SUMMER 2014

The Official Publication of the Texas Center for the Judiciary

In Chambers

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Texas Water Rights, Part I

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Awards and Honors

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On the cover: *Aerial view, Lake Travis, March 2014, courtesy, Lower Colorado River Authority.*

This is the the official publication of Texas Center for the Judiciary. The magazine is published three times a year and funded in part by a grant from the Texas Court of Criminal Appeals. In Chambers strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center's mission of "Judicial Excellence Through Education" as our guiding premise.
Readers are encouraged to write letters and submit questions, comments, or story ideas for In Chambers. To do so, please contact Courtney Gabriele, Program Attorney at 512.482.8986 or toll free at 888.785.8986, or via email at courtneyg@yourhonor.com. Articles subject to editing for clarity or space availability.
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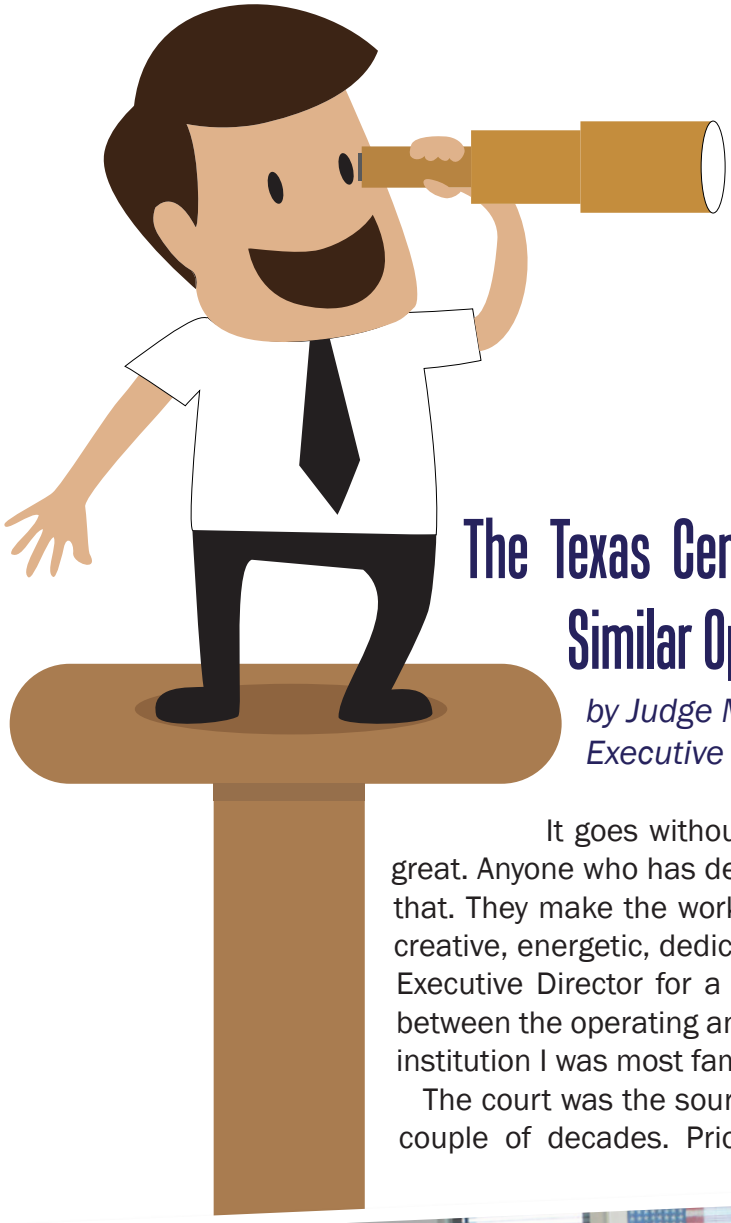


View from the Top

The Texas Center and the Courts: Similar Operations?

by Judge Mark D. Atkinson, Executive Director

It goes without saying that the staff of the Texas Center is beyond great. Anyone who has dealt with them in any capacity or for any reason knows that. They make the work of their co-workers easy, too. They are professional, creative, energetic, dedicated and intelligent. After serving the Texas Center as Executive Director for a while, it occurred to me that there were similarities between the operating and functioning of TCJ staff and that of the other type of institution I was most familiar with: the court.

The court was the source of most of my professional experience for the past couple of decades. Prior to that, it was the law office. As both a law student intern and practicing attorney, I worked in and observed a variety of law office personnel arrangements. Being that there were generally multiple "bosses" in most firms, there were, of necessity, hierarchies. Office managers, junior and senior partners, personal secretaries, receptionists, HR directors and others were necessary positions in the firms I observed.

"The courtroom was, at least in my experience, more horizontal...

The courtroom was, at least in my experience, more horizontal, with the one exception: the judge. My court staff was composed of both folks that I hired, such as a coordinator and a court reporter, and those assigned to work in the courtroom by other agencies and institutions. The Sheriff's Department assigned Deputies as bailiffs; the District Clerk assigned court clerks and CSCD assigned a probation officer. These folks all operated as a team. And, no one "bossed" any of the others around.

A veteran judge had told his staff, back when I first took the bench, "Let there be just one "meanie" in the courtroom, if there needs to be one — me."

I found this advice helpful. Whether dealing with parties, attorneys, the media, the public in general, or co-workers, I wanted to be the one to be in charge of deciding how to handle tough personal interaction situations, particularly the ones that had the potential to blow up.

It seemed to work, and the staff I had in that court is still together there today — three years after my departure (thanks in no small part to the thoughtfulness of my successor.) This is not to suggest that everyone always "felt the love" for each other or that staff members did not get on each other's nerves from time to time. But, if a staff member came to me with a complaint about another person's behavior or work, and I asked if they wanted me to get into it, they always responded after reflection that they would like to work it out themselves. And, they did.

Over the past months, it has dawned on me that we have a similar construct at the Texas Center. The size of the staff is not that much larger than that which operated in the courtroom. They all function at the top of their games. No one "bosses" or supervises anyone else, with the exception, of course, of the Executive Director — and very little bossing goes on there. In fact, now that I think about it, it's more the other way around.

The staff is so good and works so well together, even when conditions get extra-demanding, that they make the Executive Director's job easy. Just as with the court in the past, the real work is done by the staff.

The staff of the Texas Center has another essential group characteristic: They like people. Just as court personnel are expected to give good, courteous customer service, Texas Center staff members serve our members cheerfully and diligently.

So, I don't know how it happened, but I have been fortunate to step from one clockwork efficient, team operation to another, and have been honored to have served in both. ♦

Tarrant County Mental Health Court Diversion Program

By Judge Brent A Carr; Kathryn Omarkhail, LCSW; Yvonne Yanez, intern

As with many things in my life, it began with a free lunch. Our local chapter of Mental Health America (MHA) hosted a seminar on the topic of mental health diversion programs early in 2003. The program consisted of presentations from the judge, prosecutor, case manager and court administrator from a mental health court program held in Indianapolis, Indiana. This program was the brain child of the prosecutor and based on the drug court model. At that time Tarrant County had a drug diversion program. On occasion I had served as substitute judge for the program so I was familiar with the general concept of specialty courts. The presentation was impressive. Before leaving the seminar, myself and three judicial colleagues were convinced we should investigate the possibility of a similar program for Tarrant County.

In April of 2003, I called a meeting to begin the discussion on the creation of a mental health diversion program for our county. I contacted representatives from any group or resource I felt may be touched by this endeavor. Initially this included the following: county commissioners, district court judge, county court judge, district attorney, district and county clerks, sheriff, defense bar, local mental health authority, nonprofit mental health agencies, probation, etc. The response was enthusiastic and creation of the Tarrant County Mental Health Diversion Program was a go. Step one, we invited the prosecutor from the Indianapolis program to come to Fort Worth and give us a one day seminar on the creation, management and experiences of his program. During the planning process two significant events occurred. First we received grant funding from the Bureau of Justice Assistance to cover the expense of the program manager and startup costs. Second, our probation department dedicated a supervision officer to the program to serve as the case manager. The meetings and planning continued and by the fall we were ready for business. We put together a strong team and accepted our first participant in December of 2003.

> “This is a diversion program with a goal of dismissal and expunction upon successful completion.

Practice and procedure. This is a diversion program with a goal of dismissal and expunction upon successful completion. Thus, our target offender is a nonviolent offender who has a documented mental health diagnosis and whose mental illness played a role in their offense. Our program accepts both felons and misdemeanants. On occasion we have admitted participants with past felony convictions. Referrals are received from many sources. We make sure from the outset that each person referred understands that the requirements of this program are often more demanding than regular probation. Once referred, an administrative review is conducted which will eliminate inappropriate offenses, no documented mental illness, etc. A presumptively acceptable case is forwarded to the prosecutor who will conduct a review and resolve any concerns from that perspective. These may include victim input and restitution, among others. The district attorney has complete authority to deny admission. If the district attorney gives approval, an in depth assessment and interview of the applicant are performed to insure the defendant is compatible with program objectives. A successful program must have clear and consistent admission criteria which are scrupulously followed. An acceptable applicant is given final approval by the district attorney. The case is presented during a pre-docket meeting and accepted at that time. The judge also has veto authority; however, the staff does such a great job in the evaluation of applicants, I have never vetoed an application for admission. An admitted participant receives an individual treatment program prepared by the properly credentialed program manager who takes into account all assessment recommendations. This plan is turned over to the case manager who will monitor participant performance. The defendant progresses through three program stages and upon successful completion the charge is dismissed and the person is graduated from the program. Each case is staffed before the docket session. We hand out praise as well as sanctions. We rely heavily on assessment and evidence based practices.

Statistics. To date we have admitted 440 to the program. There have been 356 graduates and there are currently 32 participants in the program. The remaining 52 were discharged for violations or administrative reasons.

These programs will have ready supply of potential participants. There are ten times more mentally ill people in jail or prison than in mental health hospitals. Serious mental illness among confined offender is up to three times higher than the general population. On average, the length of confinement for mentally ill offenders is longer and more expensive. In Texas prisons, mentally ill prisoners cost $30,000 to $50,000 per year, compared to $22,000 for other prisoners.

Closing thoughts. The judge has an important role in these programs, but I will concede that the heavy lifting is done by the program staff and therapeutic resources. My main focus is to support their work. During my eight years as a prosecutor and my first 12 of 23 years on the bench, I rarely had the opportunity to see the rehabilitated defendant. Now I regularly see incredible change in people who go on to lead meaningful lives. In addition to the mental health program I also preside over a veteran's court and a high-risk female felony offender program, plus my regular duties. Again, it's all about the staff.

As a society we tend to specialize. I see specialty programs as a permanent part of the criminal justice landscape. The essence of this approach is the delivery of specialized resources to a specific population with similar needs. The result is the delivery of resources in the most efficient manner at a cost substantially less than that of incarceration of low level offenders. Frankly, I look at the county jail as an opportunity. I'm sold, it works.

If I or a member of my staff may be of service please do not hesitate to call. Judge Brent Carr, (817) 884-3410, bcarr@tarrantcounty.com. The program may be contacted at (817) 884-1774. The program manager is Kathryn Omarkhail, kmomarkhail@tarrantcounty.com. ♦

[1] *http://tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars-abridged.pdf*
[2] *http://csgjusticecenter.org/reentry/issue-areas/health/#endnotes*
[3] *http://tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars-abridged.pdf*

Editor's Note: This article was originally published in *The Oklahoma Bar Journal,* available at: http://www.okbar.org/members/BarJournal/archive2014/MayArchive14/OBJ8514Beckstrom.aspx

Century-Old Letter Provides Judicial Flashback

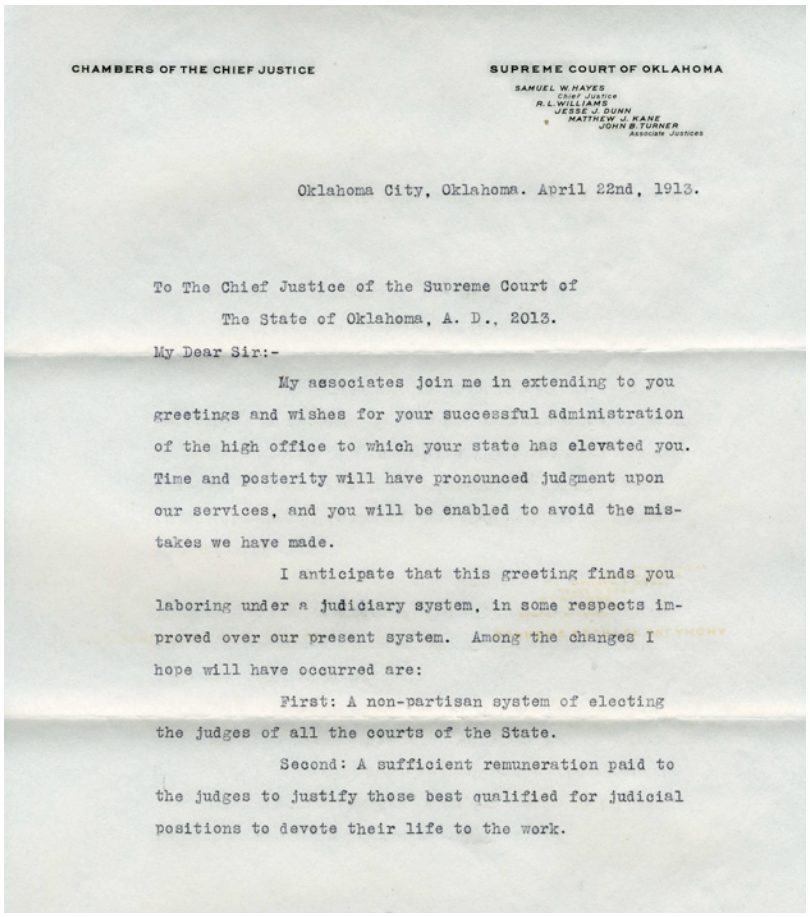
By Jarrod Beckstrom

Oklahoma Supreme Court Chief Justice Samuel W. Hayes sat at his desk on April 22, 1913, and penned a letter to a man he didn't know and would never meet. In fact, that man would not be born for another 36 years, but the contents of the letter and its relevance today is uncanny, almost eerie.

Justice Hayes folded the letter into thirds, stuffed it in an envelope and placed it in a chest at the First Lutheran Church in Oklahoma City. It wouldn't be read until 100 years later.

The letter was addressed "To The Chief Justice of the Supreme Court of The State of Oklahoma, A.D., 2013." Chief Justice Tom Colbert read the letter at a public ceremony last month, and the words reached across a century.

After a well-wishing greeting, the letter's tone turned occupational and discussed Justice Hayes' hopes for the Oklahoma judiciary in 2013. Two world wars, 25 state governors and a multitude of societal changes later – his words were poignantly relevant to the recent challenges to Oklahoma's courts.



CHAMBERS OF THE CHIEF JUSTICE

SUPREME COURT OF OKLAHOMA

SAMUEL W. HAYES, Chief Justice
R. L. WILLIAMS
JESSE J. DUNN
MATTHEW J. KANE
JOHN B. TURNER, Associate Justices

Oklahoma City, Oklahoma. April 22nd, 1913.

To The Chief Justice of the Supreme Court of
The State of Oklahoma, A. D., 2013.

My Dear Sir:-

My associates join me in extending to you greetings and wishes for your successful administration of the high office to which your state has elevated you. Time and posterity will have pronounced judgment upon our services, and you will be enabled to avoid the mistakes we have made.

I anticipate that this greeting finds you laboring under a judiciary system, in some respects improved over our present system. Among the changes I hope will have occurred are:

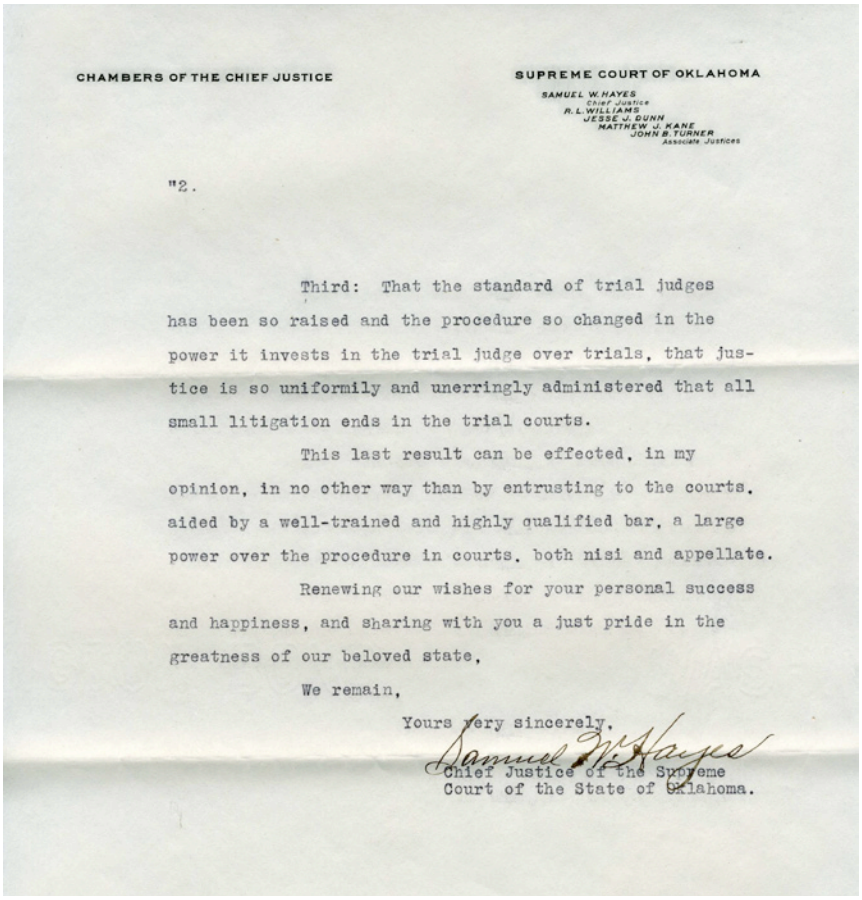
First: A non-partisan system of electing the judges of all the courts of the State.

Second: A sufficient remuneration paid to the judges to justify those best qualified for judicial positions to devote their life to the work.

> "...the challenge of protecting the system of justice is forever ongoing.

"I anticipate that this greeting finds you laboring under a judiciary system, in some respects improved over our present system," Hayes wrote and continued to list three areas in which he hoped progress had been made: 1) A non-political system of electing judges, 2) Sufficient remuneration for judges in order to attract the best legal talent to the bench and 3) Quality trial courts and access to justice for all Oklahomans.

Progress has been made in many regards, but the challenge



CHAMBERS OF THE CHIEF JUSTICE

SUPREME COURT OF OKLAHOMA

SAMUEL W. HAYES
Chief Justice
R. L. WILLIAMS
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MATTHEW J. KANE
JOHN B. TURNER
Associate Justices

"2.

Third: That the standard of trial judges has been so raised and the procedure so changed in the power it invests in the trial judge over trials, that justice is so uniformily and unerringly administered that all small litigation ends in the trial courts.

This last result can be effected, in my opinion, in no other way than by entrusting to the courts, aided by a well-trained and highly qualified bar, a large power over the procedure in courts, both nisi and appellate.

Renewing our wishes for your personal success and happiness, and sharing with you a just pride in the greatness of our beloved state,

We remain,

Yours very sincerely,

Samuel W. Hayes

Chief Justice of the Supreme Court of the State of Oklahoma.

Chief Justice Samuel W. Hayes

of protecting the system of justice is forever ongoing.

"I cannot tell you the uncanny foresight that Justice Hayes had," Chief Justice Colbert said after the reading. "It's like he was sitting here with a crystal ball and seeing us sitting here today, and seeing the issues we are addressing every day."

Among those issues was ensuring all citizens have a "fair shake" in court and the ability to have a fair trial.

Vice Chief Justice John Reif pointed out that the three points Justice Hayes focused on in his letter were representative of the "three legs of the stool of judicial independence" and that "its strength is in all three of its legs…that was the meaning of judicial independence in 1913 and is the meaning of justice in 2014.

The letter is a fascinating read and a reminder that even though we have come a long way in 100 years, we must remain vigilant in protecting the third branch and citizens' rights to fair and impartial courts free from political influence. ♦

Upcoming Conferences

Annual Judicial Education Conference
Sept 7-10, 2014
Omni, Fort Worth

Mental Health and Forensic Science
Issues for the Trial Judge
October 23-24, 2014
Austin Marriott South, Austin

College for New Judges
December 7-12, 2014
Sheraton Capitol, Austin

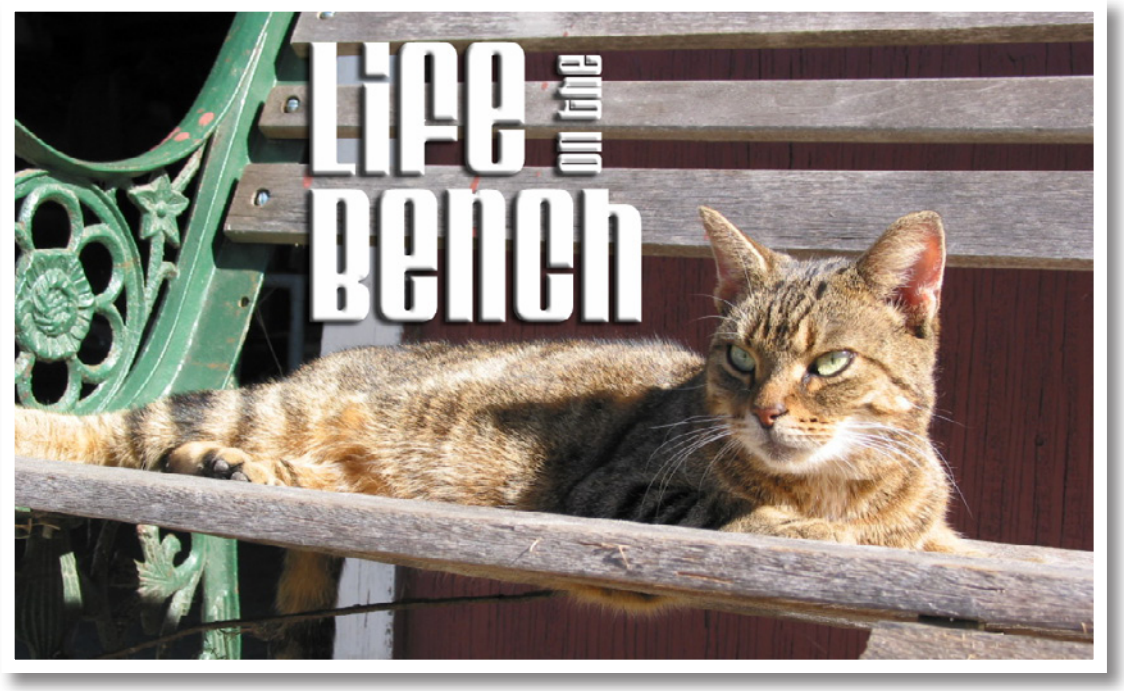
Family Violence Conference
January 28-29, 2015
Westin Riverwalk, San Antonio

Criminal Justice Conference
February 26-27, 2015
Sheratin Capitol, Austin

Regional A Conference
Regions 2, 6, 7, & 9
April 23-24, 2015
Hilton Anatole, Dallas

Regional B Conference
Regions 1, 3, 4, 5, & 8
May 14-15, 2015
Hilton Anatole, Dallas

Professional Development Program
June 15-19, 2015
Embassy Suites San Marcos, San Marcos



Don't TASE Yourself, Bro

By Judge Mark D. Atkinson

The mid-1990s were a period of change and innovation in many respects for the courts of my county. Changes in case management, sentencing practices and courtroom security unfolded rapidly. Technology brought change to the courts in a broad variety of ways.

Lest the reader think me unfair to tailor this writing to the activities of a certain subset of court personnel, I, in a previous issue of this periodical, confessed to no fewer than ten of my own judicial foibles occurring during my tenure on the bench. Most importantly, no humans were seriously or lastingly injured during the occurrence of the following events.

> "If you're going to do it, don't do it in my office."

Early one morning, my bailiff, Scott, sat in my coordinator's office killing time with nothing to do but to wait for court to start. Penny was working at her desk on the day's docket, while Scott sat on the couch with legs crossed. From a holder on his belt he removed the new device the Sheriff's Department had just issued to all Courts Division Deputies. It was called a TASER. When its two prongs were pressed against something and the trigger pulled, it fired 50,000 volts of electricity into the recipient.

As Penny researched case information on her computer, Scott admired his new weapon as would a child with a toy gun on Christmas morning. Whether Scott was just bored or overcome with excited curiosity, he began to play with the TASER more and more, running it's two contact points back and forth over the sole of his boot. He asked Penny if she thought the voltage of the TASER could penetrate the thick rubber sole of the boot.

Distractedly, she responded that she was sure it would.

"I don't think it would," replied Scott, and he applied the prongs of the device firmly to the sole of his boot.

"Well, if you're going to do it, don't do it in my office," urged Penny.

Scott responded by pulling the trigger. Penny was right.

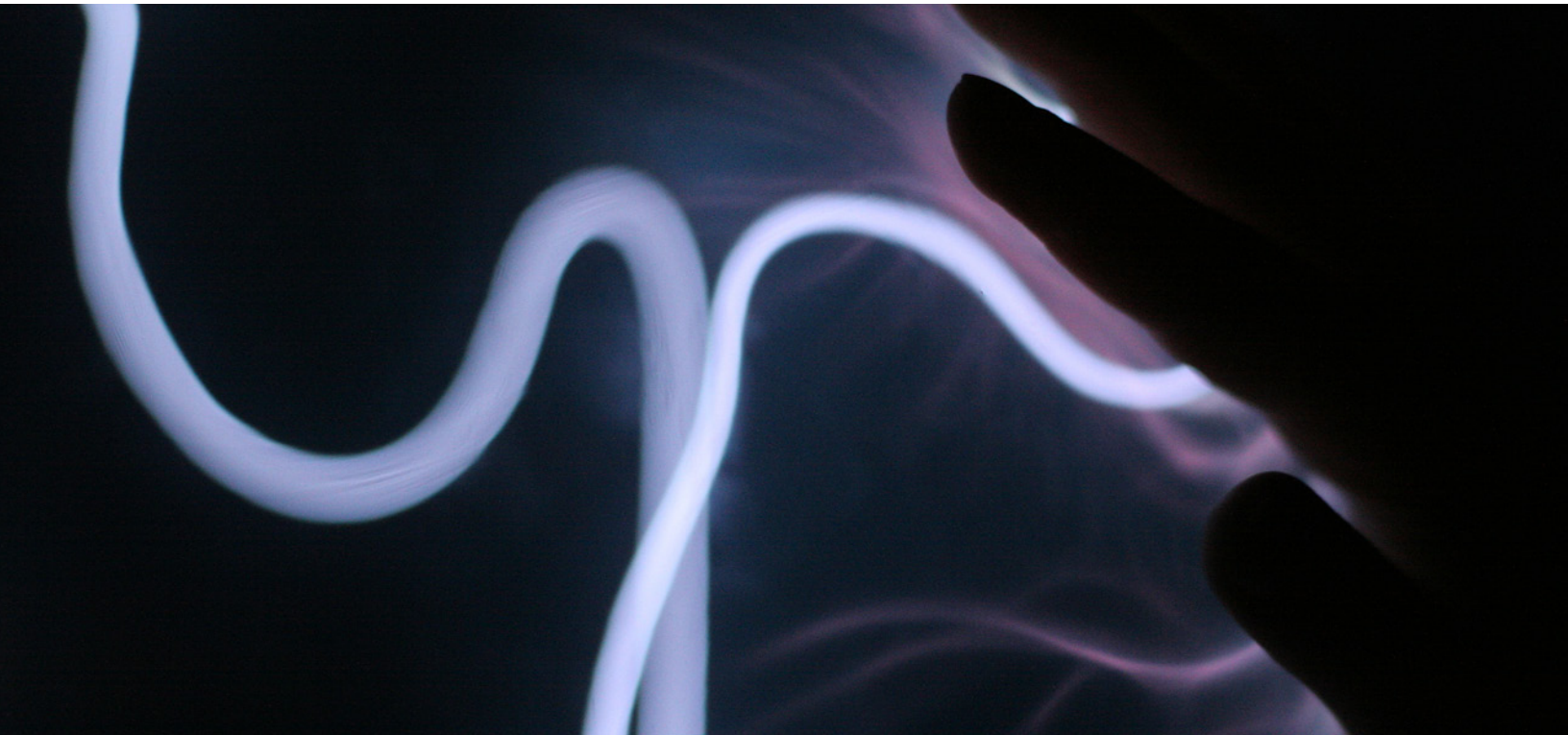
Scott's scream wasn't his first response. He shot up about three feet in the air. Veins bulged out along his neck, his face turning red and then blue. It seemed the jolt was going to shoot out of the top of his head. He then shrieked before crashing back to the couch and coming to rest.

Penny watched Scott until she felt sure that he had survived the experience, then began again to work on her docket.

"I've got 50,000 volts on my belt..."

My other bailiff, Tonya, had better luck with her TASER, primarily due to the fact that she never actually used it. She maintained order in the courtroom with calm dignity. Every morning, she talked softly to the audience before I took the Bench, apprising them of expectations of both demeanor and appearance. She rarely, if ever, raised her voice — and she didn't need to.

One morning, a defendant was taken into custody in the courtroom, owing to an open warrant. Tonya took the fellow to the court's holdover cell, which was located on the other side of a door situated behind Tonya's desk. The defendant was handcuffed to a bench inside the holding room while Tonya prepared paperwork. He did not accept his circumstance calmly and protested endlessly. Although cuffed to the bench, he was close enough to the door to push it open and continue arguing his case to Tonya. Cuffed to the bench with one hand and holding the door open with the other, he continued to complain, never stopping to breathe, it seemed.



Finally, Tonya said, without taking her eyes off of her computer screen, "I've got 50,000 volts on my belt." The door closed slowly and did not open again.

A substitute bailiff whose name I never learned was sent to work in the court next to mine for one day only. He was known as a "floating bailiff" and had only recently begun working in the Courts Division of the Sheriff's Department.

He was a very large and broad man. On his belt, he wore just about every piece of equipment you can imagine. He carried a handgun, a retractable nightstick, a pager, a can of mace, a set of handcuffs, sunglasses, some other little black leather compartments — and a skin-contact TASER.

He escorted the jury, which had been selected and sworn the day before, into the courtroom to begin a trial. He opened the door leading into the courtroom from the jury room and bellowed, "All Rise!" then led the jurors to the jury box. The judge ordered all to be seated.

"It was as if he were performing the wave at a stadium…

The bailiff walked across the courtroom to his desk and chair, which were directly opposite the jury. The chair, with armrests, was of a heavy metal type.

He pulled the chair back and attempted to sit. But, because of his size and all of the gear on his belt, he couldn't squeeze between the armrests into the chair. The chair was too narrow and he was too wide. Everyone in the courtroom including judge and jury watched as he struggled. He finally managed to squirm around enough to plop through, landing in the seat with a jar.

The force of the action combined with the size of the payload caused the TASER to fire 50,000 volts of electricity into his thigh. His body shot up and the chair rose with him, as its armrests were hung up on the gear on his belt. His arms rose too and extended above his body.

The chair was so heavy that it pulled him back down. He and the chair crashed to the floor, which caused the TASER to fire into his leg again, again shooting him upward, arms reaching for the sky, the chair then pulling him back down to Earth.

The process repeated itself a third time. It was as if he were performing the wave at a stadium.

He shot up one last time, crashed again, and was lucky enough this time to avoid another jolt. The jurors sat there watching, taking it all in — the trial had not even begun. They were asked to return to the jury room.

The bailiff recovered without any apparent lasting effect, gathered his composure and left the courtroom, leaving the trial to resume with another bailiff later that day. I don't think that floating bailiff ever returned to our floor again. ♦

(Judge Atkinson served as the judge of a county court at law for 24 years, from 1987 to 2010, and is now the Executive Director of the Texas Center for the Judiciary.)

Texas Bar Foundation Names Presiding Judge Dean Rucker as Samuel Pessarra Outstanding Jurist

Each year, the Texas Bar Foundation honors those who exemplify the highest standards of the legal profession. In June, the Texas Bar Foundation announced that Judge Dean Rucker will receive the 2014 Samuel Pessarra Outstanding Jurist Award.

In 1987, the Texas Bar Foundation created the Outstanding Jurist Award to honor an active federal or state judge. Retired judges or judges of senior status are eligible if they continue to be active on the bench. In 1995, the Foundation received a bequest to the endowment from the estate of Mrs. Samuel Pessarra in honor of her late husband for the purpose of funding the Outstanding Jurist Award. The recipient must have served on the bench for a minimum of 10 years and exhibit an exceptionally outstanding reputation for competency, efficiency, and integrity.

Left to right: Harper Estes, Fellows Chair for the Texas Bar Foundation, Hon. Dean Rucker, Presiding Judge of the 7th Judicial Administrative Region, G. Thomas Vick, Jr., Chair of the Board of Trustees of the Texas Bar Foundation.

Judge Dean Rucker presides over the 318th Family District Court of Midland County. He also serves as the Presiding Judge of the Seventh Administrative Judicial Region of Texas. Judge Rucker is board certified in family law by the Texas Board of Legal Specialization. In 2006, he was awarded the Chair's Award of Excellence by the Texas Center for the Judiciary. Judge Rucker was also honored as the 2005 Jurist of the Year by the Texas Chapter of the American Academy of Matrimonial Lawyers. In 1997, Texas CASA recognized Judge Rucker as the Clayton E. Evans Judge of the Year. Judge Rucker is a past chair of the Judicial Section, State Bar of Texas and the Texas Center for the Judiciary. He was a charter Commissioner on the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families and now serves as one its Jurists in Residence. Judge Rucker is a past chair of the Texas Children's Justice Act Task Force. He is a member of the Family Law Section, and serves on the Formbook Committee and the Legislative Committee. He served as the Judicial Advisor to the Family Law Council for many years. He is a director of the Family Law Foundation. Judge Rucker is also a member of the State Bar Pattern Jury Charge-Family/Probate Committee. He is a member of the Texas Academy of Family Law Specialists and the Midland County Bar Association. Judge Rucker has spoken at conferences for the Texas Center for the Judiciary, the National Council of Family and Juvenile Court Judges (NCJFCJ), the State Bar of Texas, and the Texas Academy of Family Law Specialists. He earned a BS in Business Administration from Trinity University and a JD from St. Mary's University School of Law. ♦

From left to right: Dustin (son), Karen (wife), Hon. Dean Rucker, Rebecca (daughter-in-law), Clark (son) Sue Kolitz (Rebecca's mother).

AWARDS&

El Paso County's DWI Drug Court Recognized as National Academy Court

The National Center for DWI Courts (NCDC), in partnership with the National Highway Traffic Safety Administration (NHTSA), recognized the El Paso DWI Drug Court Intervention and Treatment Program as one of only four DWI Academy Courts in the nation. DWI Academy Courts are selected for their use of exemplary practices and will be called upon to help develop, identify and test national best practices, to provide technical assistance to programs interested in starting a DWI Court and to mentor DWI Courts in their region. NCDC Senior Director Judge J. Michael Kavanaugh formally honored the El Paso Court as a National Academy Court at special event held on March 25, 2014. Read the full press release here. ♦

Judge Bill Henry Inducted into the American Board of Trial Advocates

Congratulations to Judge Bill Henry of the 428th District Court in Hays County. Judge Henry was inducted into the American Board of Trial Advocates (ABOTA) earlier this year. The organization is an invitation-only society that works to preserve the Seventh Amendment. In order to be eligible for membership, the applicant must have a significant number of first-chair civil jury trials.

The general mission of ABOTA is to foster improvement in the ethical and technical standards of practice in the field of advocacy to the end that individual litigants may receive more effective representation and the general public be benefited by more efficient administration of justice consistent with time-tested and traditional principles of litigation. ♦

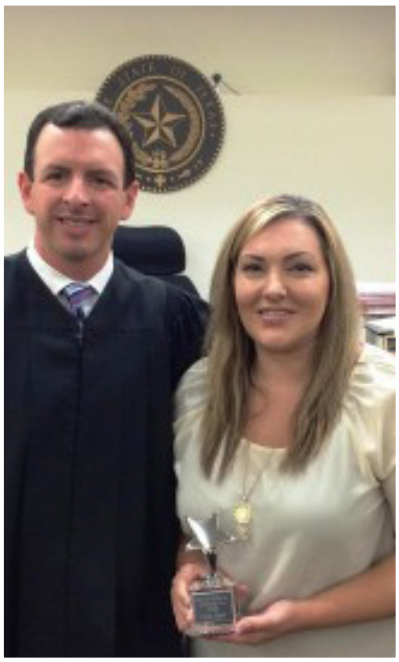
Texas Center Traffic Safety Grant Program's Spotlight on Success Awards

The Texas Center's Traffic Safety Grant Program (TSGP) presented the second annual Spotlight on Success Awards at the 2014 DWI Court Team Conference. These awards recognized the efforts of two outstanding DWI Court team members and an exemplary DWI Court program. Claire George, felony probation officer, Tarrant County Felony Alcohol Intervention Program (FAIP), and Tracie Palmer, defense attorney, Harris County SOBER Court, were both honored with Spotlight on Success Outstanding Team Member awards. Ms. George and Ms. Palmer were nominated by their respective judge based on their hard work and dedication to the program.

The Harris County S.O.B.E.R. (Saving Ourselves By Education & Recovery) Court Program was honored with the Spotlight on Success Outstanding

Tracie Palmer Spotlight Award

SOBER Court Judges



Claire George Spotlight Award

AWARDS&

Team award. The SOBER Court Program's continued willingness to share resources with other DWI Courts is a significant contribution to continuing education throughout the state. Read the press release for the Harris County SOBER Court Program and Ms. Palmer here and for Ms. George here. ♦

Justice Marilyn Aboussie Inducted into the Circle of Leaders

The Honorable Marilyn Aboussie has been inducted into the Circle of Leaders of the Center for Women in Law at the University of Texas School of Law. Justice Aboussie was recognized at the Center's Fifth Anniversary celebration in April 2014. Justice Aboussie also recently completed a three-year term as president of the Alumni Association of the law school. She had served on the Alumni Association Executive Committee since 2003.

The Center is the premier educational institution devoted to the success of the entire spectrum of women in law, from first-year law students to the most experienced and accomplished attorneys. It combines theory with practice, identifying and addressing the persistent issues facing individual women and the profession as a whole. The Center serves as a national resource to convene leaders, generate ideas, and lead change. ♦

Montgomery County Receives Recognition for Indigent Juvenile Defense

Montgomery County officials and staff earned statewide recognition for their innovative procedures in indigent juvenile defense. In 2011, the Montgomery County Juvenile Board moved away from the wheel-based appointed attorney system for indigent juveniles to contracted attorneys. In doing so, they opted for contracting with attorneys that are board certified in juvenile law, which was more expensive, but raised the bar on the quality of representation. Indigent juveniles' cases are resolved more quickly, spending less time in juvenile detention sentences with punishments being imposed sooner.

The improvements to Montgomery County's indigent juvenile defense system did not go unnoticed. In December 2013, the Texas Indigent Defense Commission (TIDC) recognized Montgomery County with its Gideon Award. TIDC recognizes counties for programs or achievements that demonstrate a significant level of innovation, significant streamlining of a process and significant increase in productivity, or improved service to indigent defendants or other stakeholders. Recognition may also be given to counties with exceptionally high performing indigent defense systems. Counties are evaluated based on how well their programs meet the principles of the Fair Defense Act and the American Bar Association's Ten Principles of a Public Defense Delivery System.

The Commission presented the Gideon Award to a delegation from Montgomery County: Precinct 2 County Commissioner Craig Doyal, 284th District Judge Cara Wood, 359th District Judge Kathleen Hamilton, County Court-at-Law No. 4 Judge Mary Ann Turner, Director of Juvenile Detention Ron Leach, Juvenile Board Member and Presiding Judge Olen Underwood, and attorneys Bill Patillo and Chris Allen, two of three attorneys with whom the county contracted for the service. The third attorney is Carolyn Atkinson. ♦

AWARDS&

Council of the Hispanic Issues Section of the State Bar of Texas Honors Justice Gina Benavides

On June 26, 2014, Justice Gina Benavides of the 13th Court of Appeals received the Judge of the Year Award from the Council on Hispanic Issues Section of the State Bar of Texas (HIS). In a press release, the Hispanic Issues Section announced that "[t]his award recognizes Justice Benavides as having demonstrated excellence in her capacity to serve the Hispanic community by showing exceptional leadership and consistent dedication to justice." The award was presented by Benny Agosto, Chair-Elect of HIS.

The purpose of the Hispanic Issues Section is to study and report on laws, judicial decisions and governmental regulations as they may affect the particular needs of the Hispanic community of Texas, to provide a common meeting ground and forum for members of the profession for consideration of special issues with respect to the recognition and enjoyment of constitutional rights of the Hispanic Community, both individually and collectively, and to take such action with respect thereto, all subject to their Bylaws and the laws, rules and regulations of the State Bar of Texas. ♦

feature

"As a result of the 1967 Water Rights Adjudication Act, all rights to use surface water are now defined by a written document issued by a state agency...

Texas Water Rights

Current Regulations and Hot Topics

by Robin A. Melvin

Editor's Note: This is Part I of a two-part piece on water rights in Texas. This article will review the basics of surface water and groundwater rights in Texas to provide context for Part II, which will address a handful of statewide hot topics in Texas water rights in 2014. Part II will be published in the Fall issue of *In Chambers.*

Current Regulation of Surface Water Use

Texas law categorizes surface water into one of two general types: diffused surface water and water in a water course. Diffused surface water belongs to the owner of the land until it enters a watercourse.[1] Water in a watercourse is the property of the sovereign, and the right to use it must be granted by the sovereign. This section of the paper discusses rights to use surface water that has reached a watercourse.

State ownership of surface water. Today, "[t]he water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state."[2]

Required certificates of adjudication or permits. As a result of the 1967 Water Rights Adjudication Act, all rights to use surface water are now defined by a written document issued by a state agency, with only a few exceptions discussed below. Surface water rights acquired before the final adjudication of a river basin – whether those rights were granted by Spanish or Mexican land grants, pre-1895 Texas republic or state land grants, the 1889, 1895 or 1913 Irrigation Acts, or a permit — are now defined in a certificate of adjudication. Surface water rights acquired after the final adjudications are defined by an amendment to a certificate of adjudication or a new permit.

Anyone seeking a new right or additional right to divert surface water must seek a permit or permit amendment from the Texas Commission on Environmental Quality (TCEQ).[3]

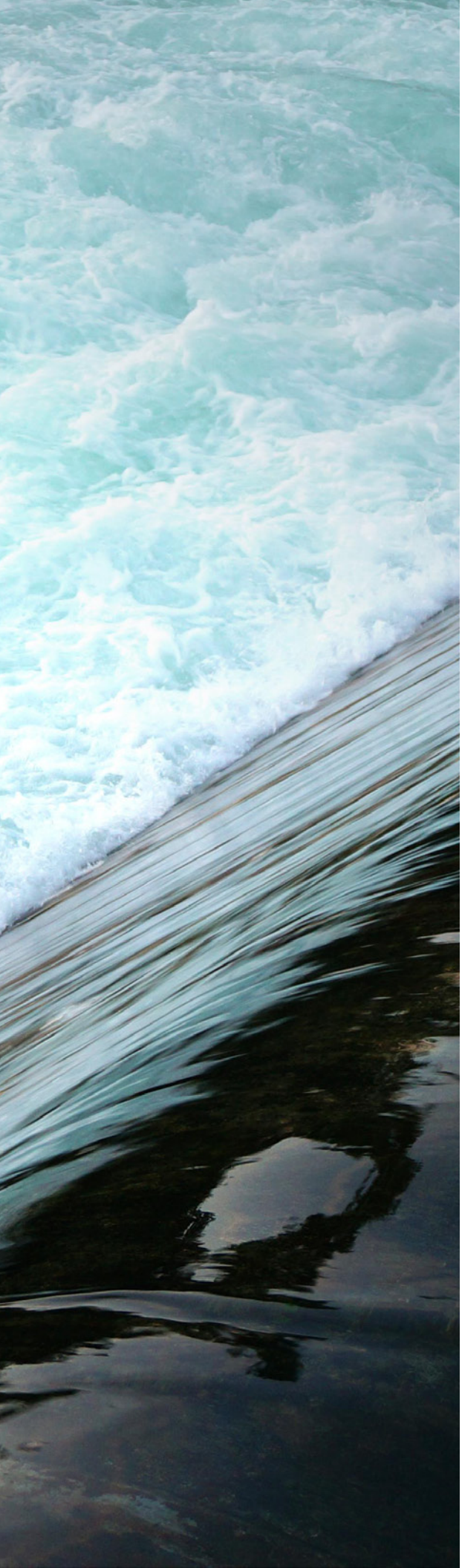
Permitting process. Notice of an application for a new permit or an application to increase the amount of water to be diverted under an existing permit generally must be mailed to all water rights holders in the basin and must be published in a newspaper of general circulation in the section of the state where the source of water is located.[4] Affected persons may request a contested case hearing on the application.[5]

TCEQ "shall grant" the application if it finds that[6]:

- unappropriated water is available in the source of supply;
- the proposed appropriation is:
  - intended for a beneficial use,
  - does not impair existing water rights or vested riparian rights,
  - is not detrimental to the public welfare,
  - considers any applicable environmental flow, and
  - addsresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan; and
- the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.

In addition, TCEQ must "consider" or "assess" the effects of issuance of the permit on water quality, fish and wildlife habitat, and groundwater.[7]

As a practical matter, TCEQ is granting very few new permits or permit amendments that authorize the use of more water on a permanent basis, because most Texas streams and rivers are fully appropriated — that is, the amount authorized to be diverted in existing certificates of adjudication and permits equals or exceeds the amount of water that is available most of the time. Water may be available in certain periods of high flows, but a right to divert water under those circumstances may only be useful if the applicant is prepared to construct an off-channel reservoir to store that water for later use. In 2011, TCEQ granted a permit to the Lower Colorado River Authority to construct an off-channel reservoir in



the lower Colorado River basin to capture high flows.

TCEQ may authorize the use of water on a temporary basis in situations when a granting a permanent right is not appropriate. For example, TCEQ may issue temporary permits to the extent that they do not interfere with or adversely affect existing water rights.[8] A temporary permit must have a term of three years or less.[9] TCEQ may also issue term permits "for use of state water to which a senior water right has not been perfected."[10] This means that TCEQ can issue a permit that allows an applicant to divert water that is already permitted to another user if the other user is not yet making beneficial use of that part of its permitted amount.

Appeals from permitting decisions. Appeals from TCEQ permitting decisions (and most other TCEQ decisions relating to water rights) must be filed in the Travis County district courts.[11] The appeals are governed by the Texas Administrative Procedure Act, and the TCEQ decisions are reviewed under the substantial evidence rule.[12] A court may only reverse or remand the case if the substantial rights of the appellant have been injured because the decision is (A) in violation of a constitutional or statutory provision; (B) in excess of the agency's statutory authority; (C) made through unlawful procedure; (D) affected by other error of law; (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[13]

Exception to permitting — domestic and livestock use. There are a few exceptions to the permit requirement. The broadest exception provides that a riparian landowner does not need a certificate of adjudication or a permit to use water for domestic and livestock purposes.[14]

Exceptions to permitting — statutory exceptions. There a number of exceptions to the permitting requirement authorized by the Texas Water Code. A fairly broad exception allows a person to construct a reservoir on the person's own property with normal storage of not more than 200 acre-feet of water for domestic and livestock or wildlife management purposes.[15] The catch in this statute is the requirement that the reservoir be on the person's own property. The State of Texas owns the bed and banks of all streams that are navigable in fact or by statute. By statute, a "navigable stream" is "a stream which retains an average width of 30 feet from the mouth up."[16] So if a stream is navigable by statute, this permitting exception does not apply.

There are a few other statutory exceptions, but they are more limited. For example, a person who is drilling and producing petroleum can produce up to one acre-foot of water per day from the Gulf of Mexico or its arms or bays for those purposes without obtaining a permit.[17]

And a person who is engaged in mariculture may take water from the Gulf of Mexico or its arms and bays for that purpose, with notice to the TCEQ, but the TCEQ can require interruption or reduction of the diversion if it determines they would interfere with the natural productivity of a bay or estuary.[18]

Current Regulation of Groundwater Production

Unlike most other western states, Texas has developed separate legal doctrines governing the use of surface water and groundwater. Under Texas law, groundwater is privately owned, not owned by the state. Groundwater is regulated by local groundwater conservation districts, not by a state agency like TCEQ.

In the parts of Texas that are not covered by a groundwater conservation district, there is no regulation of groundwater production. The rule of capture still applies. Landowners may pump unlimited quantities of groundwater for any purpose except willful waste or malice. This is sometimes called the law of the biggest pump.

If a groundwater district exists, it most likely has the regulatory powers provided by Chapter 36 of the Texas Water Code. All groundwater districts created by the TCEQ are governed by Chapter 36 of the Texas Water Code. Most statutes creating groundwater districts provide that the districts are governed by Chapter 36.[19] However, the legislation creating a district or other legislation may provide specific exceptions that relate only to that district.[20] The Edwards Aquifer Authority is governed by its creation statute and Chapter 36 does not apply to it. Because most districts are governed by Chapter 36, this section discusses the powers and duties that Chapter 36 provides.

Well permitting. A district must require well owners to register all wells with the district and to drill and equip each well in accordance with district rules.[21] In addition, a district shall require a person to obtain a permit from the district for drilling or operating any well, except wells that the Legislature has exempted by statute or that the district has exempted by rule.[22]

1. Exempt wells. Chapter 36 exempts the following wells from permitting:

- Wells used solely for domestic use or livestock use if the well is located on a tract of land larger than 10 acres and is

drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day.[23]

- Wells used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission, if the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig.[24]
- A water well authorized under a permit issued by the Railroad Commission under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities.[25]

2. Operating permit process. The Water Code sets out the information that a district may request in an application for a permit to drill or operate a well.[26] A district must "promptly consider and act on" an administratively complete application.[27]

The district has the authority to determine, by rule, whether a hearing on a permit application or permit amendment application is required.[28] If a hearing is required, then the district must prepare a notice of hearing, which must be posted in a public place at the district offices and provided to the applicant and any person who has requested notice at least 10 days before the hearing.[29] District rules may provide for more extensive notice.[30] A district may, by rule, determine when an application is considered contested."[31] If an application is contested, a quorum of the district board or a hearings examiner must hold a hearing that conforms to procedures provided

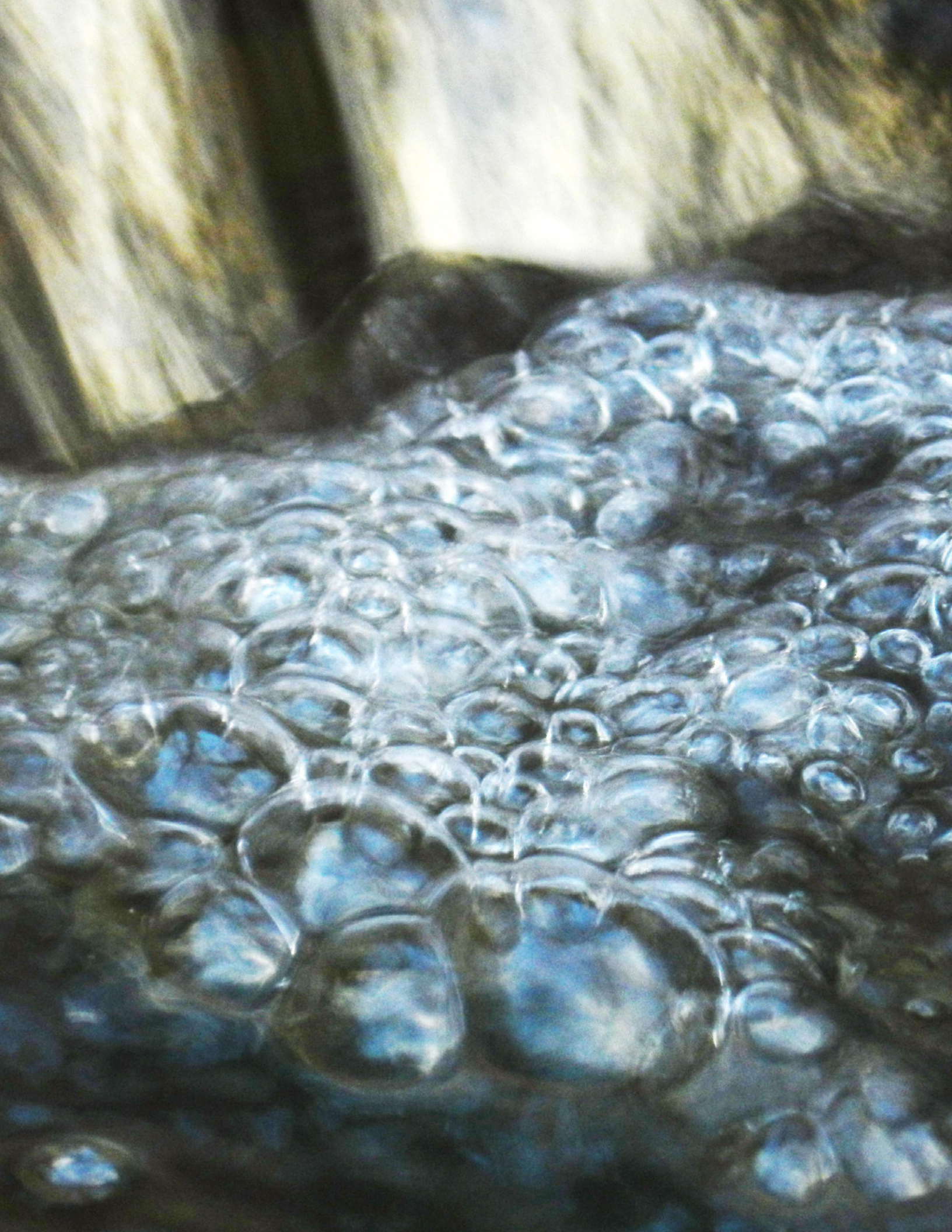
by Chapter 36, or, on the request of any party to a contested, a State Office of Administrative Hearings (SOAH) Administrative Law Judge may conduct the hearing under the Texas Administrative Procedure Act, SOAH procedural rules, and consistent district procedural rules.[32]

Before granting or denying an application, a district must consider whether:

- the application conforms to the requirements prescribed by Chapter 36 and is accompanies by the prescribed fees;
- the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- the proposed use of water is dedicated to a beneficial use;
- the proposed use of water is consistent with the district management plan;[33]
- the applicant has agreed to avoid waste and achieve water conservation;
- the applicant has agreed that reasonable diligence will be used to protect groundwater quality;
- the applicant will follow well plugging guidelines at the time of well closure[34]; and
- granting the application is consistent with the District's duty to manage total groundwater production on a long-term basis to achieve an applicable desired future condition.[35]

3. Transport permit process. A district, by rule, may require a person to obtain a permit for the transfer of groundwater out of the district.[36] The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district.[37] A district may place limitations on a transport permit based on: (1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested; (2) the projected effect of the proposed transfer on aquifer conditions or on existing permit holders or other groundwater users; and (3) the approved regional water plan and district management plan.[38] But any restrictive conditions imposed may not be more restrictive than the district imposes on in-district users, unless the more restrictive conditions apply to all new permits and permit amendments, bear a reasonable relationship to the district management plan, and are reasonably necessary to protect existing uses.[39]

Each transport permit must specify the amount of water that may be transferred out of the district and the period for which water may be transferred.[40] The period specified must be: (1) at least three years if construction of a conveyance system has not been initiated before the permit is issued; or (2) at least 30 years if the construction has been initiated.[41] If construction of a conveyance system is begun before the initial term of the permit has expired, then the term is automatically extended to at least 30 years.[42] The 30-year required term does not prohibit the district from reviewing the amount of water to be transferred under the permit using current data, so long



as it considers the permit in the same manner it would consider the renewal of any other district permit.[43]

Appeals from permitting decisions. Appeals from groundwater district permitting, and other decisions, must be filed in a court of competent jurisdiction in a county in which the district is located.[44]

Suit may only be filed after all administrative remedies have been exhausted.[45] An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.[46] The district board may act on the request for rehearing, or, if it does not act, the request is overruled by operation of law on the 91st day after the request is submitted.[47] If the applicant or a party to a contested case hearing fails to timely file a request for rehearing, a court has no jurisdiction over an appeal.[48]
Review on appeal is under the substantial evidence rule as defined in Section 2001.174 of the Texas Government Code, which is part of the Texas Administrative Procedure Act.[49] The same statute governs appeals from TCEQ permitting decisions.

Well spacing. A district may regulate the spacing of wells by distance from property lines and/or other wells.[50] For example, the rules of the High Plains Underground Water Conservation District No. 1 provides minimum distances from other wells and property lines based on the production capability of the well.[51]

Production regulation. A district may also regulate production based on tract size or managed depletion and have different production limits for different aquifers or geographic areas in the district.[52] When limiting production, a district "may preserve historic or existing use before the effective date of the rules to the maximum extent practicable" and "may consider the service needs or service area of a retail water utility."[53] The High Plains Underground Water Conservation District rules provide a production limit for all non-exempt wells of 1.25 acre-feet per contiguous acres per year after January 1, 2016.[54]

Production and transport fees. A district may charge production fees based on the amount of water withdrawn under a permit or the amount of water authorized to be withdrawn under a permit, up to a maximum charge defined by statute.[55] A district may also charge an export fee on water transported outside the boundaries of the district, although that fee may not exceed statutory maximums.[56] ♦

Endnotes

1 *Turner v. Big Lake Oil Co., 128 Tex. 155, 96 S.W.2d 221, 228 (1936).*

2 *Tex. Water Code § 11.021(a).*

3 *See Tex. Water Code § 11.121 ("no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation"); id. § 11.122(a) ("All holders of permits, certified filings, and certificates of adjudication ... issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right").*

4 *Id. § 11.132.*

5 *Id.*

6 *Id. § 11.134(b).*

7 *Id. §§ 11.150, 11.151, 11.152.*

8 *Id. § 11.138(a).*

9 *Id. § 11.138(d).*

10 *Id. § 11.1381(a).*

11 *Id. §§ 5.351, 5.354.*

12 *Tex. Gov't Code § 2001.174.*

13 *Id.*

14 *See Tex. Water Code § 11.303(l) (exempting use of water for domestic and livestock purposes from adjudication); In re Adjudication of the Water Rights of Upper Guadalupe Segment of Guadalupe River Basin, 642 S.W.2d 438, 439 (Tex. 1982).*

15 *Tex. Water Code § 11.142(a), (b).*

16 *Tex. Nat. Res. Code § 21.001(3).*

17 *Tex. Water Code § 11.142(c).*

18 *Id. § 11.143.*

19 *See, e.g., Tex. Spec. Dist. Code § 8807.006 (Chapter 36 applies to Lower Trinity Groundwater Conservation District).*

20 *See, e.g., id. § 8850.102 (prohibiting Harrison County Groundwater Conservation District from exercising Chapter 36 power of eminent domain).*

21 *Tex. Water Code § 36.117(h).*

22 *Id. § 36.113(a).*

23 *Id. § 36.117(b)(1).*

24 *Id. § 36.117(b)(2).*

25 *Id. § 36.117(b)(3).*

26 *Id. § 36.114(h).*

27 *Id. § 36.114(d).*

28 *Id. § 36.114(b).*

29 *Id. § 36.404(b), (c).*

30 *See, e.g., Blanco-Pedernales Groundwater Conservation District Rules 8.5.E-F (providing for published notice and for mailed notice to nearby landowners for certain wells).*

31 *Tex. Water Code § 36.415(b).*

32 *Id. §§ 36.406-.410, 36.416.*

33 *Each groundwater district must develop a management plan that addresses the following goals, as applicable, (1) providing the most efficient use of groundwater; (2) controlling and preventing waste of groundwater; (3) controlling and preventing subsidence; (4) addressing conjunctive surface water management issues; (5) addressing natural resource issues; (6) addressing drought conditions; (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and (8) addressing the desired future conditions adopted by the district. Tex. Water Code § 36.1071(a). The Texas Water Development Board must approve the management plan, and the district rules must implement the plan. Id. §§ 36.1072, 36.1071(f).*

34 *Id. §§ 36.113(b)*

35 *Id. § 36.1132. Desired future conditions are discussed in Section III.B.*

36 *Id. § 36.122(b).*

37 *Id. § 36.122(g).*

38 *Id. § 36.122(f), (g).*

39 *Id. §§ 36.122(c), 36.113(e).*

40 *Id. § 36.122(h).*

41 *Id. § 36.122(i).*

42 *Id. § 36.122(j).*

43 *Id. § 36.122(k).*

44 *Id. § 36.251.*

45 *Id.*

46 *Id. § 36.412(a).*

47 *Id. § 36.412(e).*

48 *See Gonzalez County Underground Water Conservation Dist. v. Water Protection Ass'n, No. 13-11-00319-CV, 2012 WL 1964549, *6 (Tex. App.—Corpus Christi, May 31, 2012, no pet.) (failure to timely file request for rehearing deprived trial court of jurisdiction over appeal).*

49 *Tex. Water Code § 36.253.*

50 *Id. § 36.116(a)(1).*

51 *See Rule 4.2.*

52 *Tex. Water Code § 36.116(a)(2), (d).*

53 *Id. § 36.116(b), (d).*

54 *Rule 5.3(c). See also, e.g., Central Texas Groundwater Conservation District Rule 5.02(c)(2) (limiting production from wells with operating permits to a maximum of 0.5 acre-feet per contiguous acre).*

55 *Tex. Water Code § 36.205.*

56 *Id. § 36.112(e).*

feature

Before You Sign That Order for an Occupational License. . .

By Hon. Laura Weiser

Judges of both civil and criminal jurisdiction will be presented with petitions for occupational or essential needs drivers' licenses (ODL). Some judges may base their decisions on a verified petition and some will require that the petitioner appear for a hearing. The laws regarding license suspensions and occupational licenses can be quite a challenge to navigate. Even judges who regularly handle these petitions know that there are many pitfalls and challenges in this area. This article is meant to help you navigate through the process successfully. Remember that granting an ODL is ALWAYS discretionary. If you believe that the petitioner would be a danger to the community, DON'T feel compelled to grant the petition.

Texas Transportation Code Section 521.242 through 521.2462 addresses occupational licenses. What proof should be presented to you in the verified petition or at the hearing?

(1) **Notice**. If the suspension is the result of a conviction for DWI, Intoxication Assault or Intoxication Manslaughter or the Petitioner is under the age of 21, the State is entitled to notice and has the right to appear to present evidence against granting the petition. This is important if you are considering these petitions by submission. There should be a waiver of appearance executed by the State in the file before you proceed;

> "If you believe that the petitioner would be a danger to the community, DON'T feel compelled to grant the petition.

“The petitioner must state the reason for the license suspension.

(2) **Jurisdiction**. If the suspension for which the ODL is requested is the result of a conviction for DWI, the petition must be filed in the convicting court. If the suspension does not result from a conviction, jurisdiction lies in the county of the petitioner’s residence;

(3) **Need** for the occupational or essential needs license. This would encompass the Petitioner’s employment, need for transportation to an educational institution, medical appointments, essential household duties, obligations to a community supervision department and any required counseling;

(4) The petitioner must state the **reason for the license suspension**. This is crucial so that you may determine whether the petitioner is eligible for an occupational license. There are several events that will make a petitioner ineligible for an ODL: (1) the petitioner has been issued more than one ODL in the last ten years; (2) the suspension is for a medical reason; (3) the suspension is for unpaid child support; (4) the license is a commercial driver’s license and (5) there is a required waiting period that has not been satisfied;

(5) The statute states that you “must” consider the petitioner’s driving record. The burden is on the petitioner to produce a valid and up to date driving record and attach it to the petition or enter it at the hearing;

(6) If there is a waiting period, proof that the waiting period has been satisfied. This is where it gets tricky. There are several different waiting periods based on the Petitioner’s driving history. This requires a careful reading of the Petitioner’s driving record.

a. If this is the first suspension for an alcohol or drug related contact within 5 years, there is no waiting period but the Court shall order the petitioner to comply with a counseling and rehabilitation program required by Section 521.245;

b. If the petitioner has had two or more drug or alcohol contacts within 5 years that did not result in a conviction, there is a 90 day waiting period. That means the suspension must stand for 90 days before an ODL is granted;

c. If one of those contacts resulted in a conviction for DWI, Intoxication Assault or Intoxication manslaughter, the waiting period is 180 days; and

d. If the petitioner has two or more convictions for DWI, Intoxication Assault or Intoxication Manslaughter within the last five years, the waiting period is one year from the date of the suspension;

(7) The petitioner must show that he is **eligible** for an ODL. That means he must have a Texas driver's license that has not been revoked or cancelled. There are ways to grant an occupational license to a petitioner holding an out of state driver's license, but that's beyond the scope of this article;

(8) The petitioner must have **proof of liability insurance in the form of an SR22**. Caveat: Do not accept an insurance card in lieu of an SR22. An SR22 requires that the company providing the insurance notify DPS if the insurance lapses or is cancelled within the term of the license; and

(9) The petitioner should state in the petition or bring to your attention at the hearing if the ODL should have a requirement of an ignition interlock device (IID). An IID is required if the petitioner is under the age of 21, if the conviction involved a blood or breath test over 0.15 or the petitioner has two convictions for DWI, Intoxication Assault or Intoxication Manslaughter within 10 years. Keep in mind that you can always require an IID whether it is mandated by statute or not.

Now that you have carefully reviewed and granted the petition, what should be contained in your order? Section 521.248 TTC lists the requirements.

(1) The hours of the day and days of the week that the petitioner can drive. The statute limits operation to not more than 4 hours in a 24 hour period except upon a showing of necessity, then the court can allow operation up to 12 hours in any 24 hour period. You may want to be as restrictive as possible here-especially for someone with a prior alcohol or drug conviction. If they work during the day, there is no reason to allow them to drive late in the evening. If they are required to have an IID, you want to make sure the monitoring authority knows what the time and day restrictions of the license are so they can notify you if those restrictions are violated;

(2) The reasons for which the petitioner may drive;

(3) The areas or routes of travel permitted. I would caution you to restrict this to as small a geographical area as possible. There are now IIDs with GPS so that the geographical restrictions can be monitored;

(4) If an IID is required. Be sure to require proof of installation within a time period not greater than 30 days. The IID must remain installed for at least half the period of the license;

(5) If the petitioner must submit to periodic testing for alcohol or controlled substances;

(6) Whether the petitioner is required to submit to supervision by the community supervision and corrections department and pay a monthly fee of not less than $25 or more than $60; and

(7) The term of the license. This should not be an open ended date.

Other conditions you might want to consider adding to your order:

(1) Any counseling you feel would be appropriate;

(2) An order that petitioner abstain from alcohol or any other substance capable of or calculated to cause intoxication; and

(3) Anything else that would protect the public and ensure that petitioner drives safely.

Remember to designate an agency to verify installation of an IID if ordered and compliance with the conditions of your order.

Crucial resources: Tracie Palmer, a defense attorney in Harris County has prepared a very helpful checklist to determine eligibility for an occupational license. You can find that checklist here. Marshall Shelsy, Staff Attorney, Harris County Office of Court Management has prepared an exhaustive chart on driver's license suspensions. You can find his chart here. If you keep these two documents handy when reviewing petitions for occupational licenses, you will find your task to be much easier. ♦

New Reports Due Soon from Court Appointed Attorneys and Counties

By Wesley Shackelford

feature

Court Appointed Attorneys Practice Time Reports

Not later than October 15, 2014, each attorney that received a court appointment for the preceding fiscal year (October 1st - September 30th) must report the percentage of the attorney's practice time that was dedicated to appointed 1) criminal cases (trial and appeals) and 2) juvenile work (trial and appeals) in each county. This report should **not** include work on other types of appointed work such as CPS or guardianship cases, nor should it include practice time devoted to federal criminal appointments — only court appointed criminal work in state and county courts.

Charged with implementing this new reporting requirement passed by the 83rd Legislature in HB 1318, the Texas Indigent Defense Commission's staff met with a variety of stakeholders, including judges, county officials, criminal defense attorneys, and others to develop a reporting process that provides meaningful information to policymakers in the most effective way.

HB 1318 included the following provision in Article 26.04, Code of Criminal Procedure:

> An attorney appointed under this article shall: ... not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

> "The Commission is working... to launch a web-based attorney reporting portal..."

The Commission is working with partners at Texas A&M's Public Policy Research Institute (PPRI) to launch a web-based attorney reporting portal at the end of September. This will enable attorneys to report their work in all counties in which they did appointed work at the same time. This portal is being developed to make the reporting as simple as possible for the individual attorneys. The report will go directly to the Commission but will be accessible by the counties. Although some counties may permit the use of the paper form, this attorney portal will provide a convenient place for attorneys to comply with this legislatively required reporting obligation. To view the complete instructions and reporting form see: Attorney Reporting Instructions and Form. Keep in mind that if a

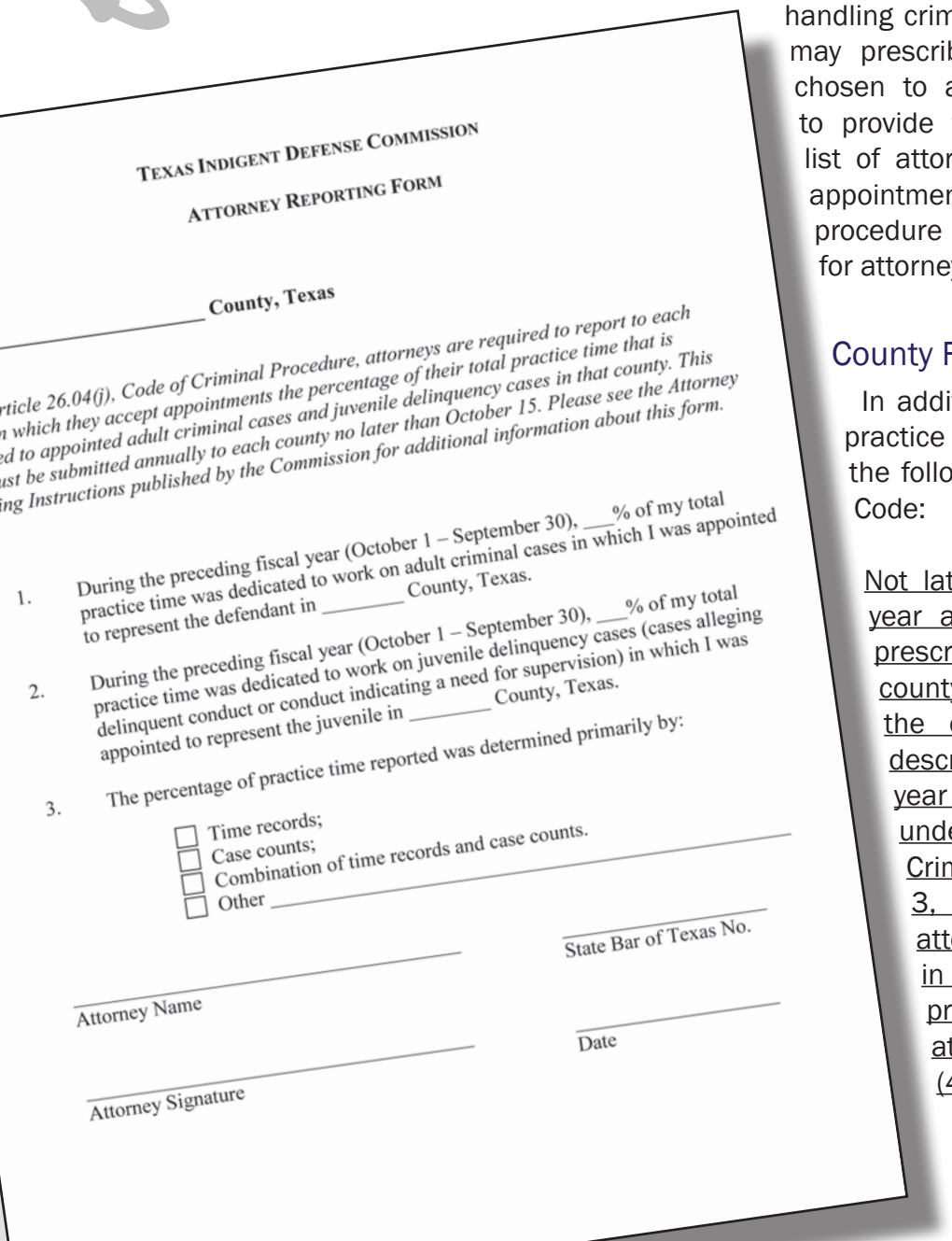
paper report is used, the county will be required to report this information on to the Commission.

Attorneys are not required to use a particular methodology to complete the practice time report. An attorney may do so by using time records, if such records are kept. Others may use a case counting methodology or some other method. All an attorney will need to do is indicate which method(s) they used when submitting the information on the attorney portal or paper form.

The Commission adopted an optional, non-mandatory worksheet that attorneys *may* use to help them calculate their practice time percentages. This new worksheet is available on the Commission's website here. This worksheet is not to be submitted, but it may be useful to assist attorneys in calculating the percentage of total practice time devoted to appointed adult criminal cases and juvenile delinquency/CINS cases in each county.

Use of the optional attorney worksheet will help attorneys consider the full variety of cases that make up their overall practice and allocate 100% of their time among these activities. It will also be made available with a link from the attorney portal website to provide attorneys immediate assistance when preparing to submit the report. If you have not done so already, **please consider sharing information on these new reporting requirements with the attorneys on your appointment lists, public defender offices, and managed assigned counsel programs.**

Penalties for failing to submit a required practice time report by the October 15th due date are not contained in the legislation, although the judges handling criminal or juvenile cases in each county may prescribe one. Many judges have already chosen to amend their indigent defense plans to provide for an attorney's removal from the list of attorneys eligible to receive future court appointments until they complete the report. This procedure is analogous to current requirements for attorneys to report annual CLE hours.[1]



TEXAS INDIGENT DEFENSE COMMISSION

ATTORNEY REPORTING FORM

_____ County, Texas

rticle 26.04(j), Code of Criminal Procedure, attorneys are required to report to each
n which they accept appointments the percentage of their total practice time that is
ed to appointed adult criminal cases and juvenile delinquency cases in that county. This
ust be submitted annually to each county no later than October 15. Please see the Attorney
ing Instructions published by the Commission for additional information about this form.

1. During the preceding fiscal year (October 1 – September 30), ___% of my total practice time was dedicated to work on adult criminal cases in which I was appointed to represent the defendant in _____ County, Texas.

2. During the preceding fiscal year (October 1 – September 30), ___% of my total practice time was dedicated to work on juvenile delinquency cases (cases alleging delinquent conduct or conduct indicating a need for supervision) in which I was appointed to represent the juvenile in _____ County, Texas.

3. The percentage of practice time reported was determined primarily by:

☐ Time records;
☐ Case counts;
☐ Combination of time records and case counts.
☐ Other _____

Attorney Name

State Bar of Texas No.

Attorney Signature

Date

County Reporting of Attorney Caseloads

In addition to the court appointed attorneys practice time reports, HB 1318 also added the following to Section 79.036, Government Code:

> Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.

> "Penalties...are not contained in the legislation...judges... may prescribe one.

Starting November 1, 2014 the law requires each county to submit to the Commission annually the information provided to the county by the attorneys described above, along with information that describes the number of appointments for the preceding fiscal year made to each attorney accepting appointments in the county.

Based on its consultation with stakeholders, the Commission decided to build on the existing reporting infrastructure in the annual Indigent Defense Expenditure Report (IDER) for this new report. The IDER already requires county auditors (or treasurers) to report the aggregate number of cases paid by case type (Juvenile, Capital Murder, Adult Felony, Adult Misdemeanor, Juvenile Appeals, Felony Appeals, and Misdemeanor Appeals) and by court, along with the amount paid each year by November 1st (the same date as the new reporting requirement). The new report will require this information to be broken down by attorney. County auditors have indicated that they already collect this information as part of the attorney payment process.[2] For the first time in Texas, these new reporting requirements will provide judges, legislators, the bar, and the public a clear picture of the caseloads handled by attorneys who accept public appointments. Until now, even the best local systems could only provide information on cases handled by attorneys within a single county, or, at most, a single judicial district encompassing more than one county. These reports will provide greater transparency of the caseloads being carried across all counties. Then by combining the case figures from each county with the practice time information submitted by each attorney, there will be a better understanding of the resources being allocated to the representation of each indigent client.

The legislation discussed above also directed the Texas Indigent Defense Commission to conduct a weighted caseload study to determine the time required to represent indigent defendants in various types of case. This study will be published by January 1, 2015 and will provide policy makers with another source of information to inform our understanding of current court appointed criminal caseloads as well as how this impacts the effective representation of the indigent client.[3] ♦

Endnotes

[1] *You can see what the courts have done in each county by reviewing the local plan at: http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx*

[2] *To learn more about the county reporting process visit: http://www.txcourts.gov/tidc/pdf/CountyReportingInstructions_HB1318.pdf*

[3] *To learn more about this research please see the article in the November 2013 issue of the Voice for the Defense and visit the study website at http://texaswcl.tamu.edu.*

Feature

Serving Veterans on Community Supervision in Bell County

By Todd J. Jermstad

As with all offender populations under community supervision, supervision strategies need to be tailored to meet the specific needs of veterans in the criminal justice system. There are several unique aspects in supervising veterans. First, because all of these people served in the military and many were exposed to combat, there is a strong sense of group solidarity. This has the benefit in that other probationers who are veterans tend to look out for their fellow veterans and are pulling for each other's success in completing community supervision. Second, veterans come from a different culture than the civilian population — the military culture. As such the experiences of veterans are very different from civilians. Hence, it makes it much easier if the community supervision officer supervising this offender population is also a veteran. All too often the veteran's response to a supervision officer who has never been in the military is "you do not know what I have gone through." Finally, veterans not only suffer from combat related stress and psychological problems, i.e., post-traumatic stress disorder (PTSD) and traumatic brain injuries (TBI), but also have many physical ailments. Not only does PTSD and TBI manifest in physiological ways, as well as psychological, but the very nature of military service also tends to create physical ailments at a much earlier stage in life and with greater severity than is found in the civilian population.

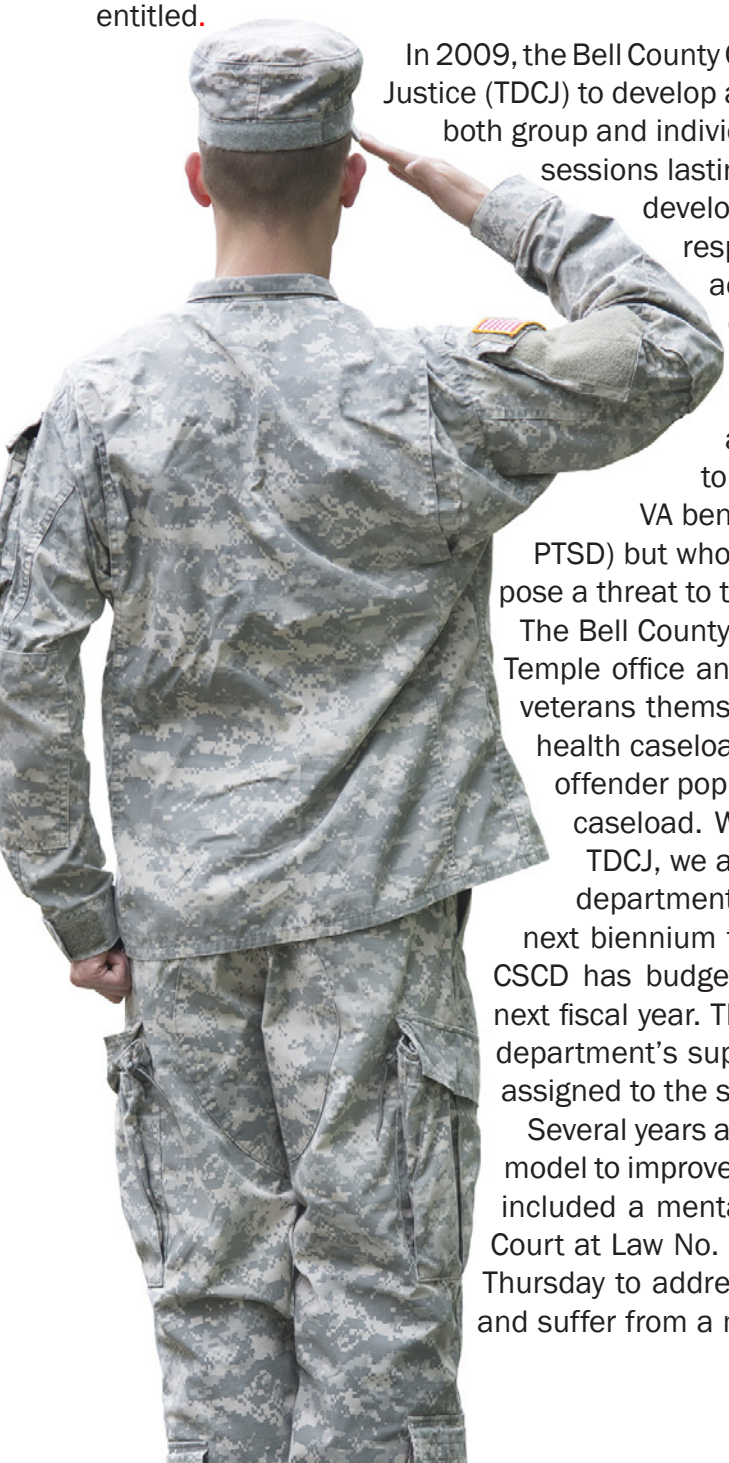
> "...veterans come from a different culture than the civilian population — the military culture.

Understanding these realities helps in the supervision of veterans. Our community supervision and corrections department (CSCD) in Bell County is fortunate to have so many officers and staff who are either veterans themselves or their spouses are on active duty or a veteran. Being a veteran or having a veteran spouse helps to know what benefits a veteran on community supervision may be entitled to. For example, for those veterans who have an honorable or general discharge, they are entitled to many services through Veterans Affairs. These include treatment for substance abuse and mental health. The VA will provide residential housing if the veteran is being treated at the VA. Moreover, the VA has initiated a program to assist homeless veterans to secure housing. Finally, regretfully, all too many female veterans suffered some form of sexual assault or abuse while on active duty.

“For many veterans...it is a daunting task to access services through the VA.

The VA offers counseling and treatment services for these female veterans.

Nevertheless, the VA is a bureaucracy, with all the rules, paperwork and procedures of a bureaucracy. For many veterans, especially those who have a mental health issue or a substance abuse problem, it is a daunting task to access services through the VA. A supervision officer who is a veteran him- herself in all likelihood is also accessing services from the VA and has had to maneuver through the bureaucratic maze of the VA. This officer is ideal in assisting the veteran probationer to receive the benefits to which the person is entitled.



In 2009, the Bell County CSCD received funding from the Texas Department of Criminal Justice (TDCJ) to develop a PTSD/Substance Abuse Program. This program consists of both group and individual counseling. Group counseling consists of twelve weekly sessions lasting one and one-half hours. The purpose of the program is to develop and implement effective coping skills to carry out normal responsibilities; maintain a program of recovery that is free of addiction and posttraumatic stress; resolve the emotional effects of the past trauma and terminate its negative impact on current behavior; and understand posttraumatic stress symptoms and how they led to addiction in a self-defeating attempt to cope. The primary group that this program is aimed to serve is veterans with PTSD who are ineligible to receive VA benefits (possibly because of behavior in the military caused by PTSD) but who nevertheless have a serious substance abuse problem and pose a threat to the community if their PTSD is left untreated.

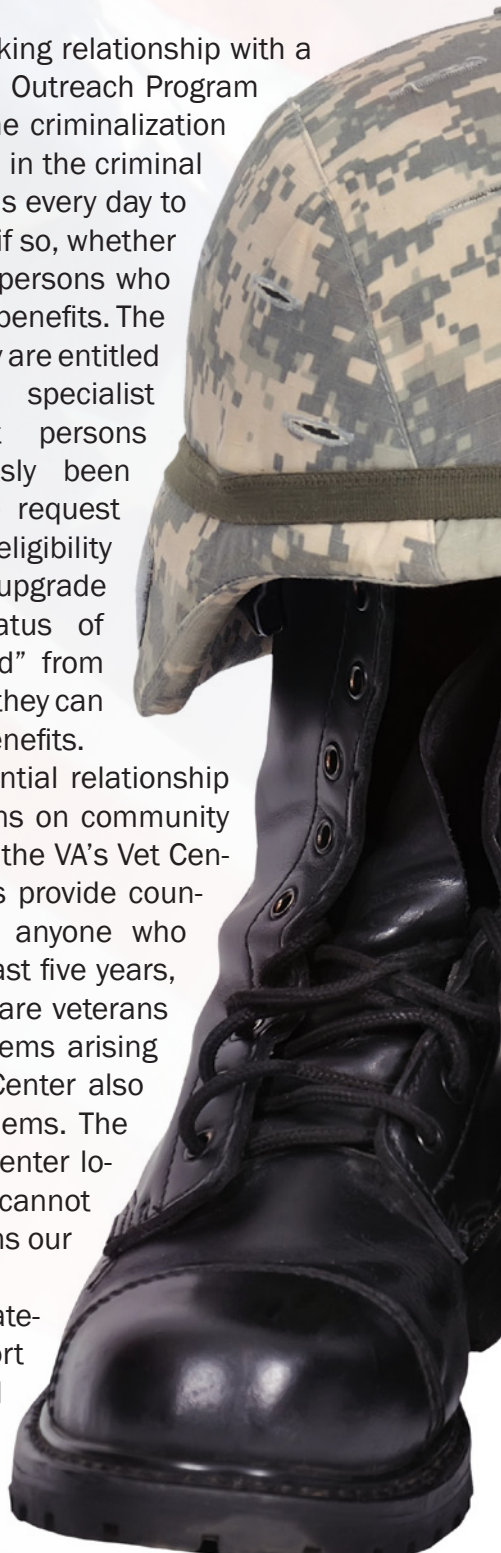
The Bell County CSCD has created two mental health caseloads, one in our Temple office and one in our Killeen office. Both mental health officers are veterans themselves. Because so many of the probationers on our mental health caseloads are veterans, these officers are ideal for supervising this offender population. One goal of our department is to establish a veteran caseload. With the assistance of the Texas Veterans Commission and TDCJ, we are very hopeful that community supervision and corrections departments in the State will be able to apply for funding during the next biennium to establish veteran caseloads. In addition, the Bell County CSCD has budgeted to hire a social worker with a master’s degree in the next fiscal year. This newly created position will work with veterans under our department’s supervision, assist the mental health officers, and will also be assigned to the specialty courts and specialty dockets working with veterans.

Several years ago, Bell County received a grant from the State to establish a model to improve legal representation for indigent defendants. This grant also included a mental health component. As part of this endeavor, Bell County Court at Law No. 3 has established a mental health docket that meets every Thursday to address indigent defendants who have been accused of a crime and suffer from a mental illness. Along with prosecutors and defense counsel,

the county jail Mental Health/Medical deputy, social work interns from area colleges who are working toward obtaining their MSW, representatives from Bell County Pre-Trial Service and Indigent Health, persons with MHMR, and a Veteran Justice Outreach Specialist with the local VA hospital, our two community supervision mental health officers also regularly attend this mental health docket.

Because veterans with mental health issues tend to be different from civilians with mental health issues, the mental health docket is divided into a civilian docket and then a veterans/active duty military personnel docket. While civilians involved in the criminal justice system tend to suffer from bi-polar disorders, paranoia and schizophrenia, veterans tend to suffer from PTSD or TBI, have marked episodes of depression, have problems controlling impulsive behavior or have anger issues. By working closely with prosecutors, defense counsel, and the various interested parties assigned to the mental health docket, once a veteran has been placed on community supervision, the person can immediately be "handed off" to the community supervision mental health officers present in court and treatment can therefore be continuous and seamless.

It is essential in addressing the needs of veterans to create a working relationship with a local or regional VA hospital and especially the VA's Veteran Justice Outreach Program (and Specialist). The purpose of this program is to try to prevent the criminalization of mentally ill veterans by identifying and assisting veterans involved in the criminal justice system. The Veteran Justice Outreach Specialist goes into jails every day to determine whether a person recently arrested may be a veteran and if so, whether that person is eligible for VA benefits. Surprisingly, there are many persons who have been in the military who are unaware that they are eligible for VA benefits. The outreach specialist will assist these individuals to access benefits they are entitled to. The outreach specialist will even assist persons who had previously been denied benefits to request a review of their eligibility and attempt to upgrade the discharge status of persons "chaptered" from the military so that they can be entitled to VA benefits.



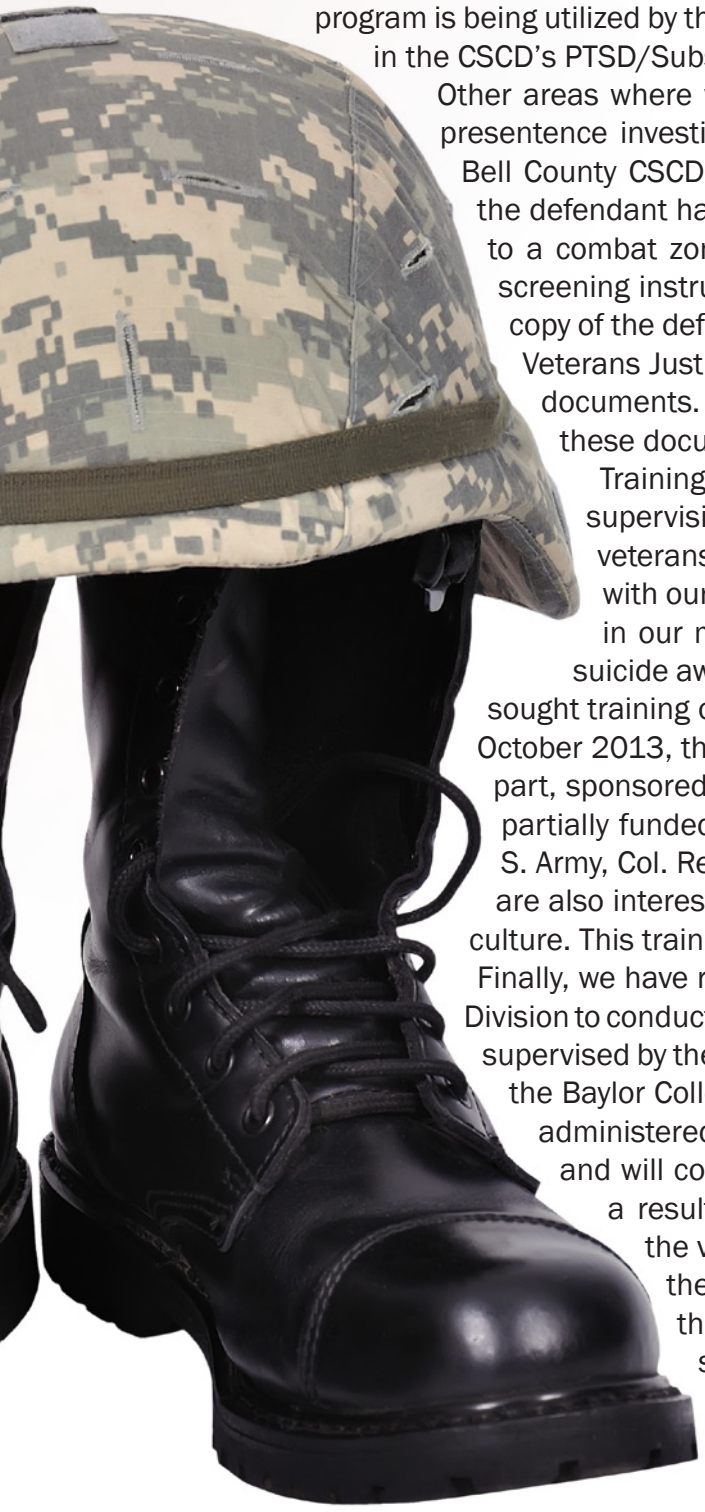
The counselors at the centers are veterans themselves...

The second essential relationship in assisting veterans on community supervision is with the VA's Vet Centers. These centers provide counseling services to anyone who has served in the military and were exposed to combat within the last five years, regardless of their discharge status. The counselors at the centers are veterans themselves and assist veterans in dealing with a number of problems arising from transitioning from the military to the civilian world. The Vet Center also makes referrals for treatment for veterans with more serious problems. The Bell County CSCD has established a written protocol with the Vet Center located in Harker Heights and has an identified point of contact. We cannot emphasis enough the benefits the Vet Center has provided to veterans our department is supervising.

In 2010, the Bell County CSCD assisted in the creation of a state-accredited Batterer's Intervention and Prevention (BIP) program in Fort Hood, the first of its kind on any military installation in the United States. The BIP program is administered through the Department of

Social Work for the Army. It is free of charge to any military person or dependent involved in an act of violence against an intimate partner. In addition, this program is open to veterans receiving Tri-Care who have been involved in a domestic violence offense. TDCJ-Community Justice Assistance Division reviewed and approved the BIP curriculum at Fort Hood which includes a component recognizing the effect of deployment in the dynamics of domestic violence.

Recently, the CSCD established a partnership with Bring Everyone in the Zone, Inc. to provide veteran peer to peer support for probationers who are veterans. This veteran peer to peer support program provides contact services to veterans and their families on a 24/7 basis. These services may be educational, supportive, referral, escort or informational. Moreover, this program provides group interaction for those veterans dealing with combat-related issues and also provides mentoring using veterans who have had many if not the same experiences as veterans that the CSCD is supervising. In addition to this program being utilized for any veteran on community supervision who is experiencing difficulties due to his or her deployment(s), this program is being utilized by the drug court program in both Bell and Lampasas Counties and in the CSCD's PTSD/Substance Abuse treatment program.



Other areas where we focus on the needs of veterans are in the preparation of presentence investigation (PSIs) reports and in training. The PSI section of the Bell County CSCD inquires as to the veteran status of each defendant and, if the defendant has indicated that s/he served in the military and was deployed to a combat zone, then the staff preparing the PSI report will administer a screening instrument for possible TBI and PSTD. The staff will also request a copy of the defendant's DD-214 (discharge papers) and medical records. The Veterans Justice Outreach Specialist is extremely helpful in acquiring these documents. While the veteran must voluntarily consent to the access of these documents, the veteran can acquire these documents on-line.

Training is essential for interacting with veterans on community supervision. Suicide is one of the prevailing concerns in dealing with veterans on community supervision. In early 2013, a representative with our local VA hospital provided staff training on suicide awareness in our military and veteran population. We have continued to stress suicide awareness in supervising this offender population. We have also sought training opportunities to better understand this offender population. In October 2013, the Central Texas Family Violence Task Force, of which we are a part, sponsored a day and one-half conference on family violence. The CSCD partially funded an expert in the field of PTSD and TBI, Dr. Charles Hoge (U. S. Army, Col. Retired) to come from Maryland to speak at our conference. We are also interested in providing training to our staff on understanding military culture. This training is available through the Military Veteran Peer Network.

Finally, we have received funding from the TDCJ-Community Justice Assistance Division to conduct a research project studying TBI in the veteran population being supervised by the Bell County CSCD. The research project is being conducted by the Baylor College of Medicine in Houston. The research project has already administered tests on 11 veterans being supervised by our department and will conduct tests on another 29 individuals. We are hoping that as a result of this study, we will better know the prevalence of TBI in the veteran population we are supervising, can determine whether there is a connection between the injury and the occurrence of the crime, and be able to identify treatment and supervision strategies to address this offender population. We continue for find new ways to serve the veterans being supervised by our department. ♦

Feature

Defense-Initiated Victim Outreach (DIVO)

By Stephanie Frogge

The 83rd Texas Legislature passed HB 899, which gives Texas judges a role in the provision of defense outreach, often called DIVO, to victim survivors of crime in capital cases. It's important that judges who hear capital cases be familiar with the new provisions.

Defense-Initiated Victim Outreach (DIVO) is a federal and state program that seeks to address the needs of victim survivors throughout the justice process by providing a link between the survivors and the defense, especially in capital cases. A significant departure from traditional criminal justice-based victim services, DIVO serves as a mechanism by which survivor families, if they choose, may have access to the defense team and the defense team in return can give consideration to requests from them – not unlike a victim survivor's right to access the prosecution. In Texas, victims of crime have a constitutional right to be treated with dignity and respect and that responsibility falls to every member of the criminal justice system, not just the state. DIVO has operated on the federal level for nearly 20 years and on the state level for more than ten.

In Texas, the DIVO program was implemented under a grant from the Bureau of Justice Assistance, U.S. Department of Justice, and is operated by the Institute for Restorative Justice & Restorative Dialogue in the School of Social Work at The University of Texas at Austin. The School of Social Work was selected as the home for DIVO because of its non-aligned status — neither pro defense nor pro prosecution. The program utilizes specially trained Victim Outreach Specialists (VOS) who, upon a vetted request from the defense, are assigned to particular cases as the bridge between the defense and victim survivors. The VOS are closely supervised and monitored through the DIVO program and operate independently of the defense. The VOS works with the survivor family to identify questions, concerns and needs that can be uniquely addressed by the defense and communicates those issues to the defense. Through the VOS the defense has an opportunity to respond without compromising the due process rights of their client. In Texas, in more than half of cases in which DIVO has been utilized, victim survivors have had questions and concerns they wished communicated to the defense. These requests often involve information about the defendant, about defense strategy, and general questions about the criminal justice process itself.

> "The purpose... is to reduce the harm the criminal justice proceedings may be... inflicting on survivor families.

In Texas DIVO is a victim service. The purpose of the program is to reduce the harm the criminal justice proceedings may be inadvertently and unnecessarily inflicting on survivor families. Research shows that engagement in the criminal justice system negatively impacts the well-being of victim survivors by reinforcing a sense of powerlessness and futility. The extreme adversarial nature of capital cases is particularly grueling and contributes substantially to survivors' feelings of injury and impotence. In that regard, DIVO rests on the reality that attending to survivors' needs may reduce some of the negativity they may otherwise bear and that some of those needs may best be addressed, or in some cases can only be addressed, by the defense. Specifically, access to the defense may help address survivor needs for information, empowerment and control – needs often not met by the criminal justice process. In addition it can serve as a means for the defense to relate to survivors with respect and compassion, which may, in turn, reduce some of the victim survivors' anger resulting in more options for their client.

Principled DIVO practices are voluntary, confidential and employ one-way communication. The program is completely voluntary for both defense counsel to initiate and for victim survivors to participate. Whatever the victim survivor shares with the VOS is confidential until the victim survivor specifically grants permission for the VOS to take the request to the defense. To insure a principled, victim-driven process, all communication therefore flows from the survivor family to the defense except when the defense is responding back to specific questions and requests.

> "...many in the criminal justice community could not imagine that a victim survivor would want anything from the defense.

Reactions to DIVO

At the time of its inception, many in the criminal justice community could not imagine that a victim survivor would want anything from the defense. The historic divide between prosecution and defense created the misperception that only the prosecution could attend to a survivor's concerns. Moreover, prosecutors and system-based service providers feared that creating a bridge between victim survivors and the defense would interfere with the case creating grounds for witness tampering, exploitation of the survivor, and inappropriate sharing of information. These beliefs and fears about engagement, though understandable, have not materialized at either the federal level where DIVO is standard practice in capital cases or at the state level. Instead, because of having created a mechanism of communication between victim survivors and the defense, victim survivors have been able to make requests of the defense demonstrating a wide range of needs. In many cases as victim survivors have been invited to reflect on their needs and have had those needs addressed, their emotional involvement with the criminal justice system itself has lessened. This observation supports research that suggests intense and virulent engagement with the criminal justice process by survivors is more a reflection of their inability to get legitimate needs met elsewhere than by genuine interest in the government's response to the harm they perceive as having been inflicted upon them.

The Texas experience bears this out. Despite defense concerns that victim survivors might want things that would jeopardize defense strategy or interfere with zealous advocacy, what victim survivors have actually wanted is relatively benign. The most common requests are procedural such as: "When will the trial take place?" "Will I get to make a statement in court?" "When will he be eligible for parole?" The second most common request is information about the defendant. This should not be surprising given the percentage of cases that involve people who had a previous relationship, but even when no such relationship existed is a reflection of the involuntary relationship that arises when one person perceives they've been harmed by another. The third most common category involve issues of strategy and have raised questions such as: "Will there be a change of venue?" "Is there some way to learn about defense motions that are filed before I read about it in the paper?" In all instances the defense have been able to respond to questions and concerns and in one case, offered to provide copies of motions filed to the victim survivors directly. To a lesser degree other questions and concerns typically relate to issues of courtesy, such as how the victim survivors wish to be acknowledged in court by the defense, questions about the crime itself, and requests for property return.

More recently, contention about the program has focused on the concern about victim-survivors being contacted initially by anyone associated with the defense, including the VOS. For that reason

and in accordance with this concern, the Institute for Restorative Justice & Restorative Dialogue supports the new legislation that asks the judge, as a neutral party, to inform the victim survivor about DIVO in cases where the court has approved funding for the service. This new procedure lets victim survivors consider the service in light of their own interests and needs without direct communication from the defense, and independent from the interests and needs of the prosecution. Furthermore, outreach is only made when the victim survivor indicates to the court that such outreach is acceptable to them.

It is important to note that DIVO is not a replacement or alternative to victim services provided by the state, non-system based programs or social service agencies. However, it is also a service that cannot be provided through any other avenue, especially by a prosecutor-based provider. A system-based provider's belief that they could bring a victim survivor's needs to a defense attorney and get a response is unrealistic given the adversarial nature of the criminal justice process.

The Court's Role in DIVO

In capital cases funding may be requested of the court by the defense to pay for DIVO services. Under the new legislation *if* the case is a capital case and *if* the defense requests and is granted funding, it becomes the judge's responsibility to notify the victim survivors about DIVO and to respond by contacting the defense *if* survivors, subsequent to the notification, wish to be contacted. In non-capital cases or cases in which funding is not sought from the court, other procedures apply.

This additional task need not be an onerous one as the Institute for Restorative Justice & Restorative Dialogue has created a brochure and template letter, which may be utilized by judges. The Institute is also working in collaboration with the Texas Association of Court Administrators to familiarize them with the new legislation and resources available to the court.

For more information about DIVO, please visit the Institute's website at www.irjrd.org and click on the DIVO tab. ♦

Endnote

[1] http://www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/HB00899F.pdf#navpanes=0

Advisory Opinion Summaries

March 8, 2014 – July 24, 2014

Texas Ethics Commission

EAO No. 517 (2014) – A diagnostic blood test and analysis of the results provided to a member of the legislative or executive branch with the intent to influence legislation or administrative action constitutes a gift for purposes of the lobby law. Expenditures made by a registrant, or by an entity whose expenditures are properly reported by an individual registrant, incurred in administering the test are disclosed as gifts on a lobby activities report.

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

Judicial Section of the State Bar of Texas Committee on Judicial Ethics

None for this time period.

State Commission on Judicial Conduct

None for this time period.

American Bar Association's Ethics Opinion

No opinions relating to judges for this time period.

Disciplinary Actions

FY 14

(September 1, 2013 – August 31, 2014)

State Commission on Judicial Conduct

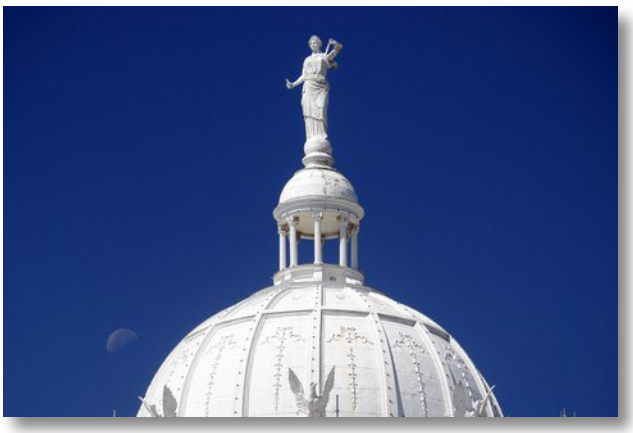
Public Sanctions

Public Reprimand: The Commission found the Justice of the Peace (JP) violated Canon 2B by lending the prestige of his office for private interests and allowing a relationship to influence his judicial conduct or judgment. JP's personal friend, who he was admittedly dating, was arrested for Driving While Intoxicated. JP asked his colleague who was scheduled to magistrate the case if he could do it instead. JP set a PR bond for her release stating that he knew she would "not run." Furthermore, JP previously received a Public Admonishment in 2011 for lending the prestige of his judicial office in an attempt to assist L.D.'s daughter with a pending criminal matter, which the Commission found to be an aggravating factor. The Commission concluded that although JP had the legal authority to magistrate a defendant charged with Driving While Intoxicated, and the discretion to release that defendant on a PR bond, his intervention in this particular case, which involved his girlfriend, created the appearance and the reality that he was allowing his relationship with her to influence his judicial conduct and judgment, that he was giving her favorable treatment, and that she was in a special position to influence the judge. (09/17/14).

Public Admonishment: The Commission found that District Judge (DJ) violated Canon 3B(8) by communicating, *ex parte*, with one of the parties to a trial over which he was presiding. DJ was presiding over an action by Jones against a former client, Whatley, for attorney's fees. DJ issued a take nothing judgment which the court reversed. DJ then announced that he was awarding Jones $40,000. After testimony from Whatley, he lowered it to $26,694. DJ then had a conversation with Jones at the courthouse, stating that he and Whatley "need[ed] to consider mediation" and that "he was inclined to sign a judgment that would provide [Jones] with a larger amount than he had previously." Whatley's attorney, Clark, was not present for this conversation. Jones sent a letter informing Clark of the conversation and Clark responded with an objection to the *ex parte* communication and a request to the judge to meet before the matter was set for trial. The following day, DJ issued a judgment awarding $45,000 in fees to Jones without a hearing or providing Whatley a chance to be heard. The Commission concluded from the facts and evidence presented that DJ engaged in an improper *ex parte* communication with Jones concerning a contested issue in a pending case, which resulted in the entry of a judgment in favor of Jones without affording Whatley the right to be heard. In reaching its decision, the Commission took into account the fact that DJ had been sanctioned previously for engaging in similar conduct.

Public Warning: The Commission found that District Judge (DJ) violated Canons 2A and 3B(2) when presiding over a suit to modify a parent child relationship. At the initial hearing regarding a TRO that was issued, DJ dissolved the TRO and issued temporary orders. During the final hearing, Complainant did not appear due to medial conditions and his attorney was excused because he suffered cardiac distress during the hearing. While neither Complainant nor his attorney were present, DJ engaged in *ex parte* communication with opposing counsel and expressed her belief that the medical excuse was a "delaying tactic" and that she was "being played games with." DJ then issued a turnover order and writ of attachment for the child without notice to the Complainant or his attorney, without conducting a hearing, and in the absence of any supporting pleadings and/or affidavits on file with the court. In issuing these orders, she relied on information she received through *ex parte* communications with Complainant's opposing counsel. When Complainant appeared in court the following day, with the child, Complainant objected to the hearing because his attorney was still in the hospital and could not be present to represent him. DJ ignored the objection and ordered Complainant to explain his whereabouts the prior day. DJ then issued temporary orders giving custody to the opposing party, relying on evidence that she obtained during from her *ex parte* communications with opposing counsel. The Commission found that DJ's actions were not done in a good faith effort to protect the best interests of the child, but rather to punish Complaint for what she believed to be delay tactics. The Commission also found that DJ provided misleading information in written responses to the Commission, provided oral testimony that contradicted court records, and "appeared designed to obfuscate the facts and evidence and thwart the Commission's attempts to investigate and resolve the issues presented by the Complainant."

Public Reprimand: The Commission found that Municipal Judge (MC) violated Canon 2A, 3B(2), 3B(8), and 6C(2) when, during a seven year period, he issued "Orders of Dismissal" and "Judgment Orders" in which he purported to place Defendants on "probation" with the only condition being that they must maintain a clear record during a specified time. The orders did not assess a court cost as required by law, but instead stated that if defendant did not comply, he or she would pay a fee and court cost. MC told the Commission that he orally assessed costs and relied on his court clerks to ensure the costs were paid. The Commission also

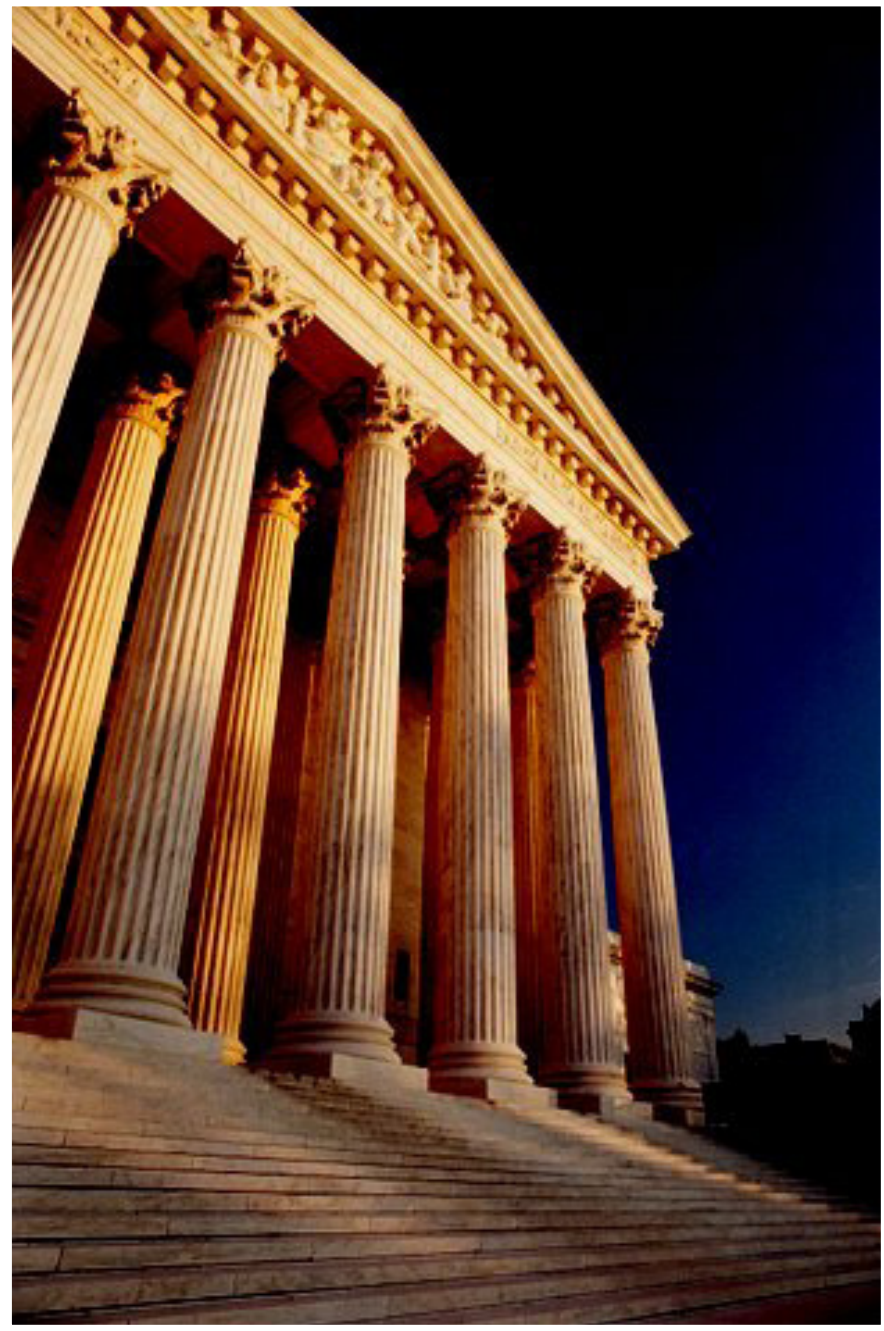


found evidence that MC entered orders of "Judgments of Acquittal" and "Judgment: Jury Waived – Not Guilty." The orders stated that Defendants entered pleas of not guilty, waived the jury trial, the court heard arguments and evidence, and the defendant was found not guilty. The city prosecutor assigned to MC's court provided a written statement that he had never been noticed for any trials or appeared for any trials, and had never filed any motions to dismiss charges. MC acknowledged that this was true, but stated that he dismissed cases only when he believed something was "wrong" with the citation. He would determine whether the citation was "wrong" by discussing the circumstances with defendant and the police officer that made the stop. He further denied dismissing charges to favor a defendant, but simply because he believed he could. The Commission held that MC failed to comply with the law, displayed a lack of professional competence, conducted independent investigations, and engaged in *ex parte* communications. The Commission did take into account that MC is part-time and his staff may have been responsible for some of the orders, but MC was responsible for supervising staff.

Public Warning: The Commission found that Justice of the Peace (JP) violated Canons 2A and 4I(2) by failing to file campaign financing reports disclosing political expenditures. During JP's campaign for re-election, she appeared in a number of joint advertisements with a local attorney. JP did not file any reports disclosing advertising expenditures or any in-kind contributions. In fact, she did not file any reports at all. She told the Commission that she did not approve or authorize the advertisements, and that her relationship to the local attorney was only that he appeared in her court no more than 5 times in the past. After further inquiry by the Commission, JP conceded that the advertisements were paid for entirely by the attorney, who was married to her sister (who at the time was appointed as her campaign treasurer), and that she failed to report them as required by law. The Commission found JP's initial response of misinformation was an aggravating factor.

Public Reprimand: The Commission found that District Judge (DJ) violated Canons 2A-B, 3B(1), (3)-(5), (8), Article V, Section 1-a(6)A of the Texas Constitution, and Section 33.001(b) of the Texas Government Code during his term on the bench when working with his local Community Supervision and Corrections Department (CSCD). Evidence presented demonstrated that DJ had an adversarial relationship with the Director of CSCD before or soon after he took the bench. The adversarial relationship developed out of Director's treatment of the

probation officer (PO) assigned to DJ's court, with whom DJ had developed a close relationship. PO and DJ had been meeting to discuss whether Director engaged in illegal conduct. PO told DJ that Director accepted cash payments and exercise equipment from probationers. Director later delivered a letter to all judges in the county that PO was under investigation for creating the impression that she was in a special position to influence DJ. She was terminated several days later. DJ then began engaging in conduct that the Commission found to be unethical. DJ allowed the adversarial relationship between him and Director improperly influence his conduct and judgment while on the bench. DJ's conduct toward the Director included, but was not limited to, attempts to interfere with Director's day to day responsibilities, orders directing the personal preparation of documents that were not within Director's scope of duties, improper use of contempt, undignified and discourteous conduct during hearings, improper waiver of monthly probation fees to cause harm to Director and the CSDC, and failure to hear motions to reconsider the waiver of probation fees. The Commission further found that DJ's conduct was done in bad faith and he misused his judicial office in an attempt to bully, embarrass, and punish Director.



Private Sanctions

The judge wore a Halloween costume while presiding over a misdemeanor criminal docket, which demonstrated a failure to conduct court proceedings with the proper order and decorum, and a failure to treat the defendants, victims, and their family members with appropriate dignity. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct, and Article V, §1a(6)A of the Texas Constitution.] *Private Reprimand of a County Court at Law Judge.* (08/19/13).

The judge made a phone call to the arresting police officer on behalf of a friend, which was perceived by the officer as an improper attempt by the judge to use of the prestige of judicial office to advance the arrestee's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge.* (08/19/13).

The judge failed to follow the law and demonstrated a lack of professional competence in the law when he removed a criminal defendant's court-appointed attorney based solely on the fact that a family member had posted a pretrial bond to obtain the

defendant's release from jail. The judge took this action without conducting an indigency hearing and without making any finding on the record that there had been a material change in the defendant's financial circumstances that warranted removal of his court-appointed counsel. [Violation of Canons 2A, 3B(2), 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Retired District Judge*. (08/19/13).

The judge failed to follow the law and demonstrated a lack of professional competence in the law when she: 1) became involved in a church dispute over which she had no jurisdiction; 2) granted a writ of re-entry in a case in which the parties were not in a landlord-tenant relationship; 3) denied a litigant's right to be heard at the hearing; and 4) denied the litigant's right to appeal the order granting the writ of re-entry and/or advised the litigant that a writ of re-entry was not an appealable order. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (09/10/13).

The judge failed to follow the law when he *sua sponte* remanded a defendant into custody and doubled her bond after she appeared in court without her attorney. There was no evidence in the record that (a) the defendant had missed a court date or was late for the hearing, (b) her bond was defective or insufficient, or (c) "other good and sufficient cause" existed for sending her to jail. Absent a record of the judge's reasons for finding the bond insufficient, one could conclude that the defendant served three days in jail simply because she came to court without her attorney. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Reprimand of a Senior Judge*. (09/16/13).

The judge lost his patience, and failed to act in a dignified, courteous manner when he ordered law enforcement officers and members of the victim's family to leave the courthouse following a criminal trial. The judge should have exercised more judicial restraint and decorum in the manner in which he continued to pursue the departure of these individuals while they waited in the safety of the district attorney's office. It appeared, given the history of conflict between the judge and the district attorney, that the judge may have been taking out his anger or frustration with the district attorney by lashing out at the family members instead, leaving the family members feeling victimized once more. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge*. (09/16/13).

The judge failed to treat an employee in a patient, dignified and courteous manner when he touched her and/or made comments to her that he knew, or should have known, she would find offensive. While the judge may not have had the intent to offend and/or may not have initially realized that his conduct was offensive, his failure to curtail his actions after being notified that his conduct made the employee feel uncomfortable led to negative media attention that centered on the fact that he ultimately entered a plea of nolo contendere to criminal charges that were filed against him. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Reprimand of a Former County Judge*. (09/23/13).

The judge failed to adequately supervise his court staff, failed to failed to follow the law, and/or demonstrate a lack of professional competence in the law when: 1) the defendant's change of plea was accepted by telephone without any written documentation; 2) the defendant was prevented by the court clerk from having the judge determine whether he could be placed on a payment plan, as required by Article 45.041(b)(2) of the Texas Code of Criminal Procedure; 3) the judge signed and issued a *capias pro* fine warrant that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing to be conducted pursuant to Article 45.046 of the Texas Code of Criminal Procedure; and 4) the judge's court staff engaged in inadequate record-keeping procedures, which contributed to the confusion that occurred in resolving the defendant's case. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (09/23/13).

The judge's demeanor while presiding over court cases demonstrated a willful and/or persistent failure to maintain patience, courtesy, and dignity toward litigants, attorney[s], and others with whom he deals in an official capacity. The Commission determined that the judge's judicial style and his methods for controlling the courtroom and dealing with difficult litigants needed to be reexamined and modified to ensure compliance with the judge's duties under the Code. Additionally, the Commission found that the

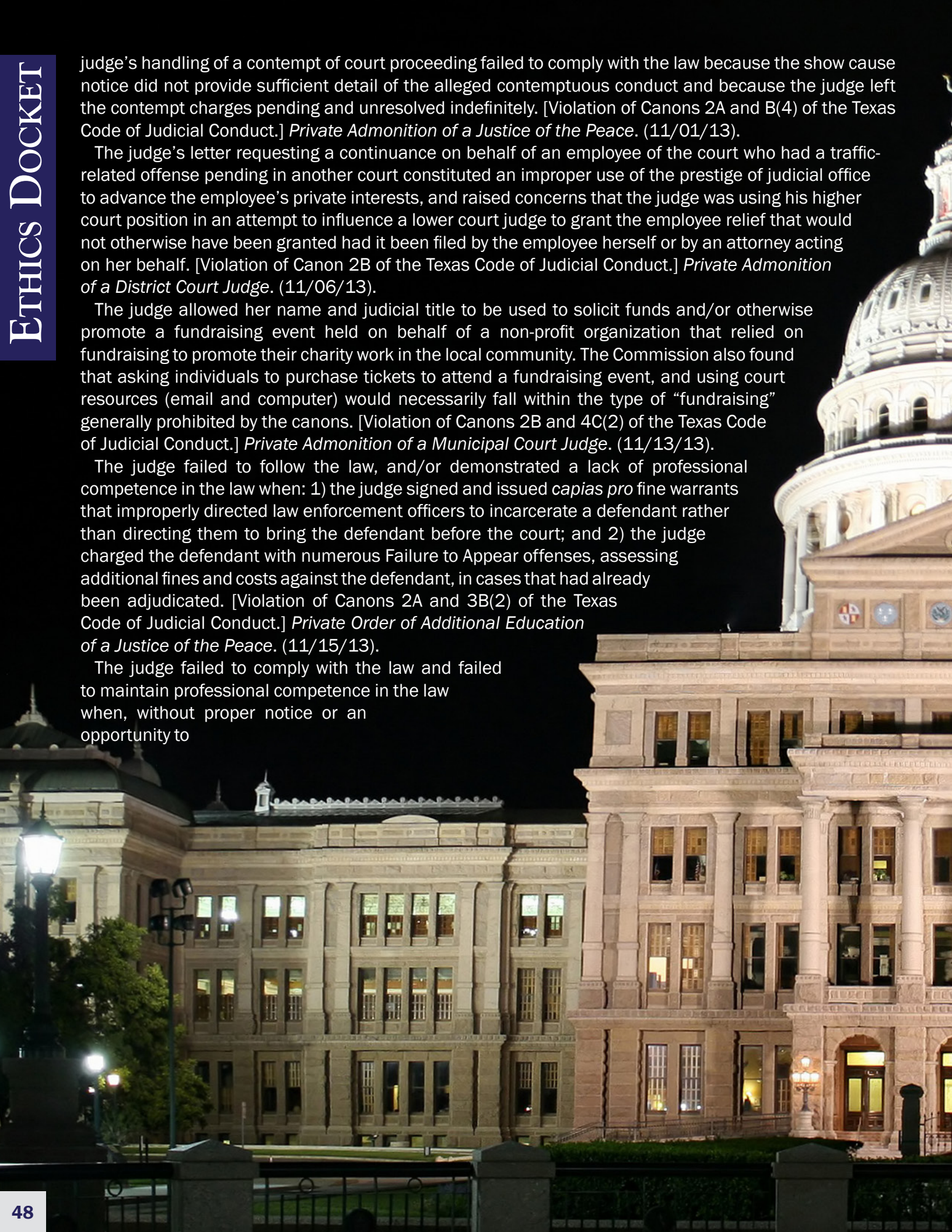
judge's handling of a contempt of court proceeding failed to comply with the law because the show cause notice did not provide sufficient detail of the alleged contemptuous conduct and because the judge left the contempt charges pending and unresolved indefinitely. [Violation of Canons 2A and B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace*. (11/01/13).

The judge's letter requesting a continuance on behalf of an employee of the court who had a traffic-related offense pending in another court constituted an improper use of the prestige of judicial office to advance the employee's private interests, and raised concerns that the judge was using his higher court position in an attempt to influence a lower court judge to grant the employee relief that would not otherwise have been granted had it been filed by the employee herself or by an attorney acting on her behalf. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (11/06/13).

The judge allowed her name and judicial title to be used to solicit funds and/or otherwise promote a fundraising event held on behalf of a non-profit organization that relied on fundraising to promote their charity work in the local community. The Commission also found that asking individuals to purchase tickets to attend a fundraising event, and using court resources (email and computer) would necessarily fall within the type of "fundraising" generally prohibited by the canons. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge*. (11/13/13).

The judge failed to follow the law, and/or demonstrated a lack of professional competence in the law when: 1) the judge signed and issued *capias pro* fine warrants that improperly directed law enforcement officers to incarcerate a defendant rather than directing them to bring the defendant before the court; and 2) the judge charged the defendant with numerous Failure to Appear offenses, assessing additional fines and costs against the defendant, in cases that had already been adjudicated. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace*. (11/15/13).

The judge failed to comply with the law and failed to maintain professional competence in the law when, without proper notice or an opportunity to



be heard, she held a litigant in contempt of court and had her incarcerated over the weekend for failing to comply with temporary orders. Based on her testimony before the Commission, it appeared the judge failed to appreciate the distinction between criminal versus civil contempt, direct versus constructive contempt, and the proper procedures to follow in each type of case before subjecting a litigant to incarceration. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a District Court Judge*. (12/19/13).

The judge failed to maintain order and decorum in the courtroom and failed to treat litigants with dignity by allowing them to perform pushups in the courtroom for being late to court. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (01/08/14).

The judge demonstrated a willful and persistent failure to be patient, dignified, and courteous toward a litigant with whom he was dealing in an official capacity. The judge also failed to be patient, dignified, and courteous toward another individual with whom he was dealing in an official capacity. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge*. (01/28/14).

The judge allowed a relationship with a family member to influence his conduct and by making a phone call, even as a courtesy, lent the prestige of his office to advance the family member's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace.* (03/10/14).

The judge lent the prestige of his judicial office to advance the private interest of a member of court staff by allowing that individual to conduct free mediations at the courthouse during regular courthouse business hours. The judge's practice of referring mediations to the staff member while that person simultaneously served the court created the appearance that the judge was allowing his relationship to influence his judicial conduct or judgment and that the staff person/mediator was in a special position to influence the judge. The judge additionally

created a conflict of interest and failed to follow the law by knowingly allowing court staff to divert time, attention, and resources away from their duties and responsibilities to the court and towards tasks related to the mediation business, in violation of county policy. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge*. (03/19/14).

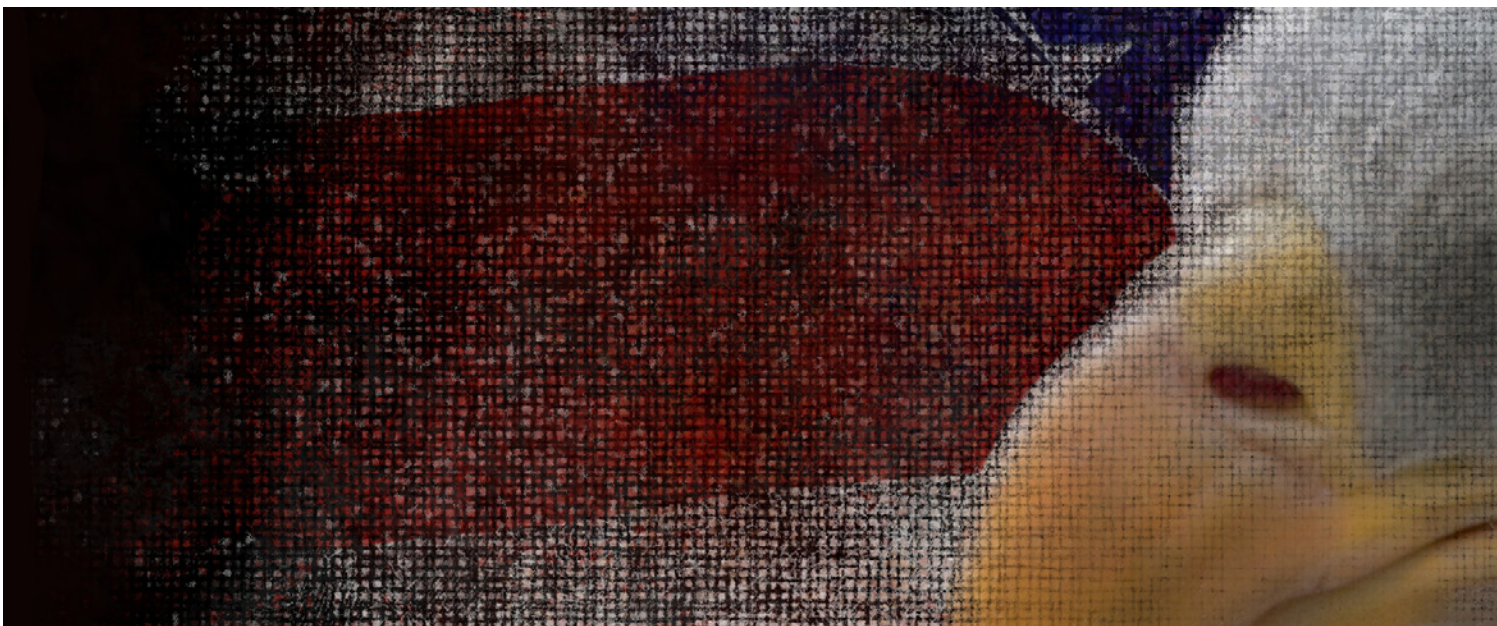
The judge failed to comply with the law, failed to maintain professional competence in the law, and denied the parties their right to be heard when she failed to hold hearings in open court in contested family law matters in which the litigants had appeared to present evidence. The judge additionally failed to comply with her obligation to treat an attorney in a patient, dignified and courteous manner during an in-chambers meeting. [Violation of Canons 2A, 3B(2), 3B(4), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge*. (03/19/14).

The judge failed to follow the law, demonstrated a lack of professional competence in the law, and denied the defendant the right to be heard when she (a) went forward with a trial and found the defendant guilty in absentia and (b) issued a judgment and arrest warrant that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing pursuant to Article 45.046 of the TEXAS CODE OF CRIMINAL PROCEDURE. [Violation of Canons 2A, 3B(2) and 3B(3) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace*. (04/04/14).

The judge failed to comply with the law and demonstrated a lack of professional competence in the law by granting an interested party a remedy to which she was not legally entitled. Based on the records presented to him by the interested party, the judge knew or should have known the party was not a tenant of the property and was merely attempting to circumvent proper procedures by approaching the judge in an ex parte manner to obtain the Writ of Re-Entry. The judge failed to comply with the law by contacting the tenant to advise her that a Writ of Re-Entry had been issued. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (04/16/14).

The judge failed to comply with the law and demonstrated a lack of professional competence in the law in his (a) handling of contempt of court and failure to appear situations involving two truancy cases; (b) use of forms that contained inconsistent and misleading information and warnings that were not consistent with the law; (c) failure to take appropriate measures to ensure the proper and safe maintenance and storage of court records; and (d) dismissal of criminal cases without a motion from the prosecutor. [Violation of Canons 2A, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (04/16/14).

The judge failed to follow the law and failed to maintain professional competence in the law when he denied a litigant's request for a court appointed attorney in a contempt of court proceeding without conducting an indigency hearing. In another matter, the judge failed to follow the law and failed to



maintain professional competence in the law when he allowed a litigant's 15-year old daughter to act as her interpreter when the daughter was also a fact witness in the case. In an effort to facilitate the proceedings, the daughter was allowed to provide testimony while serving as the litigant's interpreter. The manner in which the judge handled the trial injected unnecessary confusion into the proceedings and resulted in a confusing and undeveloped trial record which would have likely hindered either side from presenting key issues in the case on appeal. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Senior Judge*. (05/01/14).

The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she failed to schedule a trial after the defendant entered a not guilty plea and expressly requested a jury trial. Additionally, the judge failed to respond to the defendant's motion to compel discovery and request for a speedy trial, and further failed to respond to the prosecutor's request to set the defendant's motion for hearing, thereby depriving the defendant of his right to be heard. The judge also engaged in an improper ex parte communication with the prosecutor. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Municipal Court Judge*. (05/15/14).

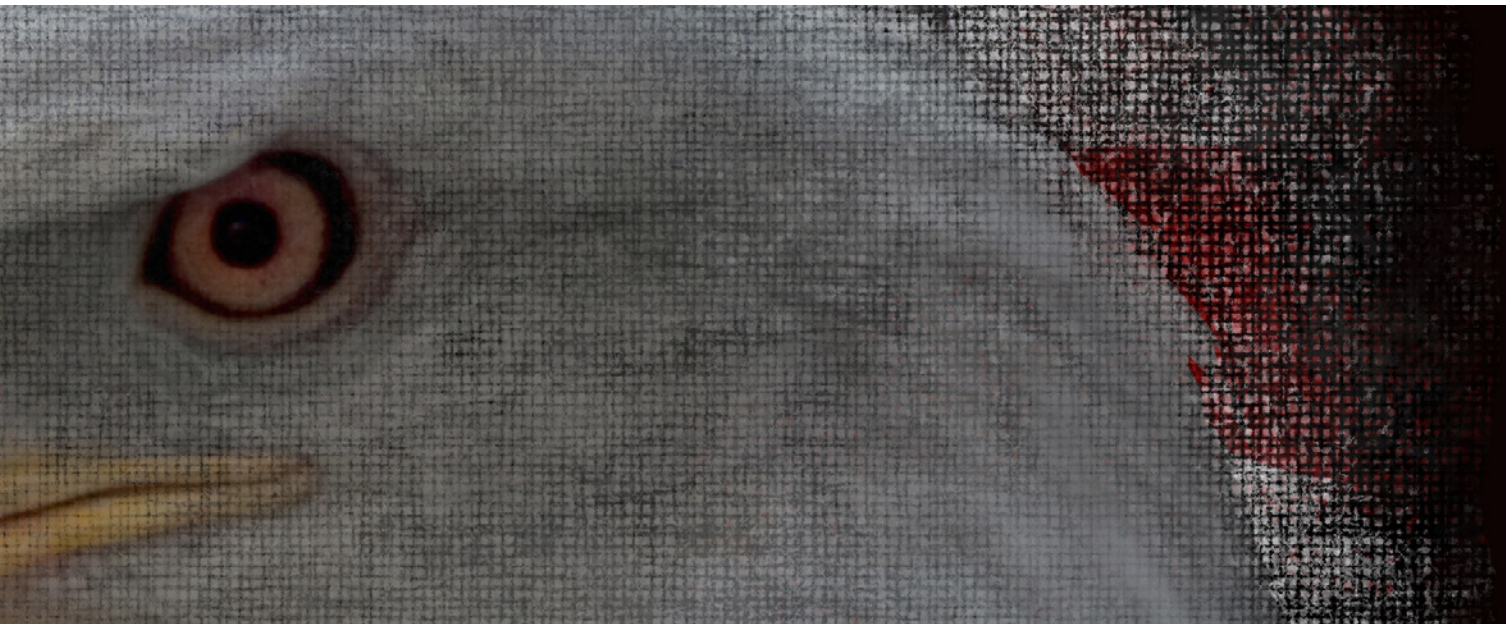
The judge failed to comply with the law, failed to maintain professional competence in the law, and failed to accord a traffic defendant her right to be heard when he denied the defendant her right to a jury trial, summarily found her guilty, and assessed a fine. Further, the judge's communications with the defendant, outside the presences of a prosecutor, regarding the merits of her case, including his efforts to discourage her from having a trial, constituted an improper *ex parte* communication with the defendant. In addition, the court's file in the defendant's case reflected that the court engaged in poor recordkeeping practices and failed to adequately document events in the defendant's case. The judge lacked professional competence not only regarding proper recordkeeping practices, but also regarding the procedures that must be followed under the Texas Code of Criminal Procedure before a defendant may be jailed for failure to pay a fine. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Former Municipal Court Judge.* (07/14/14).

Suspensions

Judge	Court	Status
Hon. Betty Caballero	**Justice of the Peace, Precinct 1 Pleasanton, Atascosa County**	**Pending Criminal Trial**

Resignations

Judge	Court	Agreement Date
Hon. Elizabeth E. Coker	**258th Judicial District, Polk County**	**10/21/13**



Texas Ethics Commission

Sworn Complaints

(January 25 - July 28, 2014)

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

Date Issued	Violations	Sanction
01/30/2014	Respondent was vice chairman of a specific-purpose committee. Respondent violated sections 253.004(a) and 253.031(b) by accepting political contributions without having a campaign treasurer appointment. Evidence indicated that the committee operated for 8 years before an appointment was filed. SC-31110241	$5,000 civil penalty
02/03/2014	Respondent was a mayoral candidate. Respondent filed an application for a place on the ballot and purchased political advertising without having a treasurer appointed. Respondent violated sections 252.001 and 253.031(a) of the Election Code by doing so. Respondent also violated section 254.064 by failing to file her 30-day pre-election report, even though she included expenditures made during that time period in her 8 day pre-election report. Finally, respondent violated section 255.001 by failing to disclose the full name of the person who paid for her political advertising signs and designating the signs as political advertising. C-31204106	$1,500 civil penalty
02/26/2014	Respondent was the treasurer for a general-purpose committee. Respondent violated section 254.151(4) by failing to clearly identify the candidates supported by its political contributions and expenditures in its reports. Respondent also violated section 254.031(a)(3) when it merely repeated the category of political expenditure as the description, which did not provide a clear reason for the expenditure. The brief statement or description of an expenditure must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Respondent further violated section 254.031(a)(3) by listing "ULLOC" as the full name of a payee, which is not a commonly recognized acronym for the United Labor Legislative Committee/Lobbyists for Labor. Respondent also improperly categorizing administrative expenses and other political expenditures as non-political expenditures, leading to understated amounts of political expenditures in violation of section 254.031(a)(6). SC-31310162	$500 civil penalty
03/19/2014	Respondent was a candidate for state representative. Respondent violated section 253.032 by not including the proper documentation for out-of-state political contributions. Respondent also repeated the category as the description for 19 expenditures, in violation of section 254.031(a)(3). SC-3120497	$400 civil penalty

04/23/2014	Respondent was a district judge. Respondent violated section 254.031(a)(6) by incorrectly reporting $24,340 as non-political expenditures, making the total expenditures reported inaccurate. Respondent did properly report the names of payees when he used "VICC" and "Food Bank RVG" because they are commonly recognized acronyms. Respondent also properly disclosed the name of a payee by listing the name of the vendor, and was not required to list the name of the individual who received the item purchased. Respondent also properly reported the employer of contributors when he listed "self-employed" because the contributors were either sole proprietors or owners of law firms which included their names in the title. However, evidence showed that Respondent listed "self-employed" for four contributors that worked for entities they did not own, in violation of section 245.0611(a)(2)(A). Finally, Respondent used his own political contributions to make contributions to six candidates that totaled $1,800, which exceeds the $100 limit per candidate, per calendar year. Respondent therefore violated section 253.1611(a). SC-3120106	$800 civil penalty
05/01/2014	Respondent was a candidate for county commissioner. Respondent had a Facebook page on which he posted political communications. The respondent's campaign communications at issue did not include the word "for" before the name of the office sought. Therefore, Respondent violated section 255.006(b). SC-31310190	No civil penalty
05/28/2014	Respondent was a state representative. Respondent accepted $487,600 in loans to her campaign over an approximately 8 year period. During this same period, Respondent failed to report most of the loan repayments as political expenditures. Instead, Respondent would omit an amount in the outstanding loan total. This was a violation of section 254.031(a)(3). SC-31008259	$5,000 civil penalty
06/18/2014	Respondent was a district judge. Respondent violated section 254.0611(a)(2)(A) by reporting a contributor as self-employed when the contributor was an officer of a LLC that did not contain his name in the title. Respondent also violated sections 253.003 and 253.094 by accepting a contribution from a partnership that had a general partner that was incorporated. Respondent violated sections 254.031(a)(3) and 253.035(h) by reimbursing himself for expenditures made out of personal funds, but not disclosing the actual vendor or payee of the expenditure. He also made the same reporting mistake when reporting reimbursements to staff. SC-3120366	$2,500 civil penalty

07/21/2014	Respondent was a paid lobbyist. The Commission found that Respondent communicated directly with members of the legislative branch to influence legislation without properly registering as a paid lobbyist. Respondent also created a legislative "scorecard" to influence members of the legislature. Respondent notified members of the Legislature directly that if they did not vote on pending legislative matters in the manner advocated by Empower Texans and its related entities 80% of the time, the members would not receive the endorsement of Empower Texans and its related entities, and would be subject to a political challenge. Respondent would then send notices in advance of each vote and give members of the Legislature individualized "draft" scores just a few weeks before the legislative session was over. Respondent then refused to testify during a formal hearing after the Commission subpoenaed him to testify. The Commission held that evidence demonstrated that Respondent was a paid lobbyist who was required to register under Texas law. SC-3120487 and SC-3120488	$10,000 civil penalty

Endnotes

1 *Omitted opinions include:*

- **SC-31310198** (03/10/2014) (failed to properly report total political expenditures due to improperly categorizing administrative and other expenses as non-political expenditures)
- **SC-31011416** (07/07/201) (failed to timely file report, failed properly itemize contributions and expenditures, and failed to accurately report total political expenditures and contributions maintained)

NEW JUDGES

Hon. Alicia Franklin	311th District Court	Houston
Hon. Ernie McClendon	258th District Court	Livingston
Hon. John Hawkins	434th District Court	Richmond
Hon. Lorina Rummel	144th District Court	San Antonio

IN MEMORIAM

Hon. Thomas Thomas	172nd District Court	Beaumont
Hon. Robert Walker	279th District Court	Beaumont

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Hon. Jon Wisser
Hon. Sharolyn Wood
Hon. John Wooldridge
Hon. Jim Worthen
Hon. Loyd Wright
Hon. Tim Yeats

The 2014 Texas College for Judicial Studies was held in Austin May 5-9, 2014. Pictured above are the 2014 graduates. Back row, left to right: John Mischtian, Randy Gray, Bud Childers, Linda Rodriguez, David Crain, Joe Lopez, Stuart Messer. Middle Row: Don Adams, Matt Johnson, Emily Tobolosky, Diane Haddock, Tom Spieczny, Bill Henry, Randy Shelton. Front Row: Lamar McCorkle (Dean), Reva Corbett, Pete Gomez, Bill C. White, Lori Rickert, David Rodriguez.

{photo lineup}

Trial Court Coordination - Speciality

Trial Court Coordination - Rural

2014 PDP Graduates

Row 1: Stephanie Ables, Cindy Watson, Francine Ly, Mary Barker, Brandy Ochs, Jennifer Watson, Mindy Quint, Lisa Rogerio, Aurora Zamora, Cheryl Jones, Shannon McFarland, Emily Golden, Debbie Reed

Row 2: Mike Sanchez, III, Sheria West, Roland Huerta, Peggy Freeman, Candi Hooper, Chief Justice Nathan Hecht, Linda Robertson, Sandra Espinoza, Sylvia Skrehot, Iryna Spangler, Paige Parks, David Slayton

Row 3: Ed Wells, Rita Bartley, Estela Alarcon, Jolene DuBoise, Dawn Ryle, Erin Johnson, Terri Meadows, Kim Plummer, Raymie Hairell, Cryctal Spradley, Carol Pelzel, Amanda Stites, Vickie Long, Mary Smith, Jennifer Wade

Not pictured: Christina Cadena

{photo lineup}

Trial Court Management

Trial Court Coordination - General Jurisdiction

{photo lineup}


RESERVED

New Online Course Addresses Dynamics of Elder Abuse

Williamsburg, Va. (May 1, 2014) – The National Center for State Courts (NCSC), in partnership with the University of California at Irvine School of Medicine's Center of Excellence on Elder Abuse and Neglect, have collaborated to create *Justice Responses to Elder Abuse,* a self-paced course for court professionals and the general public, offering a wide array of information and resources to address and reduce elder abuse. With incidents of elder abuse reportedly on the rise, this course offers courts and medical professionals the tools they need to identify abuse and develop effective responses.

The comprehensive and complimentary course provides the latest research on aging issues, including physical, cognitive and emotional changes that increase an older person's vulnerability to abuse. Medical, prosecution and judicial experts explore the dynamics of elder abuse and highlight individual and systemic barriers to effective remedies for victims.

Faculty members demonstrate how specific tools can improve access to justice and enhance outcomes for older victims of abuse. The course units include a mix of expert presentations and discussions, video clips, interactive exercises and supplemental resources.

"We are excited to offer this course and hope it will lead to strengthened efforts to improve responses to older victims of crime," said Dr. Brenda Uekert, director of NCSC's Center for Elders and the Courts.

To learn more, we invite you to watch the *Justice Responses to Elder Courts* introductory video.

Prosecutors, judges or members of the public may register for the course online.

The course is supported by grants from the Retirement Research Foundation of Chicago and the State Justice Institute.

MORE ONLINE:

UPDATED: 2014 Family and Probate Pattern Jury Charges

Latest DWI Newsletter

Go to the Texas Center website for links to Research Findings on Civil Protective Orders, and all the resources the Texas Center has to offer.