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The Supreme Court's Two Trips to the Beach

By Evan A. Young



Virtually everyone has heard about the Texas Supreme Court's recent decision concerning beach use and ownership. Hurricane Rita claimed a lot of dry beach (literally, a lot—along with various other lots—that is now covered by the Gulf of Mexico), and left Carol Severance's recently purchased home on the *new* dry beach. The public had the right to access the dry beach before the hurricane. In its first opinion in *Severance v. Patterson*, released in early November 2010, the Court ruled for Severance by concluding that the public lost its easement when the Gulf swallowed up the previously encumbered land.¹ Severance's property, although with a new beachfront, had not been subject to that easement (at least under the record presented). Unless the State could prove or obtain a new easement in the traditional way, the Court held, the Open Beaches Act provided no authority for the State to treat the new dry beach as open to the public, much less force her to remove the house that now sat on dry beach.

Two justices vigorously dissented (and Chief Justice Jefferson was recused). After protest from the State and others, the Court not only granted the motion for rehearing, but ordered the case reargued. It was resubmitted following that second argument on April 19, 2011, and we await a second ruling.

This case provides a good opportunity to explore the interesting procedural features of the case—such as why the Court granted reargument, and that the case arose in federal court. It is also substantively fascinating, representing a collision of interests—the property owner's and the public's—both of which are reasonable and steeped in our legal tradition. Without taking a position on the merits, this article will try to identify the real core of the dispute between the majority and the dissent.

Act I: Certified questions

Severance will be remarkable not only for its eventual holding, but for how much air time it will have received both at the Texas Supreme Court and the U.S. Court of Appeals for the Fifth Circuit. Most cases get one full shot on appeal; this one will get four—twice each at both courts.

The case started in federal court, where Severance alleged a Fifth Amendment takings claim and a Fourth (via the Fourteenth) Amendment seizure. In April 2009, the Fifth Circuit panel held the takings claim to be unripe because, under U.S. Supreme Court precedent, Severance had to—but could not—show that Texas courts would necessarily reject the takings claim.¹

But the Fifth Circuit majority held that the seizure claim *was* ripe and that, while it overlapped substantially with takings analysis, it was a distinct constitutional harm.² “[T]he touchstone of a takings claim [is] lack of just compensation,” the panel explained, “and that of a seizure claim [is] its unreasonableness.”³

The alleged seizure involves what Severance termed an unreasonable interference with her use of property, because the State would have prevented her from building, improving, or repairing the house on the dry beach; indeed, it would force her to move that house, while simultaneously opening up what previously had been wholly private property to public access.⁴

The majority, however, decided not to resolve the case. It found Texas law to be unclear and inconsistent with respect to the nature of the property rights at issue, and therefore concluded that resolution would be aided by receiving definitive guidance from the Texas Supreme Court. It thus certified three questions—(1) whether Texas recognizes “rolling” easements on the beachfront; (2) if so, whether it comes from the common law or the Open Beaches Act; and (3) the extent of compensation, if any, that would follow enforcement of any rolling easement.⁵

Judge Wiener dissented from Chief Judge Jones’s majority opinion (in which she was joined by Judge Clement). To Judge Wiener, the case was merely “the quixotic adventure of a California resident who” got free representation from an ideological organization waging a “thinly veiled Libertarian crusade.”⁶ To him, the alleged “seizure” was nothing more than a repackaged “takings” claim—both of which, he held, lacked merit: “[T]he majority blurs the boundaries and conflates the elements of a Fourth Amendment seizure claim and those of a Fifth Amendment takings claim, then ignores our precedent and prolongs this meritless litigation by unnecessarily certifying questions to the Texas Supreme Court.”⁷

Thus ended the first of at least four appellate acts.

Act II: Divided answers

The Texas Supreme Court accepted the certified questions, and in November 2009, the Court heard arguments in *Severance v. Patterson*, No. 09-0387. A year later, in November 2010, it answered the Fifth Circuit by holding that Texas law does *not* include “rolling easements” when beachland disappears through a sudden, “avulsive” event.⁸ Justice Wainwright wrote the opinion, which was joined by all the justices except Justices Medina and Lehmann in dissent and Chief Justice Jefferson, who did not participate.

What the Court unanimously agreed is as interesting as what divided it. All eight justices agreed that land covered by the Gulf of Mexico at least part of the time—land up to the “mean high tide”—is always state-owned.⁹ Moreover, land that once was private becomes part of the public trust when it is claimed by the Gulf—whether that happens through slow and gradual erosion, or whether it happens suddenly and as the result of a powerful force like a hurricane. Either way, landowners lose not only the right to exclude people from their property but also *the property itself*. As the majority put it, a “person purchasing beachfront property along the Texas coast does so with the risk that their property may eventually, or suddenly, recede into the ocean,” and when that happens, “a private property owner loses that property to the public trust.”¹⁰ The “wet beach,” and land that is always submerged, is owned by the State, regardless of its history.¹¹

Both sides agree that, unlike the wet beaches, “the dry beach often is privately owned,” and therefore subject to the requirement of an easement before the public may use it.¹² The dry beach is the point from the mean high tide to the line of vegetation. So long as an easement exists—and generally speaking such an easement appears always to have existed on Galveston Island—the public has the right to access the beach, and the Open Beaches Act

of 1959 created enforcement mechanisms to allow the State to force landowners to remove barriers to such access. All the justices agreed to this.

Both sides agree that the mean high tide and the line of vegetation are constantly changing. “The sand does not stay in one place, nor does the tide line. While the vegetation line may appear static because it does not move daily like the tide, it is constantly affected by the tide, wind, and other weather and natural occurrences.”²¹ Both agree that the easement the public might have to a dry beach is *also* constantly changing. Such easements “may shrink or expand gradually with the properties they encumber. Once established, we do not require the State to re-establish easements each time boundaries move due to gradual and imperceptible changes to the coastal landscape.”²² The government does not need to prove up or acquire a new easement for public access due to gradual erosion. The majority refers to this as the “dynamic”—not the “rolling”—nature of the easements.³

Where the two sides part ways is over how fast this can happen. The majority concluded that sudden loss of ownership was a risk of owning land near the coast—but that sudden loss of the right to exclude people from newly beachfront property is altogether different:

[W]hile losing property to the public trust as it becomes part of the wet beach or submerged under the ocean is an ordinary hazard of ownership for coastal property owners, it is far less reasonable to hold that a public easement can suddenly encumber an entirely new portion of a landowner’s property that was not previously subject to that right of use.⁴

When the change is avulsive—rapid, dramatic—“it would be unfair to impose such drastic restrictions through the [Open Beaches Act] upon an owner . . . without compensation.”⁵ “Unreasonableness” was, as the Fifth Circuit noted, the “touchstone” for the Fourth Amendment seizure claim.⁶

The dissent saw no principled reason for distinguishing between fast and slow change. Its focus was on the *beach*, regardless of how long that particular dry sand was in place. The public, the dissent wrote, has *always* used the beach on Galveston Island, and indeed for many years it was the only means of travel.⁷ Because the island was not always divided into many tracts—but was once only two—Justices Medina and Lehrmann concluded that the “open beach” easement was inherent *in the whole* island, no matter how many times it was subdivided.⁸ If you own property that suddenly has beach on it, your purchase when it was *not* a beach included the encumbrance that if dry beach ever appeared on your property, it was subject to public access. “As long as a dry beach exists, so too must beachfront access easements.”⁹

The dissent pointed out that *all* these risks are equally well known. The majority gives no solicitude to the risk of losing the property altogether—if the hurricane had taken a bit more, Severance would have lost *everything*. But the risk of being put on dry beach following an avulsive event (instead of being wiped out altogether) is also well known. Indeed, the *same hurricane* that put Severance on the beach also wholly destroyed the real property of the previous beachfront property owner—an owner whose beach *was* subject to an easement that, presumably, cannot be reestablished absent cost even though the easement would have remained had the same geographic result occurred more slowly.¹⁰

And, the dissent asked, why is a *gradual* expansion of the easement due to slower erosion a risk for all landowners, but a more rapid expansion through an avulsive event something that does not generate the same consequences? “[B]oth events are natural risks known to the property owner,” the dissent asserted, arguing that those who buy on the coast must be prepared for any of those possibilities.¹¹

Moreover, the dissent argued, the easements do not exist in a vacuum, but have purposes. Insisting on metes and bounds for them, in an area of real property law that all admit is subject to both gradual and immediate shifts, is a recipe for disaster. “To apply static real property concepts to beachfront easements is to presume their destruction.”¹²

But the dissent wasn't done there. Severance, they say, *was truly on notice*, and nothing could be “unfair” or “unreasonable” about holding her to it. Since 1985, Texas law has required sellers of property near the coast to include disclaimers about risks in real property contracts—and Severance's purchase in 2005 included that disclosure.¹ And in 1999, the General Land Office listed the house Severance later bought as one that was already at least partially on dry beach after Tropical Storm Frances in 1998, and it relisted it in 2004.² One might assume that prices under such circumstances would already account for the legal regime. The majority, too, acknowledged the various warnings Severance had received, but concluded that they did not make the restrictions reasonable.³

In any event, Severance won—but that wasn't the end of the story.

Act III: Another round at the Texas Supreme Court

Unsurprisingly, the State filed a vigorous motion for rehearing. The Court granted it—and even ordered reargument. Why?

Rehearing is not unusual; reargument is. One possibility is that the import and impact of the decision only hit *after* the opinion was released. From the time the Court accepted the case up to release of the decision, only four short *amicus curiae* briefs were filed—two favoring Severance, the landowner (from the Texas Landowners Council and Professor Matthew Festa) and two favoring the State (from the Surfrider Foundation and the Galveston Chamber of Commerce).⁴ Though not a “sleeper,” exactly, the Court's record did not include reason to believe that the State was deeply concerned about the result.

But that changed once the decision came out. The Court received a torrent of *amicus* letters and briefs—20 new filings. All except one supported the State, and the lone filing in support of Severance was from a fellow property owner. After the Court granted rehearing, seven more filings are available on the Court's website—four of those seven support Severance (two are from beachfront owners, and two are from public policy groups). Of the 23 filings supporting the State, twelve are from municipalities, counties, or public officials. Jerry Patterson, the named defendant as the Commissioner of the General Land Office, filed a brief in his personal capacity. Kendall, Harris, Brazoria, and Travis Counties have filed, as have the Cities of Galveston and Houston, the Village of Surfside, the Galveston Park Board of Trustees, and State Representative Richard Raymond. Other filings are from individuals and groups.

This volume of filings may have caused the Court to conclude that further argument was warranted now that the public seemed more fully aware of an issue of statewide importance. That reargument occurred on April 19, with the same eight justices. We await what will presumably be the final ruling.

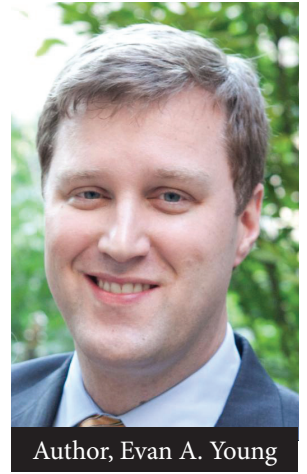
Act IV: Back to federal court

Once the Texas Supreme Court issues a ruling upon which it settles, the case will go back to the Fifth Circuit, which will resolve Severance's Fourth Amendment claim in accordance with the background law provided by the Texas Supreme Court. If the Texas Supreme Court stands by its preliminary decision, then the federal court presumably will conclude that the State's actions—if not abandoned—would in fact amount to a Fourth Amendment violation. And, of course, that option would still be theoretically open regardless of the Texas Supreme Court's decision, if the Fifth Circuit concludes that federal constitutional law was nonetheless violated—although such a holding would be far more difficult.

* * *

In these four acts, the state and federal appellate courts are trying to determine who has access to the beach as the beach changes (and particularly as it shrinks). The traditional value that Texans place on private property is a principle that the Court found outcome determinative in its first opinion. But the dissent focused on another significant value—the undisputed public policy of open access to the beaches, which appears to have been followed for

generations and which, until now, was not regarded as subject to the mercy of nature. How the Court (and the Fifth Circuit) ultimately resolves that tension will be a useful guide not only to the discrete issue of beach access, but to the way that the Supreme Court develops Texas' law of property more generally.



1 * Associate at Baker Botts L.L.P. Any views expressed are only the author's and do not reflect the views of Baker Botts or the Texas Center for the Judiciary.

2 *Severance v. Patterson*, No. 09-0387, 54 Tex. Sup. Ct. J. 172, 2010 WL 4371438 (Tex. Nov. 5, 2010), available at <http://www.supreme.courts.state.tx.us/historical/2010/nov/090387.pdf> (majority opinion), and <http://www.supreme.courts.state.tx.us/historical/2010/nov/090387d.pdf> (Medina, J., dissenting). Citations in the notes that follow will be to the slip opinions found at the links to the Supreme Court's website, with a parenthetical noting when the dissent is being cited.

3 *Severance v. Patterson*, 566 F.3d 490, 496-500 (5th Cir. 2009) (applying the requirements of *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985)). The court also noted that she had originally asserted a substantive due process claim, which she abandoned before her appeal to the Fifth Circuit. *Id.* at 494.

4 *Id.* at 501; *see also id.* at 501-03 (analyzing the Fourth Amendment claim).

5 *Id.* at 502.

6 *Id.*

7 *Id.* at 503-04 (certifying the three questions).

8 *Id.* at 504 (Wiener, J., dissenting).

9 *Id.* at 505 (Wiener, J., dissenting).

10 *Severance*, No. 09-0387, slip op. at 3, 32.

11 Slip op. at 9 ("The wet beaches are all owned by the State of Texas."). *See also* slip op. at 3 (dissent).

12 Slip op. at 15.

13 Slip op. at 25 (insisting that the rule adopted as to easements "shall not be applied to use the avulsion doctrine to upset the long-standing boundary between public and private ownership at the mean high tide line").

14 Slip op. at 9. *See also* slip op. at 3-4 (dissent) (agreeing that title to dry beach can vest privately).

15 Slip op. at 14. *See also* slip op. at 4 (dissent) ("these lines are constantly moving both inland and seaward").

16 Slip op. at 2. *See also id.* at 23 ("easements' boundaries may move according to gradual and imperceptible changes in the mean high tide and vegetation lines").

17 Slip op. at 24 ("a public beachfront easement in West Beach, although dynamic, does not roll").

18 Slip op. at 22.

19 Slip op. at 24.

20 *See* text accompanying note iv.

21 Slip op. at 1-2 & n.1, 10 ("overwhelming evidence exists that Texans have been using the beach for nearly 200 years") (dissent).

22 Slip op. at 9-10 (dissent).

23 Slip op. at 10 (dissent).

24 Slip op. at 8-9 (dissent).

25 Slip op. at 3 (dissent) (emphasis added).

26 Slip op. at 8 (dissent).

27 Slip op. at 13-14 (dissent).

28 Slip op. at 16 n.16 (dissent).

29 Slip op. at 18-19, 27-28.

Temporary Injunctions and Temporary Restraining Orders – A Focus on Trade Secrets

By Tom Fulkerson (L) and Ethan Gibson (R)



I. Introduction.

District judges are often asked to decide whether to issue temporary restraining orders or temporary injunctions to protect trade secrets. This article focuses on the significance of injunctive relief in these cases, identifies trends seen in appellate law dealing with trade secret protection—focusing on the law post-*Hyde Corp. v. Huffines*¹—and reports the results of an informal survey of a number of both state and federal district judges on what they have identified as best practices when addressing requests for injunctive relief. Further, this article covers the basic law dealing with those applications but is not intended to restate the law of either trade secrets or injunctions.

II. The Importance of Trade Secret Litigation to the Texas Economy and the Basic Law of Trade Secret Injunctions.

A. The importance of trade secrets.

Rapid technological innovation has become one of the primary drivers of Texas and national economic growth.² The federal government now tracks total productivity growth and its origins in order to determine the effect of innovation on national productivity.³ When companies are valued, unique innovations or items of intellectual property often contribute greatly to corporate value. For instance, Google™ was valued at 118 times its actual annual earnings during its initial public offering because of the perception that its intellectual property carried with it the potential for long-term profit.⁴ By the year 2000, United States businesses invested as much in intangible property such as trademarks, patents and trade secrets as they did in tangible capital, including machinery, equipment and fixtures.⁵

But the development of intellectual property—which by its nature is intangible and potentially ill defined—can be stunted by misappropriation that deprives the true owner of the fruits of his labor. The most well publicized and widespread thefts of intellectual property occur internationally. A study by the Organisation for Economic CoOperation and Development of the United Nations has concluded that counterfeiting of copyrighted or trademarked goods costs the owners of that intellectual property several hundred billion dollars of losses per year—more than the entire gross domestic products of 150 member nations of the United Nations.⁶ Internationally, between 35 and 40% of packaged commercial software and musical recordings sold each year are counterfeited.⁷

Much, if not most, of this type of misappropriation occurs outside both Texas and the United States. When inventors or owners of trade secrets look to Texas courts for protection, courts must apply a unique balancing act between trade secret protection and overaggressive protection because that may itself injure competition and innovation. Thus, the Texas judicial system's ability to make consistent, accurate and predictable judgments about trade secret claims is an important part of creating a predictable environment in which innovation can grow.

B. The importance of trade secret injunctions to litigants.

Trade secret injunctive proceedings are critical to the litigants for a number of reasons. First, although the court's decision in a TRO or temporary injunction hearing is preliminary, litigants often derive great meaning from these proceedings because they influence whether a party should continue the action, quit it or resolve it. Injunction practice in trade secret cases frequently forms a sort of informal non-binding summary jury trial in which existence or validity of a trade secret, potential defenses and the cost of injunctive relief are all tested.⁸

Unlike a summary jury trial, the preliminary injunction or TRO is binding on the parties unless the plaintiff fails to post his bond.⁹ The district court may set the TRO aside during temporary injunction hearing, afterward, or it may be reversed in the Court of Appeals. As a result, the decision to grant or to refuse temporary injunctive relief imposes substantial rights and burdens upon the parties, including—in some cases—the shuttering of entire fledgling businesses.

Moreover, litigation involving intellectual property tends to be very expensive, particularly where the trade secrets involved are of a highly technical nature. A strong parallel to state trade secret litigation is patent litigation, which tests the existence and ownership of inventions in the federal courts. A 2005 survey of the American Intellectual Property Law Association indicated that on a nationwide median in patent cases involving more than \$25 million, each side will spend more than \$4 million in fees and expenses.¹⁰ While few Texas trade secret cases reach these lofty heights (or perhaps sink to these depths), trade secret litigation is nonetheless very expensive. Preliminary decisions by the court often dictate whether a party chooses to make the substantial continuing investments needed to pursue (or defend) a trade secret matter.

Trade secret injunctions are also important because parties frequently commit themselves to propositions of fact or law at the beginning of a case that either formally or informally bind them for the remainder of the litigation.¹¹ As a result, although the results are preliminary, temporary restraining orders and temporary injunctions in trade secret matters are an extremely important way for litigants to “test the waters” of their longer-term dispute.

C. The basics of trade secret injunction law.

Hyde Corp. v. Huffines¹² and its sister case K&G Tool & Serv. Co., Inc. v. G & G Fishing Tool Serv.¹³ are the two seminal decisions in Texas law governing the existence and scope of trade secrets. Since 1958, Texas has defined a trade secret as any formula, pattern, device or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not use it.¹⁴ Customer lists, pricing data, client information, customer preferences, buyer contacts, blueprints, market strategies, drawings and software code have all been recognized as trade secrets when the legal requirements to establish a trade secret have been met.¹⁵

Texas courts use a six-factor test to determine whether information constitutes a trade secret: (1) the extent to

which the information is known outside the claimant's business; (2) the extent to which the information is known by employees and others involved in the claimant's business; (3) the extent of measures taken by the claimant to guard the information's secrecy; (4) the value of the information to the claimant and to its competitors; (5) the amount of effort or money invested by the claimant to develop the information; and (6) the ease or difficulty in which the information could be properly acquired or duplicated by others.¹⁶

Trade secret litigation is most often spawned in one of three scenarios: (1) as part of employer/employee disputes where departing employees seek to compete with their former employers; (2) in joint venture or joint development agreements where property rights in the event of separation are ill-defined; and (3) in contractual "look see" scenarios in which one party is exposed to information of another to enable a bid for property or some other potential business arrangement with the disclosing party.¹⁷ In each situation, the court's typical first inquiry is whether "property"—i.e., a trade secret—exists. If a trade secret is established, the same proof usually establishes ownership in the plaintiff, but not always.¹⁸

The duty to refrain from using trade secrets stems from different sources in each of the scenarios identified above. In the employer/employee scenario, all employees owe it to their employer to refrain from using the employer's property (including his trade secrets) for their benefit.¹⁹ In contractual scenarios such as non-disclosure agreements and joint venture or joint development agreements, the obligation may be solely contractual or may be grounded in the common law as well.²⁰

A number of particular rules have developed for the application of the rules of injunction law to trade secret cases. The general rule that the "status quo" for the purpose of trade secret analysis is the last actual and peaceable non-contested status which preceded the pending controversy is applied to misappropriation of trade secret cases.²¹ When a temporary injunction relating to a trade secret is considered by an appellate court in Texas, the court is not entitled to substitute its discretion for that of the trial court.²² Injunction decisions are reversed only for an abuse of discretion, and a trial court does not abuse its discretion if an applicant pleads an appropriate cause of action and presents some admissible evidence tending to sustain that cause.²³ Since the trial court is the finder of fact, it does not abuse its discretion when it bases its decision on conflicting evidence,²⁴ and all legitimate inferences in favor of the trial court's decision must be made by the appellate court.²⁵

We thought it might be helpful to the bench to go well beyond these basic statements of law that are commonly applied in trade secret injunctions. We therefore did two analyses, one to see how trade secret injunction jurisprudence has developed in the past and the second to see how members of the bench are currently deciding such disputes.

III. Long-Term Trends in the Jurisprudence of Trade Secret Injunctions.

To test how courts of appeal handle appeals from injunction actions in trade secret cases in order to see if any useful trends could be discerned from those decisions, we identified, as best we could, all appellate cases involving the theft of trade secrets since 1958 and also mentioning or using the word "injunction" or "enjoin." We commenced our searches in 1958 because the issuance of the Texas Supreme Court's seminal opinions in *Hyde Corp.* and *K&G Tool* are widely acknowledged to have commenced the Court's most definitive statement of the status of trade secret protection. A total of 248 cases were located utilizing both the words "trade secret" and either "injunction" or "enjoin," and each was reviewed.²⁶

Of the 248 cases reviewed, only 123 actually represented interlocutory appeals from the grant or denial of a preliminary injunction. In the remaining cases, injunctive applications were simply mentioned as part of claims pled or did not form any significant part in the appellate court's resolution of the appeal.

We reviewed the data for a number of trends: (1) whether grants of injunctions were more likely to be appealed than denials; (2) reversal rates of trade secret injunctions over time; (3) whether recent litigation involves different trade secrets than in the 1950s, 60s and 70s; (4) whether settled periods in the law of restrictive covenants affect the overall number of trade secret injunction appeals; and (5) whether the reversal rate has changed over the decades.

Before conducting the research in which we would see both standards and emerging trends, we hypothesized that: (1) grants of injunctions were more likely to be appealed than denials; (2) reversal rates would be higher on grants than in decisions appealing the denial of injunctions; and (3) as the Texas economy has become substantially more dependent upon intellectual property, the origin of trade secret disputes would have changed from the typical employer/employee dispute to disputes involving joint development agreements, non-disclosure agreements and other technological undertakings. Generally, the data confirmed our hypotheses with one significant exception.

We believed that the percentage would be even more lopsided in favor of appeals from injunctive grants because the abuse of discretion standard would be far more daunting to a party considering appeal from the denial of injunctive relief than the grant of injunctive relief. The data tended to confirm this conclusion. Decisions granting injunctions were, by far, more likely to be appealed than were denials. Of the 123 interlocutory trade secret appeals, 85 (or 69%) of interlocutory appeals were taken from injunction grants. Conversely, 38 (or 31%) of the cases involved appeals from denials of injunctive relief.

But what was the record of trial courts in these appeals? Of the 85 interlocutory appeals in which the trial court entered a preliminary injunction, 72% of the injunctions granted by the trial court were sustained and 28% reversed. Of course, several appellate decisions were not simple affirmations or reversals. Of the 61 cases in which injunctions were upheld, the injunction was modified in 21 of those cases. Usually, these modifications related to the scope of the injunction, its duration, or the identity of persons who could be charged as acting “in concert” with the defendant.²⁷ Trial courts actually appear to fare better in appeals from trade secret related injunctions than in the appeal of injunctions generally, where the reversal rate has been estimated at 59% to 61%.²⁸

We also analyzed the decisions to determine whether trends could be seen in the nature of trade secret injunction litigation over time. Although we suspected that trade secret litigation would become more technologically sophisticated over time as the Texas economy changed and that the source of trade secret cases would change, neither hypothesis was confirmed in the data. Instead, both the source of trade secret appeals (employer/employee disputes) and the nature of the trade secret sought to be protected (customer lists or customer data) remained relatively constant throughout the decades.

From 1958 to 2010, 83% of appeals involving trade secret claims and injunctions arose in the employer/employee context—frequently with a covenant against competition involved in the litigation. This percentage of employer/employee generated appeals has diminished somewhat in the 2000-2010 time period, but the result is neither statistically significant nor significantly different from the overall historic trend.

Decade	Total number of trade secret injunction cases	Number of trade secret cases stemming from employer/employee disputes	Percentage of trade secret injunctions arising from employer/employee disputes
1958–1969	23	14	60.8%
1970–1979	29	26	89.7%
1980–1989	47	43	91.5%
1990–1999	58	52	89.7%
2000–2010	91	71	78.0%
1958–2010	248	206	83.1%

We also tested the data on two other theories. First, we wanted to see if settled periods in the law of restrictive covenants affected the rates of appeal, injunction grants or reversal rates. As readers probably are aware, the permissibility of restrictive covenants, their scope, and the nature of consideration required to support them has been in flux since the Texas Supreme Court’s decision in *Hill v. Mobile Auto Trim, Inc.*²⁹ Logically, one would assume that the settlement of standards by which non-competes can be judged to be legal or not would aid litigants in avoiding injunction disputes by permitting potential violators of the non-competes to modify their behavior based on the probability that

their actions were permissible or not. We therefore focused on the frequency of trade secret injunctive activity in the five years following issuance of *Hill*—January 28, 1987—and in the five years following the issuance of the legislature’s response, which occurred on August 28, 1989.³⁰ In the first five years following *Hill*, 23 interlocutory appeals following trade secret based injunctions occurred, but in the five years following legislative action, only 14 such appeals occurred. The data, therefore, has not undergone a rigorous test for statistical significance but tends to support the idea that settling the rules of the road for non-competes reduces injunction disputes by allowing parties to plan for their own affairs.

Finally, we reviewed the data to determine whether or not trial courts were being reversed more frequently on trade secret injunctions than they were in the past. We found that trial judges are being affirmed in trade secret injunction cases more than they have been in the past, but again, the result is probably not statistically significant. In the first ten years after *Hyde and K&G Tool*, injunction grants were sustained 70% of the time and denials 64% of the time. From 2000 through 2010, grants of injunctions were sustained 74% of the time and denials 87% of the time.

In addition to this historical survey of the appellate case law concerning trade secret injunctions, we conducted a survey of several sitting judges on both the state and federal bench in Harris County, Texas, to determine whether any symmetry existed in the way most judges approached trade secret litigation.

IV. Informal Survey of Judges on Trade Secret Injunctions.

A. What we asked the judges.

A copy of our survey form is posted on our firm website, but generally what we asked our judges was:

1. What were the most common types of intellectual property injunctions they have seen?
2. What percentage of trade secret injunctions came from routine enforcement of non-compete agreements as compared to other contractual or statutory sources?
3. In what percentage was the plaintiff successful? On TROs? On temporary injunctions?
4. What factors were most influential in causing you to grant injunctions when you granted them?
5. What factors were most influential in causing you to deny injunctions when you denied them?
6. How did you determine how broadly to scope the injunction?
7. What method(s) did you use to determine the amount of bond?
8. Did injunctive relief influence your choice of a trial setting?
9. Did you have to utilize your contempt powers?
10. How often were interlocutory appeals taken from your orders, and how did those appeals affect how you handled your cases?
11. What should we have asked you about this issue and missed?

Since many of our judges requested anonymity of particular responses and since the entire idea was to project general trends rather than individual practices, we kept the results anonymous as to all.³¹

The results were perhaps more enlightening to the bar than to the bench but were still interesting. Two caveats are in order. First, the survey is anything but scientific. It does not represent to be a statistically valid sample of district court judges and is clearly not geographically representative of the state. Second, the results from federal and state

district judges were radically different. Most federal judges interviewed considered injunctive actions most often in cases where there were statutory constructs in place—trademark, copyright and patent litigation. In such cases, the substantive rules of law and procedures are significantly different from state practice.

B. What the respondents said.

1. The most common type of trade secret disputes is employer/employee contests.

Employer/employee disputes in which employees either left or were fired from an employer and then sought to open their own competing businesses were the most common trade secret injunction presented to our respondents.

The percentages were predictably different for our federal judge respondents, whose jurisdiction includes not only trade secret disputes in diversity actions but various statutorily based intellectual property actions such as patent, copyright or trade secret enforcement. Those judges still encountered ordinary employer/employee disputes more often than any other but in diminished percentages as compared to their state counterparts.

2. Employer/employee trade secret disputes were a high percentage of all trade secret disputes.

Our respondents estimated that between 50 and 80% of their trade secret injunctions were based upon employer/employee disputes, frequently involving covenants against competition.

3. Plaintiffs' success rates varied significantly from judge to judge.

The responses by our respondents to the success rates for trade secret injunctions and TROs could not be easily categorized. Several respondents indicated that as long as the plaintiff satisfied the rule requisites and narrowly tailored its relief requests, grants of TROs were commonplace. The reasoning for several respondents was that since the TROs lasted only 14 days, the probability of irreversible injury from the TROs was slight.

Several of our respondents were much more hesitant—granting fewer than 50% of trade secret TROs. Many of these respondents were highly skeptical of the quality of trade secrets in the typical employer/employee situation and reasoned that personal customer loyalty to the defendant employee was likely far more important than any customer data that employee might have accumulated on his or her exit.

Virtually all respondents indicated that, barring agreement of the parties, they were far less likely to issue temporary injunctions than temporary restraining orders. The full presence of opposing counsel, further development of factual defenses and chinks in the plaintiffs' armor all contributed to these differences. No symmetry existed in the percentage of responses we received on this question.

4. What factors were most important in granting trade secret injunctions?

In a word—skullduggery. Plaintiffs capable of demonstrating outright copying of sensitive files, computer assisted drawings or concealed planning to compete, combined with the use of the employer's property and strong similarity between a newly competing product and its predecessor, were more likely to prevail.

5. What factors were most important in denying trade secret injunctions?

Several factors were identified consistently: the "lightness" of the trade secrets—i.e., the absence of any true capital investment by the party seeking protection—was a critical factor. The second most commonly mentioned factor was the availability of money damages combined with obvious solvency of the defendant.

6. How broad were your injunctions?

The overwhelming preference of our respondents was to narrowly tailor the injunction to prohibit use of the trade secret rather than to prohibit the conduct of business that might utilize a trade secret. A number of factors supported this decision amongst those interviewed. First, a broad-based concern was expressed against granting a plaintiff more competitive advantage than required to reinstate the status quo. Second, most judges felt that narrow injunctions were helpful in compelling the plaintiff to precisely identify the trade secrets for which protection was sought—something that they viewed as beneficial for both the injunction and the case as a whole. Finally, most felt narrow injunctions promoted the use of reasonable bond requirements.

7. How did you determine the bond?

On first view, Texas Rule of Civil Procedure 684 seems clear enough. The trial court must set a bond that is sufficient to cause the party procuring the injunction to be able to “pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.” All of our respondents were keenly aware of this requirement, but no other issue caused such substantial disagreement than how to set a bond.

Several respondents fell into the “de minimus” camp, particularly with TRO issuance. They felt that if the rule requirements had been met, the likelihood of an improper injunction finding was low and the 14-day run of a TRO supported minimal bonding. Others calculated the amount of bond but used widely varying methods to calculate it, ranging from a low of 25% of the enjoined business’ annual revenue to a high of the defendant business’ entire annual projected revenue.

We were curious whether district judges used average rates of return on capital to set bonds. A large practical problem facing respondents was that many of the businesses being enjoined were just beginning and had little to no earnings or profit history. We know as a practical matter that many fledgling businesses will fail within a short time, whether they have access to another’s trade secrets or not. It is, therefore, difficult if not impossible for trial court judges to assess the incremental cost that a trade secret injunction might impose on a defendant. We therefore thought that trial courts might use average rates of return on capital to set bonds. In other words, when “A” sues “B” for theft of trade secrets and “B” has invested \$100,000 to commence its business in a high-tech field, one reasonable method of assessing the likely damage from a one-year injunction is the loss of likely return on the defendants’ capital. If such ventures on average return 22% to their owners, then \$22,000 might be a reasonable estimate of the cost of the opportunity lost to the defendant from a one-year injunction. But virtually none of our respondents utilized this or other statistical methods to set bonds.

A number of judges mentioned Judge Hecht’s opinion in *DeSantis v. Wackenhut Corp.* as influencing their decisions about bonds.³³ In *Wackenhut*, it was reiterated that an action for wrongful injunction is limited by the amount of bond actually posted in support of the temporary injunction.³⁴ A number of respondents felt that since the defendants’ cause of action was so limited, trial courts must set bonds large enough to ensure that the defendant is adequately protected in the event of error. This resulted in a strong tendency for the judges identifying the issue to increase bonding requirements.

Finally, all of our respondents were aware that many defendants viewed the setting of bonds as a second bite at the injunctive apple—that even where the defendant lost the temporary injunction hearing on the merits, the defendant might yet practically prevail by obtaining a bond setting that was higher than the plaintiff could afford. Other than stating a concern about such practices, the financial standing of the parties did not influence the amount of bonds set in trade secret cases.

One consistent response, however, was that the breadth of the injunction strongly influenced bonding. The broader the injunction, the larger the bond.³⁵

8. Do injunctions influence trial settings?

For most respondents, yes. A strong majority of judges accelerated trial settings following trade secret injunctions, in some cases giving litigants only the minimum 45 days' notice required for an initial trial setting. Our respondents gave different reasons for these accelerated trial settings. Some felt that the burden imposed by the temporary injunction supported early final resolution of the case as a whole. Others believed that the initial discovery provided prior to or during the temporary injunctive phase mitigated against the need for a long discovery period. Still others assessed the resources of the parties and the need for immediate resolution of the disputes in the conduct of their respective business.

At least two of our respondents were inclined to bypass the temporary injunction stage altogether. Their reasoning was that it was highly unlikely that the parties could, within 14 days, conduct sufficient discovery to further advance the trial court's understanding of the issues. These judges worked to obtain agreement of the parties to extend the TRO into a temporary injunction and to conduct limited and well defined discovery as a precursor to a quick trial.

A significant number of dissenters, however, felt that all litigants were entitled to an equal position in the queue for trial settings and that the mere fact that one party claimed theft of trade secret materials did not justify placing it at the front of the queue.

9. Have you had to use your contempt powers?

Almost never. While two of our respondents had used their contempt powers, both were in conjunction with mixed injunction/discovery issues in which defendants refused to turn over pilfered materials, designs or computers.

10. How often are you appealed, and does it really matter?

Respondents indicated that interlocutory appeals from their trade secret injunctions were extremely rare. Many respondents with lengthy careers had never encountered them, while others estimated that they were taken in fewer than 5% of their cases.

11. What is in the "grab bag" of our respondents' other comments?

Fabulous war stories and good lessons learned. Virtually every judge we interviewed took the time at one point or another in the interview to reiterate that in trade secret injunctions, the trial court sits as a court of equity. As courts of equity, judges felt it appropriate to consider virtually any factor that might implicate the fairness of an injunction under the circumstances.

Our federal judges both commented that trade secret and copyright injunction process under the federal rules requires a declaration under Rule 65 why notice had not been given to the opposition or was not practical. Many simply omitted this critical proof and lost their injunctions as a result.

As an exemplar of the difference between "heavy" and "light" trade secrets, one of our respondents offered the day when, on back-to-back applications for temporary restraining orders, he heard the claims of a developer of proprietary "clean room" techniques designed to preserve pristine environments for pharmaceutical research and of a strip club that claimed its dancers could not work elsewhere because they had been trained in proprietary (but presumably legal) dancing techniques.

V. Conclusion and Thoughts.

Trade secret injunctions heavily influence the ultimate outcome of these expensive disputes and are amongst

the most significant rulings trial courts can make. The very few appeals taken from trade secret based injunction, either on an interlocutory or final basis, and low reversals rates of those decisions indicate that the Texas trial bench is doing a solid job of calling balls and strikes in the trade secret injunction field.

Though one might suspect that in the emerging, more technical economy, “true” trade secret disputes would have become more prominent, the opposite is true. Our historic sampling of the case law and interviews both indicate that employer/employee disputes featuring covenants against competition are the most common source of trade secret disputes, making a solid knowledge of the law concerning such covenants a must for any trial judge.

1 158 Tex. 566, 314 S.W.2d 763 (1958).

2 Carol Corrado, Charles Hulten & Daniel Sichel, *Measuring Capital and Technology: An Expanded Framework* (2002), reprinted in MEASURING CAPITAL IN THE NEW ECONOMY 11–41, 11 (Carol Corrado, John Haltiwanger & Daniel Sichel eds., University of Chicago Press 2005), available at <http://www.nber.org/chapters/c0202.pdf> (hereafter “*Measuring Capital*”).

3 *Measuring Capital* at 15.

4 Allan Slogan, *IPO Success Doesn't Justify Google's Price*, THE WASHINGTON POST, Aug. 23, 2004, at E3.

5 *Measuring Capital* at 18.

6 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *The Economic Impact of Counterfeiting and Piracy* 13 (June 2008), available at http://www.oepm.es/cs/OEPMSite/contenidos/ponen/InformeOCDE26feb09/2009_03_03_OECD_Study_on_Counterfeiting_and_Piracy.pdf.

7 *Id.* at 17-19.

8 See TEX. CIV. PRAC. & REM. CODE ANN. § 154.026 (Vernon 1997).

9 See Tex. R. Civ. P. 684; see also *Ex parte Leshner*, 651 S.W.2d 734 (Tex. 1983) (reiterating issuance of injunction contingent on compliance by moving party with Rule 684).

10 See AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION, Report of the Economic Survey (2005) (unpublished report, on file with American Intellectual Property Law Association).

11 This result usually occurs through the invocation of the doctrine of judicial estoppel, in which a party, having requested relief and receiving it based upon representations to a court, may not later change those representations. See *Ferguson v. Building Materials Corp. of America*, 295 S.W.3d 642, 643 (Tex. 2009).

12 158 Tex. 566, 314 S.W.2d 763 (1958).

13 158 Tex. 594, 314 S.W.2d 782 (1958).

14 See *Hyde Corp. v. Huffines*, 314 S.W.2d at 776.

15 *T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 22 (Tex. App.—Houston [1st Dist.] 1998, pet. dismissed) (hereafter “*T-N-T Motorsports*”).

16 *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003) (quoting RESTATEMENT OF TORTS § 757 cmt. b (1939)). The original portion of section 757 has been omitted from the Restatement (Second) of Torts and incorporated into the Restatement (Third) on Unfair Competition. See RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 39 reporter's n. cmt. d (1995).

17 See, e.g., *Sharma v. Vinmar Int'l, Ltd.*, 231 S.W.3d 405, 413-19 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (hereafter “*Sharma*”) (former employee); *Metallurgical Indus. Inc. v. Fourtek, Inc.*, 790 F.2d 1195, 1200 (5th Cir. 1986) (claimed violation of non-disclosure agreement); *CMNC Healthcare Props., LLC v. Medistar Corp.*, No. 01-06-00182-CV, 2006 WL 3628922, at *7 (Tex. App.—Houston [1st Dist.] Dec. 14, 2006) (mem. op., not designated for publication) (claimed theft of trade secrets through development agreement).

18 See, e.g., *In re Kuntz*, 124 S.W.3d 179, 183 (Tex. 2003) (reserve data did not belong to Kuntz, employee, but to MOXY, his employer, and thus was not in Kuntz's “possession, custody or control.”).

19 *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 200 (Tex. 2002).

20 See *Anglo-Dutch Petroleum Int'l, Inc. v. Smith*, 243 S.W.3d 776, 781-82 (Tex. App.—Houston [14th Dist.] 2007, pet. denied, reh'g denied). *Anglo-Dutch v. Smith* raises a series of interesting points that are not well resolved in Texas jurisprudence. In that matter, the Plaintiff contended in the trial court

that the execution of a confidentiality agreement that prohibited disclosure and misuse of confidential information automatically created a relationship of trust and confidence. *Id.* at 782. The court rejected this argument, relying upon authorities holding that all contracts imply some level of trust and confidence by the parties but do not create a fiduciary relationship. *Id.* Another interesting and as of yet unresolved question is how the economic loss rule might apply to a theft of trade secret occurring in a contractual context. If party “A” is privy to trade secret information solely because it signed a non-disclosure agreement under which it agreed not to disclose or misuse “B’s” data, is it liable only in contract for a subsequent misappropriation, or does the independent tortious nature of a theft of property expose the misappropriating party to punitive damages as well? A number of authorities appear to hold fast to the notion that Texas courts will not expand the tort of conversion when purely intangible property is involved. See *Robin Singh Educ. Servs., Inc. v. Test Masters Educ. Servs., Inc.*, S.W.3d , 2011 WL 1044210, *2 (Tex. App.—Houston [14th Dist.] Mar. 8, 2011) no pet.) (finding emails “intangible” property that may not be the subject of a conversion action). This question is compounded by the existence of the Texas Theft Liability Act, which may permit parties to sue for criminal misappropriations of intellectual property. See, e.g., *Texas Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 369 (Tex. App.—Dallas 2009, pet. denied) (failing to resolve the issue conclusively).

21 *Sharma* at *7.

22 *Landry’s Seafood Inn & Oyster Bar Kemah, Inc. v. Wiggins*, 919 S.W.2d 924, 926 (Tex. App.—Houston [14th Dist.] 1996, no writ).

23 *Sharma* at *7.

24 *Id.*

25 *T-N-T Motorsports* at 21.

26 The results of the research are too voluminous to include in this article but may be accessed at http://www.tlotf.com/fulkerson_articles.htm.

27 TEX. R. CIV. P. 683.

28 Lynne Liberato & Kent Rutter, *Reasons for Reversal in the Texas Courts of Appeals*, 44 S. TEX. L. R. 431, 451 (2003) (finding a 59% reversal rate for temporary injunctions in the years 2001-02); Bob E. Shannon, Charles F. Herring, Jr. & J. Matthew Dow, *Temporary Restraining Orders and Temporary Injunctions in Texas—A Ten Year Survey, 1975-1985*, 17 ST. MARY’S ILL. 689, 750-55, 761-72 (1986) (finding a 61% reversal rate in the ten-year period studied).

29 725 S.W.2d 168 (Tex. 1987), *superseded by statute*, TEX. BUS. & COM. CODE ANN. §§ 15.50–51 (Vernon Supp. 1990).

30 TEX. BUS. & COM. CODE ANN. § 15.50 (Vernon Supp. 1990).

31 A copy of the form we used for the interview can be seen at http://www.tlotf.com/fulkerson_articles.htm.

32 TEX. R. CIV. P. 684.

33 793 S.W.2d 670, 685-86 (Tex. 1990).

34 *Id.*

35 Though not in the trade secret context, one of our respondents related the application by the losing competitor for a kiosk in the to-be-opened international wing of Houston’s Intercontinental Airport as a case in point. The applicant sought to have the opening of the entire wing shut down because of alleged improprieties in the manner in which a yogurt kiosk was awarded. Our respondent offered that he was happy to grant the requested relief so long as the plaintiff was willing to post a \$50,000,000 per-day cash bond.

Ten Things You Need to Know About the Texas Fair Defense Law

by Jim Bethke, Director, Task Force on Indigent Defense

This year marks the ten year anniversary of the passage of the Fair Defense Law. This law established the Texas Task Force on Indigent Defense (Task Force) as a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration. A primary purpose of the Task Force is to assist local government to develop cost-effective indigent defense that meets the needs of the local community and complies with State and constitutional law.



This is the first of a two part series. In this part, I will address the legislative and judicial requirements of the Fair Defense Law. In part two, I will cover any changes made by the 82nd Legislature to the Fair Defense Law and address the Performance Guidelines for Non-Capital Criminal Defense Representation adopted by the State Bar's Board of Directors on January 28, 2011.¹

This year marks the ten year anniversary of the passage of the Fair Defense Law. This law established the Texas Task Force on Indigent Defense (Task Force)² as a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration. The Task Force and its staff provide funding through grants and offer technical assistance to develop cost-effective indigent defense systems. A primary purpose of the Task Force is to assist local government to develop cost-effective indigent defense that meets the needs of the local community and complies with State and constitutional law. To promote best practices, transparency, and accountability, the Task Force serves as a clearinghouse of indigent defense information via its website. The judiciary, the legislature, and the public have access to all county plans, expenditures, guides, model forms, rules, publications, e-newsletters, trainings, and press releases. Visit the Task Force website at www.txcourts.gov/tfid for more information.

The following is a summary of some of the key provisions of the Fair Defense Law:

Magistrate Responsibilities: The magistrate is required to admonish the accused of his constitutional rights and set bail.³ In addition, the magistrate must: 1) inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel; 2) inquire as to whether accused is requesting that counsel be appointed; and 3) provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.⁴ The magistrate is also required to record the following: 1) the date and time the accused was arrested and the date and time when he/she was brought before the magistrate; 2) whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel; and 3) whether the accused requested appointment of counsel.⁵



Indigence Determination and Consideration of Bail. The defendant’s ability to post bail may NOT be considered apart from the defendant’s actual financial circumstances (i.e., the defendant’s income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant).⁶ A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.⁷ The local indigent defense plan, which is discussed in more detail below, must include financial standards for determining whether a defendant is eligible to receive appointed counsel. “Indigent” means a person who is not financially able to employ counsel. Every effort should be made to follow the indigence standard in the applicable local plan.

Waiver of Counsel Provisions.⁸ In 2007, the Texas Legislature promulgated procedures for obtaining waivers of the right to counsel from defendants. It also imposed limits on when prosecutors may speak with unrepresented defendants and when judges may direct such defendants to speak with prosecutors. Under the law a judge or magistrate may not order a defendant rearrested or require another, higher bond because a defendant withdraws a waiver of counsel or requests the assistance of counsel.

Time-frames for appointment of counsel. The judge (or designee) must rule on requests for counsel and appoint counsel to indigent defendants within one working day of receiving requests in counties of 250,000 or more or three working days in counties of less than 250,000.⁹ Persons out of custody: counsel must be appointed at defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.¹⁰

Attorney Selection Methodology. The local indigent defense plan must include the method by which attorneys on the appointment lists are assigned to cases. For example, in many counties the plan provides that judges will make appointments in rotation order from the appointment list. Every effort should be made to follow the applicable local plan.¹¹

Attorneys Fees. All court appointed attorney fees must be paid in accordance with a schedule of fees adopted by formal action of the local judges.¹² If a judge disapproves an attorney’s fee request, the judge must make written findings stating the amount approved and the reason for disapproving the requested amount. The attorney may appeal to the presiding judge of the administrative judicial region.¹³

Experts and Investigators. The law requires reimbursement of expert and investigative expenses with and *without* prior court approval if they are reasonably necessary and reasonably incurred.¹⁴

Indigent Defense Expenditure Report (IDER). The Government Code requires that all Texas counties report amounts spent on attorney fees, licensed investigators, expert witnesses, and other direct litigation costs.¹⁵ The Task Force allows counties to capture and report the administrative costs directly associated with providing indigent defense in the county. A comprehensive set of instructions and definitions is provided in Procedure Manual for the Indigent Defense Expenditure Report.¹⁶

Adult Local Plan Report. The Government Code also requires that each county submit its countywide indigent defense plan, procedures and forms on how it will provide court appointed counsel to eligible persons.¹⁷ These reports must be submitted to the Office of Court Administration of the Texas Judicial System by November 1 of odd-numbered years. Under the Fair Defense Law, the criminal court judges and juvenile board in each county must adopt and publish county-wide indigent defense plans.¹⁸

Juvenile Appointment of Counsel Plan Report. The juvenile board in each county shall adopt a plan and submit that plan to the Task Force that specifies the qualifications necessary for an attorney to be included on the appointment list to represent children in proceedings under Title III of the Juvenile Justice Code.¹⁹

Before this legislation passed in 2001, there was no state funding, no reporting requirements, no oversight, no state support, and no requirement that an attorney be versed in criminal or juvenile law to receive appointments.²⁰ The level of services provided to the poor charged with criminal offenses varied wildly across the state. With the passage of this law, the policies adopted by all levels courts, the efforts of local judicial and county officials, the defense community, the work of state county associations, the work of the Task Force and staff, the State Bar, and public interest groups like the Texas Criminal Justice Coalition, the Fair Defense Project, those accused of criminal misconduct in Texas unable to afford counsel are treated more fairly and effectively as a whole than they were prior to the passage of the Fair Defense Law.²¹

1 The Guidelines were developed by the Bar’s Committee on Legal Services to the Poor in Criminal Matters as a follow up/companion to the Guidelines and Standards for Texas Capital Counsel that were adopted by the Bar in 2006. Like the Capital Guidelines, the Non-Capital Guidelines were developed using as models similar guidelines published by national organizations and adopted in other states, and then were amended to better reflect Texas practice and in response to stakeholder comments. Available at: <http://www.texasbar.com>

2 The Task Force is a body of thirteen appointed and ex-officio members. See, URL: http://www.courts.state.tx.us/tfid/members_of_the_task_force.asp

3 Tex. Code Crim. Proc. § 15.17 (a)

4 Tex. Code Crim. Proc. § 15.17 (a)

5 Tex. Code Crim. Proc. § 15.17 (e)-(f), when my staff conducts a monitoring visit in a particular county, it is not uncommon to discover that this requirement is overlooked by the magistrate.

6 Tex. Code Crim. Proc. § 26.04 (l)-(m)

7 Tex. Code Crim. Proc. § 26.04 (r)

8 Tex. Code Crim. Proc. § 1.051 (f), an [overview of the changes](http://www.txcourts.gov/tfid/pdf/HB1178overviewwaiverofcounsel.pdf) (URL: <http://www.txcourts.gov/tfid/pdf/HB1178overviewwaiverofcounsel.pdf>) and [flowcharts depicting the steps](http://www.txcourts.gov/tfid/pdf/HB1178waiverofcounselflowchart.pdf) in the process are available (URL: <http://www.txcourts.gov/tfid/pdf/HB1178waiverofcounselflowchart.pdf>)

9 Tex. Code Crim. Proc. § 1.051(i)

10 Tex. Code Crim. Proc. § 1.051(j); see also, *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008)

See, *U.S. Supreme Court Decision on Rothgery – What Does It Mean?* available at <http://www.courts.state.tx.us/tfid/videos.asp>

11 The Honorable Dib Waldrip, District Judge, Comal County [Key Points on Indigent Defense Plans available at http://www.courts.state.tx.us/tfid/videos2.htm](http://www.courts.state.tx.us/tfid/videos2.htm)

12 Tex. Code Crim. Proc. § 26.05 (b)

13 Tex. Code Crim. Proc. § 26.05 (c)

14 Tex. Code Crim. Proc. § 26.05 (d)

15 Tex. Gov’t Code § 71.0351(e)

16 A copy of the electronic manual available at: <http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf> Copies of the IDER are posted on the data website of the Task Force at: <http://tfid.tamu.edu>

17 Tex. Gov’t Code § 71.0351(a) (1)

18 Tex. Gov’t Code § 71.0351(a) (1) Copies of the local plan should be available locally and also on the data website of the Task Force at: <http://tfid.tamu.edu>

19 Tex. Gov’t Code § 71.0351(a), (d) and A Joint Report by the Task Force on Indigent Defense and the Texas Juvenile Probation Commission [Indigent Defense in the Texas Juvenile Justice System \(June 2007\)](http://www.courts.state.tx.us/tfid/resourcesresearchstudies.asp) available at <http://www.courts.state.tx.us/tfid/resourcesresearchstudies.asp>. Copies of the juvenile board plan should be available locally and also on the data website of the Task Force at: <http://tfid.tamu.edu>.

20 Texas Appleseed Fair Defense Project, [The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas\(December 2000\)](http://www.texasappleseed.net/pdf/projects_fairDefense_fairreport.pdf) available at http://www.texasappleseed.net/pdf/projects_fairDefense_fairreport.pdf

21 Michael K. Moore, Allan K. Butcher, Catherine Greene Burnett, [Examining the Impact of Criminal Defense Reform in Texas: Has the Fair Defense Been Effective?](http://www.courts.state.tx.us/tfid/pdf/ButcherMooreSPWSA05.pdf) (March 2005) available at <http://www.courts.state.tx.us/tfid/pdf/ButcherMooreSPWSA05.pdf> See also, Senate Committee on Criminal Justice, Interim Report, pages 27-33, December 2010 available at: <http://www.courts.state.tx.us/tfid/82interimsenate.asp>

On May 30, 2011, Governor Rick Perry signed HB 274 into law, effective September 1, 2011. Although the new law was touted in the Wall Street Journal and the National Review as a significant continuation of the tort reform measures enacted in 2003, the final bill was a substantially watered down version of the “loser pay” bill originally passed by the House. It contains only one true fee shifting provision along with several other procedural reforms. The contours of those reforms, however, must await new rules of civil procedure to be adopted by the Supreme Court.

The key provisions of HB 274 are as follows:

(1) A New Motion to Dismiss with Fees Awarded to the Winner

The new law amends Govt. Code § 22.004 by adding a new subsection (g) providing that the Supreme Court must adopt rules “to provide for the dismissal of causes of action that have no basis in law or in fact on motion and without evidence.” The rules must provide that “the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss.” The new rules will not apply to actions under the Family Code.

The Texas Rules of Civil Procedure will accordingly have a new motion to dismiss that will go beyond the function currently served by special exceptions or a no evidence motion for summary judgment. Will the new motion be the state version of a motion to dismiss for failure to state a claim upon which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure? We won't know until the Supreme Court issues the new rules. The Bill Analysis of HB 274 notes that the Supreme Court will “be free to adopt rules that best fit with Texas jurisprudence. The court would not have to adopt the federal standard.” But if the Court does follow the federal practice there is a very substantial body of law addressing the basis for filing and the standards in deciding a motion to dismiss.



One thing is clear: attorney's fees are to be awarded to the prevailing party on a motion to dismiss. HB 274 amends the Civil Practices and Remedies Code by adding new Section 30.021, which provides: “In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss . . . , the court shall award costs and reasonable and necessary attorney's fees to the prevailing party.” Section 30.021 does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.

(2) Expedited Resolution and Lower Discovery Costs for Civil Actions Involving Less Than \$100,000

The new law also provides for expedited handling and lower discovery costs in cases in which the amount in controversy is less than \$100,000 (including interest, costs, penalties, attorney's fees and all damages of any kind including punitive damages). The law requires the Supreme Court to “adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions” involving less than \$100,000 filed in district courts, county courts at law and statutory probate courts. The rules adopted by the Supreme Court must also “address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system.” The Court may not adopt rules that conflict with a provision of Chapter 74 of the Civil Practices and Remedies Code (Medical Liability), the Family Code, the Property Code or the Tax Code.

Although Rule 190.2 already provides discovery limits in cases involving \$50,000 or less, the proponents of HB 274 felt that Level 1 discovery is not used often enough and does not provide a means of expediting the case. The Bill Analysis notes that “[i]f the actions will take just as long to be resolved, they can easily cost just as much as standard actions.”

Just how discovery will be limited and how the cases will be expedited will again have to await the adoption of new rules of civil procedure by the Supreme Court.

(3) Expansion of Interlocutory Appeals for Controlling Questions of Law

As currently written, Section 51.014(d) of the Civil Practices and Remedies Code provides that a district court, county court at law or county court may issue a written order for an interlocutory appeal in a civil action if: (1) the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion; (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and (3) the parties agree to the order. HB 274 expands this procedure by deleting the requirement for agreement of the parties.

As amended, Section 51.014(d) will now permit a trial court to issue a written order permitting an interlocutory appeal either on a party's motion or on the court's own initiative if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. New Subsection (d-1) provides that this procedure does not apply to an action brought under the Family Code.

Section 51.014(e) governs stays pending the interlocutory appeal. As amended, it provides that the interlocutory appeal does not stay proceedings in the trial court unless the parties agree or the appellate court orders a stay of the proceedings pending the appeal. The current provision allowing a stay to be granted by a single "judge of the court of appeals" has been deleted.

A new subsection (f) has also been added to Section 51.014 providing that the appellate court may accept an interlocutory appeal if the appealing party files an application for interlocutory appeal explaining why the appeal is warranted within 15 days after the date the trial court signs the order to be appealed. If the court of appeals accepts the appeal, the case is treated as an accelerated appeal under existing appellate rules.

Govt. Code § 22.225(d) has also been amended to allow a petition for review to the Supreme Court for an appeal from an interlocutory order under Section 51.014(d) of the Civil Practices and Remedies Code.

(4) Enlargement of Fees Recoverable by a Party Whose Settlement Offer is Rejected

Chapter 42 of the Civil Practices and Remedies Code currently permits a party to make a written settlement offer that, if rejected, entitles the offering party to attorney's fees and certain litigation costs if the judgment rendered is "significantly less favorable to the rejecting party than was the settlement offer." The judgment is "significantly less favorable" if "the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer" or the "rejecting party is a defendant and the award will be more than 120 percent of the rejected offer." Civ. Prac. & Rem. Code § 42.004(b). Under current law the recoverable litigation costs are limited to 50 percent of economic damages and 100 percent of noneconomic and exemplary damages. Id. § 42.004(d).

HB 274 permits any party (whether offering or rejecting) to recover litigation costs, eliminates the distinction between economic and noneconomic damages and raises the cap on recoverable litigation costs to the total amount that the claimant recovers. As amended, subsection (d) provides: "The litigation costs that may be awarded under this chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant."

For example, suppose a defendant offers to settle for \$100,000 but the plaintiff refuses and goes to trial only to win a jury verdict of \$80,000. The defendant could collect litigation costs but no more than \$80,000. On the other hand, if the plaintiff wins a jury verdict of \$120,000, then the plaintiff could collect litigation costs from the defendant up to

\$120,000. Plaintiffs therefore now risk having their entire jury award offset but they do not risk having to pay the defendant's attorney's fees out of pocket because in the event of a take nothing judgment the defendant is not entitled to recover its litigation costs.

Section 42.001(5) has also been amended to include "reasonable deposition costs" in the definition of litigation costs. New Section 42.003(b) provides that parties are not required to file a settlement offer with the court.

(5) Designation of Responsible Third Parties

Currently, Section 33.004 of the Civil Practices and Remedies Code permits a defendant to designate a person as a responsible third party by filing a motion to designate on or before the 60th day before the trial date.

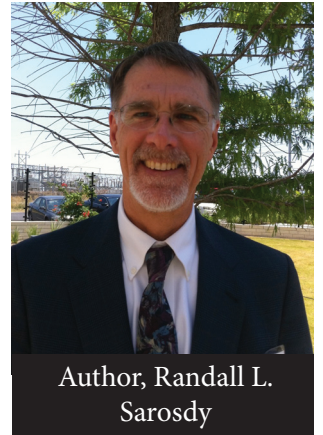
Section 33.004(e) states that if a person is designated as a responsible third party, a claimant is not barred by limitations from seeking to join that person even though the joinder would otherwise be barred by limitations if the claimant seeks to join the person not later than 60 days after they are designated. HB 274 repeals subsection (e).

It adds a new subsection (d) providing that a defendant may not designate a person as a responsible third party after the limitations period on the claimant's cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations to disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure. If the defendant complies with its disclosure obligations it is not barred from designating the person as a responsible third party.

(6) Conclusion

The "loser pays" bill originally passed by the House contained more far reaching changes than HB 274 as finally enacted into law. For example, the bill originally contained a provision that would have awarded attorney's fees to the prevailing party in any breach of contract suit. It provided that a statute "may not be construed to create a cause of action unless the statute by clear and unambiguous language creates a cause of action." It would have entitled persons who successfully disputed their property appraisals to collect attorney's fees from appraisal districts. It would have prohibited courts from recognizing Islamic law in family law cases. And it did not limit the litigation costs that a defendant whose settlement offer was rejected could collect from a plaintiff. These provisions did not survive in the Senate.

The final bill thus contains relatively modest changes compared to the sweeping reforms favored by the House. The precise scope of some of the changes must await the new rules to be adopted by the Supreme Court.



Regional Conferences

**Regions 2, 3, 4, and 5,
January 23-25, Lost Pines, Texas**

**Regions 1, 6, 7, 8, 9,
February 9-11, Dallas, Texas**



While this year's Winter Regional Conferences offered many of the traditional courses that judges enjoy, such as case law updates and evidence issues, several "cutting edge" courses dealt with new issues judges are facing these days. Mr. Craig Ball presented "The Myth of Privacy in a Wired World" demonstrating what we all know but often seem to forget – the virtual world is forever and there is virtually no privacy.

The criminal breakout track offered a truly unique session called "True Tales from the Body Farm." Forensic anthropologists from Texas State University's Forensic Anthropology Center, aka "the Body Farm," demonstrated the conclusions that can be drawn from examining a corpse. One presentation that stood out at both conferences was Civil Law Trends presented by former Judge Ada Brown and her law partner, Robert Manley (now known as the "dynamic duo"). Judges reviewed the most recent civil case law by answering Jeopardy questions, watching amusing videos, and listening to the spirited banter of Judge Brown and Mr. Manley.



While the first Winter Regional Conference in Lost Pines was serene and pleasant, the second Regional Conference in Dallas began a bit differently. Although the TCJ staff anticipated having some obstacles because the conference was just a few days after the Super Bowl, they had not anticipated the harsh ice storms that shut down cities across Texas. The storm forced participants to change travel arrangements, stranded some faculty members, and flooded the conference center. Luckily, most judges made it safely to Dallas, and once underway, the conference ran smoothly.

Overall, both Regional Conferences received very good reviews. The Lost Pines Regional received an overall score of 6.36 and the Dallas Regional received an overall score of 6.57 (with 7 being the highest score possible). More than 250 judges attended each conference.

Many thanks to the TCJ Curriculum Committee for selecting another excellent slate of speakers for the 2011 Winter Regional Conferences!

You Asked For It, You Got It

February 28 – March 1, 2011
Horseshoe Bay, Marriott

At this year's You Asked For It, You Got It! Conference we had 102 judges in attendance. As most of you know, this conference is held every other year and the curriculum is based on your responses to a survey of the courses you would most like to have. This year the overwhelming response was for courses on managing dockets and evidence.

The program began with an introduction to the principles of management developed by Peter Drucker, the "man who invented management." Panel discussions followed concerning managing pre-trial motions and trials with lively interaction between the participants and panels on innovative techniques for docket management. Many of the panel members also provided very useful forms to the participants. Other sessions included managing electronic discovery efficiently, mental health issues, hearsay and the "state of mind" exception, and motions to suppress. The program concluded with a round of judicial jeopardy on Daubert/Robinson hosted by Judge Robin Darr with special guest experts Justice Harvey Brown, Jr. and Megan Wren. Judges were placed on teams based on jurisdiction and region to ensure each team had a broad range of experience; many were on teams with judges they had never met prior to the conference. The overall quality of the conference received 6.19 out of 7.



Special thanks to Judge Robin Darr from the TCJ Curriculum Committee who was instrumental in organizing this conference. Terrific job, Judge Darr!

Congratulations to the Texas College Graduating Class of 2011

The Texas College for Judicial Studies was held in April and had more than 100 judges attend the week-long program. The Texas College is a multi-year program in which judges can earn advanced degrees in their jurisdictional area. Each year, the Texas College offers classes in four jurisdictional specialties: Civil Law, Criminal/Juvenile Law, Family Law and Appellate Law. Additionally, judges must complete a three day core curriculum within five years to graduate from the college. The core curriculum covers topics relevant to all judges regardless of jurisdiction and explores subjects from judicial stress to creating a bias-free court.

This year, Hon. Dennis Parish, former judge of the Ohio Sixth District Court of Appeals, joined us to explore how the public perceives the judiciary based on images in the news, on television and in the theaters. Judge Parish entertained the class for an insightful afternoon examining how images of Judge Judy, My Cousin Vinny and other popular television shows and movies affect the way the public views the judicial system. Judges were able to compare the realities of the court system with the average person's perception to help them better work with individuals in their court.

Other highlights of the conference included a presentation by Mr. Marty Jones, Amarillo attorney with Sprouse Shrader Smith, about water rights and their growing importance in our region's development and a presentation by Dr. Harold Urschel from EnterHealth about treating addiction.



Front Row, Left to Right: Hon. Lamar McCorkle and Hon. Marilea Lewis. Second Row, Left to Right: Hon. Richard Terrell, Hon. Mary Murphy, Hon. Donna Rayes, Hon. Angie Juarez Barrill, Hon. Erleigh N. Norville, Hon. Mark Price, Hon. Bobby Flores, Hon. Robin Malone Darr. Third Row, Left to Right: Hon. Pat Sebesta, Hon. Charles Kreger, Hon. Nancy Hohengarten, Hon. Lonnie Cox, Hon. David Rakow, Hon. Ed Klein, Hon. Stephen Crawford.

The Texas Center staff and Curriculum Committee congratulate Judge Lamar McCorkle and Judge Marilea Lewis, co-deans of the 2011 Texas College for Judicial Studies, for an outstanding program.

Judges interested in applying to the Texas College can learn more about the program at <http://yourhonor.com/Texas-College.html>.

Public Health Law Conference

April 28-29, 2011
San Antonio, Texas

When the University of Pittsburgh's Graduate School of Public Health contacted the Texas Center to request that we join them and the Centers for Disease Control to sponsor a public health law program for Texas judges, we were excited to have this important opportunity. Among a very distinguished group of speakers and panelists were Judge Tad Halbach, 333rd District Court Judge, Harris County, and Local Administrative Judge for Harris County, and Justice Pat Pirtle of the Seventh Court of Appeals.

One of the most important issues that arose during the seminar was courtroom protocol for handling people suspected of carrying infectious diseases. How should judges keep themselves and their staff safe? Whose responsibility is it to notify the judge that someone coming into a courtroom has an infectious disease? Where is the safest place for a hearing to ensure the least amount of exposure to an infectious disease? When is it proper to quarantine a person? One of the most eye-opening stories was about an entire courtroom staff that tested positive for tuberculosis after a hearing with someone carrying the disease. Other judges mentioned holding hearings outside, often on the courthouse steps, to avoid exposure to disease. If you are interested in the answers to these questions and more, please check out the Public Health Law Bench Book on our website at <http://www.yourhonor.com/BenchBooks.html> (the username is your 8-digit State Bar number and the password is the your first letter of your first name and your full

last name, all lower case with no space. For example, Judge John Smith would be username 00000000 and password jsmith.)

Here are some interesting facts from the conference:

- (1) Texas Health & Safety Code § 81.041 designates certain infectious diseases that must be reported to the Department of State Health Services by a person carrying the disease within a specified time period. Failing to report such a disease is a Class B misdemeanor. [Click here to see the list.](#)
- (2) The local health authority may seek judicial enforcement when an individual is not compliant by filing an Application for Order Management. The applicant must show that the control measures are reasonable and necessary to prevent the introduction, transmission, and spread of the disease.
- (3) The control measures a judge may enforce include, but are not limited to, immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestations, chemoprophylaxis, preventive therapy, prevention, education, and testing. Texas Health & Safety Code § 81.082.

Traffic Safety Grant Conferences

During the first week of May, Judge Mark Atkinson, Judicial Resource Liaison, and Ms. Rebecca Pitts, Program Administrator, hosted four judges and their court teams at the 2011 DWI Court Team Training at the Sheraton Gunter in San Antonio, Texas. For three and a half days (May 2-5), Judge Natalie Fleming, Harris County Criminal Court at Law #3, Judge Bobby Flores, 139th Judicial District Court in Hidalgo County, Judge Paula Goodhart, Harris County Criminal Court at Law # 1, and Judge Oscar Hale, 409th Judicial District Court in Webb County, led their teams in the Training. Faculty from the National Center for DWI Courts, a professional services division of the National Association of Drug Court Professionals, taught the course and acted as facilitators to each of the four teams.

Four Texas judges, Judge Robert Anchondo, El Paso County Criminal Court at Law #2, Judge Diane Bull, Harris County Criminal Court at Law # 11, Judge Dibrell Waldrip, 433rd Judicial District Court in Comal County, and Judge Sharen Wilson, Tarrant County Criminal District Court #1, provided knowledge on how to run DWI Courts while staying within the parameters of Texas law. Mr. Marshall Shelsy, Harris County Criminal Courts of Law Staff Attorney, attended the Training as a facilitator and in preparation of his presentation at the 2011 DWI Court Judges Conference, a half day conference scheduled for August 29. The Training also included a visit to the Comal County Accountability Court, a DWI court program presided over by Judge Randy Gray and his County Court at Law # 2 team. Mr. Randall Sarosdy, Executive Director of the Texas Center for the Judiciary, and Ms. Gail Bell, Conference Coordinator also provided assistance at the DWI Court Team Training.

On May 16, Judge Atkinson, Ms. Pitts, and Judge Patrice McDonald, Montgomery County Court at Law #3 and chair of the DWI Curriculum Committee, hosted the DWI Technology Conference at the Omni Dallas Hotel at Park West. Over thirty Texas judges learned about the technologies involved in DWI cases from beginning to end including a review of the Intoxilyzer5000, blood testing results, ignition interlock and trans-dermal alcohol detection devices. Judge Atkinson, Judge Mc Donald and Judge Ray Wheless, 366th Judicial District Court and a member of the DWI Curriculum Committee, facilitated discussion at lunch on how these technologies are currently used in the courts represented by the judges. Mr. Marlon Drakes, Associate Director of the Texas Center for the Judiciary, and Ms. Gail Bell, Conference Coordinator, also provided support at the registration desk.

Chief Judge Sharon Keller is awarded the “Promotion of Positive Mental Health Award”

Chief Judge Sharon Keller of the Texas Court of Criminal Appeals, who led the Mental Health Task Force, was recently awarded the “Promotion of Positive Mental Health Award” by the Texas Board of Criminal Justice. The Task Force is a coalition of county and state policymakers advocating for improvements to the state’s management of justice involving people with mental illnesses. Shortly after its formation in 2007, the Task Force helped pass legislation to facilitate information sharing across the state’s criminal justice and mental health systems. The Texas Board of Criminal Justice is a governor-appointed board of supervisors that oversees the activities of the Texas Department of Criminal Justice. The award was developed in 2009 to recognize those who promote the best practices in the area of mental health. See Consensus Project, TX Chief Justice-Led Mental Health Task Force Receives Award, Announcements for 05/26/11, <http://consensusproject.org/announcements/tx-chief-justice-led-mental-health-task-force-receives-award> Justice Center: The Council of State Governments, Announcements for 05/26/11, available at <http://consensusproject.org/announcements/tx-chief-justice-led-mental-health-task-force-receives-award>

Sharon Keller was first elected to the Texas Court of Criminal Appeals in 1994. She was elected Presiding Judge in 2000 and re-elected to that position in 2006. She is the first woman to have served on the Court. A native Texan, she earned her Bachelor of Arts degree in philosophy from Rice University in 1975 and her Juris Doctor degree from Southern Methodist University School of Law in 1978.

Presiding Judge Keller is chairman of the Texas Task Force on Indigent Defense and chairman of the Council of State Governments Justice Center. She is a Life Fellow of the Texas Bar Foundation and a member of the Judicial Advisory Council to the Community Justice Assistance Division of the Texas Department of Criminal Justice. By virtue of her office, she is vice-chair of the Texas Judicial Council.

In 2003 Presiding Judge Keller received the Distinguished Alumni Award for Judicial Service from the SMU Dedman School of Law.

Available at http://www.cca.courts.state.tx.us/court/judge_skeller.asp.



Chief Judge Sharon Keller of the Texas Court of Criminal Appeals, who led the Mental Health Task Force, was recently awarded the “Promotion of Positive Mental Health Award” by the Texas Board of Criminal Justice.

2011 Silver Gavel Award Recipient is Judge Jean Boyd

State District Judge Jean Boyd became the first woman to receive the Silver Gavel Award, which is given to jurists who have served for at least 10 years and exemplify ability, integrity and courage. “I will always look back on this award with such appreciation and such excitement,” Boyd said, adding that she was grateful that her 84-year-old mother could share in the joy. “My mom has been really sick and it’s very special to have her with me tonight.” Melody McDonald, *District Attorney Receives Top Award from Tarrant Lawyers*, Star-Telegram, May 6, 2011, available at <http://www.star-telegram.com/2011/05/05/3054772/district-attorney-receives-top.html#my-headlines-default>.

The Silver Gavel Award has been awarded annually since 1996 to a judge who has served on the bench for ten years

or longer and has made a substantial contribution to the judiciary by “exemplifying the ability, integrity and courage desirable in a judge; who respects the law and expects other to do the same; and who is as knowledgeable as possible in every area of the law.” Judge Boyd received the award at the Tarrant County Bar Association’s Law Day Awards dinner held May 5, 2011.

Judge Boyd is the presiding judge of the 323rd Family District Court, which serves Tarrant County as its Juvenile Court. Judge Boyd has presided in this court since 1995, and as its Associate Judge since 1987. Judge Boyd is married to John G. Boyd, D.D.S. They have one son, Scott Boyd, who is a CPA, and his wife, Shannon, is an attorney. Judge Boyd is Board Certified in Juvenile Law by the Texas Board of Legal Specialization. She is currently the chair of the Juvenile Justice Committee of the Judicial Section of the State Bar of Texas. She served as chair of the Juvenile Law Section of the State Bar of Texas from 1993 to 1994. Judge Boyd has served on the Board of the Texas Juvenile Probation Commission since her appointment by the Governor in 2005. Throughout her career, Judge Boyd has worked to serve the profession, the TCBA, and the community. She has served as President of the Eldon B. Mahon Inn of Court (2008-2009) and was inducted into the Honorary Serjeant’s Inn of the Dallas-Fort Worth Inns of Court in January 2011. She also has served as President of the Fort Worth–Tarrant County Young Lawyers Association (1985) and President of the Tarrant County Women Lawyer’s Association (1982-1983). Judge Boyd was honored as the Outstanding Young Lawyer of Tarrant County in 1988 and received The Professionalism Award from the TCBA in 2001. Judge Boyd spearheaded the implementation of National Adoption Day in Tarrant County in 2000 and has participated in every NAD event since. She was selected as Judge of the Year by Texas CASA in 1999. In 2002, Judge Boyd received the Judge Scott Moore Award from Child Advocates of Tarrant County. Judge Boyd was the recipient of the Angel in Adoption Award from the Congressional Coalition on Adoption Institute in September 2003. Judge Boyd served on the founding boards of CASA of Tarrant County and the Alliance for Children. She currently is a member of the board of Gill Children’s Services. Silver Gavel Award, Law Day Awards Dinner Program (Tarrant County Bar Ass’n and Fort Worth-Tarrant County Young Laws. Ass’n), May 5, 2011, at 11.



Tarrant County District Judge Jean Boyd is the recipient of the prestigious Silver Gavel Award given to a jurist who exemplifies ability, integrity and courage.

Hon. Oscar G. Gabaldón, Jr. Becomes a Certified Child Welfare Specialist

In July 2010, Judge Oscar G. Gabaldón, Jr., CWLS, who presides over the 65th Judicial District Child Protection Court and the Preservation Family Drug Court, became the first and only Judge in the State of Texas to be board certified as a Child Welfare Law Specialist by the American Bar Association and the National Association of Counsel for Children. The NACC began offering certifications in child welfare law in May 2009. Judge Gabaldón was the only judge, alongside eleven attorneys, to receive this certification.

A recipient of numerous awards and recognitions, Judge Gabaldón considers his most treasured recognitions to be the Outstanding Father of the Year Award (June 1992), given to him by the state employees of the El Paso office of Children’s Protective Services, and the Parent of the Year Award given to him by the Border Children’s Mental



Judge Gabaldón is the first ever board certified judge in child welfare law.

Mental Health Collaborative/El Paso Federation of Families (2005). Judge Gabaldón is also the award recipient for the 2007 State Bar of Texas Best Series of Articles for “Ethics and the Profession.”

Before being appointed to the bench, Judge Gabaldón was a Senior Trial Attorney with the County Attorney’s Office prosecuting Child Protective Services (CPS) cases of child abuse and neglect. He has previously served as the Regional Attorney, as well as an Assistant Regional Attorney, for the Texas Department of Human Services (El Paso administrative region, which was comprised of 23 counties), where his responsibilities as the Chief Legal Officer for the Region also entailed that he oversee and supervise other state attorneys, the Civil Rights Director, the Community Services Director, the Public Information Director, the Volunteer Services Director, the Contract Administrator, Contract Managers, Fair Hearing Officers, and other professional and non-professional positions. He also served as the department’s Regional Mediation Coordinator and Incident Management Team Leader.

Congratulations Judge Gabaldón!

Hon. Randy Shelton is Named 2011 Family Advocate of the Year

The Family Services of Southeast Texas (FSST) selected Jefferson County District Judge Randy Shelton as its 2011 Family Advocate of the Year. FSST is a non-profit organization known for providing services and support to families in the Southeast Texas community since 1931. Its mission is “[t]o strengthen and empower families, individuals and communities through accessible counseling services, shelter services, education and advocacy.” On Tuesday, February 15, FSST held its Annual Celebrate Families Luncheon at the MCM Elegante Hotel in Beaumont to honor those members of the community dedicated to helping families. The organization said this about Judge Shelton to Channel 6 KFDM News:



There is no question this year’s Family Advocate of the Year, Judge Randy Shelton, is a devoted public servant. As 279th District Court Judge for Jefferson County, Judge

Shelton has touched the lives of countless families in Southeast Texas. Since 200[7], Judge Shelton has been advocating for families as a Family Court Judge for Jefferson County. He says that he wanted to become a judge because he knew that he could help to bring a conclusion to a conflict in a family, and he wants to be part of a solution for families.

No doubt he has been just that for countless families in Southeast Texas. He has worked closely with Family Services to help strengthen hundreds of families by encouraging couples who are divorcing to take an important seminar provided by Family Services, which helps parents focus on the needs of their children. He has also helped hundreds of abused and neglected children receive safe forever homes through his important work.

TADP Elects Next President: Judge Robert Anchondo



Judge Anchondo is serving as Texas Association of Drug Court Professionals' 2010-2011 President.

Judge Robert S. Anchondo was elected president of Texas Association of Drug Court Professionals (TADCP) for the 2010-2011 year. The next statewide conference will be hosted in Dallas, Texas in October 2011.

In October 2010, El Paso, Texas, hosted its first TADCP Conference. This conference was the 11th TADCP Annual Conference, benefitting over 100 drug courts here statewide. The Texas Drug Courts gathered to educate, network and strengthen the goals of TADCP.

The TADCP is a non-profit organization whose objective is to reduce substance abuse, crime and recidivism by promoting and advocating for the establishment and funding of drug courts in Texas through collaborative community efforts. Its purpose is to increase local and statewide political, media and community awareness of the existence and success of drug courts, support legislation authorizing funding for the operation of drug courts, and provide support for jurisdictions wanting to establish drug courts.

A drug court is defined as a court specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction. The principles of drug courts include immediate referral to and intervention by a court-directed supervision and treatment program, frequent substance abuse testing and supervision contacts with the court, comprehensive drug treatment and aftercare, and progressive sanctions and incentives.

As part of the conference, the association hosted a variety of statewide and national speakers who provided an immense amount of information concerning the work of drug courts in their individual communities. Positive results in the outcomes of participants are utilized to develop evidence-based practices.

The association has received positive reinforcement from our local and statewide legislators and governor as well. The association also has numerous stakeholders who comprise the inner workings of successful programs throughout the State.

Letter from the Chair: Roger Towery

Dear Judges,

As the end of this year as Chair of the Texas Center approaches, I look back at some of the things which have occurred.... The rain during our Corpus Christi annual conference, the ice and snow at the Dallas regional conference, the large number of new judges attending the College for New Judges in December, the continuation of excellent judicial education offered by the Texas Center, News Alert emails from the Texas Center, Opinion Alert emails from the Texas Center..... I also look forward with anticipation to our Dallas annual conference in September without ice and snow, continuation of our quality judicial education programs, implementation of direct deposit reimbursement for judges, an interactive Texas Center website, and my being replaced by Justice Gina Benavides as Chair.

Since programs do not magically appear out of the air, please thank the Curriculum Committee, chaired by Judge Chris Oldner, for the content of the programs the Texas Center was able to provide you this year. Judges and Justices Linda Chew, Robin Darr, Brenda Kennedy, Rusty Ladd, Susan Lowery, David Sanchez, Catherine Stone, Mark Atkinson, Lamar McCorkle, Lora Livingston, Marilea Lewis, Kathleen Hamilton, David Evans, Jennifer Rymell, Don Willett, Mike Keasler and Gina Benavides were all significant contributors to the Texas Center conferences and programs. And, we all owe our thanks to the management and staff of the Texas Center for putting together the programs and conferences we attend.

Please recognize the contributions of those members of the DWI Curriculum Committee, the Appellate Education Fund Committee, the Bench Book Committee, the Budget Committee, the Bylaws Committee, Judicial Resources Committee, Long Range Planning Committee, Personnel and Salary Committee, Resolutions Committee, Fundraising Committee, and the Scholarship Committee. And if any of you would like to serve on any of the Texas Center committees, please notify Gina Benavides.

I want to thank those judges who were able to contribute financially to the Texas Center in the past year. Private fund donations are used, among other things, to supplement salaries for some staff, fund printing of the Judicial Benchbooks, adequately fund accounts for reimbursement grants, fund the annual audit of the Texas Center, and provide funding for amenities at conferences which are not covered by grant funds. Without your generosity, the Texas Center as you know it could not exist.

It has been truly a pleasure to work with the judges and justices on the Texas Center Board of Directors this year. We did not always agree on every matter, but we listened to each other's opinions. And we agreed that we would support the decision reached by the majority. Again my thanks to the members of the Texas Center Board of Directors this past year, Judges and Justices Gina Benavides, David Chew, Bob Brotherton, David Garcia, Todd Blomerth, Dick Alcala, Nanette Hassette, John Board, Rusty Ladd, Chris Oldner, Eric Shepperd, Josefina Rendon, and members who were unable to complete their term, Monica Guerrero, Frank Rynd and Rick Strange.

Finally, my thanks to our executive director, Randy Sarosdy, the associate director, Marlon Drakes, and the rest of the staff at the Texas Center who have made my job and my life so much easier than it could have been.

In retrospect, it has been in some respects the shortest year of my life and in other respects it has been the longest year of my life.

Roger Towery

Letter from the Executive Director: Randall L. Sarosdy

Over the last three months, thanks to the outstanding work of our Curriculum Committee under the leadership of Judge Chris Oldner, District Judge of the 416th District Court in Collin County, and the dedicated and tireless staff of the Texas Center, we have had a very successful series of judicial education conferences. These conferences include:

- * The National Drug Court Institute program for Drug Court Team Training in Lubbock on March 21-24.
- * Evidence Based Sentencing in Galveston on March 29-30.
- * The Texas College for Judicial Studies in Austin on April 11-15.
- * Public Health Law and Science in San Antonio on April 28-29.
- * DWI Team Court Training in San Antonio on May 2-5.
- * The DWI Technology Conference in Dallas on May 16.
- * The Criminal Justice Conference in Dallas on May 17-18.
- * Implicit Bias in Austin on June 6-7.
- * The Professional Development Program in Austin on June 12-17.

I am pleased to report that not only have these conferences been very well attended but the evaluations and feedback from the participants have been overwhelmingly positive. Special thanks go to our Fund 540 Program Attorney, Courtney Gabriele, for her amazing work in organizing and supporting these conferences, as well as to our Conference Co-ordinator, Gail Bell, our Registrar, Holly Doran, and our Associate Director, Marlon Drakes, for their excellent work in making sure the conferences ran smoothly.

On April 7, at the invitation of a Department of Justice Task Force and in co-ordination with the National Judicial College, several judges and I participated in a focus group in Dallas to develop a national curriculum for judicial education on human trafficking issues. The participants included Judge Oldner, Judge Linda Chew, Judge Marilea Lewis and Judge Brenda Kennedy. As a result of this day-long planning meeting the Texas Center was able to develop a one-day program on human trafficking issues that will be held the day after the Family Violence Conference in Bastrop during the last week of June. This appears to be the first judicial education conference in the nation on this emerging topic.

Important judicial education conferences are also scheduled for July and August, including the CPS/Associate Judges Conference in Austin on July 6-8, the DWI College for Trial Judges in Austin on July 11-13, the National Council of Juvenile and Family Court Judges Conference in New York on July 25-27, Beyond the Bench in Austin on August 24-26 and the DWI College for Court Team Members in Austin on August 29-30. All of these programs are made possible by generous grants from TxDOT and the Court Improvement Project of the Supreme Court's Permanent Commission for Children, Youth and Families. The TxDOT and CIP programs are extremely significant because of the potential for immediate benefit to the judges who hear DWI and CPS cases and therefore to the citizens and communities affected. The success of these programs would not be possible without the outstanding work of our TxDOT Program Director, Rebecca Pitts, our Judicial Resource Liaison to TxDOT, Judge Mark Atkinson, and our CIP Program Director, Heidi Penix.

Last April I also had the remarkable experience of being invited to attend and speak at a judicial education conference in Poland as a guest of the National School of the Judiciary and Public Prosecution of Poland. As many of you may know, Senior District Judge John McClellan Marshall of Dallas has been serving as a distinguished professor of law at Lublin University in Poland for the last 18 years and the invitation to the Texas Center came as a result of Judge Marshall's close association with the National School. The title of the conference, "Ethics of the Legal Profession – Mutual Relationships and Expectations," lent itself to a broad ranging and at times free-wheeling discussion

among Polish judges, prosecutors and lawyers concerning the system of judicial education in Poland and whether and how it should be reformed. Although Poland follows the civil law approach rather than our common law tradition, the participants were very interested in how similar issues are dealt with in the United States in general and specifically in Texas, and whether their current system should be reformed. Having appeared before Judge Marshall when he was on the bench in Dallas, I especially enjoyed observing him as a moderator, diplomat and “sage elder judge” during heated discussions among our Polish guests concerning the proper roles of lawyers and judges and whether the current legal system in Poland (only twenty years after the demise of the Soviet system) is serving the needs of the public. In addition to the judicial conference in Kazimierz Dolny, I also had the privilege of attending a Roundtable Discussion on the Ethics of the Legal Profession convened at the U.S. Embassy in Warsaw among Polish judges, lawyers and prosecutors, and a conference at the Prosecutor General’s Office on the evaluation and discipline of prosecutors. I have invited Judge Wojciech Postulski, the head of the International Cooperation Department of the National School, and Judge Grzegorz Borkowski of the National School to come to Texas during our Annual Conference in Dallas in September to see first hand how judicial education works here. If they are able to come to the Annual Conference, I hope many of you will have the opportunity to meet and get to know them.

Thanks to the planning of our incoming Chair, Justice Gina Benavides, we do have an outstanding program lined up for the Annual Conference at the Sheraton in Dallas on September 18-21, so I hope to see you there. In the meantime, providing first rate judicial education to the Texas judiciary on important and timely topics will continue to be our highest priority. We welcome your input and suggestions as to how we may better serve your needs as judges.

Best regards,

Randall L. Sarosdy
Executive Director

Spotlight on the Texas Center Staff

The Texas Center is fortunate to have a highly dedicated, well-educated and professional staff that works diligently and tirelessly on behalf of the Texas judiciary. If you have attended any of our judicial education conferences this year you've had the opportunity to see this for yourself. To give you a better sense of just how talented and experienced our staff is we have prepared the following biographical summaries of three of our staff and will continue this spotlight with other members of the Texas Center staff in future issues.

Marlon Drakes: Marlon Drakes is the Associate Director of the Texas Center. Marlon is from Trinidad and Tobago and came to the United States on a basketball scholarship to the University of Texas where he played under Coach Tom Penders and Coach Rick Barnes. After receiving his B.A. in Kinesiology from the University of Texas in 2002, Marlon went on to earn a Master of Science degree in Educational Leadership from Southwest Minnesota State University in 2005. Marlon came to the Texas Center in September 2010 from the Justice Court Training Center where he was the education manager. As Associate Director Marlon handles the day to day administration of the Texas Center.

Ginny Woods: Ginny Woods is the Children's Justice Act (CJA) Grant Director and the Court Improvement Project (CIP) Program Administrator. Ginny graduated Summa Cum Laude with a B.S. in Sociology from Texas A&M University in 2002 and Magna Cum Laude from Texas Tech University School of Law in 2005. Ginny joined the Texas Center as a Program Attorney in January 2006 and became Grant Director for the CJA grant in 2007. Ginny and her husband Trevor were both raised in Lubbock and met while attending Coronado High School. They have a two-year old son, Denny. As a family they enjoy long bike rides and exploring Austin's numerous trails and swimming holes. Last fall Ginny completed her first marathon with a time of 4:31:15!



Rebecca Pitts: Rebecca Pitts is the TxDOT Program Director. Rebecca joined the Texas Center in November 2008 as Program Assistant and became an integral part of the TxDOT program. Prior to joining the Texas Center, Rebecca worked as an administrative assistant in several different industries including architecture, executive staffing, financial management and other non-profit organizations in New York City, Maine and Austin. Rebecca has a B.A. in English from Harding University, spending one semester of her studies in Nairobi, Kenya. When she is not ably administering the TxDOT grant, Rebecca enjoys reading, crocheting, songwriting and a wide variety of music.

Mark Your Calendars!

Upcoming Events

JUNE

Family Violence Conference | June 27-28, 2011 | Hyatt Lost Pines | Austin

Human Trafficking Conference | June 29, 2011 | Hyatt Lost Pines | Austin

JULY

CPS/Associate Judges Conference | July 6-8, 2011 | Hilton Austin Downtown | Austin

DWI College for Trial Judges | July 11-13, 2011 | AT&T Executive Education and Conference Center | Austin

AUGUST

Beyond the Bench | August 24-26, 2011 | Barton Creek Resort & Spa | Austin

DWI College for Court Team Members | August 29-31, 2011 | AT&T Executive Education and Conference Center | Austin

SEPTEMBER

Annual Judicial Education Conference | September 18-21 | Sheraton | Dallas

OCTOBER

National Judicial Leadership Symposium | October 12-14 | Austin

DECEMBER

College for New Judges | December 4-7, 2011 | Westin Austin at the Domain | Austin

Did You Know of the Marx Brothers' Connection to Nacogdoches?

In 1912, the Marx Brothers came to Nacogdoches to perform their singing act at the old Opera House. Their performance was interrupted by a man who came inside shouting, "Runaway mule!" Most of the audience left the building, apparently thinking a runaway mule would provide better entertainment. When they filed back in, Julius (later known as Groucho) began insulting them, saying "Nacogdoches is full of roaches!" and "The jackass is the flower of Tex-ass!" Instead of becoming angry, audience members laughed. Soon afterward, Julius and his brothers decided to try their hand at comedy instead of singing, at which they had barely managed to scrape together a living. A historic plaque commemorating the event is posted in downtown Nacogdoches. Given the location of this formative experience, the Brothers' later decision, during the making of *Duck Soup*, to name the imaginary country "Freedonia" hardly seems coincidental. In the 8th March 1950 edition of *You Bet Your Life* Groucho states



"I was once pinched in Nacogdoches for playing Euchre on the front porch of a hotel. It happened to be on a Sunday. You're not allowed to play Euchre in Nacogdoches on a Sunday. As a matter of fact, the way I played it they shouldn't have allowed it on Saturday either."

Groucho appeared to have a humorous preoccupation with the word Nacogdoches and would often mention it in the show if any contestant came from Texas.

Nominees for the Board of the Judicial Section of the State Bar and for the Board of the Texas Center for the Judiciary

The following judges are the nominees of the Nominations Committees of the Judicial Section of the State Bar and the Texas Center for terms beginning in September 2011. These nominees will be voted on by the membership at the annual business meeting(s) held in conjunction with the 2011 Annual Judicial Education Conference on September 19, 2011. The board terms will be for three years.

Nominees for the Board of the Judicial Section of the State Bar:

Chair-elect: Alfonso Charles, District Judge, Longview.....1st Region

Place 2: Justice Pat Pirtle, 7th Court of Appeals, Amarillo.....9th Region

Place 3: Judge Kelly Moore, District Judge, Brownfield.....9th Region

Place 4: Judge Robert Kern, District Judge, Richmond.....2nd Region

Nominees for the Board of the Texas Center for the Judiciary:

Chair-elect: Judge Linda Chew, District Judge, El Paso.....6th Region

Place 1: Justice Lee Gabriel, 2nd Court of Appeals, Fort Worth.....8th Region

Place 3: Judge Randy Clapp, District Judge, Wharton.....2nd Region

Place 8: Judge Eric Shepperd, County Court at law Judge, Austin.....3rd Region

Place 10: Judge David Peeples, Senior District Judge, San Antonio.....4th Region

New Judges

As of June 16, 2011

Hon. Courtney Burch-Arkeen	128th District Court	Orange
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In Memoriam

As of June 16, 2011

Hon. William "Bill" R. Anderson, Sr.	Retired Judge	Cleburne
Hon. Georgia Dempster	Retired Judge	Houston
Hon. Scott Moore	Retired Judge	Fort Worth
Hon. Britton "Britt" Plunk	Judge	Kountze
Hon. John G. Street	Retired Judge	Fort Worth
Ray L. McKim	Retired Judge	San Angelo

Contributions in Honor

Hon. John Lipscombe	In Honor Of	Hon. Jan Breland
Mr. Randall L. Sarosdy	In Honor Of	Hon. David D. Garcia, Hon. Roger Towery, Hon. Gina Benavides
Hon. Kathleen Stone	In Honor Of	Hon. June Jackson
Hon. David D. Garcia	In Honor Of	Mr. Randall L. Sarosdy
Hon. David D. Garcia	In Honor Of	The dedicated and professional staff of the Texas Center
Hon. Robert Pfeuffer	In Honor Of	Texas Center Staff

Contributions in Memory

From:	In Memory of:
Hon. Robert Pfeuffer	Hon. Bill Bender
Hon. Michael LaHood	Michael LaHood, Jr.
Hon. Al Walvoord	Hon. Ray L. McKim
Hon. Bob Parks	Hon. Ray L. McKim
The Judges of the Eighth Judicial Region and Mrs. Ouida Stevens	Hon. Scott Moore
The Judges of the Eighth Judicial Region and Mrs. Ouida Stevens	Hon. John G. Street
Mr. Michael Henry	Hon. John G. Street
Mr. & Mrs. Jimmy Sutherland	Hon. John G. Street
Hon. Jerry D. Webber	George and Helen Webber

Diamond Gavel

Mr. Randall L. Sarosdy
Hon. Jerry D. Webber

Gold Gavel

Hon. Guadalupe "Lupe" R. Flores
Hon. Sherry Radack

Silver Gavel

Hon. Tom Fuller
Hon. David D. Garcia
Hon. Jack Hampton
Hon. Michael LaHood
Hon. Judy Parker

Bronze Gavel

Hon. Robin Brown
Hon. Travis B. Bryan
Hon. Margaret Cooper
Hon. Brendan J. Doran
Hon. Richard David Hatch, III
Hon. Sue Holland
Hon. Jean Spradling Hughes
Hon. John Jackson
Hon. John Lipscombe
Hon. Robert Newsom
Hon. Bob Parks
Hon. Robert Pfeuffer
Hon. Jerry Shackelford
Hon. Kathleen Stone
Hon. Mary Ann Turner
The Judges of the Eighth Judicial Region and Mrs. Ouida Stevens

Contributors

Hon. Camile G. DuBose
Hon. David Gonzales, III
Hon. Monica Gonzalez
Mr. Michael Henry
Hon. Jon Hughes
Hon. Oliver Kitzman
Hon. Leon F. Pesek, Jr.
Mr. & Mrs. Jimmy Sutherland
Hon. Al Walvoord

Mentor List

First Region

Judge Robert Burns
Criminal District Court #1
133 N Riverfront Blvd
Dallas, TX 75207
Phone: 214-653-5900
Type of Judge: Active
Areas of Practice: Criminal

Judge Oswin Chrisman
44th Judicial District Court
1151 Plymouth Rd
Dallas, TX 75208
Phone: 214-942-0889
Fax: 214-637-9331
Type of Judge: Retired
Areas of Practice: Civil, Family, Personal Injury, Commercial, Disqualification
Other Areas: Protective Order docket and IV-D Associate Judge child support docket

Judge Carole Clark
321st Judicial District Court
Smith County Courthouse
Tyler, TX 75702
Phone: 903-590-1600
Fax: 903-590-1606
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile

Judge Deborah Oakes Evans
87th Judicial District Court
500 N Church Ste 30
Palestine, TX 75801
Phone: 903-723-7415
Fax: 903-723-7803
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile, Personal Injury, Capital Murder, Commercial, Foreclosure, Probate, Disqualification, Contempt

Judge Robert Burns
Criminal District Court #1
133 N Riverfront Blvd
Dallas, TX 75207
Phone: 214-653-5900
Type of Judge: Active
Areas of Practice: Criminal

Judge Jim Fallon
15th Judicial District Court
200 S Crockett
Sherman, TX 75090
Phone: 903-813-4303
Fax: 903-813-4304
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile, Mass torts, Personal Injury, Capital Murder, Commercial, Foreclosure

Judge Jim Jordan
160th Judicial District Court
600 Commerce
Dallas, TX 75202
Phone: 214-653-7271
Fax: 214-653-7288
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury

Judge Lori Hockett
255th Judicial District Court
600 Commerce
Dallas, TX 75202
Phone: 214-653-6159
Fax: 214-653-6305
Type of Judge: Active
Areas of Practice: Family

Judge Pat McDowell
3401 Colgate
Dallas, TX 75255
Phone: 214-363-5900
Fax: 214-363-0002
Type of Judge: Retired
Areas of Practice: Criminal, Capital Murder, Disqualification, Contempt
Other Areas: District Court experience

Judge John Roach, Jr.
296th Judicial District Court
2100 Bloomdale
McKinney, TX 75070
Phone: 972-548-4409
Fax: 972-547-5732
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Mass torts, Personal Injury, Commercial

Mentor List

Second Region

Justice Eric Andell
Brazos River Valley Cluster Court No. 2
1111 Caroline St Ste 2614
Houston, TX 77010
Fax: 713-652-6293
Type of Judge: Active
Areas of Practice: Family, Juvenile
Other Areas: CPS cases

Judge Diane Bull
County Criminal Court at Law #11
1201 Franklin St
Houston, TX 77002
Phone: 713-755-7780
Fax: 713-368-9267
Type of Judge: Active
Areas of Practice: Criminal
Other Areas: misdemeanor

Judge Frank Carmona
7721 Chantilly Circle
Galveston, TX 77551
Phone: 409-744-3789
Fax: 409-444-3789
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder, Commercial, Foreclo-
sure, Contempt
Other Areas: District Court experience

Judge Randy M. Clapp
329th District Court
100 S Fulton Ste 200
Wharton, TX 77488
Phone: 979-532-1514
Fax: 979-532-4752
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder, Commercial, Foreclo-
sure, Probate
Other Areas: oil and gas, agriculture

Judge A. Reagan Clark
1600 Hwy 450
Sugarland, TX 77478
Phone: 281-277-1500
Fax: 281-277-1505
Type of Judge: Retired

Areas of Practice: Criminal, Civil, Mass torts, Personal
Injury, Capital Murder, Commercial, Probate X, Dis-
qualification, Contempt
Other Areas: District Court experience

Judge Susan Criss
212th Judicial District Court
600 59th St
Galveston, TX 77551
Phone: 409-766-2266
Fax: 409-765-2610
Type of Judge: Active
Areas of Practice: Criminal, Civil, Mass torts, Personal
Injury, Capital Murder

Justice Lee Duggan
5571 Candlewood
Houston, TX 77056
Phone: 713-552-0342
Fax: 713-552-0342
Type of Judge: Retired
Areas of Practice: Criminal, Disqualification, Con-
tempt
Other Areas: Appellate and District Court experience

Judge Deborah Oakes Evans
87th Judicial District Court
500 N Church Ste 30
Palestine, TX 75801
Phone: 903-723-7415
Fax: 903-723-7803
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder, Commercial, Fore-
closure, Probate, Disqualification, Contempt

Judge Brent Gamble
270th District Court
201 Caroline
Houston, TX 77002
Phone: 713-368-6400
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury,
Commercial, Foreclosure

Judge Buddie Hahn
260th Judicial District Court
801 W Division
Orange, TX 77630
Phone: 409-882-7095
Fax: 409-882-7093
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Mass torts,
Personal Injury, Capital Murder, Commercial, Foreclo-
sure, Disqualification, Contempt

Judge H.D. Black, Jr.
620 S 9th Ave
Teague, TX 75860
Phone: 903-389-2534
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder, Commercial, Probate,
Disqualification
Other Areas: District Court experience, oil and gas,
eminent domain

Judge Jay Karahan
County Criminal Court at Law #8
1201 Franklin St 9th Flr
Houston, TX 77002
Phone: 713-755-6203
Fax: 713-368-9264
Type of Judge: Active
Areas of Practice: Criminal, Disqualification
Other Areas: DWI, domestic violence

Judge Mary Lou Keel
232nd Judicial District Court
1201 Franklin
Houston, TX 77002
Phone: 713-755-6778
Fax: 713-755-4425
Type of Judge: Active
Areas of Practice: Criminal, Capital Murder

Judge J.D. Langley
85th Judicial District Court
300 E 26th St Ste 224
Bryan, TX 77803
Phone: 979-361-4270
Fax: 979-361-4276
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal

Injury, Capital Murder, Commercial, Disqualification,
Contempt

Judge David Longoria
IV-D Court #2
1115 Congress 4th Flr
Houston, TX 77002
Phone: 713-755-6875
Type of Judge: Active
Areas of Practice: Contempt

Judge Sharon McCally
334th Civil District
201 Caroline
Houston, TX 77002
Phone: 713-368-6500
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury,
Commercial, Foreclosure, Contempt

Justice Margaret G. Mirabal
First Court of Appeals
P O Box 90740
Houston, TX 77290
Phone: 281-290-9094
Fax: 512-267-4721
Type of Judge: Retired
Areas of Practice: Civil, Commercial

Judge Charles Mitchell
273rd Judicial District Court
202 Courthouse
San Augustine, TX 75972
Phone: 936-275-9634
Fax: 936-275-2389
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder

Judge Reece Rondon
234th Judicial District Court
201 Caroline 13th Flr
Houston, TX 77002
Phone: 713-368-6350
Fax: 713-368-6970
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury,
Commercial, Foreclosure, Disqualification

Judge Buddie Hahn
 260th Judicial District Court
 801 W Division
 Orange, TX 77630
 Phone: 409-882-7095
 Fax: 409-882-7093
 Type of Judge: Active
 Areas of Practice: Criminal, Civil, Family, Mass torts,
 Personal Injury, Capital Murder, Commercial, Foreclo-
 sure, Disqualification, Contempt

Judge H.D. Black, Jr.
 620 S 9th Ave
 Teague, TX 75860
 Phone: 903-389-2534
 Type of Judge: Retired
 Areas of Practice: Criminal, Civil, Family, Juvenile,
 Personal Injury, Capital Murder, Commercial, Probate,
 Disqualification
 Other Areas: District Court experience, oil and gas,
 eminent domain

Judge Jay Karahan
 County Criminal Court at Law #8
 1201 Franklin St 9th Flr
 Houston, TX 77002
 Phone: 713-755-6203
 Fax: 713-368-9264
 Type of Judge: Active
 Areas of Practice: Criminal, Disqualification
 Other Areas: DWI, domestic violence

Judge Mary Lou Keel
 232nd Judicial District Court
 1201 Franklin
 Houston, TX 77002
 Phone: 713-755-6778
 Fax: 713-755-4425
 Type of Judge: Active
 Areas of Practice: Criminal, Capital Murder

Judge J.D. Langley
 85th Judicial District Court
 300 E 26th St Ste 224
 Bryan, TX 77803
 Phone: 979-361-4270
 Fax: 979-361-4276
 Type of Judge: Active
 Areas of Practice: Criminal, Civil, Family, Personal

Injury, Capital Murder, Commercial, Disqualification,
 Contempt

Judge David Longoria
 IV-D Court #2
 1115 Congress 4th Flr
 Houston, TX 77002
 Phone: 713-755-6875
 Type of Judge: Active
 Areas of Practice: Contempt

Judge Sharon McCally
 334th Civil District
 201 Caroline
 Houston, TX 77002
 Phone: 713-368-6500
 Type of Judge: Active
 Areas of Practice: Civil, Mass torts, Personal Injury,
 Commercial, Foreclosure, Contempt

Justice Margaret G. Mirabal
 First Court of Appeals
 P O Box 90740
 Houston, TX 77290
 Phone: 281-290-9094
 Fax: 512-267-4721
 Type of Judge: Retired
 Areas of Practice: Civil, Commercial

Judge Charles Mitchell
 273rd Judicial District Court
 202 Courthouse
 San Augustine, TX 75972
 Phone: 936-275-9634
 Fax: 936-275-2389
 Type of Judge: Active
 Areas of Practice: Criminal, Civil, Family, Juvenile,
 Personal Injury, Capital Murder

Judge Reece Rondon
 234th Judicial District Court
 201 Caroline 13th Flr
 Houston, TX 77002
 Phone: 713-368-6350
 Fax: 713-368-6970
 Type of Judge: Active
 Areas of Practice: Civil, Mass torts, Personal Injury,
 Commercial, Foreclosure, Disqualification

Mentor List

Second Region Ctd.

Judge Robert Schaffer
152nd District Court
201 Caroline 11th Flr
Houston, TX 77002
Phone: 713-368-6040
Fax: 713-368-6801
Type of Judge: Active
Areas of Practice: Civil, Personal Injury, Commercial,
Foreclosure

Judge Milton "Mickey" Gunn Sheffield
136th Judicial District Court
1001 Pearl St
Beaumont, TX 77701
Phone: 409-835-8481
Fax: 409-784-5814
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury,
Commercial

Judge Steve Smith
361st District Court
300 E 26th St Ste 305
Bryan, TX 77803
Phone: 979-361-4380
Fax: 979-361-4385
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal
Injury, Capital Murder, Commercial, Foreclosure, Pro-
bate, Disqualification

Judge Tom Stansbury
11803 Brighton Ln
Stafford, TX 77477
Phone: 281-498-8566
Fax: 281-498-2010
Type of Judge: Retired
Areas of Practice: Family, Contempt
Other Areas: ADR, District Court experience

Judge Earl Stover, III
88th District Court
P O Box 607
Kountze, TX 77625
Phone: 409-246-5151
Fax: 409-246-5194
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury

Judge Vanessa Velasquez
183rd Judicial District Court
1201 Franklin 18th Flr
Houston, TX 77002
Phone: 713-755-6354
Fax: 713-755-8918
Type of Judge: Active
Areas of Practice: Criminal

Judge Walter B. Williams
Child Support Court 9
301 Jackson St Ste 101
Richmond, TX 77469
Phone: 281-344-3832
Fax: 281-238-3201
Type of Judge: Active Areas of Practice: Family

Judge David V. Wilson
2164 U S Hwy 190 E
Livingston, TX 77351
Phone: 936-327-5238
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Family, Personal
Injury, Capital Murder, Disqualification, Contempt
Other Areas: District Court experience
Judge Sharolyn Wood

8714 Hardeman Crt
Houston, TX 77046
Phone: 713-781-9978
Fax: 281-807-0938
Type of Judge: Active
Areas of Practice: Civil, Mass torts, Personal Injury,
Commercial, Foreclosure, Probate, Disqualification,
Contempt

Fourth Region

Judge Dick Alcala
13315 Vista Arroyo
San Antonio, TX 78216
Phone: 210-387-5769
Fax: 210-617-7683
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Family, Juvenile,
Personal Injury, Capital Murder, Commercial, Dis-
qualification
Other Areas: District Court experience, post convic-
tion writs

Mentor List

Sixth Region

Judge Robert S. Anchondo
County Criminal Court at Law #2
500 E San Antonio Ave Ste 704
El Paso, TX 79901
Phone: 915-834-8232
Fax: 915-834-8212
Type of Judge: Active X
Areas of Practice: Criminal

Judge Robert R. Barton
P O Box 290129
Kerrville, TX 78029
Phone: 830-257-8773
Type of Judge: Retired
Areas of Practice: Criminal, Civil
Other Areas: District Court experience

Judge Camile DuBose
38th Judicial District Court
Courthouse Box 17
Uvalde, TX 78801
Phone: 830-278-3913
Fax: 830-278-7502
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal Injury
Other Areas: I have only been on the District Court bench since January 2009, but am happy to help in any way I can. Associate Judge for 12 yrs.

Judge Eduardo A. Gamboa
Probate Court #2
500 E San Antonio Ave Rm 422
El Paso, TX 79901
Phone: 915-546-8183
Fax: 915-875-8530
Type of Judge: Active
Areas of Practice: Probate

Judge Ricardo Herrera
County Court at Law #1
500 E San Antonio Rm 802
El Paso, TX 79901
Phone: 915-546-2011
Fax: 915-543-3865
Type of Judge: Active Areas of Practice: Criminal, Disqualification

Judge Sam Medrano, Jr.
409th Judicial District Court
500 E San Antonio Rm 459
El Paso, TX 79901
Phone: 915-834-8209
Fax: 915-834-8204
Type of Judge: Active
Areas of Practice: Criminal, Juvenile, Capital Murder Other Areas: Aside from presiding over an adult felony criminal court, I run a juvenile drug court

Judge Kathleen H. Olivares
205th Judicial District Court
500 E San Antonio Ave Ste 1002
El Paso, TX 79901
Phone: 915-546-2107
Fax: 915-546-2013
Type of Judge: Active
Areas of Practice: Criminal, Civil
Other Areas: general jurisdiction docket/multi-county jurisdiction

Judge Bonnie Rangel
171st Judicial District Court
500 E San Antonio
El Paso, TX 79901
Phone: 915-546-2100
Fax: 915-546-2114
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal Injury, Foreclosure, Disqualification

Judge Tom Spieczny
County Court at Law #7
500 E San Antonio St
El Paso, TX 79901
Phone: 915-546-8111
Fax: 915-543-3883
Type of Judge: Active
Areas of Practice: Criminal, Civil, Personal Injury, Commercial, Disqualification
Other Areas: labor and employment

Judge Keith Williams
216th Judicial District Court
700 Main St
Kerrville, TX 78028

Mentor List

Sixth Region Ctd.

Phone: 830-792-2290
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal Injury, Capital Murder, Commercial, Foreclosure, Probate, Disqualification, Contempt
Other Areas: real estate; limited capital murder experience

Seventh Region

Judge Robin Malone Darr
385th Judicial District Court
500 N Lorraine Ste 801
Midland, TX 79701
Phone: 432-688-4385
Fax: 432-688-4935
Type of Judge: Active
Areas of Practice: Criminal, Civil Other Areas: I have 25 years of criminal law with 6 years of it being on the bench. I have six years of civil law being on the bench. I am happy to help in any way I can.

Judge Stephen Ellis
35th Judicial District Court
200 S Broadway
Brownwood, TX 76801
Phone: 325-646-1987
Fax: 325-643-6396
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal Injury, Capital Murder, Commercial, Probate, Disqualification, Contempt

Judge Robin Malone Darr
385th Judicial District Court
500 N Lorraine Ste 801
Midland, TX 79701
Phone: 432-688-4385
Fax: 432-688-4935
Type of Judge: Active
Areas of Practice: Criminal, Civil Other Areas: I have 25 years of criminal law with 6 years of it being on the bench. I have six years of civil law being on the bench. I am happy to help in any way I can

Judge Stephen Ellis
35th Judicial District Court
200 S Broadway

Brownwood, TX 76801
Phone: 325-646-1987
Fax: 325-643-6396
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Personal Injury, Capital Murder, Commercial, Probate, Disqualification, Contempt

Judge Jay Gibson
1706 Graham Ave
Odessa, TX 79763
Phone: 432-337-3215
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Family, Mass torts, Personal Injury, Capital Murder, Commercial, Disqualification, Contempt
Other Areas: District Court experience

Judge Aleta Hacker
326th Judicial District Court
300 Oak St Ste 403
Abilene, TX 79602
Phone: 325-674-1325
Type of Judge: Active
Areas of Practice: Family

Judge Brooks Hagler
259th Judicial District Court
P O Box 429
Anson, TX 79501
Phone: 325-823-2721
Fax: 325-823-4200
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile, Personal Injury, Disqualification, Contempt

Judge Glen Harrison
32nd Judicial District Court
100 E Third Ste 204
Sweetwater, TX 79556
Phone: 325-235-3133
Fax: 325-235-4614
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Injury, Commercial, Disqualification, Contempt Other Areas: 10 years CCL bench, 10 yrs District bench, lots of time dealing with county commissioners, auditors, probation departments, etc.

Mentor List

Seventh Region Ctd.

Judge Dean Rucker
318th Judicial District Court
500 N Loraine St Ste 900
Midland, TX 79701
Phone: 432-688-4390
Fax: 432-688-4924
Type of Judge: Active
Areas of Practice: Family, Disqualification, Contempt
Other Areas: judicial administration

Judge Dean Rucker
318th Judicial District Court
500 N Loraine St Ste 900
Midland, TX 79701
Phone: 432-688-4390
Fax: 432-688-4924
Type of Judge: Active
Areas of Practice: Family, Disqualification, Contempt
Other Areas: judicial administration

Ninth Region

Chief Justice John T. Boyd
Seventh Court of Appeals
P O Box 9540
Amarillo, TX 79105
Phone: 806-342-2647
Type of Judge: Retired
Areas of Practice: Criminal, Civil, Disqualification,
Other Areas: Appellate experience, Instructor for 16
years - Texas College for New Judges, Commission
on Judicial Conduct 1981-1987 (chair 1983-1987),
Judicial Section Chair 1978-1979, served on Board
three different times

Judge Pamela C. Sirmon
County Court at Law #2
500 S Fillmore Rm 301
Amarillo, TX 79101
Phone: 806-379-2380
Fax: 806-379-2222
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family
Other Areas: misdemeanor

Judge Ron E. Enns
69th Judicial District Court
715 Dumas Ave Ste 302
Dumas, TX 79029
Phone: 806-935-2700
Fax: 806-935-5500
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Commer-
cial, Foreclosure, Disqualification
Other Areas: docket control, commissioners' court
and other courthouse personnel

Judge Brad Underwood
364th Judicial District Court
P O Box 10536
Lubbock, TX 79408
Phone: 806-775-1021
Fax: 806-775-7996
Type of Judge: Active
Areas of Practice: Criminal, Capital Murder, Disquali-
fication, Contempt

Judge Kelly G. Moore
121st District Court
500 W Main Rm 302
Brownfield, TX 79316
Phone: 806-637-7742
Fax: 806-637-8011
Type of Judge: Active
Areas of Practice: Criminal, Civil, Family, Juvenile,
Disqualification

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.

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 clearing-house 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

Resource Lists

Case Law, Rules and 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.

Resource Lists

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

Publications

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**” utilizes sophisticated and detailed medical illustrations and animation as well as radiographs to demonstrate the location, characteristic, 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 illustration. 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. [View Video](#)

Associations, 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 Institute 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

Resource Lists

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.

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.

Resource Lists

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