CHAMBERS

Volume 37, Number 2 Spring, 2010

Addressing Addictions in Court: Rethinking Recovery and Relapse Part One

CHAMBERS

Levels of Giving
In Memoriam
Upcoming Events
and more!

Contempt Series Conclusion

by Hon. Paul Davis

Procedure in Direct Contempt Cases

5th Circuit Gets E-Filing, Texas Appeals Court to Follow

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

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Special Notice!

Nominations Committee Prepares for FY 2010-2011

The Texas Center Nominations Committee is preparing to slate new officers and members for the 2010-2011 Texas Center for the Judiciary Board of Directors. This is an opportunity to serve the Texas judiciary in a unique and rewarding way. Following are the positions which need to be filled.
Three positions and the chair-elect will be open for the Texas Center for the Judiciary's Board of Directors:
Chair-Elect – Must be filled by an appellate judge for 2010-2011. One-year term, beginning September 22, 2010.
Place 2 - Appellate Judge
Place 6 - District Judge
Place 9 - County Court at Law Judge
The board member terms are for three years, beginning September 22, 2010. The position as secretary/treasurer on the TCJ board is an appointed position.

What You'll Need to apply for a position on the Texas Center's Board of Directors

The 2009-2010 Nominations Committee has established an application process that requires all nominees to accomplish the following by June 1, 2010:

- Review the Texas Center bylaws pertaining to chair-elect and board member duties;
- Review the appropriate job description (chair-elect, board member);
- Submit a letter of interest;
- Submit a completed application.

Candidates for any open position must submit their letter of interest and completed application by U.S. Mail to:
Hon. Suzanne Stovall, Senior District Judge
221st District Court, Montgomery County Courthouse
Conroe, TX 77301
Email: suzanne.stovall@mctx.org

In addition, please provide the Texas Center for the Judiciary with a copy of your letter of interest and your completed application via U.S. Mail or fax to:
MAIL:
Ms. Mari Kay Bickett
Texas Center for the Judiciary
1210 San Antonio Street, Suite 800
Austin, TX 78701
FAX: 512-469-7664 | Email: mkbickett@yourhonor.com

If you would like to recommend someone for nomination, please notify Judge Suzanne Stovall, Chair of the TCJ Nominations Committee, no later than 5:00 p.m., June 1, 2010.

Slated officers' names will be announced in the Summer 2010 edition of In Chambers. At the Annual meeting in September, the greater Texas judiciary will be able to vote for their candidates of choice.

Nominations Committee FY 2009-2010

Chair
Hon. Suzanne Stovall
Conroe, Texas

Member
Hon. Linda Chew
El Paso, Texas

Member
Hon. Alex R. Hernandez
Port Lavaca, Texas

Member
Hon. Elizabeth Lang-Miers
Dallas, Texas

Member
Hon. Migdalia Lopez
Brownsville, Texas

Member
Hon. C.H. Terry McCall
Eastland, Texas

Member
Hon. John Hardy Morris
Gainesville, Texas

Member
Hon. Billy Ray Stubblefield
Georgetown, Texas

Member
Hon. Lee Waters
Pampa, Texas

FOR YOUR INFORMATION ONLY
Judicial Section Nominations

For more information on the Judicial Section's nominations and an application for the Judicial Section board positions, please visit the State Bar Judicial Section website. The following positions are open:

Place 1 – Appellate Court Judge
Place 6 – District Court Judge
Place 7 – District Court Judge
Place 9 – County Court at Law Judge
Place 11 – Supreme Court Justice
Place 12 – Court of Criminal Appeals Judge
Chair-Elect – Appellate position

Applications must be submitted by June 1, 2010. Board positions are three-year terms beginning September 22, 2010 and expiring in 2013 (except Place 1 which was created by a vacancy and expires in 2012). The secretary/treasurer position on the Judicial Section board is appointed by the Chairman of the Board.

Applications and a letter of interest should be sent by regular mail or email to the address listed below. Applications must be received by June 1, 2010 at 5:00 pm. Late applications will not be accepted.

Tracy Nuckols
tnuckols@texasbar.com
Project Manager, Sections Department
P.O. Box 12487
Austin, Texas 78711-2487

New Administrators of Justice

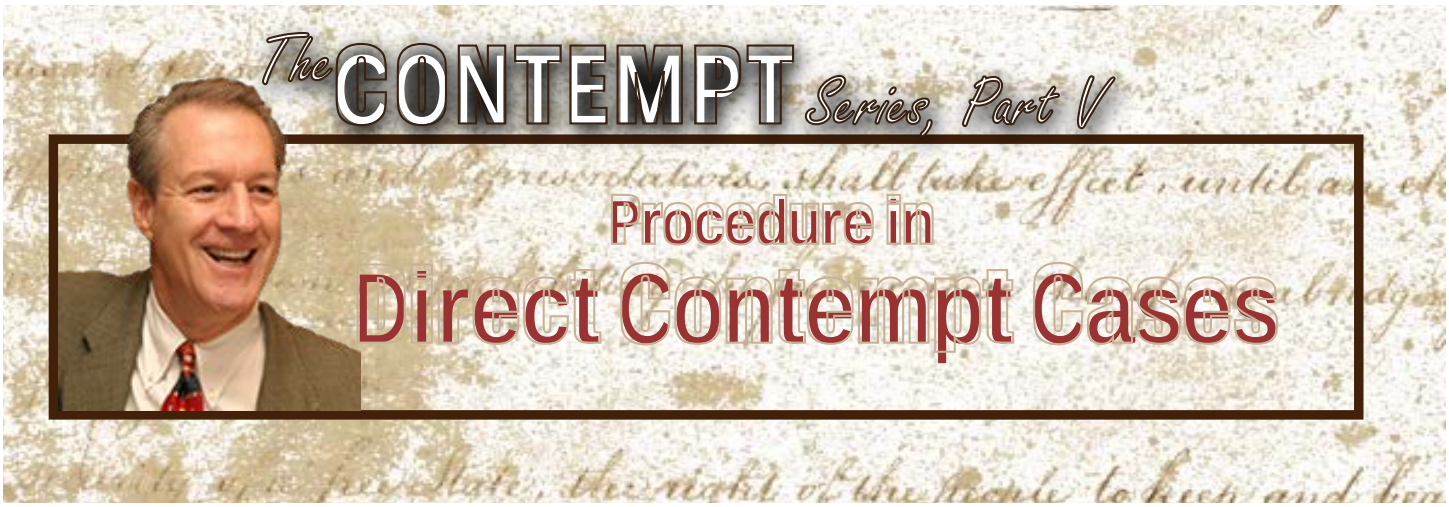
As of April 1, 2010

W. Bernard "Barney" Fudge
Judge, 78th District Court
Wichita Falls

Ruben Gonzalez, Jr.
Judge, 432nd District Court
Fort Worth

Lisa Jarrett
Judge, 436th District Court
San Antonio

Lori I. Valenzuela
Justice, 437th District Court
San Antonio



by Hon. Paul Davis

"Oh, it is excellent to have a giant's strength, but it is tyrannous to use it like a giant."
Shakespeare, Measure for Measure II, ii

The second scenario in which judges encounter our contempt powers is in connection with our obligation to control the courtroom. The successful management of our courtrooms is key to insuring that justice is done in the proceedings brought before us. The power to hold a person in direct contempt is a critical tool for this purpose.

However, there are both precedental and statutory limitations on this power. Moreover, it is important to examine our motivations when considering whether to embark on a direct contempt finding.

Direct contempt occurs within the presence of the court, and the court knows firsthand all the facts constituting the contemptuous conduct.[1]

Depending on the exigencies of the situation, a court has full and complete powers to act immediately. When the court must act instantly to suppress a disturbance, violence or physical obstruction or disrespect to the court, the due process requirements of notice and hearing demanded in constructive contempt cases are not necessary.[2] But, even if direct contempt is committed, the contemnor may be entitled to notice and a hearing if there is no exigent situation which requires the court to act immediately to quell the situation.[3] Generally, if due process protections can be afforded, they must be.

There are even further restrictions on a court's contempt powers when dealing with an officer of the court. The procedure for holding an officer of the court in contempt is set forth in Tex. Gov't Code § 21.002(d).[4] When an officer of the court is involved, a court may certainly use all its powers, including contempt, to control immediate courtroom disturbances. But once the immediacy has passed, due process and the statute step in.

Under the statute, you become "the offended judge" and the court officer is entitled to:

- release on personal recognizance, and
- a hearing before a different judge for "a determination of his [or her] guilt or innocence."[5]

In addition to the court officer's due process and statutory rights, the court must at all times keep in mind the litigant's right to a fair trial.[6] The court's dealings with the attorney should not prejudice the litigant's rights.

A. CONTEMPT BY NON-OFFICERS

1. Conduct Must Obstruct Court.

Generally, contemptuous conduct is that which "tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during a litigation, or otherwise tends to impede, embarrass, or obstruct the court in discharge of its duties . . ."[7]

2. Conduct Must Dictate Immediate Court Intervention.

One distinguishing factor between direct and constructive contempt is the court's need to act instantly to preserve order and integrity.[8]

3. Procedures of Complaint, Notice, and Hearing Not Always Necessary.

When the court must act instantly to suppress a disturbance, violence or physical obstruction or disrespect to the court, the due process requirements of notice and hearing demanded in constructive contempt cases are not necessary.[9] However, the contemnor must have some notice that it is the court being affronted. To be held in contempt for criticizing a judge, for example, the person must have some notice that the judge is acting as the court, and not in a personal capacity.[10]

a. If Due Process Can Be Accorded, It Must Be. Even if direct contempt is committed, the contemnor may be entitled to notice and a hearing if there is no exigent situation which requires the court to act immediately to quell the situation.[11]

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Contempt
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4. Conduct Must Occur in the Presence of the Court.
Contemptuous conduct does not have to take place in the immediate presence of the judge to be considered in the presence of the court. As stated by the Court of Criminal Appeals, "The court is present whenever any of its constituent parts are engaged in the prosecution of the court, which constituent parts include the judge, the courtroom, the jury, and the jury room.[12]

In Ex parte Aldridge, the contemnor had left objectionable pamphlets in the hallway outside the courtroom where prospective jurors were likely to find them, necessitating a mistrial. The conviction of contempt was upheld. [13]

a. Offensive Conduct Toward Judge Outside of Court Is Not Direct Contempt. The conduct must occur while court is in session, or in the discharge of its duties, to be considered direct contempt. The contemnor must have some notice that the judge is acting as the court and not in a personal capacity.[14] A mere affront to the person of the judge is not enough if court is not in session, although the same actions in open court may have been contumacious. Some examples of conduct outside of court include:

- critical letter to judge not direct contempt;[15]
- confronting judge in hallway outside courtroom and calling her disgraceful not direct contempt;[16]
- assault on judge at gas station arising out of court proceedings not direct contempt.[17]

5. Conduct Must Be Intentionally Disrespectful to the Court
Judges have been repeatedly cautioned by appellate courts against confusing offenses to their personal sensibilities with obstruction to the administration of justice.[18]

Offensive comments alone are not necessarily contumacious, unless they are disruptive or boisterous, even if spoken in open court.[19] Whether or not the respondent's statement offends the court is not the test for contempt actions, but rather the act itself must be shown to be intentionally disrespectful.[20]

B. CONTEMPT BY OFFICERS OF THE COURT

1. Procedure codified.
In addition to the procedures for non-officers, the legislature has codified additional procedures for holding an officer of the court in contempt. These are set forth in Tex. Gov't Code §21.002(d).[21]

2. Who is an Officer?
a. Attorneys. Case law in regards to contempt by officers of the court is almost exclusively devoted to conduct of lawyers. An attorney representing a client in the trial of a case is, of course, an officer of the court.[22] An attorney may be fined or imprisoned by any court for misbehavior or for contempt of the court.[23]

b. Receivers. Court-appointed receivers are officers of the court and are entitled to the protection of Government Code §21.002(d).[24]

c. Court Reporters. Court reporters are officers of the court.[25] As Sanchez involved contempt imposed by an appellate court, it should be noted that Tex. Gov't Code Ann. § 21.002(d) applies only to officers of the court who are held in contempt by a trial court. Thus, the pronouncement of contempt of a court officer by an appellate court need not be referred to another court for determination of guilt or innocence.

3. When is Contempt Holding Proper?
It is important for the trial judge to remember that holding an attorney in contempt must be done in such a manner as to not prejudice the rights of the litigant. One option available is for the judge to halt the conduct, note the offensive conduct at the time it occurs, warn the lawyer in that respect, and conduct a contempt hearing after the trial.[26]

4. Examples of Lawyer Contempt.
a. Improper Remarks. An attorney may be held in contempt for statements made during court proceedings. Even if the remarks are not disrespectful or improper, an attorney may be held in contempt for the manner in which he or she spoke.[27]

The Court of Criminal Appeals has held that the essence of direct contempt is that the conduct obstructs or tends to obstruct the proper administration of justice.[28] Recently, this Court clarified its position, stating that disrespectful conduct toward the court, even if it does not obstruct the administration of justice, may subject an attorney to contempt.[29]

Numerous additional examples may be found in the annotation at 68 A.L.R.3d 273 (1976).

b. Tardiness. An attorney may not be punished by contempt for being justifiably late for a court appearance.[30] In that case, a contempt order against an attorney was reversed where he was ten to twenty minutes late because he was answering the docket call in another court.[31]

c. Failure to File a Brief Timely. An attorney may be held in contempt for failing to file a brief timely.[32]

d. Failure by Prosecutor to Present Case. A prosecutor may be held in contempt for failure to present a case.[33]

e. Advice to Clients. An attorney's advice to a client to violate a court order will not subject the attorney to contempt if he acted in good faith.[34]

f. Incompetence of Counsel. It appears doubtful that an attorney

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Contempt
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can be held in contempt for alleged incompetence or for certain trial tactics which are in his discretion. In Ex parte Pink, the court of criminal appeals stated:

Although we reserve judgment on whether a trial judge who believes an attorney is not rendering effective assistance to his client during the trial of a case may for that reason hold the attorney in contempt, until it is properly before us, we harbor serious doubt that it is a proper use of contempt powers.[35]

Thus, a trial court cannot rule that an attorney's failing to conduct voir dire examination or to utilize peremptory challenges is contemptuous.[36]

g. Trial Tactics. Where the trial court had ruled that a certain line of argument was inadmissible, and the attorney persisted, contempt may be proper.[37]

Trial court has ample power to terminate action of counsel in repeatedly propounding questions to a witness designed to elicit improper evidence by holding attorney in contempt.[38]

5. Motion to Release.
When a court officer is held in direct contempt, he or she has the right to present a motion to be released upon recognizance pending a determination of guilt or innocence by another judge. Once an officer of the court makes such a motion, the trial judge must release the officer on his own recognizance pending the hearing.[39]

While there are no cases on point, it would seem than an oral motion would meet the requirements of §21.002(d) in direct contempt matters. This would make sense because in a direct contempt case, the judgment may be immediately imposed by the court, which would preclude the officer from having the time to prepare a written motion.

On the other hand, in a constructive contempt case, a written motion may be required.[40]

6. Hearing Before Different Judge.
Tex. Gov't Code § 21.002(d) gives the respondent the right to have a judge, "other than the judge of the offended court," determine whether the respondent is actually guilty.[41]

7. Notice and Opportunity to be Heard.
Due process demands that direct contemnors, those whose contumacious acts occur in the presence of the court, be afforded reasonable notice of the specific charges and an opportunity to be heard before being finally adjudicated in contempt and sentenced.[42]

The show cause order in Pink commanded the respondent to "appear before this Court on [date] for a contempt hearing . . ." This notice was held "insufficient to inform [Pink] of the accusations against him." On the other hand, the notice was held sufficient in Reposa, which said "Defense counsel Reposa made a simulated masturbatory gesture with his hand while making eye contact with the Court in response to an objection by the State to his interference with the Court's plea bargain inquiry."

Conclusion
In summary, my advice to you can be summarized by a few ideas:

- Contempt, particularly direct contempt, is an inherent power of the court, and arises from the very nature and purpose of a court.
- A court's contempt power should be used only sparingly, and after consideration of all other available options.
- Contempt proceedings are quasi-criminal.
- Contempt proceedings are governed, at least, by Constitutional due process requirements, and probably by statute.

I hope that this walk through the maze of contempt law will be of some use to you, the Judges of Texas. Please do not hesitate to call me if I may ever be of service.

This concludes Judge Paul Davis' series on contempt.

ENDNOTES

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

2 In re Bell, 894 S.W. 2d 119 (Tex. Spec. Ct. Rev. 1995)

3 Ex parte Knable, 818 S.W.2d 811 (Tex. Crim. App. 1991)

4 "An officer of a court who is held in contempt by a trial court shall, on proper motion filed in the offended court, be released on his own personal recognizance pending a determination of his guilt or innocence. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to assignment by the presiding judge other than the judge of the offended court to determine the guilt or innocence of the officer of the court." Tex. Gov't Code § 21.002(d)

5 Ibid.

6 "In a case involving a lawyer's contemptuous conduct, a holding of contempt must be done in such a manner so to not prejudice the rights of the litigant who is represented by the contemptuous lawyer. If the trial judge decides to wait until the conclusion of the trial before making findings of contempt and assessing the punishment, he should note the offensive conduct at the time it occurs, and warn the lawyer in that respect." Kilgarlin & Ozmun, Contempt of Court in Texas--What You Shouldn't Say to the Judge, 38 Baylor L. Rev. 291, 313-14 (1986)

7 Ex parte Norton, 191 S.W.2d 713 (Tex. 1946).

8 Cooke v. United States, 267 U.S. 517 (1925); In re Bell, 894 S.W.2d 119 (Tex. Spec. Ct. Rev. 1995).

9 In re Bell, 894 S.W. 2d 119 (Tex. Spec. Ct. Rev. 1995).

10 Id.

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11 Ex parte Knable, 818 S.W.2d 811 (Tex. Crim. App. 1991) (If contemnor "could have been afforded due process protections without disrupting the orderly trial process . . . he should have been afforded these protections.")

12 Ex parte Aldridge, 334 S.W.2d 161 (Tex. Crim. App. 1959).

13 Id.

14 See Cooke v. United States, 267 U.S. 517 (1925); In re Bell, 894 S.W.2d 119 (Tex. Spec. Ct. Rev. 1995).

15 Cooke v. United States, 267 U.S. 517 (1925)

16 In re Bell, 894 S.W.2d 119 (Tex. Spec. Ct. Rev. 1995)

17 Ex parte Soape, 347 S.W.2d 621 (Tex. Crim. App. 1961)

18 Ex parte Gibson, 811 S.W.2d 594 (Tex. Crim. App. 1991) (quoting Brown v. United States, 356 U.S. 148 (1958)); Ex parte Taylor, 807 S.W.2d 746 (Tex. Crim. App. 1991); In re Bell, 894 S.W.2d 746 (Tex. Spec. Ct. Rev. 1995).

19 E.g., Ex parte Gibson, 811 S.W.2d 594 (Tex. Crim. App. 1991).

20 Ex parte Taylor, 807 S.W.2d 746 (Tex. Crim. App. 1991).

21 See footnote 4.

22 .Ex parte Howell, 488 S.W.2d 123 (Tex. Crim. App. 1972).

23 Tex. Gov't Code § 82.061.

24 Ex parte Griffitts, 711 S.W.2d 225 (Tex. 1986).

25 Ex parte Sanchez, 703 S.W.2d 955 (Tex. 1986).

26 Kilgarlin & Ozmun, supra.

27 Ex parte Sentell, 266 S.W.2d 365 (Tex. 1954).

28 Ex parte Gibson, 811 S.W.2d 594 (Tex. Crim. App. 1991); Ex parte Pink, 746 S.W.2d 762 (Tex. Crim. App. 1988).

29 In Ex parte Reposa, 2009 Tex. Crim. App. Unpub. LEXIS 725, the Court of Criminal Appeals wrote: "Despite this focus, however, we have never rejected another category of conduct, disrespect for the court, and acts which bring the court into disrepute, as a legitimate basis for a finding of criminal contempt." Reposa at p. 14

30 Ex parte Butler, 372 S.W.2d 686 (Tex. Crim. App. 1963).

31 Id. at 687.

32 Morgan v. State, 646 S.W.2d 603, 605 (Tex. App.—San Antonio 1983, no pet.). See also Ex parte Cooper, 657 S.W.2d 435 (Tex. Crim. App. 1983); In Re Shelnutt, 695 S.W.2d 622 (Tex. App.—Austin 1985, orig. proceeding).

33 In Ex parte Holmes, 754 S.W.2d 676 (Tex. Crim. App. 1988), the reviewing court upheld an order holding the Harris County District Attorney in contempt for refusing to proceed in the prosecution of a criminal case before a visiting judge.

34 Maness v. Meyers, 419 U.S. 449 (1975). But see Ex parte Knollenberg, 69 S.W.2d 37 (Tex. 1934) (attorney held in contempt for failing to produce, pursuant to court order, two letters he claimed were confidential communications between attorney and client, but which obviously were not).

35 Ex parte Pink, 645 S.W.2d 262, 265 (Tex. Crim. App. 1982).

36 Ex parte Jacobs, 664 S.W.2d 360, 364 (Tex. Crim. App. 1984).

37 Ex parte Fisher, 206 S.W.2d 1000 (Tex. 1948), aff'd, Fisher v. Pace, 336 U.S. 155 (1949).

38 McEntire v. Baygent, 229 S.W.2d 866 (Tex. Civ. App.—El Paso 1949, no writ).

39 Tex. Gov't Code § 21.002 (d).

40 Ex parte Waters, 499 S.W.2d 309 (Tex. Crim. App. 1973).

41 Tex. Gov't Code § 21.002(d). See also Ex parte Howell, 488 S.W.2d 123 (Tex. Crim. App. 1972); Ex parte Pink, 645 S.W.2d 262 (Tex. Crim. App. 1982).

42 Ex parte Reposa, 2009 Tex. Crim. App. Unpub. LEXIS 725, at p. 9, citing Taylor v. Hayes, 418 U.S. 488, 498-500, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974); Ex parte Knable, 818 S.W.2d 811, 812-14 (Tex. Cr. App. 1991); Ex parte Pink, 645 S.W.2d, at 264.

by Hon. K. Michael Mayes

Editors's Note: This is the first of a three-part series on Addiction in Court.

Before the mid to late twentieth century, "alcoholism" and "drug addiction"[1] were words whispered about fallen friends and relatives. Since that time, the recovery community has made significant strides in explaining to non-addicts what it means to be an addict, and how recovery and relapse co-exist in the addict's world. But fully explaining these concepts in terms that make sense to non-addicts can be an insurmountable task and the resultant lack of understanding by those who are not touched directly or indirectly by addiction has created an atmosphere of distrust between addicts and non-addicts. This, in turn, has resulted in little empathy from various professionals and industries that have the capacity to create positive change for addicts. We see this in sparse funding for research and treatment, rejection of coverage by the insurance industry for necessary mental health care, and denial by those in the judicial field that addictions should be viewed differently than crimes.

The recovery community fights preconceived biases that have existed for years. For example, many well-intentioned non-addicts find it easier to blame the abuse of alcohol or drugs on a lack of courage or an unwillingness to just say "no" than to thoughtfully consider the painful and costly alternative that addiction is a mental health condition that in fact exists and cannot be cured. Moreover, since our society values accomplishment through hard work, it is difficult for many to accept the notion that simple effort and a willingness to quit alcohol or drugs is not the answer to addiction. These people find it easier and, quite frankly, more satisfying, to simply assign culpability to a failure in the addict's morality, thereby satisfying their human desire to assign fault.

While we have known for some time that addiction affects the addict's psyche in ways that promote the disease process itself,[2] only in recent years have the medical and technology communities weighed in with their expertise, explaining and showing in vivid detail the direct effects addiction has upon the brain of an addict. Advanced CAT scans, MRIs and other radiological devices now confirm with remarkable specificity how addiction, as a mental disorder or disease, operates in the brain of an addict, and how substance abuse alters and damages the brain. Medicine has proven what addiction and substance abuse experts have suspected for years: (1) an addict's brain is different than other brains and (2) drugs and alcohol damage the addict's brain in specific locations and in demonstrable ways. Being able to see verifiable changes in an addict's brain has brought undisputable proof to even the most skeptical of minds.

Medical studies support the conclusion that heredity and genetics play a large role in the susceptibility of certain persons to become addicted; that is, the propensity to addiction is predetermined and not based on some conscious decision-making by the addict. These modern advances also confirm the mechanism of how the abuse of substances affects the frontal region of the brain where judgment, decision making and regulation of impulse behaviors are governed.[3]

These brain alterations result in an inability to recognize or acknowledge that one is even sick and convince the addict that they do not have a problem or need any help. The resulting denial cannot be assigned to laziness, a lack of will power or an unwillingness to accept the truth.

The continued refusal by some judges to recognize addiction as a mental disorder is not only refuted by this current medical knowledge, but serves to detract from the desperate need for solutions. This reluctance to acknowledge the medical truths about addiction fuels an unwarranted loss of hope for those who are addicts or who suffer as a result of the addiction of another. Combining current medical knowledge with the reality that addiction is a disease generates an entirely new impetus to implement treatment whenever and however possible, including in the judicial setting.

For judges, especially, it is imprudent to approach addiction with an attitude that ignores the realities of the diagnosis. It is even less judicious to ignore our ability to implement an intervention or require treatment for this disorder simply because we feel uninformed or uneducated about the disease. This does not mean that we allow defendants to escape consequences for their actions, but it does mean that we join the recovery and treatment communities with a protocol that addresses the problem head on. A judge has the unique ability to oversee and manage the devastating consequences of addiction. How to use this ability in a positive, healthy and therapeutic way can be better understood once addiction is defined in terms that are appreciated. Once addiction is understood, lives can and will be saved.

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Addiction
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What is addiction?

Addiction has been defined in various ways by various professionals. Gorski and Miller state that "[a]ddiction is a condition in which a person develops bio-psycho-social dependence on any mood-altering substance."[4] Abraham Twerski, M.D. opined decades ago that alcoholism was a disease, stating that "[i]n some alcoholics there is a physiologic abnormality in the way the body handles alcohol. Perhaps this is an inherited metabolic abnormality or something which develops after long periods of drinking or even a combination of these two factors…. Personality changes [and] [l]oss of control [and] [t]he compulsive drive for alcohol does not occur in the nonalcoholic."[5] The DSM-IV(TR 2002) couches its definitions of substance abuse, substance dependence and addiction in terms of symptoms demonstrated by the patient.[6] Some researchers now distinguish between substance addictions and process addictions (e.g., gambling and eating). All of these definitions and others have merit, of course, but I have discovered that on the bench it is best to think of addiction in terms of "recovery" and "relapse." Understanding these two terms helps guide me in overseeing and handling drug and alcohol cases as I find it easier to address these realities of addiction than worry about a specific definition of the disorder.

A word of what addiction is not. Addiction is not a thought that can be forgotten, a habit that can be undone, a memory that fades with time or a craving that goes away after a long period of abstinence. It does not exist only where it is wanted, it cannot be willed away and it does not present itself the same way in every addicted person. Where it exists it always exists, when it surfaces it stays until death, when it is at work it never stops working and when it appears to be defeated it is simply playing possum. It does not exist in every living person but when it does exist it can be lethal if ignored.

For those who have never experienced the power or consequences of addiction, or who profess that addiction is merely a weakness in will power, the notion of "powerlessness" (Step 1 in 12 Step work) over addiction is confounding and insulting. They scoff at the notion that an individual could have the inability to ignore the urges and triggers that incite substance abuse, and they believe that addiction is not a mental disorder but rather a conscious decision by the addict to use. Successful non-addicts thrive on the idea that people achieve by controlling their environment, getting things done through hard work and overcoming hardship thorough sweat and exertion. Addicts and non-addicts live in the same world, they argue, and as a result they cannot accept that an addict is powerless and without control over their addiction. To them, overcoming addiction should require nothing more than taking control of it, shaking it, throwing it down on the ground and stomping it out so that it never returns.

Unfortunately, while non-addicts live and flourish in a world of rational decisions and logical consequences, addicts do not. This does not mean that the psycho-social-biological makeup of an addict's brain is untreatable or that the damage caused by substance abuse is irreversible, but it does mean that the addict cannot simply rely upon a "self will" approach to get and stay clean.

What are recovery and relapse?

Truth #1: "Recovery" means more than just not using drugs or alcohol, and "relapse" means more than just using drugs. This statement reflects the very nature of addiction and it must be understood and accepted before an addict can learn how to successfully recover from their addiction. More important, we as judges cannot effectively evaluate or govern over substance abuse cases if we do not accept and understand this truth about addiction because we are refusing to redefine our assumptions about addiction, and as a result we are refusing to treat substance abusers at the level of their disorder.

To an addict, recovery and relapse do not exist independent of each other. Neither is a black and white phenomenon that occurs instantaneously, and neither exists free of the other. Recovery and relapse ebb and flow in the daily life of an addict and are conversely interdependent. They are realities which exist as reverse mirror images of each other. Think of recovery as a continuum that exists on an upward angle.[7] Think of relapse as the reverse mirror image of recovery, existing on a downward angle. As recovery increases in strength, relapse weakens. As relapse increases in strength, recovery weakens.

Since recovery and relapse have many stages or levels, limited only by the individual's addiction, there is no one way to define them. In our juvenile Power Recovery Court[8] we have a formula: Powerful Recovery = sobriety + control of addictive thinking + no secrets. Another good definition is this: Totally Successful Recovery means (1) the non-use of unprescribed drugs, (2) the non-abuse of prescribed medications and (3) the non-existence of addictive thinking.[9] It is important to note in these definitions that the "non-use" of substances is only part of the equation. This is imperative to appreciate because an addict can be in relapse mode without ever having used a drug or alcohol. Indeed, this is typical of relapse, a strong recovery turning downward through a relapse in "addictive thinking."

Truth #2: Recovery is not a singular point in time when the addict stops abusing drugs. When an addict starts a "recovery," he begins a long, uphill walk of daily work addressing the triggers and struggles that lead him to abuse substances. This walk is called recovery, not recovered, because it is a journey whose work reflects the strength of the addict's thinking and ultimately his sobriety. This journey is pursued on a road that has a beginning but has no end. Recovery is a lifelong venture composed of, as the 12 Step programs put it, "one day at a time." A recovery will be strong if the addict can be taught (1) to focus on their thinking patterns,[10] (2) to be committed to their counseling, 12 Step or other group work, and (3) to be honest with themselves about their sobriety. In addition, a strong spirituality is the cornerstone of a successful recovery.[11] In recovery, spirituality is not necessarily a religious thing, though for

(Continued next page)

Addiction
(continued)

some it may be.[12] On the other hand, a recovery will falter where there is an inattentive pattern of addictive thinking and behavior exemplified by a lack of genuine recovery work. If an addict labors in a positive way in their recovery, their sobriety strengthens much like we gain muscle from exercise and knowledge from study. It doesn't mean they defeat and snuff out the addiction. It means that while their triggers and struggles still exist, the addict's ability to handle those increases. As a result, the addict becomes more successful at fending off the daily demons that haunt them and which lead to a return to drugs or alcohol.

Be sure to check out part two of this series in the next edition of In Chambers!

Endnotes

1 I will use the word "addiction" to include "alcoholism."

2 The most damaging symptom of an addiction disorder is the addict's "denial" of the existence of the disease. To understand this, imagine a person having been diagnosed with cancer, kidney failure, diabetes or even flu symptoms but who denied they had such a condition and refused treatment.

3 TIME, The Science of Addiction (July 16, 2007).

4 Gorski and Miller, Staying Sober, A Guide For Relapse Prevention, at page 39 (1986).

5 Twerski, Self Discovery in Recovery, at page 63 (1984).

6 The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (TR 2002).

7 The recovery continuum I refer to is never a smooth incline with uninterrupted seamless growth, but rather is a jagged slope containing periodic bumps and interruptions.

8 http://www.co.montgomery.tx.us/410dc/mcpowercourt.shtml

9 Compare Gorski and Miller, Staying Sober, A Guide For Relapse Prevention (1986).

10 In our Recovery Court Programs and jail substance abuse classes the counselors and staff use cognitive behavioral therapy and similar approaches to teach better thinking patterns.

11 "After half a century in psychiatric practice, I know without a doubt that the source of addiction is spiritual deficiency. Irrespective of whether we are religious or atheist, all human beings are spiritual by nature, and spirituality is the cornerstone of our recovery." Abraham Twerski, M.D.

12 As I have stated before, our Recovery Programs do not preach or mandate any religious belief whatsoever, but we do encourage the addict to seek a properly understood spirituality that will bolster their recovery. See Mayes, Recovery Courts and Character Changes (July 2006), http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf; Compare Twerski, Addictive Thinking, Understanding Self Deception," (Chapter 20) (1997); Twerski, The Spiritual Self (2000).

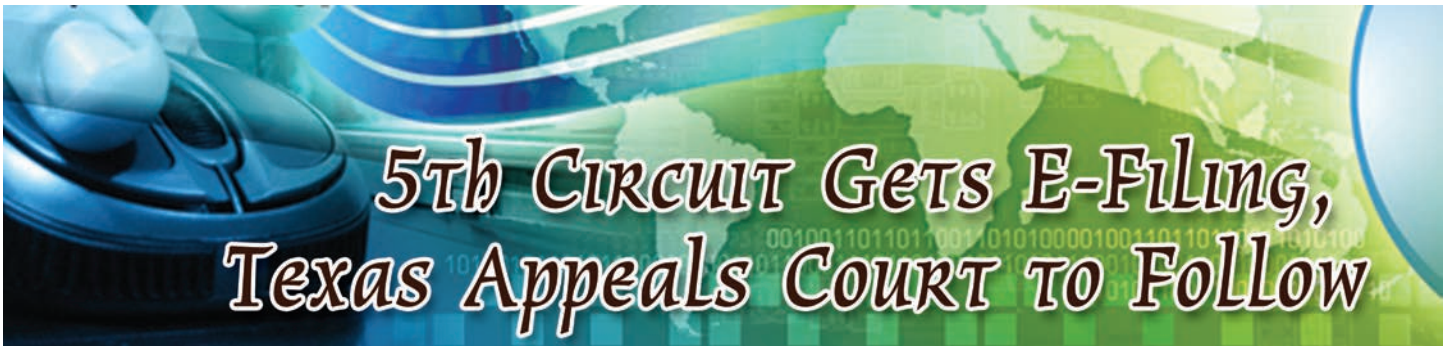
In Memoriam

Our hearts go out to the families of those honorable souls who have passed before us and served the bench so well. Please join us in remembering:

Hon. Clyde Ashworth
Retired Justice
Arlington

Hon. Edward Landry
Senior Judge
Houston, Texas

Hon. Bruce Hal Miner
47th District Court
Amarillo, Texas



5th Circuit Gets E-Filing, Texas Appeals Court to Follow

D. Todd Smith

For many Texas lawyers, filing trial court pleadings electronically has become almost second nature. The federal district and bankruptcy courts' Case Management/Electronic Case Files system is well established, and through TexasOnline, e-filing is an increasingly available option in state trial courts.

Yet, the 5th U.S. Circuit Court of Appeals and Texas appellate courts have lagged behind the e-filing curve. Though each system implemented a means of making orders and opinions available online and through e-mail notification, parties have not been able to officially file appellate motions or briefs electronically. Thankfully, change is here in the 5th Circuit and soon will be coming to the state appellate courts.

For the past three months, the 5th Circuit has offered voluntary e-filing through the appellate version of the federal judiciary's CM/ECF system. What began as an optional test run became mandatory on March 15, according to the 5th Circuit's website. Unless excused for good cause, counsel or an approved designee must register under new 5th Circuit Rule 25.2.3 and comply with the electronic filing standards posted at the CM/ECF information page on the 5th Circuit's website. See "Paper Cut." Texas Lawyer, March 8, 2010.

Registering attorneys must be admitted to practice in the 5th Circuit and must file an appearance form in each case. In public announcements about the new rules, the clerk's office strongly recommends that all members of the 5th Circuit Bar register, even if they do not currently have a case pending before the court. Registrants must complete two training modules online before being cleared to e-file.

Upon completing these initial steps, the 5th Circuit system should be seamless for those with experience e-filing in lower federal courts. As lawyers might expect, the biggest change from past practice is how to deliver documents to the court and other counsel.

According to explanatory materials available on its website, the 5th Circuit does not want paper copies unless it specifically requests them. Under new Circuit Rule 25.2.3, registering constitutes consent to electronic service of all documents, so after some initial lag time, serving a hard copy on opposing counsel should not be required. Under the new rules, briefs and motions uploaded in PDF format and processed through the ECF system will take the place of printed and bound versions.

Greater Efficiency

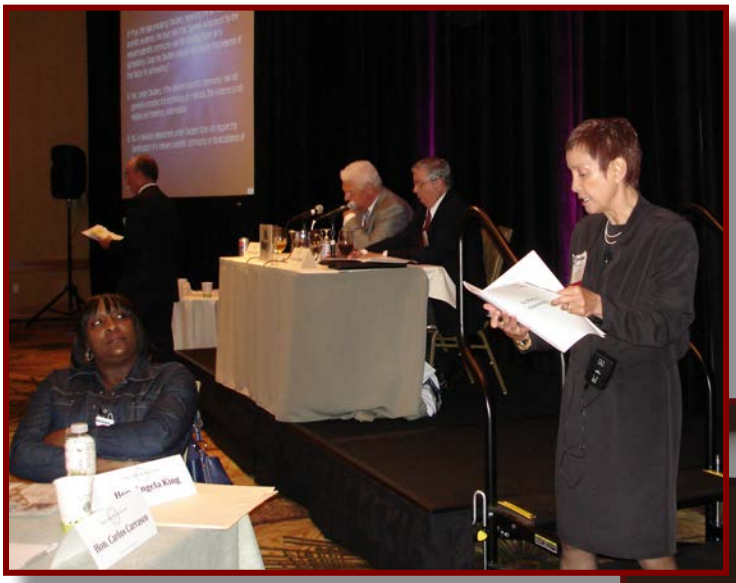
Without an established and unified e-filing model to build on, change has come more slowly in the state appellate court system. For years, the Texas Supreme Court has posted briefs and webcast oral arguments on its website, and some intermediate courts have undertaken similar measures. Recently, the Supreme Court started requiring parties to e-mail the clerk with searchable PDF copies of just about every kind of document other than a motion for extension of time. But sending e-copies is not yet sufficient to constitute filing or service; the court still requires the regular paper versions.

EVIDENCE SUMMIT 2010: CONFERENCE WRAP-UP

The Texas Center's second bi-annual Evidence Summit was held April 7-9, 2010, at the newly opened Westin at the Domain Hotel in Austin, Texas. Nine law schools tested the knowledge of Texas judges in a fun, challenging, and interactive Jeopardy format. The feedback from participants was tremendous, and we wanted to share some of the comments we received, along with a few memorable moments.

The judges said:

- **Exceeded my expectations – time flew by.**
- **Very good – very thorough coverage. Great participation.**
- **Best conference yet! I can't say enough about the excellent quality of the conferences put on by the Texas Center.**
- **Interactive! I enjoyed the format.**
- **Open questions; wonderfully conceived and executed.**
- **I had not attended an Evidence conference as judge and had heard from other judges that this would be informative, interactive and fun… They were correct!**



Moderator Linda Chew (right) leads the audience through a series of questions.

Team 1 (left to right): Hon. Angelica Barill, Hon. Bob McGregor, Hon. Roberto Canas, Hon. Nancy Hohengarten, Hon. Robin Malone Darr, Hon. Peter Peca, and Hon. Bonnie Sudderth.

Team #9 (left to right): Hon. Jim Crouch, Hon. James Jordan, Hon. Buddie Hahn, Hon. Dean Rucker, Hon. William Hughey, and Hon. Carlos Barrera (not pictured: Hon. John McCall).

Bronze Medalists, Team 6 (left to right): Hon. Wayne Bridewell, Hon. Robert Wortham, and Hon. Amado Abascal. (not pictured: Hon. Bascom Bentley, Hon. Rodolfo Delgado, Hon. Robert Jones, and Hon. Thomas Spieczny).

Silver Medalists, Team 7 (left to right): Hon. Brenda Chapman, Hon. Glen Harrison, Hon. Elma Salinas Ender, Hon. Donald Adams, Hon. Margaret Mirabal, and Hon. Mike Engelhart (not pictured: Hon. Patrick Garcia).

The Gold Medal Winners! Team 3 (left to right): Moderator Hon. Bud Kirkendall, Hon. Pamela Sirmon, Hon. Barbara Hale, Hon. Ernest White, Hon. Marilea Lewis, Hon. Laura Weiser, Moderator Hon. Linda Chew, Hon. Sergio Gonzalez, and Hon. Robert Barton.

(Continued on page 16)

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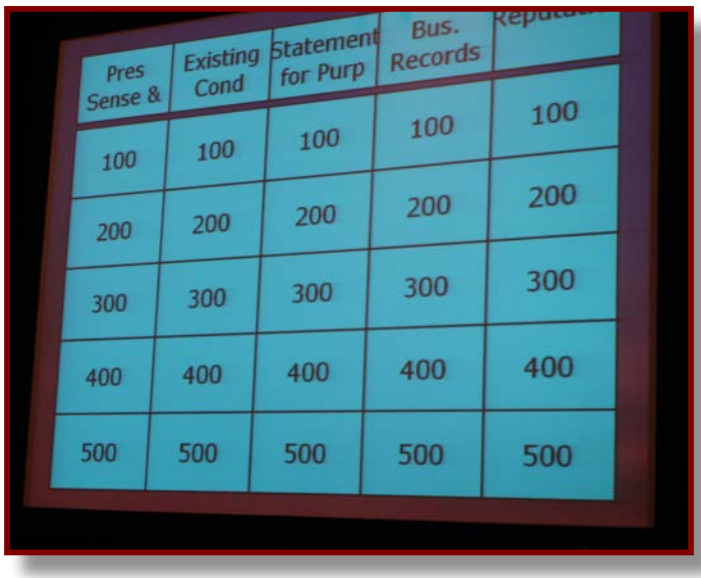

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Hon. John J. Specia, as part of the St. Mary's Panel

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Upcoming Conferences

2010

TxDOT Team Training
May 16-20
Austin

Criminal Law Conference (B)
June 4
Richardson

PDP Conference
June 13-18
Austin

Civil Law Conference (B)
June 25
Fort Worth/Dallas

Associate Judges Conference
July 5-7
Austin

DWI College
July 19-23
Austin

CPS Judges Conference
August 4-6
San Antonio

Annual Judicial Education Conference
September 21-24
Corpus Christi

College for New Judges
December 5-10
Austin

2011

Regional Conference 2, 3, 4 & 5
January 23-25, 2011
Bastrop

Regional Conference, 1, 6, 7, 8 & 9
February 9-11
Dallas

Texas College for Judicial Studies
April 10-15
Austin

Criminal Justice Conference
May 16-18
Dallas

PDP Conference
June 12-17
Austin

Annual Judicial Education Conference
September 18-21
Dallas

College for New Judges
December 4-7
Austin

More conferences await confirmation.
Look for announcements on
www.yourhonor.com
and in future editions of *In Chambers*.