearby neighbors in the "Lone Star State," we would be glad to help.

Mark D. Steward
Director of Missouri Youth Services Institute (MYSI) and Former Director of the Missouri Division of Youth Services

{photo lineup}

from the 2012 conferences

*for more photos see the online version of the issue

EVIDENCE SUMMIT

May 30 & 31, The Pearl,
South Padre Island

PROFESSIONAL DEVELOPMENT PROGRAM

June 18 through 22, Westin at the Domain, Austin

{photo lineup}

DWI COLLEGE

FOR COURT TEAMS, STUDENT CONDUCT OFFICES, AND ADMINISTRATIVE LAW JUDGES

July 30 through August 1,
Omni Downtown, Austin

2012 ANNUAL JUDICIAL EDUCATION CONFERENCE

September 9 through 12, Westin, Houston

"The training my staff received in the Court Management Program has stimulated a positive shift in the dynamics of the court that has been beneficial to all of our personnel. She has been exposed to the best current thinking on case management and court administration, and has developed a large network of professional resources. These are things that simply cannot be picked up on the job."

Professional Development Program
Texas Court Management, Graduating Class of 2012

Court Staff Graduate from Prestigious Program

This summer, 30 court coordinators and administrators from around the state graduated from the Court Manager Program sponsored by the Texas Center for the Judiciary and the Texas Association for Court Administration (TACA). The program, licensed from the National Center for State Courts' Institute for Court Management (ICM), is a nationally-recognized training program for court staff. It focuses on five courses:

- Court Performance Standards: CourTools
- Fundamental Issues of Caseflow Management (credit given after completion of two years of the Texas Center's Professional Development Program)
- Managing Court Financial Resources
- Managing Human Resources
- Managing Technology Projects and Technology Resources
- Purposes and Responsibilities of Courts

This program is able to be brought to Texas court staff at a deeply discounted price due to the partnership between ICM, TACA and the Texas Center. Without the discount, students would have to pay an average of $10,000 to achieve the certification. Through the partnership, students pay $160 per course, plus travel expenses to one TACA conference, to achieve the certification.

Why should a judge send their coordinator/administrator to this program?

Studies have repeatedly shown that having a well-trained and engaged staff is key to recruiting and retaining top talent for positions. The Court Management Program is focused on training court staff in the core competencies of court administration. Judges can expect a well-trained coordinator/administrator upon completion of the program. Successful completion of the program entitles the student to a national certification as a Certified Court Manager. The certification also allows students the opportunity to pursue the Certified Court Executive certification, the highest national certification available in court administration. The courses are meant to ensure that court staff have a good foundation to assist them in managing a well-run court, something that no judge would desire to turn down.

awards & honors

Retired Justice Don Reavis Honored by Amarillo Area Bar Association

Don H. Reavis is the latest recipient of the Chief Justice Charles L. Reynolds Lifetime Achievement Award. Justice Reavis, a native of Shamrock, is a graduate of McMurry College and the University of Texas Law School. While at McMurry, he and his debate partner, now- Lubbock lawyer Don Hunt, achieved national recognition in debate competitions. Then, during law school, Justice Reavis and his moot court partner won the State Bar's Moot Court Competition. He began his practice in Perryton, with the firm of Allen and Allen. In 1966, he joined Lumpkin, Watson and Smith in Amarillo, and practiced with that firm and its successors until he was appointed to the Seventh Court of Appeals in 1996. He retired from the court in 2006 and since has been of counsel to Courtney, Countiss, Brian and Bailey, LLP. Justice Reavis has served our association as president and the State Bar of Texas as a member of the board of directors. He is a fellow of the Texas Bar Foundation. He also is a past District Committeeman for the Republican Party of Texas. A lover of music, he and his family have long been active in Amarillo's music community. He has served on the board of the Amarillo Opera and as a member of the choir of St. Paul United Methodist Church. The Chief Justice Charles L. Reynolds Lifetime Achievement Award was established in 2001 and is given to an area lawyer or judge with a distinguished legal career who has made a substantial contribution to the Amarillo Area Bar Association, the community, and the legal profession. Recipients of the award are individuals who exhibit the knowledge, wisdom, integrity, ethics, and professionalism possessed by Charles L. Reynolds. After service as a district judge, Chief Justice Reynolds served on the Seventh Court of Appeals from January 1971 through June 1996, the last seventeen years as Chief Justice. Past recipients of the award are S. Tom Morris, Hon. John T. Boyd, Jerome W. Johnson, Wayne Sturdivant, Maston C. Courtney, Hon. Mary Lou Robinson, Edward H. Hill, Dee Miller and Oth Miller.

Originally published by Amarillo Area Bar Association, *Justice Don Reavis Honored with the Charles L. Reynolds Lifetime Achievement Award, 26 AMA-LAW 1 (May 2012).*

New State Bar of Texas Pro Bono Award Goes To…Justice Phylis Speedlin

On June 14, 2012, Justice Phylis Speedlin received the State Bar of Texas' Judge Merrill Hartman Pro Bono Judge Award. This award honors a judge who has provided exemplary pro bono service. Justice Speedlin has served on the Fourth Court of Appeals since her appointment to the appellate court in April 2003. Frustrated with the number of pro se litigants appearing before their courts, Justice Speedlin and Judge Karen Pozza decided to design a new pro bono program — a joint project of the San Antonio Bar Association, Texas RioGrande Legal Aid, and other community organizations — the Community Justice Program ("CJP").[1] The mission of the Community Justice Program is to support legal representation for indigent residents of San Antonio. The CJP accepts uncontested civil matters including divorce, name changes, simple landlord/tenant disputes, probate matters and wills. To date, CJP has matched more than 6,000 pro bono cases to volunteer attorneys.[2]

Before joining the Fourth Court of Appeals, Justice Speedlin served for

over three years as district judge of the 408th Judicial District Court in Bexar County. Originally raised in Ohio, Justice Speedlin moved to San Antonio in 1970 during her service with the United States Army Nurse Corp. She completed her undergraduate education in nursing at Incarnate Word College and obtained a masters degree in health care administration from Trinity University in San Antonio. She received her law degree from St. Mary's University School of Law and is board certified by the Texas Board of Legal Specialization in personal injury law. Before becoming a judge, Justice Speedlin practiced law as a trial attorney for seventeen years with the San Antonio law firm of Clemens & Spencer. Her law practice was concentrated in the areas of medical malpractice and health care law. Justice Speedlin has been an active member of various state and local organizations, including having served as President of the San Antonio Bar Association. While she was in law school, Justice Speedlin co-authored and published the book, Dear Birthmother, which has been credited with changing adoptive practices in the United States from closed to open adoption. On a personal note, she is married, has two daughters and one son.[3]

Retired Chief Justice William J. Cornelius Honored at Annual Judicial Education Conference

Retired Chief Justice William J. Cornelius at the Annual Judicial Education Conference in Houston, Texas on September 9, 2012. Born in Sweetwater, Texas, Retired Chief Justice Cornelius earned his undergraduate degree at East Texas Baptist University, a J.D. from Baylor (where he served as the Law Review's Comments Editor), and an LL.M. from the University of Virginia. He also did graduate legal study at Oxford University in England. Among his numerous services to the law are chairing the Judicial Section of the State Bar, serving on the faculty of the Texas Judicial College, becoming a Charter Life Fellow of the Bar Foundation, and serving as a founder of the nation-wide Council of Chief Judges of the State Courts of Appeal. Chief Justice Cornelius authored over 2,800 appellate opinions and various legal pieces including law review articles and a book, Swift and Sure: Bringing Certainty and Finality to Criminal Punishments. He is into restoration, both historical and individual. He and his wife have renovated a historic structure into a lovely home in beautiful Jefferson, Texas. He has spent years teaching an adult Sunday school class at the First Baptist Church. He is married to his lifelong companion, Kathryn.

The Judicial Lifetime Achievement Award is presented annually to a current or former Texas judge who is recognized by his or her peers as having a reputation for and commitment to judicial excellence, has achieved a significant length of service as a judge in Texas and has demonstrated a long term, consistent and significant contribution to the betterment of the judiciary, access to justice and the system of justice in Texas.

The Texas Center Honors Outstanding Faculty and Jurists

Texas Center for the Judiciary's 2011-2012 Chair's Awards: Hon. Lora Livingston and Hon. Maria Salas-Medoza

Hon. Lora Livingston

Judge Livingston is a 1982 graduate of the UCLA School of Law. She began her legal career as a Reginald Heber Smith Community Lawyer Fellow assigned to the Legal Aid Society of Central Texas in Austin, Texas. After completion of the two-year fellowship program, she continued to work in the area of poverty law until 1988 when she entered private practice with the law firm of Joel B. Bennett, PC. In 1993, she and S. Gail Parr formed a partnership and opened the law firm of Livingston & Parr. She was engaged in a general civil litigation practice with an emphasis on family law. In January, 1995, she was sworn in as an associate judge for the District Courts of Travis County, Texas. After her successful election, Judge Livingston was sworn in as judge of the 261st District Court in January, 1999. She is the first African-American woman to serve on a district court in Travis County, Texas. In 1992, she received the Outstanding Attorney award from the Travis County Women Lawyers Association. In 2005, she received both the Texas Access to Justice Commission Pro Bono Champion Award and the Texas Equal Access to Justice Foundation Harold F. Kleinman Award. Judge Livingston was also the recipient of the Texas Center for the Judiciary Exemplary Judicial Faculty Award for 2005-2006 and again for 2008-2009. She was awarded the Women of Distinction Award in 2006 by the Lonestar Girl Scouts Council and the Community Service Award in 2007 by the Austin Independent School District. An active member of the Austin community, Judge Livingston has served on the boards of the Ann Richards School for Young Women Leaders, Capital Area Food Bank, Austin Symphony Orchestra, Austin Tenants Council, Central East Austin Community Organization, YMCA, Austin Area Urban League, and El Buen Samaritano. Judge Livingston is also a graduate of the 1999-2000 class of Leadership Austin.

Hon. Maria Salas-Mendoza

For over twenty years, Judge Maria Salas-Mendoza has been dedicated to increasing educational access and opportunities for students, in particular students of disadvantaged and non-traditional backgrounds. At Harvard, Judge Salas-Mendoza worked with children living in inner-city housing projects through afterschool and summer programs. She also volunteered in programs mentoring high school age students, teaching literacy to prisoners, food salvage and several other public service programs through the Phillips Brooks House Association ("PBHA"), the largest and oldest student run public service organization in the country. In El Paso, Judge Salas-Mendoza has committed hundreds of hours to speaking to students about the importance of education at numerous career day events and student visits to the Court. Currently, Judge Salas Mendoza and County Attorney Jo Anne Bernal host the El Paso Women's Bar Association's Positive Role Model Program for 5th graders at Burleson Elementary School. Through this program, students are brought to the Court to learn about careers in the law and the legal system. Most importantly, the program aims to inspire students to follow their dreams, work hard and go to college. Judge Salas-Mendoza is a graduate of Ascarate Elementary and Riverside High School. She received her Bachelor of Arts from Harvard and her Juris Doctor from UCLA School of Law. She was elected judge of the 120th Judicial District Court in 2006. She is the proud mother of Michael, a senior at UT-Arlington, Melina, a freshman at St. John's University and Dillon, a fourth grader.

2011-2012 Exemplary Judicial Faculty Award: Hon. W.C. "Bud" Kirkendall

Judge Kirkendall currently serves on the 2nd 25th District Court and has over 30 years of experience in law. Prior to taking the bench, he had a private practice in Seguin, TX, served as District Attorney for the 25th Judicial District from 1984 to 2004, and as a Briefing Attorney for the Court of Criminal Appeals. In 1996, Judge Kirkendall was named Prosecutor of the Year by the State Bar of Texas. He won the John Ben Sheppard Political Courage Award in 1993. He holds an undergraduate degree from Iowa State University and a law degree from the University of Texas School of Law.

2011-2012 Exemplary Non-Judicial Faculty Award: Mr. David Slayton

In May of 2012, David W. Slayton began serving in his current position as the Administrative Director for the Texas Office of Court Administration. Prior to May, Mr. Slayton served as the Director of Court Administration for the Lubbock County, Texas, District Courts and County Courts at Law for over 7 years. He has been employed by the judicial branch in various roles for over 11 years. Previously, he served as Court Services Supervisor for the United States District Court, Northern District of Texas, in Dallas, Texas, and as a Trial Court Coordinator for the 99th District Court in Lubbock County. Mr. Slayton earned a Bachelor's Degree in Political Science from Texas Tech University and a Master's Degree in Public Administration from Troy University. He is a 2007 Graduate Fellow of the Institute for Court Management, where he was chosen to deliver the commencement address on behalf of his class in the United States Supreme Court. Mr. Slayton received the 2008 Distinguished Service Award from the National Center for State Courts. He has published an article entitled An Analysis of the Effective Use of Jurors in Lubbock County and was instrumental in the publication of the 2007 version of the National Association for Court Management's Model Code of Conduct. He currently serves as an Officer on the National Association for Court Management's Board of Directors and previously was the Secretary on the Board of Directors

for the Texas Association for Drug Court Professionals. In addition to the aforementioned organizations, Mr. Slayton is a member of the Texas Association for Court Administration, the National Association for Drug Court Professionals, and the American Judicature Society.

2011-2012 Exemplary Article Award: Hon. David Garcia and Hon. Patrice McDonald

Judge David Garcia has served as the judge of the County Criminal Court #3 in Denton County, Texas since his appointment on September 1, 1997. He received his JD from the University of Texas, School of Law in 1984 and a BA from Texas Tech University in 1981. Prior to taking the bench, he was in private practice in Denton. Judge Garcia currently serves on the Court of Criminal Appeals Judicial Education Committee and the Judicial Advisory Board for the Texas Association for Court Administration, and previously served as chair of the Judicial Section of the State Bar of Texas and Texas Center for the Judiciary, dean of the Texas Judicial College for the Study of Alcohol and other Drugs, a fellow of the Texas Bar Foundation, and as a member of the DWI Curriculum Committee. He is a member of the Judicial Section of the State Bar of Texas, the Texas Association of County Court at Law Judges, the Denton County Bar Association, and the American Judge's Association.

awards & honors

Judge Patrice McDonald has presided over Montgomery County Court at Law No. 3 since 2007. She has a general jurisdiction court and currently hears family and criminal cases. Judge McDonald has been the administrative judge for Montgomery County Courts at Law since 2010. She is also Chair of the DWI Curriculum Committee for the Texas Center for the Judiciary. Prior to taking the bench, Judge McDonald spent over 25 years in private practice in the fields of family law, family law mediation, and collaborative law. She began her legal career as an associate with the firm Perini, Carlock, & Mills, P.C. in Dallas. Judge McDonald is board certified in family law and is a frequent lecturer on family law topics. She received the President's Award from the Montgomery County Bar Association and was named a "Super Lawyer – Family Law" by Texas Monthly Magazine in 2003, 2004, 2005, and 2006. Judge McDonald has a B.A. from Austin College and J.D. from Southern Methodist University School of Law. She has also attended several mediation programs, including A.A. White Dispute Resolution Institute (1992), AMI Family Mediator Training (1992), Collaborative Law Institute (2000), and Rose Collaborative Law Training (2001).

*Not pictured: Hon. David Garcia.

2011-2012 Judicial Excellence in Education Award: Hon. Mark Atkinson

Judge Mark Atkinson currently serves as the Judicial Resource Liaison for the Texas Center for the Judiciary. Prior to taking this position, he served 24 years on the bench presiding over more than 100,000 criminal cases, 20,000 of those being DWIs. Since 1988, Judge Atkinson implemented creative DWI sentencing practices, particularly with regard to repeat offenders. Many of those sentencing practices are similar to those currently used in today's DWI Courts. During his years on the bench, Judge Atkinson received The National Association of Probation Executives Excellence in Leadership Award, the Mexican-American Bar Association of Houston Amicus Award, the Houston Council on Alcoholism and Drug Abuse Judicial Award, the League of United Latin-American Citizens Certificate of Recognition, and the Houston Police Officers' Association County Court Judge of the Year. He is past chair of the Judicial Section State Bar of Texas and the Texas Center for the Judiciary. Over many years, he chaired the American Probation and Parole Association's Judicial Committee. Prior to taking the bench, his law practice focused on criminal, family, and civil trial law. Judge Atkinson earned his BA from the University of Texas at Austin and his law degree from South Texas College of Law.

The William E. Burger Award Goes To Texas' Own Robert Wessels

Mr. Bob Wessels, right and Ms. Mary McQueen, President of the National Center for State Courts, left

Robert "Bob" Wessels, former court manager for the Harris County Texas courts, has been named recipient of the 2011 Warren E. Burger Award. One of the highest awards presented by the NCSC, the Burger Award is named for the former Chief Justice of the U.S. Supreme Court who helped found the NCSC in 1971. NCSC presents the Burger Award annually to an individual who has made significant contributions in the field of court administration and who has contributed to NCSC's mission.

"For nearly four decades, Bob Wessels's commitment to the field of court management has made a significant and positive difference in courts around the country," said NCSC President Mary C. McQueen. "Bob has served as a true advocate for the profession, and he established himself as a subject-matter expert in areas critical to court management."

[Bob] Wessels worked the Harris County Texas courts for 37 years -- 35 of those as the county's first court manager. His leadership has been felt nationwide. He's a past president and board member of the National Association for Court Management (NACM), he served on the NCSC Board of Directors, and he has chaired numerous state and national committees on court management and technology.

In Texas, [Bob] Wessels is a leading figure in court and justice system improvement. He developed a highly effective staff that provides support for the Harris County judges. He and his staff gained a reputation for their groundbreaking work in developing what has become recognized as the leading web-based courts' intelligence system in the country.

Nationally, [Bob] Wessels is considered a leader in helping to modernize and to promote the best practices in court technology, including serving for a number of years as a member of the Conference of State Court Administrators and NACM's Joint Technology Committee.

The National Center for State Courts, headquartered in Williamsburg, Va., is a nonprofit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. Founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation's state courts

Article Originally published in Press Release, National Center for State Courts, Robert Wessels Receives 2011 Warren E. Burger Award (July 11, 2012) (on file with National Center for State Court's News Room).

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To help the Texas Center for the Judiciary meet its mission of providing outstanding continuing judicial education for the judges of Texas, please consider donating at one of these levels.

Advisory Opinion Summaries

January 1, 2012 – October 22, 2012

Texas Ethics Commission

EAO No. 503 (2012) – The single fact that a corporation shares a vendor with a candidate would not constitute a campaign contribution by the corporation to the candidate. If a corporation uses its general treasury funds to make a campaign expenditure to a vendor for services to benefit a candidate, and if the vendor is concurrently providing campaign services to both the corporation and the candidate or if the vendor has previously provided campaign services to the candidate, the expenditure may constitute a prohibited contribution to the candidate. Whether the expenditure constitutes a prohibited contribution depends on whether the expenditure is made with the prior consent or approval of the candidate. An expenditure that is not made with the prior consent and approval of the candidate is not a campaign contribution to the candidate.

EAO No. 504 (2012) – For purposes of section 255.003 of the Election Code, the attached fact sheet is not political advertising and, therefore, public funds may be used to distribute the fact sheet unless an officer or employee of the city authorizing such use of public funds knows that the fact sheet contains false information.

EAO No. 505 (2012) – Section 571.140 of the Government Code does not prohibit a complainant or respondent from publicly disclosing or discussing a commission order that dismisses a complaint filed by the complainant. If a third party receives a copy of such a dismissal order from a complainant or respondent, the confidentiality provision does not prohibit the third party from possessing or discussing the order with other third parties.

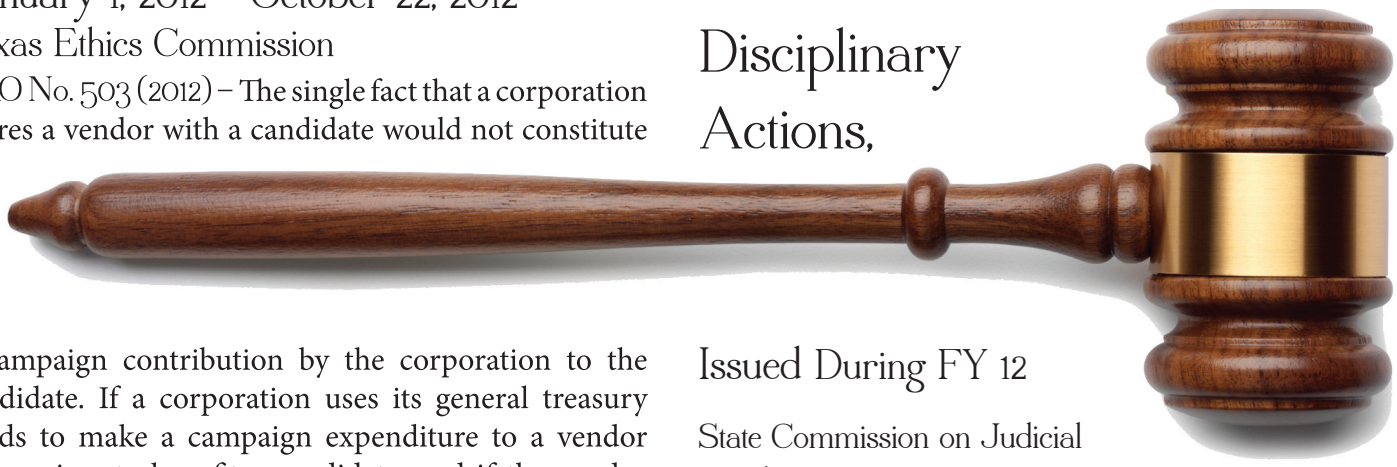
These summaries have been taken directly from the TEC's website. To see summaries from previous years, please visit: http://www.ethics.state.tx.us/legal/digest_d.html.

Committee on Judicial Ethics

There have been no advisory opinions written for 2012.

ETHICS DOCKET

Disciplinary Actions,



Issued During FY 12

State Commission on Judicial Conduct

Public Sanctions

Public Admonishment: The Commission found Sabine County Justice of the Peace ("JP") in violation of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct when he dismissed a criminal case without the consent of the State and was influenced by ex parte communication with a defendant ("D") appearing in his courtroom. He was also improperly influenced by fear of a potential lawsuit. D was issued a citation by a Game Warden for failing to complete a harvest log on the back of his hunting license. The next day, the Game Warden met with JP and recorded their conversation using his dash cam and a lapel microphone. During this conversation, JP stated that he had private conversations with D who was threatening an official oppression lawsuit. JP then said he was going to dismiss that case to avoid "muddy[ing]" the Game Warden's name. The next month, D appeared before JP's court and JP dismissed the case with prejudice. The Commission found violations based upon these facts. *(CJC No. 10-1018-JP, Signed 08/18/11)*

Public Admonishment: The Commission found Harris County Justice of the Peace ("JP") in violation of Canons 3B(4), 3B(5), and 3B(6) of the Texas Code of Judicial Conduct because evidence showed that he asked Hispanic parents and students that appeared in his courtroom if their child was born in the U.S. and, upon confirming their status as illegal immigrants, reported them to Immigration and Customs Enforcement. He did not ask this question to ascertain the need for an interpreter. JP also admitted to using a vulgar term while interacting with litigants. The Commission found that these behaviors constituted discourteous

treatment of litigants and demonstrated prejudice and bias. *(CJC No. 09-1028-JP, Signed 10/20/11)*

Public Admonishment: The Commission found Trinity County Justice of the Peace ("JP") in violation of Canon 2B when he allowed his personal relationship with a defendant ("D") and her mother to influence his conduct, causing him to repeatedly intercede on D's behalf while using his office to help D's case. JP was living with D's mother when D was indicted for burglary of a habitation. While D was out on a $50,000 bond, she was indicted on three other burglaries of a habitation and an additional $35,000 bond was set for her. Both bonds were set by a fellow justice of the peace (JP2). JP called JP2 and told him that a second bond should not have been set. When the constables came to pick up D from her home and transport her to county jail, JP told them that D could not afford a second bond and that it should not have been set. JP also told constables that he was "going to try to get [JP2]'s job" and that the constable's office was picking on D. JP next called the local district attorney and a district judge who were involved in D's burglary cases and expressed frustration about the second bond. The second bond was then discharged and D was released under the first bond. Later, a constable reported suspicious activity at D's apartment to D's landlord. After hearing this, JP called the landlord to ensure D would not lose her place and stated that D was not doing anything suspicious. JP then called the constable's office to complain about the deputy that made that report and accused the constable's office of harassment. He also called the deputy that made the report directly to accuse him of harassment. The Commission found that JP's conduct of calling the district attorney and district judge in an attempt to discharge the second bond and JP's attempts to influence law enforcement violated Canon 2B. *(CJC No. 12-0048-JP, Signed 01/03/12)*

Public Admonishment: The Commission found Harris County Justice of the Peace ("JP") in violation of Canon 2A, 3B(2), 3B(4), 3B(5), and Article V, §1-a(6)A of the Texas Constitution by failing to immediately forward a motion to recuse, using expletives and demonstrating anger towards a defense attorney, and by displaying a lack of courtesy and dignity when communicating with certain defendants and their parents, thereby demonstrating bias and prejudice. The Commission reviewed two complaints against JP. The first complaint was regarding JP's conduct towards a defense attorney. Defense attorney claimed JP used abusive language during a discovery hearing, calling him "boy," using expletives, and calling his client a "brat nosed, punk ass kid with a foul mouth and bad attitude," among other things. JP disputed these claims but admitted to using the word "goddamn." The defense attorney then filed a motion to recuse citing JP's behavior. In response to the motion and allegations therein, JP had his clerk contact defense attorney and tell him to file a "plain vanilla" motion to recuse, made an unsuccessful attempt to have prosecutor sign an affidavit negating defense attorney's allegations of what happened during discovery meeting, and sought to have prosecutor's supervisor file perjury charges against defense attorney. After all his unsuccessful attempts, JP forwarded motion to recuse to regional administrative judge. The second complaint alleged that JP made the following statements while complainant was waiting for her son's case to be called:

a) Told a defendant that he would "throw his twat in jail;"
b) Asked an African-American parent "if she was on welfare and expected the government to pay her fine;"
c) Asked a Hispanic parent "if she had 6 or 7 kids;"
d) Told a Pakistani parent that her son should be "stoned to death."

JP attempted to provide a context for all the statements above stating that the claimant misunderstood and that there were valid reasons for JP to make these inquiries in connection to the evidence and cases before him. The Commission found that the above facts demonstrated a lack of patience, dignity and courtesy expected when interacting with defendants and parents in court and that some of the comments were perceived by litigants as prejudicial and biased. *(CJC No. 11-0141-JP and 11-0514-JP, Signed 03/28/12)*

Public Reprimand and Order for Additional Education: The Commission found Jasper County Justice of the Peace ("JP") in violation of Canons 2A, 3B(2), and 3B(4) by failing to comply with the law and failing to demonstrate professional competence in the law. Defendant ("D") appeared in court and pleaded no contest to Parent Contributing to Non-Attendance. D could not afford to immediately pay court costs so she entered into a payment agreement. The agreement stated that if D failed to pay the costs on time she would be required to appear in court and if she failed to appear, a warrant would be issued for her arrest. She was unable to pay the full amount on time and appeared in court to

make a partial payment of $20 and request additional time for the rest. JP and clerk were very rude but gave her another week, with the warning that a warrant would be issued if she failed to pay. D was unable to make the payment deadline again and two weeks later, JP issued a capias pro fine warrant for D's arrest. D then purchased a money order for the full amount of court costs and left it in the court's dropbox. The court mailed the money order back and told D that it was too late and a warrant was issued for her arrest and she was now responsible for almost triple the amount of the original fine. A few weeks later, D was arrested and jailed pursuant to JP's warrant. Commission found that JP violated Canon 2A, 3B(2) and 3(B)4 by issuing a warrant that resulted in D's incarceration before first (1) issuing a written deferred disposition order against D; (2) issuing a written final judgment; (3) providing D with notice and an opportunity to appear at a "Show Cause" hearing; and (4) providing D with an indigency hearing. JP also made ethical violations by being discourteous and undignified towards D. *(CJC No. 11-0574-JP, Signed 08/03/12)*

Public Warning: The Commission found Kleberg County Justice of the Peace ("JP") in violation of Canons 2A, 2B, and 3B(2) by failing to comply with the law and demonstrating a lack of professional competence when he intervened in a landlord-tenant dispute case that was not pending in his court. The facts of the complaint include an Employer "(E") who allowed his employee ("T"), to live in his mobile home as a benefit of his employment. After E terminated T and asked him to vacate the mobile home within 24 hours, T asked for more time to pack his belongings. E went to JP for assistance. JP agreed to help because the mobile home was in his precinct and told E that he did not need to file for an eviction because there was no lease. E and JP then drove to mobile home and told T to immediately leave the premises (what was actually said is disputed). T then moved out. The Commission held that JP failed to comply with the law by asserting that there was no need for E to file for an eviction and lent the prestige of his office to advance the private interests of E which allowed E to evict a tenant without providing the proper notice or paying the required court fees. *(CJC No. 11-0804-JP, Signed 08/03/12)*

Public Reprimand: The Commission found Houston appellate court justice ("J") in violation of Canons 2B, 4A, and Article V, § 1-a(6)A of the Texas Constitution by lending the prestige of his office to advance private interests of his friend and her daughter. J was contacted by a friend whose daughter ("D") was arrested for shoplifting and placed in a juvenile detention center. The mother asked J for help getting her daughter out of the detention center so that she would not have to spend the night. J called the juvenile detention center and spoke with employees at various levels, identifying himself as a justice on the court of appeals, inquiring how to get an early release for D, and when he was told that policy required that she remain overnight, J made several comments regarding potential lawsuits against the county and the detention center. J also contacted a local District Judge and local County Commissioner, leaving voicemails and text messages asking for their help in securing early release for D. During all of his phone calls, he clearly identified himself as an appellate justice with the Houston court of appeals. J also made vulgar statements regarding the detention center employees in his various communications with stakeholders while attempting to secure early release for D. Local media picked up on these stories and wrote several articles recounting the events. The Commission found that J persistently attempted to use his position and authority as an appellate judge to pressure, intimidate and/or coerce the juvenile detention employees, as well as attempting to enlist the help his influential friends. The Commission also found that his inappropriate behavior fell far below the minimum standards of conduct and cast public discredit upon the judiciary. J's conduct was reported by the district attorney's office and J was later recused from presiding over any cases to which it was a party. Thus, his conduct caused interference with the proper performance of his judicial duties. *(CJC No. 12-0452-AP, Signed 08/30/12)*

Public Warning: The Commission found Aransas County Court at Law Judge (CCLJ) in violation of Canons 3B(4), 4A, and Article V, §1-a(6)A of the Texas Constitution by taking actions towards his daughter that cast reasonable doubt on his capacity to act impartially as a judge and interfered with the proper performance of his judicial duties. CCLJ was secretly videotaped by his daughter. In the video, CCLJ was captured forcefully striking his 16 year-old daughter with a belt at least 17 times, yelling profanities, and threatening her with physical harm. His daughter then released the video to the media seven years later. The Texas Supreme Court suspended CCLJ in response to an agreed motion by him and the Commission. Attorneys interviewed during the Commission's

investigation believed that CCLJ was fair and impartial. Six supported him returning to the bench, six other attorneys felt that he could no longer be effective in court because of the conduct portrayed, and two other attorneys believed motions to recuse would be filed by defense attorneys if he returned to the bench. Still other attorneys who practiced regularly in his court described patterns where CCLJ displayed anger and poor judicial demeanor, especially towards the former County Attorney. The Commissioner for TDFPS also wrote a letter stating that it was not in the best interests of the children and parents for CCLJ to preside over CPS cases. The Commission held that because CCLJ regularly presided over and decided child custody, child abuse, and family violence cases, his private conduct cast public discredit on the judiciary. It also found that CCLJ's treatment of some attorneys in his courtroom fell below the minimum standards of conduct expected of judicial officers. *(CJC No. 12-0217-CC, Signed 09/04/12)*

Private Sanctions

The judge failed to comply with the law, failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and engaged in willful conduct that was inconsistent with the proper performance of her duties by engaging in conduct that violated Section 49.031 of the Texas Penal Code. [Violation of Canon 2A of the Texas Code of Judicial Conduct and Article V, §l-a(6) of the Texas Constitution] Private *Reprimand of a Former District Court Judge (09/01/11).*

The judge failed to comply with the law and demonstrated a lack of professional competence in the law when he summoned a party to appear in court when no case was pending. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] Private Order of *Additional Education of a Justice of the Peace (09/08/11).*

The judge failed to perform his judicial duties without bias or prejudice by participating in improper ex parte communications with Defense counsel and with the Defense's expert witness. Relying on the information obtained ex parte from the expert, who alleged that a party to the litigation had engaged in fraudulent conduct, the judge undertook the role of investigator or special prosecutor in an effort to ferret out whether the party had committed fraud. Once the judge became embroiled in the parties' discovery dispute, he created a strong perception that he could not be a fair and impartial arbiter in the case. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct] *Private Warning of a District Judge (09/13/11).*

The judge failed to follow the law and demonstrated a lack of professional competence in the law when he reduced a defendant's bond that had been set by another magistrate. The judge reduced the bond based on an oral request from members of the defendant's family and without notice to the State as required by Article 17.091 of the Texas Code of Criminal Procedure. The judge had previously been counseled against this practice by the District Attorney. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (09/26/11).*

The judge failed to follow the law and demonstrated a lack of professional competence in the law when he reduced a defendant's bond that had been set by another magistrate. The judge reduced the bond based solely on an oral request from a defense attorney. The judge had previously been counseled against this practice by the District Attorney. [Violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (09/29/11).*

The judge failed to obtain mandatory judicial education hours during the 2009 academic year. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Court Judge (10/10/11).*

The judge failed to follow the law and demonstrated a lack of professional competence in the law when he reduced defendants' bonds that had been set by other magistrates. The judge reduced the bonds based solely on the oral requests from a defense attorney and/or a defendant's family member. The judge had previously been counseled against this practice by the District Attorney. [Violations of Canon 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (10/12/11).*

The judge lent the prestige of his judicial office when he identified himself as a judge in a letter sent on the city letterhead asking a favorable treatment of a city employee. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge (11/03/11).*

The judge failed to follow the proper steps under Article 45.046 of the Texas Code of Criminal Procedure by issuing a capias pro fine warrant and a commitment order directing defendant to serve time in jail in order to discharge a fine. The commitment order was issued on the same day the judge entered the judgment of guilt and assessed the fine. It was clear the defendant was not afforded an opportunity to make a good faith effort to discharge the fine before arrest and commitment to jail. Other discrepancies in the court record raised questions as to whether the judge had followed proper procedures in earlier stages of the case. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Municipal Court Judge (11/22/11).*

The judge failed to announce the ruling in open court as required by Rule 557 of the Texas Rules of Civil Procedure. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (01/03/12).*

The judge exceeded his authority when he issued summonses directing several individuals to appear in his court in an apparent attempt to mediate a private dispute that had allegedly resulted in the filing of criminal charges. None of the individuals had entered pleas. One of the individuals was summoned to court as a witness, not a defendant. The judge acknowledged he used the proceeding as an opportunity to admonish the individuals regarding their conduct. The judge acted improperly when he allowed the individuals to testify in court about the merits of their pending cases outside the presence of the State and prior to entry of any guilty or nolo contendere plea. Additionally, the judge failed to adequately maintain and preserve court records; ensure his court staff maintained a docket of the proceedings; and demonstrated a lack of professional competence in the law. [Violation of Canons 3B(2) and 6(C)2 of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Municipal Court Judge (01/03/12).*

The judge acted improperly when he followed a litigant into the court's parking lot in a confrontational manner that was not patient, dignified or courteous regarding the litigant's small claims case. *[Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] Private Admonition of a Justice of the Peace (01/03/12).* The judge failed to maintain professional competence in the law when he: (1) dismissed a criminal complaint without a motion from the prosecutor based on a belief that the "complaint was weak;" and (2) set a personal recognizance bond in violation of Section 17.02 of the Texas Code of Criminal Procedure in a case in which the defendant was charged with injury to a child. Additionally, the judge allowed

his relationship with the defendant's relative to improperly influence his conduct and judgment which resulted in the defendant receiving favorable treatment. The judge also used his judicial position in an attempt to influence the police department to reduce the charges against the defendant. [Violation of Canons 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace (01/03/12).*

The judge failed to comply with the law and failed to maintain professional competence in the law when he issued a non-monetary judgment in a small claims case. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace (03/12/12).*

The judge failed to comply with the law and demonstrated a lack of professional competence in the law when he unilaterally negotiated plea deals and dismissed criminal cases without the consent of the State. The judge further lent the prestige of his office to advance the private interests of charitable organizations when he allowed a defendant to make a donation to a charity in exchange for having a speeding citation dismissed. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a former Municipal Court Judge (03/12/12).*

The judge failed to comply with the law and failed to maintain professional competence in the law when she signed and issued a capias pro fine warrant for the arrest of a traffic defendant without first giving the defendant notice and conducting a show cause hearing as required by Article 45.051 of the Texas Code of Criminal Procedure. [Violation of Canons 2A, 3B(2) of the Texas Code of Judicial Conduct and Article V, § l-a(6)A of the Texas Constitution.] *Order of Additional Education of a Municipal Court Judge (03/13/12).*

The judge lent the prestige of his judicial office to advance the private interests of a family member when he used his title "J.P." and his official court seal on a statement supporting his nephew. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (05/21/12).*

The judge willfully and/or persistently failed to timely execute the business of his court, in violation of Article V, section 1-a(6)A of the Texas Constitution and Section 33.001(b)(1) of the Texas Government Code, and denied a litigant's right to be heard, by waiting more than three years to set a case for trial despite the repeated requests for a trial setting from the litigant's attorney. [Violation of Article V, §1 -a(6)A of the Texas Constitution and Canon 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace (06/04/12).*

The judge failed to require that his court coordinator comply with the provisions of the Texas Code of Judicial Conduct. As a result, the court coordinator engaged in a series of improper ex parte communications with the State's attorney. The emails included unsolicited legal advice, which caused the State's attorney to believe that the judge had authorized, if not authored, the communications. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge (06/11/12).*

The judge failed to comply with the law and demonstrated a lack of professional competence in the law when: (1) after conducting a hearing on the merits of a peace bond application and determining that a peace bond was warranted, the judge failed to issue a written order that required the subject of the application to enter into a peace bond, specified the duration of the peace bond order, and adjudged the costs of the proceeding against the defendant, as required by articles 7.03 and 7.14 of the Texas Code of Criminal Procedure; and (2) after the defendant failed to post the peace bond, the judge placed the peace bond order "on hold" rather than committing the defendant to jail as required by article 7.08 of the Texas Code of Criminal Procedure. [Violation of Canon 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace (07/05/12).*

The judge failed to comply with the provisions of the Texas Property Code when he entered a judgment in an eviction action that included an order that the landlords return half of the security deposit to the tenant. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace (08/10/12).*

The judge violated Canon 3B(4) of the Texas Code of Judicial Conduct by failing to treat court staff, defendants, and a prosecutor in a manner that was patient, dignified and courteous. In addition, the judge acted

without authority when he banned the prosecutor from appearing in his court, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct. The judge also violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct when he: (1) dismissed cases pending in his court without a motion from the State, some of which were dismissed after he was advised by the district attorney's office that he had no authority to do so; and (2) followed a procedure in which he held certain "Parent Contributing to Non-attendance" cases "in abeyance" without any legal authority for doing so and without complying with Article 45.051 of the Texas Code of Criminal Procedure. In addition, the judge violated Canons 2B and 3B(5) of the Texas Code of Judicial Conduct by giving favorable treatment to a public official in a manner that suggested that the official was in a special position to influence the judge. Finally, the judge violated Canon 3B(10) of the Texas Code of Judicial Conduct by making public comments to the media about the school districts' handling of truancy cases in a manner which suggested how he might rule in those cases. The judge's public criticism of the school districts, as well as public comments voicing his opinion that he had been "Mexicanized" in the primary election, constituted violations of Canon 4A(l) of the Texas Code of Judicial Conduct since the comments cast reasonable doubt on his capacity to act impartially as a judge. [Violation of 2A, 2B, 3B(2), 3B(4), 3B(5), 3B(l 0) and 4A(l) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace (08/10/12).*

Based on numerous entries on a Facebook page, it was apparent to the public that the judge was actively involved as an organizer of a charitable fundraiser in violation of Canon 4C(2) of the Texas Code of Judicial Conduct. The judge was aware that his name and judicial title were being used to promote the fundraiser, to sell tickets, and to solicit funds, yet he took no affirmative steps to correct that impression. The judge's active participation in the fundraiser also conveyed the impression that the parent of the recipients of the charitable funds was in a special position to influence the judge and raised questions about the judge's impartiality. [Violation of 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Municipal Court Judge (08/23/12).*

The judge violated Canon 3B(ll) of the Texas Code of Judicial Conduct when, in his judicial capacity, he was able to obtain nonpublic information from the District Clerk's Office, which he then used for purposes unrelated to his judicial duties. [Violation of 3B(11) of the Texas Code of Judicial Conduct.) *Private Admonition of a District Judge (08/23/12).*

Suspensions

Suspension Type	Judge	Date Issued	Status
15a	Hon. Mario Perez Associate Municipal Judge Forest Hill, Tarrant County, Texas	06/27/12	Pending criminal trial
15a	Hon. Priscilla Ann Sanders Justice of the Peace Tulia, Swisher County, Texas	10/18/12	Pending criminal trial

Resignations

Judge	Court	Agreement Date
Mike Wiggins	Former County Judge Seguin, Guadalupe County	06/14/12
R.G. Bowers	Municipal Court Judge Diboll, Angelina County	10/18/12

Texas Ethics Commission

Sworn Complaints

Editor's Note: Complaint orders with duplicative facts and findings to those listed below were omitted.[1]

Date Issued	Violations	Sanction
01/03/2012	Candidate for county judge filed an application for a place on the 2010 Harris County Democratic Party general primary ballot. Candidate failed to disclose this expenditure on any finance reports and was found in violation of §254.031(a)(1). SC-31008253	$300 civil penalty
01/03/2012	Candidate for Navigation District Commissioner violated §253.094 and §253.003 by accepting a $5,000 contribution from a construction company that was registered by that Secretary of State as a for-profit corporation. He also violated §255.006(b) by allowing a campaign advertisement to run that stated he was running for re-election when he was not the officeholder at that time. SC-31011391. On January 9, 2012, construction company was also fined $500 for this violation. SC-31011392	$1,000 civil penalty
01/03/2012	Unopposed candidate for justice of the peace violated §254.031(a)(1) by failing to itemize contributions from each person that aggregated over $50. He also violated this section by reporting an expenditure made for a filing fee on the 8-day pre-election report instead of the semiannual report as required. Candidate violated §254.031(a)(3) and §254.036(a) by reporting the incorrect date for political expenditures. Candidate also violated §254.031(a)(6) by reporting expenditures as "running totals" rather than the total amount actually incurred during that period. SC-3110493	$1,000 civil penalty
01/09/12	Respondent was a successful candidate for a city council position. Respondent used a Mustang from a local Ford dealership to ride in city parade. Commission found it unclear whether the respondent intended to pay Ford for the use of the Mustang at the time of the agreement or whether the use of the vehicle was intended as a political contribution, so respondent violated §§253.003 and 253.094. Respondent did file a report showing $100 payment to Ford "for use of mustang in parade" and an invoice from Ford, however it was unclear as to the date the invoice was issued by Ford. Respondent violated §254.031(a)(3) by not properly disclosing the purpose of a $300 political expenditure to a restaurant. The category "Event Expense" is not sufficiently specific. Disclosure of purposes of expenses in not required for expenditures under $50. The commission also found that "USPS" is a common enough acronym to by sufficient for payee's name. SC-311010324	$100 civil penalty
01/09/12	Respondent was a successful candidate for City Commissioner. Respondent violated §254.031(a)(1) by not reporting the date of one $500 political contribution and only reporting the month for another $500 contribution. The Commission found that having an incorrect balance for political contributions on a report is a de minimis or technical violation as long as all political contributions are correctly itemized. Respondent also failed to file her semiannual reports timely. SC-3110335	$300 civil penalty

Date Issued	Violations	Sanction
01/09/12	Respondent was a domestic limited partnership. Its general partner is a domestic for-profit corporation. Respondent made three political contributions totaling $550 to a candidate. A partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations, thus Respondent made a prohibited political contribution. (Ethics Advisory Opinion No. 215). SC-31108185	$300 civil penalty
01/10/12	Respondent was a campaign treasurer for a general-purpose committee. Respondent violated §254.031(a)(8) by failing to report the correct amount of political contributions maintained by the due date of the report. Respondent violated §254.031(a)(1) by failing to itemize contributions that exceed $50 in aggregate on Schedule A. Respondent also violated §254.031(a)(3) by reporting all the expenditures made by a staff member from personal funds as a lump-sum amount, instead of itemizing each expenditure to show who the expenditures were ultimately made to. Respondent then violated §254.031(a)(3) by reporting the loan repayment to the staff person as a political expenditure on the wrong schedule. Respondent also violated § 254.151(2) by listing	$300 civil penalty
01/11/12	Respondent was a campaign treasurer for a general purpose committee. Respondent failed to report the correct amount of contributions maintained because he reported $0 but bank account statements showed $2,043.45 in contributions maintained. SC-31009282	$100 civil penalty
01/27/12	Respondent was a campaign treasurer for a general purpose committee. The commission found a de minimis violation because although total contributions maintained were incorrect, the difference between the amount disclosed on the original report and the corrected report did not exceed the lesser of 10% or $2,500. Respondent violated §254.031(a)(8) on its 30-day pre-election report because the difference between the amount disclosed on the original report and the amount disclosed on the corrected report was $20,686.50. Respondent also violated §254.031(a)(3) when the description for five political expenditures just stated "PC" or described a purpose different than that described in the corrected report. Respondent violated §§254.151(4)-(5) by not listing the names of candidates and officeholders for school board and city elections supported by the committee in the "Committee Activity" section of the reports. The committee's name has the word "Democrats" and when the name of a committee includes a party identification, the legal requirement that each report identify candidates supported by party classification is satisfied. However, city and school board elections are non-partisan, so the names of candidates and officeholders should be disclosed in the "Committee Activity" section of the reports. Respondent also failed to file the proper pre-election reports. SC-31009298	$500 civil penalty
02/15/12	Respondent was a candidate for office of County Treasurer. Respondent violated § 253.032(e) by accepting a $500 contribution from an out-of-state political committee and not reporting it as such on his finance report. This section requires the same information for an out-of-state political committee as required for general-purpose committees by§§252.002 and 252.003 or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. SC-31011384	$1,500 civil penalty

Date Issued	Violations	Sanction
02/15/12	Respondent was a campaign treasurer for a general purpose committee. Respondent violated § 254.031(a)(1) by failing to disclose the full name of a contributor, § 254.031(a)(3) by failing to list the actual vendor payees for 15 political expenditures described as reimbursements, § 254.151(6)for not disclosing the principal occupation of a contributor, and § 254.154(c) by failing to file an 8-day pre-election report. SC-31011397	$1,500 civil penalty
02/17/12	Respondent was a State Representative. Respondent violated §§254.031(a)(1) & (3) because the following acronyms or names are not sufficient as full names of contributors or payees: "AIA," "Haa Better Government Fund," "Texas Employee Political Action Committee of TXU Corp," "C.S.," "J.N.," "W.," or "Mr. C. C." The Respondent also violated §254.031(a)(3) by failing to identify the categories of goods or services received in exchange for political expenditures. Respondent also failed to identify the vendor payee of a political expenditure disclosed as a reimbursement. Respondent failed to properly disclose the occupation and employer of one contributor. However, she sufficiently met her burden with 5 others because she disclosed that the contributors were self-employed and they were officers or principals of entities that bore their name, or were otherwise self-employed. SC-3110471 a PO Box address for the campaign treasurer, instead of his residential or business street address. SC-31108178	$500 civil penalty
02/27/12	Respondent was a campaign treasurer for a general purpose political committee. Respondent violated §254.031(a)(1) by reporting the full name of contributors as "Crain" and "Sosa," and leaving blank the spaces provided to disclose principal occupation or job title and employer information for the contributors. Respondent also violated §254.151(4) for not making it clear the candidates that her committee supported. Respondent also violated §254.035 because the endorsements and activities in which the committee engaged suggest that the dates of some of the expenditures did not reflect the date that the expenditures were readily determinable, but instead disclosed the date when a bill was received, i.e. holding block walks to distribute flyers during a period covered by an 8-day pre-election report, but disclosing the expenditure as having been made after that period. Respondent violated §254.154 by failing to file 30-day and 8-day pre-election reports. SC-31009268	$250 civil penalty
02/27/12	Respondent was President of a political subdivision across North Texas. Respondent violated §255.003 (prohibiting an officer or employee of a political subdivision to knowingly spend or authorize the spending of public funds for political advertising) by using his school district email, during working hours, to assist in the creating and/or disseminating political advertisements to pass a school bond. SC-31108198	$500 civil penalty
03/02/12	Respondent was a candidate for a county probate court. Respondent violated §254.063(b) because she filed her report with the county clerk instead of the county elections administrator. The Commission found that there was insufficient evidence to show that Respondent did not describe the purposes of her political expenditures adequately because "a critical factor in determining whether the respondent sufficiently described the purpose of a political	No Sanction

Date Issued	Violations	Sanction
	expenditure is the respondent's level of involvement with the expenditure. For instance, if the respondent directed a political consultant's activity by telling the consultant how to spend the funds, the respondent would have been required to disclose the ultimate recipient as the payee and describe the purpose of the expenditure in more detail than "campaign services/expenses." On the other hand, if the respondent gave money to the consultant knowing that the consultant would pay other service providers but did not exercise discretion over the details of how the consultant made the payments, then the respondent would comply with the law by reporting the payment to the consultant, and describing the purpose of the expenditure as being for consulting or campaign services would be sufficient." Respondent's listing of "consulting" and "consulting and printing" and "banners and consulting" were therefore sufficient. The Commission also found that although holding a fundraising event in a jewelry store which was owned by a corporation qualified as an in-kind contribution, Respondent did not illegally accept a contribution from a corporation because there was no evidence that she knew that store was a corporation. SC-31007235	
03/05/12	Respondent was a successful candidate for Mayor. Respondent made a de minimis or technical violation of §254.036 by not using the proper forms to file finance reports but still disclosing the same information as required by the proper forms. He violated §254.036 when he used his own form which did not disclose the amount of a political expenditure as required by the correct Schedule F. Respondent violated §254.031(a)(6) by under-reporting his total political expenditures by $1,900 in his semiannual report. Respondent violated §254.031(a)(3) by failing to disclose the purpose, payee's full name, and the payee's address. Again, acronyms not commonly used are unacceptable. SC-31010325	$500 civil penalty
03/57/12	Respondent was a successful candidate for County Commissioner. Respondent violated §254.064(c) when he ran opposed in a primary and failed to file 30-day and 8-day pre-election reports. Respondent violated §254.064(b) when he failed to also file these reports for the general election. Respondent also violated §254.064(e) when he failed to file a runoff election report. SC-31010340	$600 civil penalty
03/07/12	Respondent was a successful candidate for City Council. Among other various de minimis violations in her campaign finance reports, Respondent violated §254.031(a)(3) by not listing the purpose of several campaign expenditures. She left the fields blank. Respondent did not violate §253.003(b) by accepting a contribution from a company because it was listed as a limited liability company with the Secretary of State and therefore not a corporation. SC-31012424	$200 civil penalty
03/08/12	Respondent is campaign treasurer for a specific-purpose committee. Respondent reimbursed an individual for $7,380 in political expenditures made on behalf of the committee. Respondent violated §254.031(a)(3) because he only disclosed the reimbursement to the individual and did not disclose the actual vendors to whom the expenditures were made on Schedule F. Respondent also violated §254.031(a)(6) by failing to disclose these expenditures on the cover page totals of his reports. Respondent violated §254.031(a)(6)	$2,000 civil penalty

Date Issued	Violations	Sanction
	by reporting expenditures that were made during the 30-day and 8-day pre-election periods on his January semiannual report. Respondent further violated §254.031(a)(2) by failing to disclose approximately $2,600 in loans from an individual who made expenditures for the committee from personal funds because the individual was not reimbursed for the expenditures until a subsequent reporting period. Section 254.031(a)(1) was violated because Respondent failed to itemize $600 in political contributions in his semiannual report and $4,850 in political contributions in his 8-day pre-election report. The Respondent violated §§20.309(7) and 20.311(a) of the Ethics Commission Rules by failing to notify the ACCD that the purposes of the committee had changed and that the committee supported a different measure. Finally, Respondent was also cited for failing to timely file his finance reports. SC-31012426 and SC-31011396	
03/16/12	Respondent was Mayor at time of complaint. Respondent directed that a letter be included with residents' utility bills which encouraged citizens to cancel subscriptions to a local newspaper, The Community News, because the newspaper was biased against Respondent and the members of the city council. The letter than gave examples of the service he and council members had provided while in office, i.e. that he and council members serve as unpaid volunteers. The complaint also included an email stating that the letter could be printed front-and-back to minimize cost to city. Respondent violated §255.003 because the letter was promotional rather than informational, thus Respondent authorized the use of city funds or resources to distribute political advertisements. SC-31011409	$200 civil penalty
04/16/12	Respondent was a State Representative and candidate for re-election in 2010. The complaint alleged that the respondent did not disclose her spouse's financial activity and the gifts of three vehicles from a highway contractor in her personal financial statements filed in 2009 and 2010. The autos in question were owned by and registered to a private business entity but bore state official license plates which were issued to the Respondent. TEC found that Even if the vehicles at issue were the separate property of the respondent's spouse in the form of compensation, the facts indicate that the respondent exercised control over that property. Therefore, Respondent violated §572.023(b)(1) of the Government Code by not disclosing her spouse's financial activity, including in-kind compensation of automobiles over which she had actual control.	$2,000 civil penalty
04/17/12	Respondent was publisher of a newsletter. The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes. Respondent violated §255.002(b) by charging two candidates for public office rates differing by $5,000 for the same amount of advertising space. SC-31007215	$500 civil penalty
05/03/12	Respondent was registered with Secretary of State as a for-profit corporation. Complaint alleged that Respondent made unlawful political contribution for $150 to candidate for County Commissioner. Respondent violated §§253.003 and 253.094 because candidate's report showed he accepted political contribution from Respondent for $150. SC-31108188	$150 civil penalty
05/10/12	Respondent was incumbent candidate for County Judge. Respondent violated §254.031(a)(3) by not including the full address of the payee/vendor for a political expenditure over $50. Respondent was also cited for filing reports late and inadvertently reporting incorrect total contributions maintained. SC-31109222	$250 civil penalty

Date Issued	Violations	Sanction
05/11/12	Respondent was a campaign treasurer for a general-purpose committee. Committee had no political contributions or expenditures involved with the election and was therefore not required the file a 30-day report. However, the Respondent violated §§254.031(a)(8) and 254.031(a)(6) by failing to report accepted contributions and the correct amount of contributions maintained in its semiannual reports. SC-31109201	$200 civil penalty
05/11/12	Respondent was a District Judge. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on four campaign finance reports. Respondent swore that she used a calculation method that takes the bank balance, subtracts outstanding payments that have been made but have not yet cleared the bank, and adds funds on hand that are not deposited but are received during the reporting period. Respondent violated §254.031(a)(8) by failing to report the balance that was on deposit as of the last day of the reporting period. Respondent made a de minimis violation of §254.031(a)(1) by not reporting the full legal name of a law firm that contributed more than $50. It was not a violation to use the acronym of a committee that contributed more than $50 because the committee uses the acronym when filing campaign finance reports and an Internet search using the acronym returned a first-page result with the full name of the committee. Respondent did violate §254.0611(a)(2)(A) by listing "self" as the employer when the attorneys worked for law firms. Respondent made no violation by listing "self" as employer/law firm if contributors were solo practitioners. Respondent also did not violate §254.0611(a)(2)(A) by listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed. Respondent violated §253.1611(b) by making a $250 political contribution to a political committee in connection with a primary election, which are not allowed to exceed the officeholder's pro rata share of the committee's normal overhead and administrative or operating costs, which is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. Respondent violated §253.1611(d) by making political contributions to a political committee in excess of $250 during a calendar year in which the office held was not on the ballot. These contributions comprised of payments made to the county democrats committees for "tickets for event," "breakfast for meeting," "Table Sponsor at Banquet," and "Super Bowl Sponsor" to name a few. SC-31109204	$250 civil penalty
05/22/12	Respondent was a campaign treasurer for a general-purpose committee. Respondent did not accept prohibited political contributions from a corporation because corporations may make political expenditures for the administration of a general-purpose committee. The contributions at issue were made to the committee for administrative expenses and the Respondent filed a corrected report disclosing the payments on Schedule C-2. Respondent violated §254.031(a)(6) by reporting some expenditures as non-political and not including them in the totals on the cover pages, when the expenditures were in fact political expenditures. Respondent violated §254.031(a)(3) because political expenditures that were made out of the personal funds of a staff member were disclosed as reimbursements to the individual instead of political expenditures to the actual vendor to whom the personal funds were paid. SC-31105162	$100 civil penalty

Date Issued	Violations	Sanction
07/02/12	Respondent was a campaign treasurer for a general-purpose committee. Respondent violated §254.151(2) by not listing an address or phone number for himself on the semiannual report. Respondent also violated several sections by not itemizing contributions and disclosing incorrect amounts for contributions maintained. Respondent violated §254.031(a)(1) by not disclosing the dates that contributions were received. Respondent violated 254.151(6) by leaving blank fields for several contributors' principal occupation who donated more than $50. Respondent violated §254.031(a)(3) by leaving blank the fields for the date, name and address for whom expenditures were made to, as well as the description for those expenditures. SC-3110470	$300 civil penalty
07/02/12	Respondent was a District Judge. Respondent did not violate §§253.003 and 253.094 by accepting political contributions from a limited liability company (a funeral home) and a for-profit corporation. The funeral home was not a prohibited contributor and there was no evidence that Respondent knew the contribution from the rehabilitation center was a prohibited corporation. Respondent violated §254.0611(a)(2)(A) by listing contributors as self-employed businessmen when they were either owners or employees of entities that did not contain the contributors' names in the business title (there were several entries where this was sufficient because the company title had the contributor's name). He also violated this section by listing the contributors' principal occupation and job title as "Attorney at Law" and listing the contributors' employer as "Law Firm" when the attorneys were employed by a law firms whose title did not bear the contributors' names. However, TEC noted that the Respondent only made a de minimis violation by using "Attorney at Law" and "Law Firm," instead of the full firm name, for several contributors who were sole practitioners or owners of small firms operated as professional corporations or LLPs which included the contributors' names in the title. Respondent violated § 254.031(a)(3) by failing to include the full address for payees. Respondent did not make a violation when he purchased turkeys from HEB for needy families and recorded the payee as "HEB Grocery" instead of listing the ultimate recipients of the turkeys because there was no evidence that the political expenditures were more than $50. Respondent violated §254.031(a)(3) by listing political expenditures under the category of "Contributions/Donations Made by Candidate" with descriptions of "Election Day Sponsorship" and "Local Election Day Sponsorship" because they did not disclose the specific goods or services purchased. Respondent also violated §§253.035(h) and 254.031(a)(3) by improperly reporting expenditures made from personal funds and reimbursement to himself. Respondent also failed to properly report outstanding loans. SC-31112263	$500 civil penalty
09/13/12	Respondent was a candidate for State Representative. Respondent violated §254.001 by accepting $490 in anonymous cash donations because he was unable to disclose the full name, address and employer of the contributor, even though he later donated the $490 to a non-profit. Respondent also violated §254.031(a)(6) by failing to disclose the correct amounts of contributions maintained on the cover sheet of the semiannual report. Respondent violated §254.031(a)(3) by failing to report his $750 filing fee as a political expenditure. SC-312051 64 and SC-31205132	$500 civil penalty
09/19/12	Respondent was a candidate for County Tax Assessor Collector. Complaint alleged that the Respondent did not include a disclosure statement on political advertising. Respondent distributed small notebooks with the Respon dent's campaign stickers placed on the cover. TEC found no violation	No Sanction

Date Issued	Violations	Sanction
	because disclosure statement is not required on lapel stickers, and the small notebooks were similar in type to campaign buttons, pins, or hats, and therefore fall under the disclosure statement exception. Respondent did violate §255.006(c) by using a campaign sign which stated: "Elect [Respondent's name] Tax Assessor Collector" because he did not include the word "for" immediately before the name of the office. SC-31205150 and SC-31205149	
09/26/12	Respondent was a candidate for State Representative. Respondent violated §254.0612 by leaving blank spaces for the employer of the contributors of $99,000 in political contributions. Even though Respondent stated that he/staff made oral requests for employer information, they were not evidenced in writing as required by §254.0312(c)(3). Respondent also violated §254.031(a)(3) by not listing the categories for political expenditures of $142,700. SC-31011377	$1,000 civil penalty
09/26/12	Respondent was a County Commissioner. Respondent violated §254.031(a)(3) because the following categories are not sufficiently clear as to not require a description for the reasons stated: (1) the categories of "Donation," "Donation/Memorial Expense," and "Donation/Ramp" are not sufficiently specific because it is unclear whether the expenditures were for monetary donations or to purchase items that were subsequently donated; (2) the category of "fees" did not disclose the purpose of the fees; (3) the categories of "event," "expense," and "Event Expense" are not sufficiently specific because it is unclear whether the expenditures were for admission to events, donations, or some other purposes; (4) the categories of the expenditures for "office expense" did not clearly indicate their purposes; and (5) the expenditure of $2,000 for "Transportation, Equipment, repair of trailer" did not indicate whether it was for contract labor or purchases for the respondent's campaign. However, the TEC noted that the following categories were sufficiently clear to not require a description: "Advertising," "Printing," "Consulting," "Telephone & Service," "Food/Beverage Expense," "Meeting," "Meeting/Food/Beverage expense," and "Material for greenhouse" because the category and payee information were sufficiently clear to disclose the goods or services the respondent purchased. SC-31109217	$800 civil penalty
09/26/12	Respondent was a County Commissioner. Respondent violated §254.031(a)(3) by failing to disclose $32,300 in political expenditures as shown by his bank statements. Respondent stated that the expenditures were for campaign marketing services during his campaign for re-election and included "expenditures for campaign mail outs, automatic phone dialer messages sent to potential voters at various times throughout the campaign, newspaper ads, push cards, etc.," but Respondent acknowledged that he failed to report them. Respondent also violated §254.031(a)(3) by failing to provide a sufficient purpose or category of goods and services for the following descriptions: "senior bingo," "senior birthdays," "bingo for constituents," "East Montgomery Co. Improvement District Back to School Bash," "Splendora Area Softball Assn – Opening Day Parade," "Campaign Expenses – Early Voting Camp," and "donation to senior constituents." SC-31112264 and SC-31110244	$7,000 civil penalty
09/28/12	Respondent was a District Clerk. Among his violations for failing to properly report contributions and expenditures, Respondent violated §254.031(a)(3) by merely restating the category of an expenditure as the description for $41,400 in political expenditures. SC-3110357	$900 civil penalty

EX PARTE

Dear Judges,

We saw a wonderful gathering of our colleagues at the annual conference in Houston, September 9-12, 2012. It was a conference dedicated to our theme of vision, discipline and courage, attributes that are manifested daily by Texas Judges. For those of you who did attend I am sure you found the topics motivating as well as relevant. For those of you who did not…you missed a great one!

The curriculum committee is already planning the 2013 annual conference which will be exceptional in every way. I hope all of you will make your plans now to attend the annual in September, 2013. We will be meeting at the J.W. Marriott in San Antonio, a wonderful venue for the conference and a great place to bring the entire family.

Our Executive Director, Randy Sarosdy, will be leaving us December 31, 2012. He has served tirelessly and with dedication to the Texas Center. We wish him great success in his upcoming endeavors and in pursuing his love of triathlons….bring home those medals, Randy!

The TCJ has some real challenges this year. In addition to our search for a new Executive Director, we also face financial challenges like we have never faced before. Despite best efforts by our Immediate Past Chair, Justice Gina Benavides, and Randy Sarosdy, our budget for the upcoming 2013 year was cut to the bone. We will be unable to present the very popular YAFI (You Asked For It) conference and the Texas College for Judicial Studies will be severely reduced in the number of attendees and the breadth of the topics.

Notwithstanding those obstacles, I can assure you that what will never be compromised is the quality of our programs. We may not have as many…but we will have the best!

Our goal will be to stay at the top of the field in providing quality judicial education that is not only relevant, but cutting edge. We will continue to have the best speakers and the best materials for the best judges in the nation.

So, despite our challenges the TCJ is going to be "mighty fine, mighty fine" (using the words of Coach Teaff's 96 year old mom) and we will win in the arena of judicial education.
We are going for the gold.

Sincerely,

Hon. Linda Chew
Chair

Letter from the Chair

Spotlight on the Staff

Patricia Hall: Patricia Hall has worked at the Texas Center since May 2011 as Accounting Assistant. Patricia graduated from the University of Texas San Antonio in 2003 with a BBA in Management and is currently pursuing her CPA certification. Because of her father's career as a foreign service officer, she grew up mostly in Asian countries such as China and Burma during elementary school and Vietnam and Japan in high school. She also grew up in Washington DC and attended boarding school in Connecticut. Prior to joining the Texas Center, she worked as a Budget Analyst for the Texas Department of State Health Services. Her interests include karaoke, billiards, travelling, and spending time with friends and family.

Shirley Irvin: Shirley Irvin has been with the Texas Center since 1999. She was born and raised in Baton Rouge, Louisiana and relocated to Austin in 1987. Prior to joining the Texas Center staff, she was an Executive Secretary at Holt, Rinehart and Winston Publishers and a Human Resources Rep for Tracor, Inc. In her role as Executive Assistant at the Texas Center, Shirley keeps the office running smoothly and her wonderful sense of humor keeps the office full of laughter. When not at work, Shirley enjoys shopping, reading, listening to gospel and jazz music, and most of all spending time with her two adorable grandchildren, Brooklynn and Edwin.

Bruce Lawrence: Bruce Lawrence has been the Texas Center's Financial Officer since January 2011. Bruce's background includes several years of non-profit auditing experience in public accounting preceded by several years with the Texas State Auditor's office. Before becoming a certified public accountant, Bruce was the senior financial accountant for a precious metals brokerage firm for six years overseeing transactions involving gold and silver bullion and rare coins. Bruce graduated from the University of Texas in 1998 with a degree in economics and later earned a degree in accounting. In 1988, he graduated from the Musician's Institute in Hollywood, CA and served as an instructor at Austin Guitar School for 15 years and performed in Austin for over twenty. Bruce lives with his wife and their two young children in a house full of laughter and entropy.

Silent Auction

Melinda Garriga, right, was recognized by Justice Gina Benavides, left.

Our heartfelt thanks go out to the Texas Court Reporters Association for once again organizing the silent auction at the Annual Judicial Education Conference. This group has generously managed the silent auction since 1995, putting in countless hours of hard work and raising well over $150,000 for judicial education.

This year, Melinda Garriga, the auction's organizer, was recognized by Justice Gina Benavides, outgoing chair of the Texas Center for the Judiciary, for her dedication to the Texas judiciary. Ms. Garriga has been in charge of the auction since 2008 when she took over for Ms. Judy Miller, CSR and Ms. Susan Simmons, CSR. Ms. Garriga has successfully raised more money each year that she has run the auction.

by Gail Bell

Advisory Board

College for New Judges
December 02-07, 2012
Westin at the Domain | Austin, TX

Regional Conference A
January 07-08, 2013
Hyatt Regency Lost Pines | Lost Pines, TX

Regional Conference B
February 07-08, 2013
Omni Bayfront Hotel | Corpus Christi, TX

Education Summit
February 19-20, 2013
Sheraton Austin Capitol | Austin, TX

Family Violence
March 07-08, 2013
San Luis Hotel | Galveston, TX
Cost: $60.00

Implicit Bias
March 25-26, 2013
Sheraton Gunter | San Antonio, TX

Texas College for Judicial Studies
April 11-12, 2013
Westin at the Domain | Austin, TX

DWI Court Team Training
April 29- May 02, 2013
Doubletree Hotel El Paso Downtown | El Paso, TX

Criminal Justice
May 23-24, 2013
Hilton Bella Harbor | Rockwall, TX

Child Welfare Conference
June 03-05, 2013
Westin La Cantera | San Antonio, TX

2013 Professional Development Program
June 23-28, 2013
Sheraton Austin Capitol | Austin, TX

DWI College
July 01-02, 2013
Omni Downtown | Austin, TX

2013 Annual Judicial Education Conference
September 03-06, 2013
JW Marriott | San Antonio, TX

College for New Judges
December 01-04, 2013
Hyatt Lost Pines | Lost Pines, TX

Winter Regional Conference A - Regions 1, 6, 7 & 9
January 23-24, 2014
Horseshoe Bay Marriott | Horseshoe Bay, TX

Winter Regional Conference B - Regions 2, 3, 4, 5 & 8
February 20-21, 2014
Moody Gardens Hotel | Galveston, TX

Annual Judicial Education Conference
September 07-10, 2014
Omni Fort Worth Hotel | Fort Worth, TX

Upcoming Conferences

NEW JUDGES

Hon. J. Brett Busby	14th Court of Appeals	Houston
Hon. Jason Cashon	266th District Court	Stephenville
Hon. Angela Ellis	315th District Court	Houston
Hon. Eileen Gaffney	312th District Court	Houston
Hon. Elizabeth Leonard	238th District Court	Midland
Hon. Ryan Patrick	177th District Court	Houston
Hon. Benjamin Smith	380th District Court	McKinney
Hon. Angela Tucker	199th District Court	McKinney
Hon. Carlos Villalon	Child Protection Court	Edinburg

IN MEMORIAM

as of November 30th

Hon. Nickolas Barrera	Harris County Criminal Court at Law #2	Houston
Hon. Marvin Teddy "Ted" Butler	226th District Court	Karnes City
Hon. William Cornelius	6th Court of Appeals	Tekarkana
Hon. Gene Landis Dulaney	132nd District Court	Fort Worth
Hon. C.T. "Rusty" (Carroll Thomas) Hight	75th District Court	Liberty
Hon. Ramona John	Associate Judge, IV-D (Juvenile Court)	Houston
Hon. William Kilgarlin	Supreme Court of Texas	Houston
Hon. Walter McMeans	Fort Bend County Court at Law #2	Richmond
Hon. Homer Salinas	92nd District Court	Mercedes
Hon. Billie B "B.B." Schraub	Presiding Judge, Region 3	San Antonio
Hon. Larry Weldon Starr	6th Court of Appeals	Longview
Hon. Wells Stewart	308th District Court	Kerrville
Hon. R.E. (Robert Ernest "Bob") Thornton	90th District Court	Weatherford

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BENCH BOOKS

Texas Bench Book

The Texas Bench Book is a practical aid and quick reference for trial court judges in performing their judicial responsibilities. It contains a compilation of information by the Texas Center for the Judiciary's Bench Book Committee and Texas Tech School of Law. Texas trial court judges will find several resource formats, including checklists, sample scripts for hearings and trials, and guidelines. Note that the Texas Bench Book is not designed to dictate judicial procedures, but is meant to assist a trial court judge while on the bench.

Capital Cases Bench Book

The Capital Cases Bench Book is written by Texas judges for the benefit of Texas judges presiding over a capital trial. Judicial authors, Texas Wesleyan University School of Law, Texas Wesleyan Law Review editors, Texas Court of Criminal Appeals staff counsel, and the Texas Center for the Judiciary staff collaborated to write, proof, make suggestions, and edit the Capital Cases Bench Book. It is reviewed and updated on-line under the supervision of the Texas Center for the Judiciary and through the collaborative efforts of Texas judges and the Texas Wesleyan Law Review editorial staff. Note that the Capital Cases Bench Book is not designed to dictate judicial procedures, but is meant to assist capital case trial court judges. Judges presiding over capital cases should always double check the suggested substantive and procedural law for any changes in the law or unique differences in the specific case over which they are presiding.

CPS Bench Book

Judges across the state now have access to essential information on child welfare law in a user-friendly, online CPS Bench Book. The Bench Book, which is the first of its kind, allows judges to navigate the bench book like a website. It was authored by seasoned district and associate judges with dozens of years on the bench presiding over CPS cases. The book is designed to benefit new judges and experienced judges alike. When researching with the Bench Book, a judge is able to search chronologically by event (e.g., investigations, removals, adversary, status, permanency, placement, final hearing, appeals, and adoption) and topically (ICPC, ICWA, Medical Care, or Permanency Care Assistance). The information is set out in a simplified format to facilitate real-time use from the bench. Or if further research is needed, all of the case law and statutory references are directly linked to Lexis/Nexis, free of charge. Through the Texas Center for the Judiciary's website, the CPS Bench Book provides secure access to checklists, practice notes, national and statewide policies, and numerous links to helpful guidelines, forms and other websites.

Public Health Law Bench Book

The purpose of this bench book is to serve as a guide for judges who evaluate public health control measures, such as quarantine and isolation, particularly in the face of a catastrophic event such as a pandemic flu. The Texas Constitution discusses Texas' open courts policy, which is based on the importance of everyone having access to justice and to a day in court. The likelihood that this important aspect of our society could be disrupted during a public health emergency, such as a major hurricane or a more long-term emergency such as a pandemic flu, has led to the creation of this bench book and the forms included in its appendix. This book briefly lays out which laws govern during a public health emergency and what role the courts play in ensuring that the balance between public safety and individual rights is not forgotten.

NEW RESOURCES *for* JUDGES

This bench book provides the Texas judiciary with a single, comprehensive reference for family violence law. In addition to identifying and organizing the relevant primary sources (state and federal statutes annotated with case law), the benchbook also takes advantage of current technology by providing hyperlinks to the online resources discussed in each chapter's comments section. It is a project of the Office of Court Administration and funded with a grant from the Criminal Justice Division of the Office of the Governor in conjunction with the U.S. Department of Justice Office of Violence Against Women's STOP program.

JUDICIAL RESOURCES

American Bar Association
The ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

Employees Retirement System of Texas

Visit this website to review the JRS-II booklet which provides information regarding retirement benefits available to eligible justices, judges or commissioners of specified courts in the State.

JERITT
The Judicial Education Reference, Information and Technical Transfer (JERITT) Project is the national clearinghouse for information on continuing judicial branch education for judges and other judicial officers; administrators and managers; judicial branch educators; and other key court personnel employed in the local, state, and federal courts.

Judicial Committee on Information Technology

Judicial Ethics Opinions
This section of the OCA website lists all the current opinions given by the Committee on Judicial Ethics.

Office of the Attorney General, State of Texas

The Office of Court Administration
The Office of Court Administration (OCA) is a state agency that provides administrative support and technical assistance to all of the courts of Texas. The agency was created in 1977 and operates under the direction of the chief justice of the Texas Supreme Court.

Out-of-State Meal and Lodging Rates
Traveling to a conference out-of-state? Find out how much is authorized for meals and lodging.

Secretary of State, Elections Division

State Commission on Judicial Conduct
The 2010 State Commission on Judicial Conduct is the independent Texas state agency that is responsible for investigating allegations of judicial misconduct or judicial disability, and for disciplining judges.

Texas Courts Online

CASE, LAWS, RULES & STATUTES

Court of Criminal Appeals Opinions

Court of Criminal Appeals Summaries 2007-2008

Family Violence Judicial Training Statute

Procedures and Rules Revisions

Rules of Judicial Education

SCOTUSblog

Texas Constitution

Texas Registar

Texas Rules of Appellate Procedures

Texas Rules of Civil Procedure

Texas Rules of Evidence

Texas Statutes

Texas Supreme Court Opinions

LEGAL RESEARCH

Cornell Law School's Legal Information Institute
The site features the U.S. Code and state constitutions and codes, a collection of all recent opinions of the U.S. Supreme Court and state judicial opinions, overviews of various legal topics, and links to sites offering

court decisions, statutes, regulations and other legal materials.

Federal 5th Circuit Opinions
Visit FindLaw's searchable database of the 5th Circuit Court decisions since July 1997. Also, review an archive of Opinion Summaries since September 2000. Browsable by year and searchable by docket number, case title, and full text.

findlaw.com
This website offers resources on general laws and various legal topic.

law.com
A comprehensive legal destination, law.com allows visitors to track breaking developments in the law, research issues and cases, explore nationwide job openings in the legal industry, and much more.

Texas Legislature Online

PULBLICATIONS

Indigent Defense Archives

Standardized Felony Judgment Forms
The Office of Court Administration, in collaboration with Texas criminal justice professionals, has prepared and promulgated the standardized felony judgment forms pursuant to Section 42.01 of the Texas Code of Criminal Procedure. Effective 01/11/02.

Mechanisms of Injury in Childhood
Mechanisms of Injury in Childhood is now available on the Texas Center's website. This DVD resource utilizes sophisticated and detailed medical illustrations and animation as well as radiographs to demonstrate the location, characteristics, and biomechanics of injuries in young children that involve internal structures (fractures, head injuries, abdominal injuries). This DVD provides a realistic demonstration of injury mechanisms that go well beyond the capabilities of the typical two-dimensional illustrations. The goal for users of the DVD is an improved knowledge of injuries and findings in abuse cases, an understanding of the actual physical mechanisms of the injuries, and increased confidence in the assessment and investigation of cases of suspected child abuse. The DVD was produced by the UT Health Science Center under the direction of Dr. James D. Anderst, MD MSCI and Dr. Nancy D. Kellogg, MD and made possible by a grant from the Texas Children's Justice Act program.

NEW RESOURCES *for* JUDGES

ASSOCIATES, INSTITUTES, & AGENCIES

ABA Family Law Section: Military Committee
Find the Military Committee's Judges' Guide to the Soldiers' and Sailors' Civil Relief Act here.

Correctional Management Institute of Texas
The Correctional Management Institute of Texas is responsible for developing and delivering professional development training programs for personnel in juvenile and adult institutional and community corrections agencies.

Department of Information Resources

Judicial Family Institute
The Judicial Family Insitute serves as a clearinghouse for judicial officers and their families to be in contact with individual state and national judicial educational organizations for answers to questions that arise ranging from ethical issues to practical matters.

Judicial Section of the State Bar of Texas

The Judicial Section of the State Bar of Texas

National Association of Women Judges
Founded in 1979, NAWJ is a non-profit organization with more than 1,400 members, including both female and male judges, from every state and all levels of the judiciary. The association's mission is to provide strong, committed judicial leadership to improve the administration of justice and to ensure fairness, gender equality and diversity in American courts.

National Center for State Courts
Founded in 1971 by U.S. Chief Justice Warren E. Burger, the National Center for State Courts (NCSC) is a non-profit organization that promotes justice through leadership and service to the state courts. Through numerous programs and divisions, the NCSC is committed to improving the administration of justice in the United States and abroad.

NEW RESOURCES *for* JUDGES

National Council of Juvenile and Family Court Judges
The National Council of Juvenile and Family Court Judges is dedicated to serving the nation's children and families by improving the courts of juvenile and family jurisdictions. Our mission is to better the justice system through education and applied research and improve the standards, practices and effectiveness of the juvenile court system.

The National Judicial College
Since 1963, The National Judicial College has provided educational and professional development opportunities to over 58,000 judges worldwide. From limited jurisdiction judges to U.S. Supreme Court justices, attendees from all areas of the judicial system have benefited from the very best in judicial education offered at the College.

State Bar of Texas
The State Bar of Texas is an administrative agency of the judicial branch in Texas. Every licensed attorney is a member of the State Bar, which provides a wide array of services to its members and the public.

State of Texas
The State of Texas website is intended to serve as the official compilation of Texas government electronic resources, both at the state and local levels, and as an index of Texas governmental or taxing authority web sites and services.

Texas Access to Justice Commission
The Supreme Court of Texas created the Texas Access to Justice Commission to coordinate services for people who need legal help but may not be able to afford it or find it. The Commission's goals include reducing barriers to the justice system and increasing resources and funding for Legal Aid.

Texas Association for Court Administration (TACA)
TACA is organized to encourage and promote continuing education and maintenance of professional standards for Court Administration in the State of Texas.

The Texas Association of District Judges (TADJ)

Texas CASA
Texas CASA advocates for abused and neglected children in the court system through the development, growth and support of local CASA programs.

Texas Department of Criminal Justice

Texas Ethics Commission

Texas Lawyer Press

Texas Lawyers for Children
Texas Lawyers for Children provides statewide assistance to judges and attorneys who handle child abuse and neglect cases. TLC's mission is to improve case outcomes for abused and neglected children by enhancing the quality of legal services they receive.

Texas State Cemetery
The Texas State Cemetery serves as the burial ground for Texas' most notable sons and daughters. The Cemetery includes the graves of 11 Governors, three Lieutenant Governors, two American Revolutionary War veterans, 64 Republic of Texas veterans, and 2,200 Confederate veterans and their spouses.

Texas Statutes
These files include revisions to the Texas Statutes through the 81st Regular Session of the Texas Legislature.

Texas Trial Lawyers Association

ENDNOTES

Social Networking and Judicial Ethics, by Hon. Craig Estlinbaum

1. Craig Estlinbaum, *Social Networking and Judicial Ethics*, 2 St. Mary's J. Legal Mal. & Ethics 2 (2012).

2. *See* Carolyn Elefant, The *"Power" of Social Media: Legal Issues & Best Practices for Utilities Engaging Social Media,* 32 ENERGY L.J. 1, 4 (2011) (defining social media as "a catch phrase that describes technology that facilitates interactive information, user-created content[,] and collaboration" (citing *Core Characteristic of Web 2.0 Services*, TECHPLUTO, http://www.tech pluto.com/ web-20-services/ (last visited Apr. 11, 2012))); see also James Grimmelmann, Saving Facebook, 94 IOWA L. REV. 1137, 1142 (2009) (defining social network sites as "web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system[;] (2) articulate a list of other users with whom they share a connection[;] and (3) view and traverse their list of connections and those made by others within the system." (quoting danah m. boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 11, para. 4 (2007), *available at* http://jcmc.indiana.edu/vol13/issue1/boyd.ellison.html)).

3. Eric Eldon, *Facebook Sees Big Traffic Drops in US and Canada As It Nears 700 Million Users Worldwide,* INSIDE FACEBOOOK (June 15, 2011), http://www.insidefacebook.com/2011 /06/12/ facebook-sees-big-traffic-drops-in-us-and-canada-as-it-nears-700-million-users-worldwide/ (estimating that Facebook reportedly boasts 149 million users in the United States alone). Facebook is an SNS that allows users to connect online with others in the Facebook community by inviting and adding friends, exchanging messages, maintaining and updating a personal profile, and joining common-interest user groups. James Grimmelmann, *Saving Facebook*, 94 IOWA L. REV. 1137, 1144–49 (2009). *See generally* FACEBOOK, http://www.facebook.com/principles. php (last visited Apr. 11, 2012) (discussing the goals and utility of Facebook).

4. *See* Phillip Gragg & Christine L. Sellers, *Twitter*, 102 LAW LIBR. J. 325, 325 (2010) (depicting Twitter as a microblogging service that allows users to send tweets—messages limited to 140 characters—to followers and web users (citing *About Twitter*, TWITTER, http://twitter. com/about (last visited Apr. 11, 2012))). See generally TWITTER, http://twitter.com/about (last visited Apr. 11, 2012) (explaining the information network to potential users).

5. *See* Claire Cain Miller, *Another Try by Google to Take on Facebook*, N.Y. TIMES, June 28, 2011, http://www.nytimes. com/2011/06/29/technology/29google.html?_r=2 (introducing Google+ as an SNS and identity service operated by search engine giant Google Inc. launched on June 28, 2011, for an invitation-only field-testing phase). By the end of 2011, it was reported that Google+ surpassed an estimated user base of 62 million. Jill Duffy, *Google+ Users Estimated at 62 Million*, PCMAG (Dec. 28, 2011, 10:53 AM), http://www.pcmag.com/article2/0,2817,2398114,00.asp.

6. *See About YouTube*, YOUTUBE, http://www.youtube.com/t/ about_youtube (last visited Apr. 11, 2012) (explaining YouTube as an online video sharing Internet service that "provides a forum for people to connect, inform, and inspire others across the globe and acts as a distribution platform for original content"). YouTube estimates it has 800 million different user visits each month; however, this number may be much higher. *Statistics*, YOUTUBE http://www.youtube.com/t/press_statistics (last visited Apr. 11, 2012).

7. Debra L. Bruce, *Social Media 101 for Lawyers*, 73 TEX. B.J. 186, 186 (2010) (depicting LinkedIn as a networking site geared towards professionals that allows members to connect with other professionals). *See generally About Us*, LINKEDIN, http://press. linkedin.com/about (last visited Apr. 11, 2012) (providing a general overview of the LinkedIn service). As of February 9, 2012, LinkedIn reported having over 150 million users worldwide, nearly 60% of whom are located outside the United States. *Id.*

8. See danah m. boyd & Nicole B. Ellison, *Social Network Sites: Definition*, *History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 11, para. 15 (2007), available at http://jcmc. indiana.edu/vol13/issue1/boyd.ellison.html (identifying SixDegrees. com, launched in 1997, as the first truly recognizable social networking site). SixDegrees.com allowed members to create profiles, identify and list friends, and provided a means to connect and communicate with others. *Id.* paras. 15–16.

9. MARY MADDEN & KATHRYN ZICKUHR, PEW RESEARCH CTR., 65% OF ONLINE ADULTS USE SOCIAL NETWORKING SITES: WOMEN MAINTAIN THEIR FOOTHOLD ON SNS USE AND OLDER AMERICANS ARE STILL COMING ABOARD 2 (2011), *available at* http://pewinternet. org/~/ media/Files/Reports/2011/ PIP-SNS- Update-2011.pdf.

10. *See id.* at 4 (illustrating the high percentages of online social networking users across a variety of typical demographics).

11. *Id.* at 5–6.

12. CHRISTOPHER J. DAVEY ET AL., NEW MEDIA COMM., CONFERENCE OF COURT PUB. INFO. OFFICERS, NEW MEDIA AND THE COURTS: THE CURRENT STATUS AND A LOOK AT THE FUTURE 8 (2010), *available at* http://www. ccpio.org/documents/newmediaproject/New-Media-and-the-Courts-Report.pdf. The report is based upon a 2010 survey of "individuals in the court community" that returned 810 complete responses and an additional 789 partially complete responses. Id. The report defines "new media" in broader terms than the "social networking" definition used herein, to include microblogging, visual media sharing, and Wikis such as Wikipedia and Judgepedia. *See id.* at 7–8 (enumerating several categories of technology that impact the judiciary).

13. *Id.* at 8.

14. *See* Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 GEO. J. LEGAL ETHICS 281, 284–85 (2011) (exploring application of the judicial code of conduct to new social media).

15. *See* id. at 286–90 (introducing the concept of two approaches when addressing the quandary of judges using new media such as Facebook).

16. *Id.* at 288–90.

17. *E.g.,* Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 3 (2010), *available* at http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf (noting that the mere designation of a friend online does not "in and of itself[] indicate the degree . . . of a judge's relationship with the person"); *see also* Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 GEO. J. LEGAL ETHICS 281, 288 (2011) (examining additional states' ethics opinions that exemplify the integrative approach). The Model Code of Judicial Conduct was introduced in 1972 and was revised in 2007. J. MICHAEL GOODSON LAW LIBRARY, DUKE UNIV. SCH. OF LAW, RESEARCH GUIDES: LEGAL ETHICS 6 (2011), *available* at http://www.law.duke.edu/lib/researchguides/pdf/legalethics.pdf. "[E]ach state adopts its own rules for judicial conduct, and most are based on this model." *Id.*

18. *E.g.*, Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 3–4 (2009), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html (disallowing judges and attorneys to be friends on SNSs).

19. *Compare* Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 5 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf, (allowing judges, attorneys, and other court personnel to be friends on social media sites), with Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 3–4 (2009), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html (deciding that judges and attorneys are not allowed to be friends on SNSs).

20. *See generally* MODEL CODE OF JUDICIAL CONDUCT R. 2.4 (2007) (requiring judges to exemplify and maintain the impression of neutral decision-makers free from outside influence); *id.* R. 2.11 (providing a list of potential situations that could result in disqualification).

21. danah m. boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 11, para. 4 (2007), available at http://jcmc. indiana.edu/vol13/issue1/boyd.ellison.html.

22. Linda Fulkerson, *23 Types of Social Media Sites*, ON BLOGGING WELL (Feb. 17, 2010), http://onbloggingwell.com/23-types-of-social-media-sites/. Such subcategories range from blogs and social networking sites to "content-driven communities" like Wikipedia, and even to sites that defy simple categorization, such as StumbleUpon. Id. StumbleUpon is, for lack of a better term, a "channel-surfing" web service that takes users to randomly selected websites based upon user ratings and feedback of each user's particular interests. *Id.; accord What Is StumbleUpon*, STUMBLEUPON, http://www.stumbleupon.com/about (last visited Apr. 11, 2012) ("We'll show you web pages based on that feedback as well as what similar Stumblers and the people you follow have [l]iked or [d]isliked.").

23. CHRISTOPHER J. DAVEY ET AL., NEW MEDIA COMM., CONFERENCE OF COURT PUB. INFO. OFFICERS, NEW MEDIA AND THE COURTS: THE CURRENT STATUS AND A LOOK AT THE FUTURE 7–8 (2010), *available at* http://www.ccpio.org/documents/newmediaproject/New-Media-and-the-Courts-Report.pdf.

24. *Id.* at 7.

25. *Id.*

26. *Id.* While these devices are not SNSs, they do enable users to remain connected to their assorted online networks virtually all the time via wireless Internet access. *Id.*

27. *Id.* at 8. Sites in this category "aggregate information about Internet traffic patterns and . . . display analyses of how a particular entity is portrayed or understood by the public." *Id.*

28. *Id.* Digg is an Internet web service that allows information sharing by way of ranking news stories and blogs. *See generally* DIGG, http://digg.com/ (last visited Apr. 11, 2012) (presenting top rated news stories).

29. CHRISTOPHER J. DAVEY ET AL., NEW MEDIA COMM., CONFERENCE OF COURT PUB. INFO. OFFICERS, NEW MEDIA AND THE COURTS: THE CURRENT STATUS AND A LOOK AT THE FUTURE 8 (2010), available at http://www.ccpio.org/documents/newmediaproject/New-Media-and-the-Courts-Report.pdf.

30. *See id.* (reviewing several websites that allow collaborative information gathering on any given topic, including an online encyclopedia (Wikipedia) and an interactive website providing information on courts and judges (Judgepedia)).

31. *See* David Weidner, *Please Wait, This Column on the Facebook IPO Is Browsing Its Friends' Updates*, WALL ST. JOURNAL (Feb. 2, 2012), http://online.wsj.com/article/SB10001424052970203920204577197571408312382.html?mod=fbapp_art_onwsj ("Users spend 800 billion minutes, an average of an hour per user, on the site a month . . . ."); *see also* Jessica Guynn, *Facebook Tops 500 Million Users Worldwide*, L.A. TIMES (July 22, 2010), available at http://articles. latimes.com/2010/jul/22/business/la-fi-facebook-20100722 (naming Facebook as "[t]he world's most popular social networking site," rapidly growing to boast over 500 million users as of 2010).

32. *See Sharing and Finding You on Facebook: Control Over Your Profile*, FACEBOOK, http://www.facebook.com/about/privacy/your-info-on-fb#controlprofile (last visited Apr. 11, 2012) (explaining how to manipulate the internal privacy settings on Facebook to make a particular profile page available to an audience of the user's choosing); *see also* Matthew J. Hodge, *The Fourth Amendment and Privacy Issues on the "New" Internet: Facebook.com and MySpace.com*, 31 S. ILL. U. L.J. 95, 97 (2006) (detailing multiple privacy functions available on Facebook).

33. *Help Center: Adding Friends & Friend Requests*, FACEBOOK, http://www.facebook.com/ help/friends/requests (last visited Apr. 11, 2012).

34. Matthew J. Hodge, *The Fourth Amendment and Privacy Issues on the "New" Internet: Facebook.com and MySpace.com*, 31 S. ILL. U. L.J. 95, 97 (2006).

35. *See* Fla. Judicial Ethics Advisory Comm., Op. No. 2010-05, para. 1 (2010), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2010/2010-05.html (stating the issue in controversy as "[w]hether a candidate for judicial

office may add lawyers who may appear before the candidate, if elected judge, as 'friends' on a SNS, and permit such lawyers to add the candidate as their 'friend'"); Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 1 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794 CD62E/0/JE119.pdf ("The Ethics Committee of the Kentucky Judiciary has received an inquiry from a judge as to the propriety of his being a member of Facebook, an Internet-based social networking site, and being 'friends' with various persons who might appear before him in court."); *see also* Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics Prohibition*, 24 GEO. J. LEGAL ETHICS 281, 288–89 (2011) (elaborating upon the various judicial opinions addressing SNSs).

36. *Compare Facebook Principles*, FACEBOOK, http://www.facebook.com/principles.php (last visited Apr. 11, 2012) (stating the principles behind friending and community within Facebook), with *About Twitter*, TWITTER, http://twitter.com/about (last visited Apr. 11, 2012) (describing how members "follow" communication avenues).

37. Samuel Vincent Jones, Judges, Friends, and Facebook: The Ethics of Prohibition, 24 GEO. J LEGAL ETHICS 281, 282 nn.5–10 (2011) (describing how SNSs allow people to "cultivate social connections, enhance political campaign marketing, locate people, facilitate romantic interaction/dating, share personal information, and supplement litigation methodologies," all from an assortment of devices in addition to computers).

38. *See Facebook Statistics, Stats & Facts for 2011*, DIGITAL BUZZ BLOG (Jan. 28, 2011), http://www.digitalbuzzblog.com/facebook-statistics-stats-facts-2011/ (illustrating that in a given twenty-minute period during 2010, 2.716 million Facebook messages were sent); see also Jeff Bullas, 50 Fascinating Facebook Facts and Figures, JEFFBULLAS.COM, http://www.jeffbullas.com/ 2011/04/28/50-fascinating-facebook-facts-and-figures/ (last visited Apr. 11, 2012) (providing comprehensive statistics of Facebook's social media usage).

39. Lauren Dugan, *230 Million Tweets Per Day, 50 Million Daily Users and Other Twitter Stats*, MEDIA BISTRO (Sept. 9, 2011), http://www.mediabistro.com/alltwitter/230-million-tweets-per-day-50-million-daily-users-and-other-twitter-stats_b13518.

40. *Statistics*, YOUTUBE, http://www.youtube.com/t/press_statistics (last visited Apr. 4, 2012).

41. *See* Leslie W. Abramson, *Canon 2 of the Code of Judicial Conduct*, 79 MARQ. L. REV. 949, 951 (1996) (defining the code's objective as maintaining both the appearance and reality of judicial integrity). The United States Supreme Court has observed that public confidence in the judicial branch of government is essential to its proper functioning. *E.g.*, Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 474 (1982) (noting that public confidence in the judiciary erodes in the absence of judicial self-restraint in the exercise of its power).

42. *See* Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 GEO. J LEGAL ETHICS 281, 284–85 (2011) ("Legal constructions have long struggled to keep pace with . . . technology . . . [, which has] 'outpaced' legal ethics rules.").

43. *Cf.* Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 2–3 (2010), *available at* http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/2010/default.asp (follow "Opinion 2010-7" hyperlink; then accept the download prompt) (summarizing existing canons and rules of judicial conduct and concluding that "[u]pholding these required virtues may be challenging for a social networking judge").

44. MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

45. *Id.* R. 1.2 cmt. 5.

46. *Id.* R. 1.3 cmt. 1.

47. *Id.* Canon 2.

48. *Id.* R. 2.2.

49. *Id.* R. 2.3(A).

50. *Id.* R. 2.4(B). Specifically of interest here is the fact that judges are not to be influenced in conduct or judgment by "family, social, political, financial, or other . . . relationships." *Id.*

51. *Id.* R. 2.6(A).

52. *Id.* R. 2.9. "Ex parte communications are 'those that involve fewer than all of the parties who are legally entitled to be present during the discussion of any matter. They are barred in order to ensure that 'every person who is legally interested in a proceeding [is given the] full right to be heard according to law.'" In re Thoma, 873 S.W.2d 477, 496 (Tex. Rev. Trib. 1994, no appeal) (alteration in original) (quoting JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS, § 6.01, at 145 (1990)). However, in *Onnen v. Sioux Falls* Independent School District, the Supreme Court of South Dakota held that a litigant did not engage in improper ex parte communication when a defense witness wished the judge "happy birthday" via the judge's Facebook page. Onnen v. Sioux Falls Indep. Sch. Dist. #49-5, 801 N.W.2d 752, 757–58 (S.D. 2011). The court reasoned that the communication was "incidental" and did not concern "a pending or impending proceeding." *Id.* at 758.

53. MODEL CODE OF JUDICIAL CONDUCT R. 2.10(A) (2007). Canon 2 also requires judges to be dignified when conversing with jurors, attorneys, and litigants, as well as others that come into contact with the court. *Id.* R. 2.8(B).

54. *See id.* Canon 3 (elaborating on judicial participation in outside activities and encouraging such participation as long as judicial impartiality can be maintained).

55. *Id.* R. 3.1(A).

56. *Id.* R. 3.1(B).

57. *Id.* R. 3.1(C).

58. *Id.* R. 3.1(D).

59. *Id.* R. 3.1(E).

60. Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 GEO. J LEGAL ETHICS 281, 299 (2011) ("[T]he status . . . and the responsibilities associated with the judicial office apply both during the judge's professional activities and personal affairs.").

61. MODEL CODE OF JUDICIAL CONDUCT R. 3.1 cmt. 2 (2007); *cf. In re* A.H. Robins Co., 602 F. Supp. 243, 245 (D. Kan. 1985) (explaining that in order to determine whether a judge is biased, prejudiced, or has compromised his impartiality, a reviewing court or committee may look only at conduct by the judge that is extrajudicial in nature).

62. Model Code of Judicial Conduct R. 2.4(B) (2007).

63. *See id.* R. 2.1 ("The duties of judicial office . . . shall take precedence over all of a judge's personal and extrajudicial activities.").

64. *See id.* pmbl. ("The Code is intended . . . to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies."). Commentators suggest that harsher standards, like sequestering judges from the broader society, would be undesirable. Steven Lubet, *Judicial Ethics and Private Lives*, 79 Nw. U. L. Rev. 983, 988–90 (1985). Lubet observed:

> The dispensation of justice is advanced by the institution of a judiciary that is ethnically, socially, ideologically, and economically diverse. The goal of a system of judicial restrictions should be to draw the line between those nonjudicial activities that enrich, or at least are harmless to, the judiciary and those that actually detract from or interfere with the business of judging. This line should not be drawn so as to eliminate all perceivable evils and temptations. Rather, the delineation should give the women and men of the judiciary every reasonable degree of latitude, barring activities only where they do measurable damage to the court's dignity, available time and energy, or appearance of impartiality.

Id. at 990 (citing Robert B. McKay, *The Judiciary and Nonjudicial Activities*, 35 Law & Contemp. Probs. 9, 12 (1970)); *see also* Robert B. McKay, *The Judiciary and Nonjudicial Activities*, 35 Law & Contemp. Probs. 9, 12 (1970) ("To judge in the real world a judge must live, breathe, think, and partake of opinions in that world.").

65. *See*, *e.g.*, *In re* Davis, 82 S.W.3d 140, 142, 145, 150 (Tex. Spec. Ct. Rev. 2002) (holding that a judge who (1) wrote a letter to the district attorney suggesting the judge had biblical authority for his decision-making; (2) compared an assistant prosecutor to a prison guard at Auschwitz; and (3) equated a district attorney's criticism of the judge to fornication with an assistant, violated the judge's duty to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary); *In re* Thoma, 873 S.W.2d 477, 483, 490–95 (Tex. Rev. Trib. 1994, no appeal) (holding that a judge violated the judicial canons when he conspired "to extort money from a party in" a judicial proceeding and "engaged in ex parte communications with criminal defendants" regarding pending criminal matters); *see also In re* Cummings, 211 P.3d 1136, 1138–39 (Alaska 2009) (holding that a judge violated the prohibition against ex parte communication when he intentionally passed notes to the prosecution team in a criminal case); *In re* Ackel, 745 P.2d 92, 94–95 (Ariz. 1987) (citing a judge's "conduct in 'hugging' [a] litigant, . . . using profanity and language with sexual overtones[,] and asking the litigant to go 'for a drink' with" him as inappropriate conduct that violated the judicial ethical canons), *overruled on other grounds by In re* Jett, 882 P.2d 414 (Ariz. 1994) (en banc); *In re* Flanagan, 690 A.2d 865, 866–67, 881 (Conn. 1997) (holding that a judge who had a three-year affair "with a married court reporter who [was] regularly . . . assigned to his courtroom" violated Canon 1 because his conduct would lead an observer to question the judiciary's integrity and lose confidence in it); *In re* Servaas, 774 N.W.2d 46, 54–55 (Mich. 2009) (discussing that a judge who made sexually explicit drawings and included them in the court's files and who commented on the small chest size of a female employee violated Canons 1 and 2); *In re* White, 499 S.E.2d 813, 816 (S.C. 1998) (holding that a judge who lied on his application to become a magistrate violated Canon 1 by taking judicial office after falsifying his academic credentials).

66. Herbert B. Dixon Jr., *The Black Hole Effect: When Internet Use and Judicial Ethics Collide*, Judges' J., Fall 2010, at 38, 38 (citing Katheryn Hayes Tucker, *Ga. Judge Steps Down Following Questions About Facebook Relationship with Defendant*, Law.com (Jan. 7, 2010), http://www.law. com/jsp/article.jsp?id=1202437652986&slreturn=1).

67. *Id.*

67. *Id.*

68. *Id.* However, the local district attorney did not file any criminal charges, and the judge chose to resign his position only when the allegations came to light publicly. *Id.*

69. *See* Model Code of Judicial Conduct Canon 3 (2007) ("A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office."); *cf.* Model Rules of Prof'l Conduct R. 1.8(e) cmt. 18 (2002) (stating that no attorney may engage in sexual relations with a client unless a consensual sexual relationship existed beforehand).

70. *See* Herbert B. Dixon Jr., *The Black Hole Effect: When Internet Use and Judicial Ethics Collide*, Judges' J., Fall 2010, at 38, 38 (detailing how a judge and a defendant currently before the judge had extensive ex parte communications that clearly caused the judge to abandon his impartiality).

71. Judicial Standards Comm'n of the State of N.C., Inquiry No. 08-234, at 2–3 (2009). Similarly, a substitute judge in Nevada lost his position after reports surfaced that his MySpace profile included hostile comments toward prosecuting attorneys. K. C. Howard, *MySpace Judgment: Guilty*, Las Vegas Rev. J. (Sept. 26, 2008, 4:38 PM), http://www.lvrj.com/ news/9121536.html. Once again though, it was the hostile statements that evidenced improper conduct, not the particular medium. *Id.*

72. Judicial Standards Comm'n of the State of N.C., Inquiry No. 08-234, at 2–3 (2009). In particular, the commission found:

> On or about the evening of September 10, 2008, Judge Terry checked [the attorney's] "Facebook" account and saw where [the attorney] had posted "how do I prove a negative[.]" Judge Terry posted on his "Facebook" account, [that] he had "two good parents to choose from" and "Terry feels that he will be back in court" referring to the case not being settled. [The attorney] then posted on his "Facebook" account, "I have a wise Judge[.]"
>
> . . .
>
> On or about September 11, 2008, Judge Terry wrote on his "Facebook" account [that], "he was in his last day of trial[.]" [The attorney] then wrote "I hope I'm in my last day of trial." Judge Terry responded stating "you are in your last day of trial[.]"

Id. at 2.

73. *See id.* at 2–4 (noting that it was the judge's actions and communications that violated Canons 1, 2, and 3 of the Judicial Code as well as the North Carolina Constitution).

74. *Cf.* Erskine v. Baker, 22 S.W.3d 537, 540 (Tex. App.—El Paso 2000, pet. denied) (holding that a judge's private telephone conversation with an attorney and a witness in a pending case was improper ex parte communication).

75. *Cf.* Fletcher v. Comm'n on Judicial Performance, 968 P.2d 958, 972 (Cal. 1999) (describing a judge's ex parte communication at a men's fellowship group with a criminal defendant whose case was pending in his court).

76. N.Y. State Advisory Comm. on Judicial Ethics, Op. 08-176, para. 7 (2009), *available at* http://www.courts.state.ny.us/ip/judicialethics/opinions/08-176.htm.

77. *Id.* (citing N.Y. State Advisory Comm. on Judicial Ethics, Op. 07-141 (2007), *available at* http://www.nycourts.gov/acoje/opinions/07-141.htm).

78. *Id.* (citing N.Y. State Advisory Comm. on Judicial Ethics, Op. 07-135 (2007), *available at* http://www.nycourts.gov/acoje/opinions/07-135.htm).

79. *Id.*

80. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 3 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf (agreeing with the caveats of the New York committee that judges should be aware that online social relationships are a factor which may require disclosure and/or recusal (citing N.Y. State Advisory Comm. on Judicial Ethics, Op. 08-176 (2009))); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 5–6, 8–9 (2010), *available at* http://www.sconet.state.oh.us/Boards/ BOC/Advisory_Opinions/2010/default.asp (follow "Opinion 2010-7" hyperlink; then accept the download prompt) (summarizing the opinions of the Kentucky and New York committees and ultimately deciding along similar lines).

81. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 3 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf; N.Y. State Advisory Comm. on Judicial Ethics, Op. 08-176 (2009); *see* Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 8 (2010) (agreeing with the Kentucky and New York opinions).

82. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 4 (2010) ("[T]his opinion should not be construed as an explicit or implicit statement that judges may participate in [SNSs] in the same manner as members of the general public."); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 8 (2010) (stressing that while there are no bright line rules, judges must be prudent while utilizing SNSs, much more so than a nonjudicial officer).

83. S.C. Advisory Comm. on Standards of Judicial Conduct, Op. No. 17-2009 (2009), *available at* http://www.judicial.state.sc.us/advisoryOpinions/displayadvopin.cfm?advOpinNo=17-2009.

84. *Id.* para. 2.

85. *Id.* para. 3.

86. *Id.*

87. *Id.* The permissive idea seems to adopt the argument that it would be both "intellectually lazy" and "self-defeating" to isolate judges from the communities they serve. Steven Lubet, *Judicial Ethics and Private Lives*, 79 Nw. U. L. Rev. 983, 988–90 (1985). Lubet notes that both the judge and the public benefit from judicial exposure to public life:

> Not only is it impossible to isolate a judge from opinion-shaping forces, it is undesirable to give the impression that this has been accomplished. Assuming that judges are not to be sealed hermetically in their homes after working hours, they will continue to form opinions as a consequence of exposure to friends, colleagues, and the media. In the absence of nonjudicial activities that reflect the tenor of a judge's ideas, the public and the bar will have no way of knowing of the jurist's proclivities. A ban on nonjudicial activities will not erase biases, it will simply hide them. A judge who loves animals will not lose this predisposition merely because membership in the A.S.P.C.A. has been prohibited. It will be a rare case where knowledge of a judge's activities will be relevant; nonetheless, public information on the judiciary is valuable in and of itself.
>
> Similarly, judges' knowledge of the public is essential to the dispensation of justice. It is not enough to say that a judge is enriched by knowledge of the real world; rather, the nature of modern law absolutely requires that judges "live, breathe, think and partake of opinions in that world." . . . It is probable that a majority of legal tests and rules which a judge is called upon to apply call for judgments which involve common experience.

Id. at 989 (quoting Robert B. McKay, *The Judiciary and Nonjudicial Activities*, 35 Law & Contemp. Probs. 9, 12 (1970)).

88. *See* Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 1–8 (2009), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html (ascertaining (1) whether a judge can post comments on SNSs; (2) whether a judge can add lawyers as "friends" who may appear before the judge; and (3) applicable rules for committees who conduct election campaigns on behalf of judges). While the committee answered the first issue in the affirmative, it would not allow judges to add lawyers as friends. *Id.* paras. 2–4.

89. *Id.*

90. *Id.* paras. 20–21. The Florida committee noted three elements that make social networking impermissible under the Judicial Code:

> First, the judge must establish the social networking page. Second, the site must afford the judge the right to accept or reject contacts or "friends" on the judge's page, or denominate the judge as a "friend" on another member's page. Third, the identity of the "friends" or contacts selected by the judge, and the judge's having denominated himself or herself as a "friend" on another's page, must then be communicated to others. Typically, this third element is fulfilled because each of a judge's "friends" may see on the judge's page who the judge's other "friends" are. Similarly, all "friends" of another user may see that the judge is also a "friend" of that user.

Id. para. 21. However, contrasting other SNSs with Facebook, the commission noted that other sites lack friend features, and judicial use of such sites would comply with the Judicial Code. *Id.* n.1.

91. *Id.* para. 32.

92. Mass. Comm. on Judicial Ethics, Op. No. 2011-6 (2011), *available at* http://www.mass. gov/courts/sjc/cje/2011-6n.html; *In re* Judicial Ethics Op. 2011–3, 261 P.3d 1185, 1186 (Okla. Jud. Ethics Advisory Panel 2011).

93. *In re Judicial Ethics Op. 2011-3*, 261 P.3d at 1185.

94. *Id.* at 1186; *accord* Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 4 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/ 0/JE119.pdf (initializing the "fraught with peril" language to describe judicial ethics issues with regards to SNS usage).

95. Mass. Comm. on Judicial Ethics, Op. No. 2011-6, para. 5 (2011).

96. *Id.*

97. *See* Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 5–8 (2009), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html (answering in the affirmative to questions regarding committee use of social network technology for election campaign purposes).

98. *Id.* paras. 31–32.

99. *Id.* n.1.

100. *Id.* para. 37 n.1.

101. Fla. Judicial Ethics Advisory Comm., Op. No. 2010-06 (2010), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2010/2010-06.html; Fla. Judicial Ethics Advisory Comm., Op. No. 2010-05 (2010), *available at* http://www.jud6.org/ LegalCommunity/LegalPractice/opinions/jeacopinions/2010/2010-05.html.

102. Fla. Judicial Ethics Advisory Comm., Op. No. 2010-05, paras. 1–2, 8 (2010). This results because the Judicial canon at issue here does not apply to judicial candidates. *Id.* para. 5 (citing *In re* Kinsey, 842 So. 2d 77, 85 (Fla. 2003)).

103. Fla. Judicial Ethics Advisory Comm., Op. No. 2010-06 (2010). The issues presented here addressed the act of friending attorneys on SNSs, namely the acceptability of an "admit all" friend policy and the efficacy of a disclaimer that online "friends" were not necessarily friends in the traditional sense. *Id.* paras. 1–6.

104. *Id.* para. 9.

105. *Id.* para. 18.

106 .*Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* para. 23. Specifically, the procedures of: (1) accepting as a friend all persons that are either recognized by the judge "or who share a number of common 'friends' with the judge"; or (2) accepting as a friend any and all members who request to be the judge's friend on the SNS. *Id.*

111. *Id.* para. 25.

112. *Id.* para. 26 (citing Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20 (2010), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html). *Contra id.* para. 35 (minority op.) ("The exclusivity and selectivity by the judge in choosing to spend time and enjoyment with some attorneys and not others is far more apparent than 'friendship' in the social networking setting of the [I]nternet.").

113. *See id.* para. 32 ("[E]ven if the term 'friend' on an Internet [SNS] means a friend in the traditional sense, which it does not, that relationship without more is ethically permissible." (citing Stevens v. Americana Healthcare Corp. of Naples, 919 So. 2d 713, 716 (Fla. Dist. Ct. App. 2006))). In *Stevens v. Americana Healthcare Corporation of Naples*, the judge disclosed that he was personally acquainted with witnesses and, upon discussion with the attorneys, invited them to move for disqualification. *Stevens*, 919 So. 2d at 714–15. The court concluded that the disclosure alone did not require disqualification, yet the judge's invitation did. *Id.* at 715–16 (citing Pool Water Prods., Inc. v. Pools by L.S. Rule, 612 So. 2d 705, 707 (Fla. Dist. Ct. App. 1993)). Because the operative friendship in *Stevens* was between the judge and multiple witnesses, and not the actual attorneys, reliance upon the opinion by the Florida Judicial Ethics Advisory Committee's minority is tenuous at best.

114. *In re* Estate of Carlton, 378 So. 2d 1212 (Fla. 1979).

115. *Id.* at 1220. Other jurisdictions have taken similar stances on friendships between judges and attorneys who may appear before them. *See, e.g.*, Demoulas v. Demoulas Super Mkts., Inc., 703 N.E.2d 1141, 1147 (Mass. 1998) (concluding that not every "public social discussion between [a] judge and [a] lawyer requires an evidentiary hearing" to determine whether the judge's impartiality can be questioned (citing *In re* United States, 666 F.2d 690, 695 (1st Cir. 1981))); *In re* Schwartz, 255 P.3d 299, 304 (N.M. 2011) ("[A] judge's impartiality will not normally be questioned merely because a judge has a social relationship with an attorney." (citation omitted)); Brosseau v. Ranzau, 81 S.W.3d 381, 400 (Tex. App.—Beaumont 2002, no pet.) ("[T]he existence of a friendship between a judge and an attorney appearing before him is not sufficient, without more, to demonstrate partiality." (citing Woodruff v. Wright, 51 S.W.3d 727, 736–37 (Tex. App.—Texarkana 2001, pet. denied))).

116. Fla. Judicial Ethics Advisory Comm., Op. No. 2010-06, para. 35 (2010) (minority op.), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2010/2010-06.html.

117. *Id.* paras. 34–35. *But see id.* paras. 26–28 (majority op.) (noting that the process of acceptance or rejection of online friends conveys an impression of a special relationship with the judge. Opinion No. 2009-20 established that it is unethical for a lawyer who appears before a judge to be friends with the judge in Florida. Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 3–4 (2009), *available at* http://www.jud6.org/LegalCommunity/LegalPractice/opinions/ jeacopinions/2009/2009-20.html. Therefore, the question remains: Does this rule also apply to *litigants* who appear before a judge?

118. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 5 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf; Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 8–9 (2010), *available at* http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/2010/default.asp (follow "Opinion 2010-7" hyperlink; then accept the download prompt); S.C. Advisory Comm. on Standards of Judicial Conduct, Op. No. 17-2009, para. 2 (2009), *available at* http://www.judicial.state.sc.us/ advisoryOpinions/displayadvopin.cfm?advOpinNo=17-2009.

119. Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 1–8 (2009); *In re* Judicial Ethics Opinion 2011–3, 261 P.3d 1185, 1186 (Okla Jud. Ethics Advisory Panel 2011).

120. *Cf.* Fla. Judicial Ethics Advisory Comm., Op. No. 2009-20, paras. 25–26 (2009) (disallowing judges from participating in extrajudicial activities that could result in "frequent disqualification of the judge").

121. *See* Fla. Judicial Ethics Advisory Comm., Op. No. 2010-06, para. 36 (2010) (minority opinion) ("[I]f it is unethical for a judge to have a lawyer who appears before the judge as a Facebook 'friend,' then it would be equally unethical for a judge to have as a Facebook 'friend' *any* person who may appear before the judge as a litigant." (emphasis added)). It would seem then that a judge under such a prohibition would be limited to friending only those persons who she would otherwise be prohibited from presiding over, such as a spouse or a close relative.

122. *See id.* ("[SNS] 'friends' can be hundreds of people, comprising a network.").

123. *See*, *e.g.*, Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 Geo. J. Legal Ethics 281, 285–90 (2011) (discussing the necessity of prohibitions to control the effects of judicial social networking and to avoid the decline of public confidence in the judiciary).

124. *Compare* Judicial Standards Comm'n of the State of N.C., Inquiry No. 08-234, at 1–3 (2009), *available at* http://www.aoc.state.nc.us/www/public/coa/jsc/publicreprimands/jsc08-234.pdf (reprimanding the judge for failing to ensure integrity in the judiciary by participating in ex parte online communication via Facebook as well as conducting independent ex parte online research that influenced his decisions), *with* Judge Herbert B. Dixon Jr., *The Black Hole Effect: When Internet Use and Judicial Ethics Collide*, Judges' J., Fall 2010, at 38, 38 (describing the resignation of a Georgia judge after allegations of inappropriate contacts on Facebook became public).

125. *See, e.g.*, *In re* Jett, 882 P.2d 414, 426 (Ariz. 1994) (en banc) (suspending a judge for the willful misconduct of releasing her live-in boyfriend from police custody); *In re* Platt, 48 Cal. 4th CJP Supp. 227, 231, 251–52 (Comm'n Jud. Performance 2002), *available at* http://cjp.ca.gov/ res/docs/s_c_cites/Platt_48_Cal.4th_CJP_Supp._227.pdf (removing a judge for intervening in a friend's daughter's criminal case); *In re* Edwards, 694 N.E.2d 701, 718–19 (Ind. 1998) (per curiam) (disciplining a judge, with permanent removal, for presiding over and attempting to influence cases involving parties in a sexual relationship with the judge);

In re Ziegler, 750 N.W.2d 710, 721 (Wis. 2008) (per curiam) (reprimanding a judge who presided over cases "when she knew that her spouse was a director" to one of the parties).

126. *See, e.g.*, *In re* Schwartz, 255 P.3d 299, 301, 307 (N.M. 2011) (reprimanding and fining a judge for failing to timely recuse himself after initiating a romantic relationship with an assistant public defender who had cases pending before him and continuing to rule in those cases after recusing himself); Tex. Comm'n on Judicial Conduct, Pub. Reprimand of Hon. Richard W. B. "Rick" Davis, at 7 (2008), *available at* http://alt.coxnewsweb.com/shared-blogs/austin/courts/ upload/2008/11/agency_reprimands_ex-judge_fro/Davis%20reprimand.pdf (reprimanding a judge for allowing a grand jury the judge appointed to be influenced by a friend and political supporter).

127. *E.g.*, Miss. Comm'n on Judicial Performance v. Gordon, 955 So. 2d 300, 303, 306 (Miss. 2007) (suspending a municipal judge for ex parte communications with defendants appearing before him). *See generally* Geoffrey P. Miller, *Bad Judges*, 83 Tex. L. Rev. 431, 432–33 (2004) ("Most examples of bad judging can be grouped into the following categories: (1) corrupt influence on judicial action; (2) questionable fiduciary appointments; (3) abuse of office for personal gain; (4) incompetence and neglect of duties; (5) overstepping of authority; (6) interpersonal abuse; (7) bias, prejudice, and insensitivity; (8) personal misconduct reflecting adversely on fitness for office; (9) conflict of interest; (10) inappropriate behavior in a judicial capacity; (11) lack of candor; and (12) electioneering and purchase of office.").

128. *See, e.g.*, Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 4 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf ("[T]he Committee is compelled to note that, as with any public media, [SNSs] are fraught with peril for judges . . . .").

129. N.Y. State Advisory Comm. on Judicial Ethics, Op. 08-176, para. 9 (2009), *available at* http://www.courts.state.ny.us/ip/judicialethics/opinions/08-176.htm.

130. *Id.* para. 10.

131. *Id.*

132. *Id.* paras. 9–11. For example, the opinion warns that SNS profiles may serve as an additional channel for informal legal advice or other communication with attorneys and litigants, yet such communication is just as improper as a face-to-face meeting. *Id.* para. 11.

133. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 4 (2010).

134. *See id.* at 4–5 (delineating several considerations implicated by social media use, such as the pendency of upcoming court proceedings, the form of online connections, whether ex parte communications will occur, and the extent of any ex parte communication).

135. *Id.* (citing *In re* Complaint of Judicial Misconduct, 575 F.3d 279 (3d. Cir. 2009)). In *In re Complaint of Judicial Misconduct*, Chief Judge Alex Kozinski was publicly reprimanded for maintaining a website that contained sexually explicit material and other offensive content. *In re* Complaint of Judicial Misconduct, 575 F.3d at 280.

136. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 5 (2010).

137. Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 7–8 (2010), *available at* http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/2010/default.asp (follow "Opinion 2010-7" hyperlink; then accept the download prompt).

138. *Id.* at 7.

139. *Id.*

140. *Id.*

141. *Id.*

142 .*Id.* at 8.

143. *Id.*

144. *Id.*

145. *See generally* Ohio Jud. Cond. R. 1.1–4.6 (2009) (adopting behavioral standards for the judiciary based upon the Model Code of Judicial Conduct).

146. *Cf.* Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 8–9 (2010) (acknowledging that upholding the virtue required of judges is very challenging).

147. *See generally* Ronald D. Rotunda, *Judicial Ethics, the Appearance of Impropriety, and the Proposed New ABA Judicial Code*, 34 Hofstra L. Rev. 1337, 1351–61, 1369 (2006) (providing an overview of the standards used to determine an appearance of impropriety and mentioning public confidence as an additional standard).

148. *See id.* at 1342 ("[The ABA] believed that a rule prohibiting the 'appearances of impropriety' [would] make the world think better of judges, but that belief is inconsistent with the evidence. The world will not think less well of judges if anyone can launch a plausible claim that any judge engaged in an act or omission that was *not* improper but might *appear* to be improper.").

149. *See generally* Keith R. Fisher, *Education for Judicial Aspirants*, 43 Akron L. Rev. 163, 185–89 (2010) (describing poll data indicating a general decline in public confidence in the judiciary). Indeed, according to a 1999 survey, a commanding majority of Texans believed that judicial decisions are affected by campaign contributions. Tex. Office of Court Admin., State Bar of Tex., The Courts and the Legal Profession in Texas: The Insider's Perspective: A Survey of Judges, Court Personnel, and Attorneys (1999), *available at* http://www. courts.state.tx.us/pubs/publictrust/execsum.htm.

150. Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 4 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf.

151. *Facebook Pages: What Are Facebook Pages? Should I Create One?*, Facebook Help Center, https://www.facebook.com/help/?page=205666086139358 (last visited Apr. 11, 2012). However, it should be noted that even these pages need to be managed by administrators who must have their own personal page. *Id.*

152. Samuel Vincent Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 Geo. J. Legal Ethics 281, 287–88 (2011) ("Among the most potentially problematic [SNS] activities involves judges engaging in Facebook 'friending.'").

153. *Cf.* Margaret M. DiBianca, *Ethical Risks Arising From Lawyers' Use of (and Refusal to Use) Social Media*, 12 Del. L. Rev. 179, 181 (2011) (defining a microblog as a tool designed to transmit small pieces of information quickly and efficiently).

154. *Cf. id.* (participating in microblogging only allows for brief text updates).

155. *Compare id.* (describing a microblog as permitting a user to transmit only small amounts of information), *with* Samuel Vincent

Jones, *Judges, Friends, and Facebook: The Ethics of Prohibition*, 24 Geo. J. Legal Ethics 281, 283–84 (2011) (discussing numerous functions allowed on Facebook).

156. *Cf.* Model Code of Judicial Conduct R. 2.9(A) (2007) ("A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter . . . .").

157. *Facebook Privacy Policy*, Facebook, http://www.facebook.com/about/privacy (last visited Apr. 11, 2012); *cf., e.g.*, Kevin Bankston, *Facebook's New Privacy Changes: The Good, the Bad, and the Ugly*, Electronic Frontier Found. (Dec. 9, 2009), https://www.eff.org/deeplinks/2009/ 12/facebooks-new-privacy-changes-good-bad-and-ugly (explaining how privacy settings were simplified, yet the new default settings treat information as publicly available); *Twitter Privacy Policy*, Twitter, http://twitter.com/privacy (last visited Apr. 7, 2012) (stating that effective June 23, 2011, "[w]e may revise [our] privacy policy from time to time").

158. *Cf.* Matthew J. Hodge, *The Fourth Amendment and Privacy Issues on the "New"* Internet*: Facebook.com and MySpace.com*, 31 S. Ill. U. L.J. 95, 98–99, 110 (2006) ("[U]sers are allowed to restrict their privacy settings . . . . [The private] setting is not the default, but instead, a user must actively change the settings to restrict access.").

159. *E.g.*, Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 2 (2010), *available at* http://courts.ky.gov/NR/rdonlyres/FA22C251-1987-4AD9-999B-A326794CD62E/0/JE119.pdf ("Recusal is generally required . . . 'in a proceeding in which the judge's impartiality might reasonably be questioned.'").

160. *See, e.g.*, Carolyn Elefant, *The "Power" of Social Media: Legal Issues & Best Practices for Utilities Engaging Social Media*, 32 Energy L.J. 1, 55 (2011) (acknowledging "[s]ocial media is here to stay").

161. *See generally id.* at 53 (defining social media as a rapidly changing medium where companies must continuously evolve by introducing versions and features). *But see* Matt Rosoff, *Facebook Is Losing Users in the Countries Where It Took Off First*, Bus. Insider (June 14, 2011), *available at* http://articles.businessinsider.com/2011-06-13/tech/30013526_1_facebook-first-users-countries (indicating declines in Facebook membership in the United States).

162. *Cf.* Keith R. Fisher, *Education for Judicial Aspirants*, 43 Akron L. Rev. 163, 185–89 (2010) (describing a decline of public confidence in the judiciary in part because of the far removed position of the judiciary).

163. *See* Herbert B. Dixon Jr., *The Black Hole Effect: When Internet Use and Judicial Ethics Collide*, Judges' J., Fall 2010, at 38, 38 (comparing the Internet and its communication methods to a black hole effect because of the trouble judges may find themselves in when using it).

164. *See, e.g.*, Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 3–5 (2010) (acknowledging that meeting ethical rules requires judges to avoid behavior that would otherwise be acceptable for the general public).

165. *See* Steven Lubet, *Judicial Ethics and Private Lives*, 79 Nw. U. L. Rev. 983, 1007–08 (1984) (concluding that it is necessary to balance restrictions for judges against "judges' legitimate rights to privacy, self-expression, and freedom of association").

166. *See* Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119, at 3–5 (2010) (cautioning that posting pictures or commentary could be inappropriate for judges); N.Y. State Advisory Comm. on Judicial Ethics, Op. 08-176, para. 11 (2009), *available at* http://www.courts.state.ny.us/ ip/judicialethics/opinions/08-176.htm (warning that "other users of the social network, upon learning of the judge's identity, may informally ask the judge questions about or seek to discuss their cases, or seek legal advice"); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 2010-7, at 3 (2010), *available at* http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/2010/ default.asp (follow "Opinion 2010-7" hyperlink; then accept the download prompt) (reminding judges of the difficulty involved in meeting ethical requirements when involved in SNSs).

Improving the Quality of Court Interpreter Services

1. Marco Hanson is a Texas licensed court interpreter for Spanish and supervises the OCA Texas Remote Interpreter Project. He wishes to thank Ann Landeros, OCA Domestic Violence Resource Attorney, and Visiting Judge Gary Harger, 3rd Administrative Judicial Region, for their substantial contributions to this article. He also wishes to thank Mary Cowherd, OCA Deputy Director, and Mena Ramon, OCA General Counsel, for their editorial assistance.

2. This anecdote and others which follow have been compiled informally from conversations at interpreter conferences and courthouses.

3. See, the letter dated August 17, 2010, to the chief justices and court administrators of all the states from the Assistant Attorney General for the Civil Rights Division of the US Department of Justice. A copy of the letter is available at: www.lep.gov/final_courts_ltr_081610.pdf.

4. Texas Department of Licensing and Regulation (TDLR): www.license.state.tx.us/LicenseSearch (accessed January 24, 2012)

5. Tex. Gov't Code Ann § 57.002 (Vernon 2011)

6. This project is supported by Grant No. 2010-WC-AX-K015 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

7. For purposes of TRIP, intimate partner relationships involve current spouses, former spouses, current boy/girlfriends, or former boy/girlfriends. Individuals involved in an intimate partner relationship may be of the same gender. Note that intimate partner violence does not have to be the sole issue to be decided for the case to qualify for TRIP services. For instance, a child custody modification case might involve issues of intimate partner violence.

8. According to TDLR data on www.license.state.tx.us/court/examinfo.htm, in the spreadsheet "2010 Licensed Court Interpreter Exam Information by Month," 49% of testers passed the initial (written) exam, and of those who went on to take the second (oral) exam, 20.5% passed it, for a total of 10%. (accessed January 24, 2012)

9. "How are you? I'm fine, thanks. And you?"

10. National Association of Judiciary Interpreters and Translators. (2006). NAJIT Position Paper:
Onsite Simultaneous Interpretation of a Sound File is Not Recommended. Retrieved from www.najit.org/publications/Onsite%20

Simultaneous%20Interpre.pdf (accessed January 26, 2012)

11. Conference of State Court Administrators. *White Paper on Court Interpretation: Fundamental to Access to Justice*. (Adopted November 2007)

Texas Election Law in the Aftermath of Citizens United

1. HightowerLowdown.com, Citizens United Against Citizens United: A Grassroots Campaign to Restore Democracy, http://www.hightowerlowdown.org/node/2795 (last visited Oct. 29, 2012).

2. H.B. 2359, 82nd Leg., Reg. Sess. (Tex. 2011) (citing author's/sponsor's statement of intent in bill analysis).

3. Tex. Elec. Code Ann. § 251.001(6) (Vernon 2011).

4. § 251.001(7).

5. § 251.001(8).

6. Tex. Ethics Comm'n Advisory Opinion 331 (1996).

7. *Id*.; Tex. Elec. Code Ann. §253.094.

8. Tex. Ethics Comm'n Advisory Opinion 331 (1996).

9. § 253.002, repealed by Acts 2011, 82nd Leg., ch. 6, §3, eff. June 2011

10. Tex. Elec. Code Ann. § 254.036(c) (2011). The remaining exceptions are: (1) the candidate, officeholder, or campaign treasurer could file an affidavit with the commission stating that they do not keep records electronically **and** they do not accept more than $20,000 in contributions and do not spend more than $20,000; and (2) if the filer is a candidate for an office described by Section 252.005(5) or a specific-purpose committee for supporting or opposing only candidates for an office described by Section 252.005(5) or a measure described by Section 252.007(5).

11. § 253.002, *repealed by* Acts 2011, 82nd Leg., R.S., Ch. 1009, Sec. 4, eff. June 17, 2011, *available at* http://www.ethics.state.tx.us/statutes/09title15.html.

12. § 254.261(a).

13. § 253.002, *repealed by* Acts 2011, 82nd Leg., R.S., Ch. 1009, Sec. 4, eff. June 17, 2011, *available at* http://www.ethics.state.tx.us/statutes/09title15.html.

14. § 253.097, *repealed by* Acts 2011, 82nd Leg R.S., Ch. 1009, Sec. 6, eff. June 17, 2011, *available at* http://www.ethics.state.tx.us/statutes/09title15.html.

15. §§ 254.261-.262.

16. Please note there were other changes made during the October 2011 and April 2012 meeting, but only changes relating to *Citizens United* are referenced.

17. Tex. Ethics Comm'n Rule §24.3 (repealed 2011).

18. Tex. Ethics Comm'n Rule §24.9 (repealed 2011).

19. Tex. Ethics Comm'n Rule §22.6 (2011).

20. Tex. Ethics Comm'n Rule §24.7 (repealed 2012).

21. Tex. Ethics Comm'n Rule §24.11 (repealed 2012).

22. Tex. Ethics Comm'n Rule §24.13 (repealed 2012).

23. Tex. Ethics Comm'n Rule §24.14 (repealed 2012).

24. Tex. Ethics Comm'n Rule §24.19 (repealed 2012).

25. Tex. Ethics Comm'n Rule §24.1(a)(2) (amended 2012).

26. Tex. Ethics Comm'n Rule §24.1(a)(3) (amended 2012).

27. Tex. Ethics Comm'n Rule §24.15 (amended 2012).

28. Tex. Ethics Comm'n Advisory Opinion 489 (2010).

29. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

30. Tex. Ethics Comm'n Advisory Opinion 489 (2010).

31. H.B. 2359.

32. Tex. Ethics Comm'n Advisory Opinion 503 (2012).

33. *Id*.

34. The requestor of the opinion notes the following services as "strategic:" development of media strategy, selection and purchasing of advertising slots, selection of audiences, polling, fundraising, developing the content of a public communication, identifying voters or developing voter lists, mailing lists and donor lists, etc. "Non-strategic" services would be such things as legal and compliance.

35. *Id*.

36. *Id.*

37. *Id.* The firewall policy in the opinion is: (1) written; (2) distributed to all relevant employees, consultants, subcontractors, and clients affected by the policy; and (3) designed and implemented to prohibit the flow of information between employees and/or consultants providing services for the Corporation and the employees and/or consultants providing services to the candidate's campaign committee. Furthermore, the policy contains the following clauses: (1) vendor employees who provide services to a candidate may not also provide services to corporations that make direct campaign expenditures supporting that candidate; (2) Non-public information about a candidate that is obtained by vendor employees providing services to a candidate may not share that information with any corporation making direct expenditures and the necessary precautions must be taken to prevent the inadvertent sharing of such information, i.e. vendor employees working for corporation must use different officer printers than vendor employees working for candidate; (2) Non-public information about a corporation's direct campaign expenditure that is obtained by vendor employees may not be shared with candidate and the same precautions in (1) must be taken; and (3) vendor employees who are providing services to candidate may not request, suggest, or approve any action taken or proposed by a corporation that

makes direct campaign expenditures to support that candidate.

38. *Id*.

39. *Id*.

40. *Id.*

New State Bar of Texas Pro Bono Award Goes To…Justice Phylis Speedlin

1. *State Bar Awards*, 75 TEX. B. J. 626, 627 (2012).

2. San Antonio Bar Association, Community Justice Program, http://www.sabar.org/displaycommon.cfm?an=1&subarticlenbr=91 (last visited on Oct. 8, 2012).

3. Fourth Court of Appeals, Justice Phylis J. Speedlin, http://www.4thcoa.courts.state.tx.us/court/justice_pspeedlin.asp (last visited on Oct. 8, 2012).