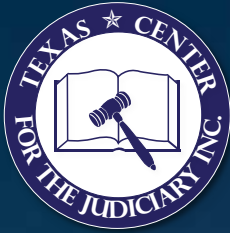


**SUMMER 2015**

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY



# In Chambers

**INSIDE:**

***2015 Legislative Update***

***Ensuring Equal Access to Justice for Deaf /  
Hard of Hearing***

***Awards and Honors***

***Ethics***

***Upcoming Events***

***and more!***

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**On the cover:** State Capitol, photo by Debra Malkiewicz

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*Readers are encouraged to write letters and submit questions, comments, or story ideas for In Chambers. To do so, please contact Courtney Gabriele, Curriculum Director, 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.*

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

# In Chambers

*The official publication of the Texas Center for the Judiciary*

## Summer 2015

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## Letter from the Chair

by Judge Randy M. Clapp

It has been a wonderful year for the education of Texas judges. Attendance is up at almost all of the Texas Center for the Judiciary's conferences, and we have had to deal with waiting lists at several. There is a very good reason for this – quality. Our grass-roots approach to judicial education, with curriculum designed by judges for judges, has resulted in the best judicial education delivery system in the nation. Quality in judicial education leads to quality in judicial decision-making across the state. We should all be proud of the fact that the third branch of Texas state government is constantly improving itself.

The TCJ staff is now a well-oiled machine, and our CEO Mark Atkinson has made it so. He has greatly improved our reputation and relationship with our education partners. Having a retired judge at the helm seems to be working quite well. I commend him for a job well done.

We have completed installing new technology and now have a new database and a new website. This will streamline many of the processes and communication between TCJ and the judges of Texas. Please remember to respond sooner rather than later when you receive information regarding an up-coming conference that interests you. If you wait until the last moment, you may find yourself on a waiting list.

We will continue to seek funding increases from our education partners to eliminate those waiting lists. One way you can help is to make a charitable donation to the Texas Center. Donations from our members augment our private funds and give us much greater flexibility in planning and designing education conferences. The amount of support we have received from judges in the last two years is phenomenal. Please keep it up.

See you at the annual conference in Dallas!



A handwritten signature in blue ink that reads "Randy M. Clapp". The signature is fluid and cursive.

Randy M. Clapp ♦



Download the TCJ app  
for full conference  
access.

New TCJ website



## Spotlight on a Texas ESTEEM Court

*By Judge Robert Anchondo, Deputy Eileen Lopez  
and Case Manager/Coordinator Claudia Arreola*

**D**ue to the enormous time and effort that the Honorable Judge Anchondo and his team have devoted to the community of El Paso, and the participants that have gone through the El Paso County DWI Intervention and Treatment Program, Judge Anchondo was able to collaborate with existing agencies to create the Effective Services To Empower Educate and Mentor, or ESTEEM, program.

As one of its kind in El Paso, the ESTEEM Program seeks to transform lives through multi-agency efforts and partnerships, by providing a program for an underserved and highly victimized population in a multicultural and diverse region.

The Program's mission is to provide resources to victims of prostitution by linking them to medical, mental health, and substance abuse services. A systematic approach to safeguarding the community and providing second chances to those in need utilizes the joinder of law enforcement, human rights, and social services.

### The Program

In late 2013, El Paso County Criminal Court at Law #2 Judge Robert S. Anchondo was asked to lead an effort that would benefit the El Paso community in dealing with the need for workers of the sex industry to abide by the Prostitution Prevention Program/Specialty Court model envisioned in Texas Health and Safety Code, Chapter 169 & 169A.

After long talks and a few meetings, the El Paso County Mental Health Support Services Department (MHSS), the West Texas Community Supervision and Corrections Department (WTCSCD), and the El Paso County Sheriff's Office (SO) came to the table to discuss this issue. Pursuant to the statute, Criminal Court at Law #2 created the ESTEEM program.

El Paso County Commissioners Court then established the specialty court, which, in January 2014, received funding through a grant from the Criminal Justice Division of the Office of the Governor of Texas. Participants who meet the program's eligibility requirements are provided a supportive and structured environment which allows them to build self-esteem and work towards transformation. Participants of the program are a part of a specialty court that offers a dismissal of charges upon successful completion of the program.

During the development of the program, both enthusiasm and challenges were present. The planning process included evaluating program modalities and finding best practices. ESTEEM consists of eight essential components geared towards defendants arrested for prostitution who also face other issues, including mental and medical health and environmental factors impacting their current lifestyle. Such issues typically impede defendants' efforts to depart from their risky lifestyles.

### Our Team

A team was assembled to provide a helping hand to participants. MHSS provides a counselor and a case manager acting as a coordinator. The Sheriff's Office provides a surveillance officer who conducts home visits and can become a mentor to participants. Also on the team are an Assistant District Attorney (ADA) who evaluates participation and candidacy for the program and a Public Defender (PD) who monitors and counsels defendants' participation in the program. At all times the clients' rights to counsel are a priorities.

## Program Modalities

Individuals charged with prostitution offenses are eligible for the program. The DA's office reviews cases based upon criminal backgrounds and refers cases to the case manager, who conducts a screening pre-ESTEEM. If the defendants are found eligible for the program and accept the program, psychosocial evaluations are conducted as part of needs assessments. Terms are then tailored to the needs of the individual participants.

In order to graduate or complete the ESTEEM program, several phases must be completed by the participants. The ultimate goal is to assist participants in transforming and restarting their lives in mainstream society.

Communication with law enforcement agencies was essential in achieving collaboration and education regarding program terms, behaviors, and other links associated with prostitution. Meetings with key players have taken place to introduce the program and share the essential components provided by the specialty court. All involved desire to have accused individuals assessed, screened, and enrolled in the program in an effort to place them in the community as law abiding citizens.

## Closing Remarks

In March 2014 the ESTEEM program started running and to date five participants have successfully graduated from the program. Though the ESTEEM program is still at its infancy, the team has united to deal with all challenges presented. They have the passion to continue working for the community and will continue to make El Paso a safer community by assisting those enrolled in the program and their families.

All components of the program are focused on targeting the assessed needs of the participants. The program assists participants in reunifying with families, regaining trust and hopefully, starting over. ♦



## The Texas Center's 2015-2016 Board Nomination Slate

Chair-Elect: David Sanchez, 444th District Court, Brownsville

David Sanchez is Judge of the 444th State District Court in Cameron County, Texas. He earned a Bachelor of Arts Degree from St. Mary's University. Judge Sanchez then attended the University Of Texas School Of Law. The first area of practice for him was in the area of worker's compensation litigation. He simultaneously enrolled at St. Mary's University and completed a Masters in Business Administration degree while practicing law during the day. Part of his legal career included working as an assistant District Attorney in both Cameron and Bexar County. Judge Sanchez has also worked in the area of civil litigation including products liability, trucking litigation and medical malpractice. He has been married to Melba for over 14 years and has a son, Nicklaus and two daughters, Daniella and Briannah. In January, 2014, Judge Sanchez helped create the Cameron County Veterans Court, which he also presides over. The 444th District Court is a general jurisdiction court with a docket that is primarily comprised of family law matters. Judge Sanchez finds his work very rewarding as he helps divorcing families in custody issues associated with divorce. Throughout these emotional custody proceedings, Judge Sanchez reminds the parties that the children of the marriage are the true focus and not mere pawns in the process. He has resolved thousands of cases since taking the bench. He is completing his second term in office and looking forward to his next. He finds his role presiding over the Veterans Court as one of the most rewarding components of his role as Judge. He served on the Texas Center's Curriculum Committee from 2010-2012, and is currently completing his three year term as a Member of the Board of Directors.



Place 4: Ben Woodward, 199th District Court, San Angelo



Ben Woodward is Judge of the 119th District Court. From 1979 to 1980, he was briefing attorney for the Texas Supreme Court for Justice Zollie Steakley. Prior to taking the bench, he practiced law in San Angelo and was board certified by the Texas Board of Legal specialization in residential, commercial, and farm and ranch real estate law. Judge Woodward graduated from the University of Texas in 1976 with a BBA in accounting, Texas Tech University School of Law in 1979 with a JD, with honors, and is a graduate of the Texas College for Judicial Studies. Judge Woodward was chairman of the Texas Young Lawyers Association in 1988. He served on the Texas Supreme Court's Task Force for Judicial Ethics and Supreme Court's Task Force for Jury Service. He is a member of the American Law Institute and Texas Bar Foundation. He was a member of the Board for the Judicial Section

of the State Bar of Texas and was chairman of the Texas Court Reporters Certification Board. He now serves as a member of the Texas Judicial Branch Certification Commission. Judge Woodward and his wife, Gwen, are members of Sierra Vista United Methodist Church and they have two daughters. Beverly is a graduate of Southwestern University and The University of Texas (MSN). She works at the Vanderbilt Comprehensive Care Clinic in Nashville, Tennessee. Catherine has undergraduate and master degrees from Trinity University and taught in the Alamo Heights School District. She and her husband, Whit have two daughters, Cora Len and Bennett Pepper.

### Place 5: Lori Valenzuela, 437th District Court, San Antonio

Appointed by the former Governor Perry to the newly created court, Judge Lori I. Valenzuela has been presiding over the 437th Criminal District Court since 2009. She oversees a docket of cases that range in punishment from State Jail felonies to the death penalty. She is currently serving as the Criminal District Court Administrative Judge. Prior to taking the bench, Judge Valenzuela served as a Bexar County Assistant District Attorney from 1998-2007. Upon leaving the District Attorney's Office in 2007 as a First Chair Felony Prosecutor, she started her own criminal defense practice and later served as a Bexar County Magistrate. Judge Valenzuela earned her degree from The University of Texas at Austin and her J.D. from St. Mary's University School of Law. Her current community involvement includes serving on two local boards: St. Peter's St. Joseph's Children's Home and Family Service Association. Off the bench, she has coached for the YMCA, participated in Habitat for Humanity and is a Cub Scout den leader. She also serves by appointment of Senators Cornyn and Cruz on the Federal Judicial Executive Commission. Judge Valenzuela is married to Robert Sean McCleskey, a retired Secret Service Agent who currently works at the Center for Identity at the University of Texas at Austin. They have one daughter and two sons.



### Place 7: Robert P. "Bob" Brotherton, 30th District Court, Wichita Falls

Judge Bob Brotherton is a native of Wichita Falls, Texas and has served as the Judge of the 30th District Court since being appointed on May 1, 1989. He has served as the Secretary-Treasurer of the Texas Center for the Judiciary and has served on various other committees with the Center. Judge Brotherton is the past Chairman of the Texas Juvenile Probation Commission, now the Texas Juvenile Justice Department; past President of the Wichita County Bar Association and the Wichita County Young Lawyers Association. He has been an adjunct professor in the Criminal Justice Department at Midwestern State University for ten years. Judge Brotherton is active in his church and his community. He is married with three children and one grandson. ♦



## Upcoming Conferences

#### Child Welfare Conference

August 17-19, 2015  
Westin at the Domain, Austin

#### DWI Summit

September 10, 2015  
Wyndham Garden, Amarillo

#### Annual Judicial Education Conference

September 27-30, 2015  
Sheraton Dallas, Dallas

#### College for New Judges

December 6-9, 2015  
Hyatt Regency, Lost Pines

#### Family Justice Conference

January 25-26, 2016  
Hyatt Regency, Lost Pines

#### DWI Court Team Training

February 8-10, 2016  
Sheraton Austin Capitol, Austin

#### DWI Court Team Conference

February 11-12, 2016  
Sheraton Austin Capitol, Austin

#### Criminal Justice

February 22-23, 2016  
Sheraton Austin Capitol, Austin

#### Civil Justice Conference

March 31-April 1, 2016  
Hotel Galvez, Galveston

#### Regional A (2, 6, 7 & 9)

April 18-19, 2016  
Westin Galleria, Houston

#### Regional B (1,3, 4, 5 & 8)

May 9-10, 2016  
Westin Galleria, Houston

#### Professional Development Program

June 20-24, 2016  
Embassy Suites, San Marcos

## Changes Regarding the Awarding of Diligent Participation Credit to Defendants Confined in a State Jail Felony Facility

*By Judge Carroll Wilborn*

In 2011, the 82nd Texas Legislature passed House Bill 2649 to allow the awarding of time credits to state jail felony offenders who diligently participated in certain educational, vocational, treatment, or work programs. After the recent 84th Legislative Session, Governor Abbott signed into law House Bill 1546, which amends Chapter 42 of the Code of Criminal Procedure regarding the awarding of diligent participation credit to defendants confined in a state jail felony facility. This change applies to an offense committed on or after September 1, 2015.

Per the new Article 42.0199, CCP, “the judge shall make a finding and enter the finding in the judgment of the case regarding whether the person is presumptively entitled to diligent participation credit in accordance with Section 15(h), Article 42.12.” This finding or lack of finding of presumptive entitlement will determine if a state jail offender’s time is automatically credited for diligent participation.

If the defendant receives the presumptive finding, the Texas Department of Criminal Justice will credit up to one-fifth of the time the defendant was required to serve in the facility. If the defendant does not receive the presumptive finding, TDCJ will continue to notify the sentencing court of the number of days the defendant diligently participated in an eligible program, and the judge may then credit up to one-fifth of the original time required to serve in the facility against the defendant’s sentence at his or her discretion. ♦







**Trial Court Management**

**Trial Court Coordination –  
Specialty Jurisdiction**



**Trial Court Coordination –  
General Jurisdiction**

**Trial Court Coordination –  
Rural/Multi-County Jurisdiction**



**Court Management Program**

*feature*





# Legislation Affecting the Judiciary:

What Judges Need to Know on  
September 1, 2015

*By Hon. Alfonso Charles*

**T**he 84<sup>th</sup> Texas Legislative session was a very interesting session for the Judiciary. There were several bills filed targeting or impacting the courts of this state. This article discusses some of the major changes that will become law on September 1, 2015. This is not a complete list of all bills passed that will concern the judiciary, but it covers the major changes that will go into effect on September 1. A more detailed paper and discussion will be had at the Annual Judicial Conference on September 28, 2015. All the new laws are effective September 1, 2015 unless indicated otherwise.



## *Family Law Bills*

**SB 814 by Sen. Rodriguez:** This amends section 6.4035 of the Family Code. Under this new law, digital waivers on family law cases to remove disability of minor change name, or suits affecting parent child relationship are not allowed. Further, the waiver must contain the mailing address of the individual executing the waiver. This section does not apply to a person who is incarcerated.

**SB 815 by Sen. Rodriguez:** This new law amends section 6.501 (a) of the Family Code and updates standard divorce temporary restraining order language to include technology. Examples include that a party may not threaten or harass the other party by electronic messaging, electronic voice messaging or video chat. The bill further includes references to intellectual property and social media.

**SB 822 by Sen. Rodriguez:** This bill creates Chapter 47 of the Family Code and attempts to provide clarification of definitions of ad litem, amicus, and guardian ad litem in family law cases.

**HB 3994 by Rep. Morrison: Notice and Consent to an abortion for a minor.** This bill dramatically amends Chapter 33 of the Family Code. A suit for a court order authorizing an abortion of a pregnant minor without parental notification and consent must be filed in the county where the minor resides, a contiguous county, or the county where the procedure will be performed.

The petition must include a statement that the minor wishes to proceed to have an abortion without the notification and consent of a parent, managing conservator, or guardian. It must contain a statement about the minor's current physical address, mailing address, and telephone number. The court "shall" appoint a guardian ad litem to represent the best interest of the minor. The pregnant minor must appear before the court in person and cannot appear through video conferencing, telephone conferencing or any other electronic means.

The court must issue written findings of fact and conclusions of law no later than 5:00 p.m. on the fifth business day after the petition is filed. The new law deletes the provision that the petition is deemed granted if the court fails to issue findings in a timely manner. Further, the burden of proof for the court to grant the application is changed from preponderance of the evidence to clear and convincing evidence that the abortion is in child's best interest. The court can inquire into the reasons why the minor wants the procedure and why the minor does not want to notify the parent, managing conservator, or guardian.

The clerk of the court is to file a report with the Office of Court Administration containing the following information:

1. the case number and style
2. the applicant's county of residence
3. the Court of Appeals District where the hearing occurred
4. the date of the filing of the application
5. the date of the disposition of the case
6. the disposition of the case.

The Office of Court Administration is required to publish a report annually with the figures from the court of appeals districts and the dispositions of the cases. The report from the clerks offices are not public record. **Effective January 1, 2016.**

### Civil Law Bills

**HB 1403 by Rep. Sheets:** This bill amends section 74.001 (a) (13) of the Civil Practice and Remedies Code and clarifies that Labor Code cases brought against a healthcare facility are not healthcare liability claims. However, the legislature did not address slip and fall cases in a healthcare facility, as HB 956 failed to pass.

**SB 735 by Sen. Fraser:** This bill amends section 41.001 of the Civil Practice and Remedies Code by changing when evidence of a party's "net worth" is discoverable. The bill defines net worth as "the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court."

The new law allows discovery of net worth only if: **"the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages."**



Earlier versions of the bill had provisions that net worth was not even relevant and therefore not discoverable.

The bill further states that if a party seeks discovery of net worth, the trial court should presume that the party seeking the discovery of net worth has had adequate time for discovery on the issue of exemplary damages and the responding party may seek summary judgment on that issue.

### *Juvenile Law Bills*

**SB 1630 by Sen. Whitmire:** This bill relates to the commitment of juveniles in post-adjudication secure correctional facilities operated by the Texas Juvenile Justice Department and by local probation departments. The intent of the bill is to encourage counties to use local facilities and programs more than the state operated facilities. The bill actually authorizes more funding for local juvenile probation departments. The bill did not change the age of criminal responsibility.

**HB 642 by Rep. Canales:** This new statute requires the court, as a condition of community supervision for offender younger than 18 years of age, order the offender to attend alcohol or drug classes if placed on probation for an alcohol or drug related offense. In addition, it requires offender or offender's family to pay as a condition of probation.

**HB 2398 Truancy:** This bill decriminalizes the offense of Truancy. It does allow for charges to be filed against the parent or guardian, but not against the child. However, a child can still be fined in a civil proceeding.

**SB 1707 by Sen. Fraser:** This bill amends the Family Code and removes the requirement that the trial court hold a hearing before sealing the records of a juvenile who was adjudicated. The new law requires the court to give reasonable notice to the prosecuting attorney and allow the state to request a hearing before the court seals the records.

### *Criminal Law Bills*

**HB 2150 by Rep. Alvarado:** This bill amends article 19.01 of the Code of Criminal Procedure. It establishes new requirements for a Grand Jury and abolishes the use of the Grand Jury commissioner system. The new law requires that all grand juries be summoned and empaneled using the same system as petit juries. There are no exceptions to this new statute. Further, the grand jury panel must be ***“fair cross section of the population area served by the court.”***

In addition, the bill amends Article 19.31 of the Code of Criminal Procedure and expands the grounds for challenging a potential grand juror. Such new grounds include:

1. The grand juror is insane;
2. The grand juror is a witness or a target in the investigation;
3. The grand juror served on the petit jury of the offense or conduct this grand jury is investigating;
4. That the grand juror has a bias against the defendant or the state.

A challenge to the grand juror can be made ex parte and has to be



reviewed in an in camera proceeding by the court.

**SB 316 by Sen. Hinojosa:** This bill amends article 26.04 of the Code of Criminal Procedure and requires the court to give priority to appointing the public defender's office in court appointments for indigent defendants. The bill does allow the court to appoint an attorney outside the public defender's office if:

1. The court has reason to appoint other counsel; or
2. A managed assigned counsel program also exists in the county and the attorney will be appointed under that program.

**SB 1517 by Sen. Seliger:** This bill amends the Code of Criminal Procedure and could require a county to appoint counsel for an indigent inmate arrested on a warrant from another county. The bill sets out time frames based on population.

**HB 1396 by Rep. Workman:** This bill became the criminal law "Christmas Tree" bill. The bill amends sections in both the penal code and the code of criminal procedure.

This bill amends Code of Criminal Procedure Article 18.0215, dealing with cell phone search warrants. It clarifies that a peace officer cannot search phone without consent or warrant. The bill further sets out that only a judge in the same judicial district as the law enforcement agency seeking the warrant or where the phone is located can issue the warrant. The bill further sets out additional grounds to be met before the court can issue the warrant.

HB1396 also amends article 32A.01 of the Code of Criminal Procedure concerning trial priority. The new amendment states that cases with an alleged victim under 14 years of age shall be given priority over other cases on the docket.

The bill further addresses statutory construction in criminal cases. The new law states that ambiguity in penalty or element of offense shall be construed in actor's favor. Further, ambiguity is matter of law and shall be decided by the judge.

Finally, the bill amends several sections of the Penal Code and increases the theft value ladders: The new classifications are:

1. Under \$100: Class C Misdemeanor.
2. \$100 to \$750: Class B Misdemeanor
3. \$750 to \$2,500: Class A Misdemeanor
4. \$2,500 to \$30,000: State Jail Felony
5. \$30,000 to \$150,000: Third Degree Felony
6. \$150,000 to \$300,000: Second Degree Felony
7. Over \$300,000: First Degree Felony

**HB 1546 by Rep Allen:** This bill amends article 42 of the Code of Criminal Procedure. It changes how the trial court grants State Jail Felony Diligent Participation credit. The new law basically gives the sentencing judge two options.

The first option is the judge can make a finding at sentencing that the defendant is presumptively entitled to the diligent participation credit. It would then be up to the Texas Department of Criminal Justice to determine how much of the 20% credit the defendant would be entitled to, depending on the inmate's disciplinary history, if any, and the days the inmate participates in work or programs. This finding would have to be made on the judgment. Once that finding is made, the judge would not have any further input as to how much, if any, credit the defendant would receive.

The second option is for the judge not to make the presumptive finding on the record at the time of sentencing. If no finding is made, then the Texas Department of Criminal Justice would report to the sentencing judge at least 30 days prior to the inmate having completed 80% of his or her sentence. The sentencing judge would then have 30 days to determine how much, if any, credit to give. **Effective for crimes committed on or after September 1, 2015.**



# This amendment does away with the petitions requirement for judicial offices...

**SB 112 by Sen. Taylor:** This bill amends article 17.292 of the Code of Criminal Procedure concerning Emergency Protective Orders. If the magistrate finds good cause, the order may authorize the accused's attorney or other court appointed person, to contact the alleged victim. **Effective immediately.**

**HB 1690 by Rep. King:** This bill makes significant changes to how the Public Integrity Unit operates. The bill orders the Texas Rangers to assist in the investigations. Furthermore, the new law would require any prosecution to be in the accused's county of residence.

## *General Law Bills*

**SB 1073 by Sen. Zaffirini:** This bill started off as a simple bill addressing the requirements for an application to run for office. It passed out of the Senate in that manner. However, the House Elections Committee amended the bill on May 20, 2015, to repeal sections 172.21 (e) and (g) of the Elections Code. This amendment does away with the petitions requirement for judicial offices, including the Supreme Court, the Court of Criminal Appeals, the Courts of Appeals, and the courts in the five largest counties, Harris, Dallas, Bexar, Tarrant, and Travis.

**SB 1369 and SB 1876 by Sen. Zaffirini:** These two bills would require that the court make reports of all appointments of ad litem, amicus attorneys, and mediators. It would exclude the appointments of CASA and ad litem in the minor abortion cases. Further, the court would have to report all payments to ad litem, amicus attorneys, and mediators.

In addition, the courts would have to create a rotating wheel, similar to those used for criminal defense appointments, for the appointment of attorney ad litem, amicus attorneys, guardian ad litem, and mediators. The court would then be required to make appointments from those wheels. The bill does allow the judge discretion to vary from the wheel depending on the facts of the case and a finding of good cause by the court. The lists shall be posted at the courthouse.

I hope this article is helpful. Please feel free to contact me if you have any questions or comments. See you all in September. ♦

# The Texas Property Owner Rule

By Hon. Craig Estlinbaum\*

**T**exas judges and jurors are often called upon to resolve disputes regarding property value. These disputes may arise in many case types, including divorce, probate, property tax and some civil cases. Generally, when property value becomes issue in a case, parties are required to present valuation testimony through an expert witness. An exception to this requirement is known as the Property Owner Rule.<sup>1</sup>

The Property Owner Rule provides that a property owner<sup>2</sup> is qualified to testify about his property's value even though he would not be qualified to testify about the value of similar property owned by someone else.<sup>3</sup> Property Owner Rule testimony falls under Rule 701.<sup>4</sup> This evidentiary rule allows lay witnesses to provide opinion testimony when that testimony is "rationally based on the perceptions of the witnesses," and is "helpful to a clear understanding of the witnesses' testimony or the determination of a fact in issue."<sup>5</sup> The Property Owner Rule rests upon the assumption that a property owner is familiar with his property and its value even though he may not be familiar with property values generally.<sup>6</sup> The owner's valuation testimony serves the same function at trial as Rule 702 expert testimony.<sup>7</sup>

The Property Owner Rule provides a cost advantage for the landowner litigant when value is an issue. Utilizing the rule, a property owner can testify to market value while a non-owner in the same litigation usually must hire or otherwise secure valuation testimony from a qualified Rule 702 expert. The rule, therefore, offers parties an opportunity to save litigation costs even though some expertise and objectivity may be lost.

A recent Supreme Court of Texas case, *Natural Gas Pipeline Co. of America v. Justiss*,<sup>8</sup> addressed the relationship between the Property Owner Rule and the requirements for Rule 702 opinion testimony by experts generally. This case reveals that presenting valuation testimony through the property owner may not be as simple a proposition as it may first appear. The case holds that a property owner's valuation testimony must meet the same reliability requirements that apply to expert witnesses generally.<sup>9</sup>

**The Property Owner Rule rests upon the assumption that a property owner is familiar with his property and its value...**

## **Porras and the Market Value Standard**

To understand how *Justiss* affects the Property Owner Rule, it is necessary to first understand the rule as it existed prior to that decision. The first Supreme Court of Texas case to examine the Property Owner Rule in the post-war era was *Porras v. Craig*,<sup>0</sup> a suit for trespass damages to land. The property owner plaintiff, Craig, testified about the affected property's value. Craig limited his testimony to the property's intrinsic value<sup>1</sup> to him and his





wife rather than market value.<sup>2</sup>

The Supreme Court observed that trespass damages are based upon the property's change in market value attributed to the trespass.<sup>3</sup> The court held Craig's testimony about intrinsic value provided no evidence to support damages under a market value standard. Because this personal or intrinsic value was not relevant to market value or to an issue in the case, the Court held the jury's damage award was not supported by the evidence.<sup>4</sup> The Court remanded the case for a new trial.

*Porras* holds that when market value is a fact issue, the property owner's valuation testimony must address market value, not some other subjective valuation definition. Importantly, *Porras* and its progeny established the predicate for parties giving valuation testimony under the rule – such witnesses must affirm their familiarity with the subject property's market value.<sup>5</sup> Once the witness meets this minimum requirement, the amount of detail and support went to the testimony's weight and not admissibility.

### ***Justiss*: The Property Owner Rule Meets Rule 702**

In *Justiss*, several homeowners brought a nuisance suit against a gas plant operator. The Supreme Court agreed the evidence supported the jury's finding that the gas plant created a nuisance and then turned its attention to damages. The plaintiffs provided their own valuation testimony under the Property Owner Rule to support their respective damage claims.

Citing *Porras*, the Court affirmed that property owner valuation testimony must “meet the same requirements as any other opinion evidence.”<sup>6</sup> The Court observed that since *Porras*, however, the Court has further developed the requirements a Rule 702 expert's testimony must meet before the opinions and conclusions offered can support a judgment.<sup>7</sup> In *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*,<sup>8</sup> the Court held it is the “basis of the [expert] witness's opinion and not his qualifications or bare opinions alone that can settle an issue as a matter of law.”<sup>9</sup> *Coastal* and the cases that followed require experts provide more than “credentials and a subjective opinion”<sup>10</sup> to meet the Rule 702 relevance and reliability requirements.<sup>1</sup>

The Court concluded *Coastal* and its progeny provides the proper standard for determining when the property owner's valuation testimony adequately supports a judgment. Property owners offering lay valuation testimony must base that testimony upon more than his *ipse dixit* or mere "say so" and must instead provide a factual basis for the conclusions reached. The Court observed that property owners testifying to property value may rely on evidence such as the "price paid for comparable sales, tax valuations, appraisals, online resources, and any other relevant factors [that] support the claim."<sup>2</sup> With the "resources available today," the Court found this burden would not be particularly "onerous."<sup>3</sup>

The *Justiss* Court examined the owners' valuation testimony in that case and found it wanting. The Court held that one witness's testimony was "speculative," and that a passing reference to, "what the price of land is bringing" is insufficient to support the conclusions. A second property owner testified to the property's value to him, not market value; an approach previously rejected in *Porras*. Two other homeowners related testimony about comparable sales post-nuisance, but this testimony, the Court held, was inadequate to describe how much the property value changed due to the nuisance. The Court dismissed a fifth property owner's valuation because he "failed to explain the factual basis" for his conclusions. Where the witness provides a conclusion is without explanation, the Court held, the testimony is conclusory and constitutes no evidence.<sup>4</sup>

Normally, when no evidence supports a judgment, the Court renders judgment against the party with the burden of proof.<sup>5</sup> In *Justiss*, however the Court did not follow this general rule and instead remanded for a new trial:

In *Porras*, we stated that market value could be shown merely "by asking the witness if he is familiar with the market value of the property," and we have never before explained the interplay between *Porras* and *Coastal*. Because the landowners may have relied on *Porras* in presenting the evidence on their properties' diminution in value, we conclude a remand is appropriate.<sup>6</sup>

## Cases After *Justiss*

Since *Justiss*, intermediate court cases have highlighted the consequences that can arise when property owners offering valuation testimony are not prepared to meet the *Coastal* burden. In *Zhu v. Lam*,<sup>7</sup> a DTPA and fiduciary duty case involving a real estate brokerage contract, the Houston Court affirmed a no-evidence summary judgment for the broker in part because the property owner's testimony included only an unexplained conclusion regarding value.<sup>8</sup>

By contrast, in *Miller v. Argumaniz*,<sup>9</sup> the El Paso Court found that the property owner's valuation testimony met the *Coastal* burden when the owner based her valuation opinion on an appraisal performed by a certified appraiser four years before the relevant date. The Court held that a landowner, like an expert, may rely on hearsay to form the opinion and that the gap in time between the certified appraisal and the relevant date did not render the appraisal irrelevant.<sup>0</sup> Unlike the landowner in *Zhu*, the landowner in *Miller* supported her opinion by testifying to the reasons she concluded as she did. While a property owner's valuation testimony under the rule may not be the to the same detail as a trained or licensed expert's, *Zhu* and *Miller* highlight that post-*Justiss*, property owners must provide support for valuation testimony similar to the requirement imposed upon those experts.

## Conclusion

*Justiss* demonstrates that in valuation cases, landowner litigants can no longer rely upon a mere affirmation of familiarity with the property and its value to avoid Rule 702 reliability requirements. Property owners valuation testimony must have a basis in fact. The failure to do so may result in the Property Owner Rule being insufficient to support the judgment.

## Endnotes:

\*Judge, 130th Judicial District Court of Texas and Adjunct Professor of Law, South Texas College of Law. J.D., South Texas College of Law. B.S. and M.Agr., Texas A&M University.

1 *Porras v. Craig*, 675 S.W.2d 503, 504 (Tex. 1984).

2 A “property owner” for Property Owner Rule purposes includes not only natural persons, but organizational owners such as corporations or partnerships. *Reid Rd. Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 849 (Tex. 2011) (holding that for entity owners, “the Property Owner Rule is limited to those witnesses who are officers of the entity in managerial positions with duties related to the property, or employees of the entity with substantially equivalent positions and duties.”)

3 *Porras*, 675 S.W.2d at 504.

4 *TEX. R. EVID.* 701.

5 *Id.*

6 *Reid Rd. Mun. Util. Dist. No. 2*, 337 S.W.3d at 852-53.

7 Expert testimony is governed by *TEX. R. EVID.* 702. Rule 702 includes three requirements for admission: (1) the witness must be qualified, (2) the proposed testimony must be grounded in scientific, technical or other specialized knowledge and (3) the testimony must assist the trier of fact in understanding the evidence admitted at trial or to determining a fact in issue. See *E. I. du Pont de Nemours & Co v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995).

8 397 S.W.3d 150 (Tex. 2012).

9 *Harvey Brown and Melissa Davis*, “Eight Gates for Expert Witnesses: Fifteen Years Later,” 52 *Hou. L. Rev.* 1, 175-76 (2014).

10 675 S.W.2d 503 (Tex. 1984).

11 Intrinsic value is a personal or sentimental value not affected by market forces. See *Star Houston, Inc. v. Kundac*, 843 S.W.2d 298 (Tex. App.—Houston [14th Dist.] 1992, no writ).

12 *Id.*, at 505. Market value is typically defined as “the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying.” *City of Harlingen v. Estate of Sharboneau*, 48 S.W.3d 177, 182 (Tex.2001).

13 *Porras*, 675 S.W.2d at 504.

14 *Id.*, at 505.

15 *E.g.*, *Southwestern Bell Tel. Co. v. Wilson*, 768 S.W.2d 755, 762 (Tex. App.—Corpus Christi 1988, writ denied) (stating the requirement that the owner’s testimony refers to market value instead of intrinsic value is, “usually met by asking the witness if he is familiar with the market value of the property.”)

16 *Justiss*, 397 S.W.3d at 156 (quoting *Porras*, 675 S.W.2d at 504).

17 *Id.*

18 136 S.W.3d 227 (Tex. 2004). The *Justiss* Court also cited a Fifth Circuit case for a similar proposition. *Justiss*, 397 S.W.3d at 158 (citing *King v. Ames*, 179 F.3d 370, 376 (5th Cir., 1999)).

19 *Coastal Transp. Co.*, 136 S.W.3d at 232.

20 *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 712 (Tex. 1997).

21 *Coastal Transp. Co.*, 136 S.W.3d at 232. “A party may complain that conclusory opinions are legally insufficient evidence to support a judgment even if the party did not object to the admission of the testimony.” *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009).

22 *Justiss*, 397 S.W.3d at 159.

23 *Id.*

24 *Id.*, at 161.

25 *Id.*, at 162.

26 *Id.*

27 426 S.W.3d 333, 341 (Tex. App. — Houston [14th Dist.] 2014, no writ).

28 *Id.*, at 341-42. The property owner’s valuation testimony by affidavit reads:

I am familiar with the market value of the property that I own. It is my opinion that the market value in June of 2010 was \$140,000.00. In addition, [the Harris County Appraisal District] now lists the appraised value of our home as \$155,000, which is much less than the \$174,402 it listed in 2010 and the \$180,000 we paid for the home.

*Id.* at 341 (alteration in original). See *Arkoma Basin Exploration Co. v. FMF Associates 1990-A, Ltd.*, 249 S.W.3d 380, 389 (Tex. 2008) (holding a witnesses testimony is conclusory when he “simply states a conclusion without any explanation.”).

29 No. 08–13–00091–CV, 2015 WL 595468 (Tex. App. — El Paso Feb. 11, 2015, n.w.h.).

30 *Id.*, at \*4. ◆

# Ensuring Equal Access to Justice for Individuals Who are Deaf or Hard of Hearing

Guidelines for Understanding and Fulfilling the Court's Legal Obligation

By Brian East and Lia Davis<sup>1</sup>

**E**very day, judges interact with diverse individuals whose lives are being directly impacted by our justice system. Some of these individuals are deaf or hard of hearing. Judges and their court staff play a key role in ensuring equal access to justice for these individuals.



## *Who needs a qualified sign language interpreter?*

Usually the court discovers the need for an interpreter because the individual who is deaf or hard of hearing (or his/her attorney) requests one.

However, courts should also consider interpreters if a person who is deaf or hard of hearing has difficulty communicating or understanding spoken or written language. The court should not assume that written communication or lip reading will work, as some who are deaf or hard of hearing may have difficulty with this form of communication.



## *Does the court have to provide a qualified interpreter? Who pays?*

All Texas civil and criminal courts are required to appoint a certified or licensed interpreter for civil or criminal court proceedings.<sup>2</sup> The court is also required to appoint an interpreter for witnesses, jurors, and counsel. The court is responsible for scheduling, arranging, and paying for the interpreter.

The individual who is deaf or hard of hearing is not responsible for making these arrangements and may not be charged for the cost of a qualified interpreter. The interpreter's fee and expenses are paid from the general fund of the county in which the case was brought.<sup>3</sup>

## *What is a qualified interpreter? How do I find one?*

In Texas state courts, a "qualified interpreter" is an interpreter who holds a Court Interpreter Certification from BEI/DARS<sup>4</sup> or a legal certificate from the National Registry of Interpreters for the Deaf.<sup>5</sup> Family members, friends, or court personnel should never be asked to serve as an interpreter. Court staff are responsible for verifying an interpreter's qualifications before scheduling

feature



the interpreter to appear in court.

If your court administrator, clerk, or ADA coordinator does not already have a relationship with an interpreter service, check the state or national certified lists at [www.dars.state.tx.us/dhhs](http://www.dars.state.tx.us/dhhs) or [www.rid.org/](http://www.rid.org/).

Remember, the court is responsible for locating, scheduling, assigning, and paying for qualified interpreters. Also, since different signed languages exist, the court should verify the individual's preferred language before scheduling an interpreter.

“Sign language does not always have specific signs for specialized or technical words.”

#### *What is the role of a qualified interpreter?*

The qualified interpreter has two primary responsibilities during a court proceeding: (1) to listen to what is said in English and convey the meaning in sign language, and (2) to observe the communications of the deaf or hard-of-hearing individual and interpret them into English.

Professional interpreters know to interpret everything that is said in the courtroom without omissions or additions. They also know not to conduct any side conversations. Occasionally, however, questions posed to a deaf or hard-of-hearing individual may require the interpreter to break the question down into more than one part in order to fit the grammatical structure of sign language. In those cases what may appear as an exchange between the witness and the interpreter is actually part of the interpreting

process and should not be misconstrued as a side conversation. The interpreter may also occasionally request clarification if he or she does not understand a word or phrase.

#### *Should an interpreter take an oath prior to the proceeding?*

Yes. Here is a sample oath based on the language in the statute:<sup>6</sup> “Do you solemnly swear or affirm that you will make a true interpretation of all case proceedings and discharge all of the duties and obligations of legal interpretation and translation to your best skill and judgment so help you God?”

#### *What can a judge do to assist the interpreted proceedings?*

When using an interpreter, the judge may find it helpful to clarify the interpreter's role to the parties prior to the court proceeding. Other suggestions include:

- Ask for the interpreter's input on the best location for the interpreter in relation to the others involved in the communication.
- Speak directly to the deaf or hard-of-hearing individual, not to the interpreter.
- Speak in a natural speed and tone of voice, but speak clearly and slowly enough for the interpreter to keep up.
- Sign language does not always have specific signs for specialized or technical words. Sometimes interpreters will need to “fingerspell” specialized or technical words or may need help understanding the concept first in order to provide an equivalent sign or interpretation. Providing vocabulary lists, documents, or pleadings to the interpreters in advance will ensure a more successful and accurate interpretation.

- Allow only one person to speak at a time.
- For longer proceedings with continuous interpreting, the court should hire a team of two interpreters. The teaming allows the interpreters to switch roles every 15 to 20 minutes which will ensure effective communication.

### *Are there other accommodations the court should provide?*

For court proceedings, courts will need to use a qualified sign language interpreter if the individual's primary or preferred language is sign language. However, for informal and brief interactions with staff, the court may find other accommodations, such as written communication, are effective. Examples of informal and brief interactions are the in-person confirmation of the date and time of a hearing or an interaction confirming the location of jury duty.

Occasionally, a person who is deaf or hard-of-hearing may request something other than a sign-language interpreter, such as CART, intermediary interpreters, oral interpreters, or assistive listening devices. The court should give primary consideration to the communication method requested.

### *Is there anything else I should know?*

Ideally, courts should have a clear procedure in place for arranging for a qualified interpreter and should verify that staff are aware of the court's obligation to provide such interpreters and procedures for doing so. The process for requesting a qualified interpreter should also be publicized so that individuals will be aware of proper procedures.

If you have any questions about an interpreter's performance or want to file a complaint, contact the DARS Office for Deaf and Hard of Hearing Services at 512-407-3250 or by e-mail at [bei@dars.state.tx.us](mailto:bei@dars.state.tx.us).

To file a written complaint by mail: DARS DHHS, at P.O. Box 12904 Austin, TX 78711.

Visit [www.dr.tx.org/resources/accessibility](http://www.dr.tx.org/resources/accessibility) to download an electronic version of this document.

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#### **Endnotes:**

1 *Brian East and Lia Davis are attorneys with Disability Rights Texas (DRTx). DRTx is the federally designated protection and advocacy agency for people with disabilities in Texas. Our mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society. For more information about our services, visit [www.dr.tx.org](http://www.dr.tx.org) or call (512) 454-4816. The content of this article was created for a project funded by a grant from the State Bar of Texas Litigation Section.*

2 *Tex. Gov't. Code § 57.002.*

3 *Tex. Civ. Prac. & Rem. Code § 21.006.*

4 *BEI/DARS means the Board of Evaluation of Interpreters at the Texas Department of Rehabilitative Services.*

5 *Tex. Civ. Prac. & Rem. Code § 21.003.*

6 *Tex. Civ. Prac. & Rem. Code § 21.005.*



# HONOR ROLL

as of 7/10/15

## NEW JUDGES

Hon. Charlie Barnard  
Hon. John Longoria  
Hon. Debra Ibarra Mayfield  
Hon. Erin Lunceford

89th District Court  
Bexar County Court at Law No. 5  
165th District Court  
61st District Court

Wichita Falls  
San Antonio  
Houston  
Houston

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## IN MEMORIAM

Hon. Dan Beck  
Hon. Betty Caton  
Hon. Lupe Flores  
Hon. Bill Heatly  
Hon. James Martin  
Hon. Bob Parks  
Hon. Robert Price  
Hon. Carroll Wilborn, Jr.

Region 3 - District Court  
Region 1  
Jefferson County Court at Law No. 2  
Region 9 - District Court  
254th District Court  
143rd District Court  
Region 1  
344th District Court

La Grange  
McKinney  
Beaumont  
Paducah  
Dallas  
Monahans  
Dallas  
Anahuac



# Advisory Opinion Summaries

March 3, 2015 – July 1, 2015

## *Texas Ethics Commission*

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

[EAO No. 526 \(2015\)](#) – A city ordered an election to determine whether the city should adopt a “Type B” economic development sales and use tax. The city prepared three communications to inform voters of the facts regarding the election: (1) a newsletter; (2) a poster to be displayed at city facilities and distributed with outgoing bills; and (3) a document to be posted to a city's networking site. The TEC had to determine if these communications constituted political advertising, and therefore the city was prohibited from using public funds to produce them under section 255.003. They examined the communications to determine if any of them supported or opposed the measure up for election. The TEC found that although one of the communications went beyond a factual description of the measure, none of them supported or opposed the measure. Thus, for purposes of section 255.003, the communications are not political advertising and, therefore, public funds may be used to distribute the communications unless an officer or employee of the city authorizing such use of public funds knows that the communications contain false information.

[EAO No. 527 \(2015\)](#) - A general-purpose committee may not use political contributions accepted from a corporation for its own administration to make a contribution to a political party for the party's administrative costs.

[EAO No. 528 \(2015\)](#) - Title 15 does not prohibit a general-purpose committee from using a political contribution that was legally given and accepted from a corporation, for the purpose of financing the establishment or administration of the committee, to compensate an individual lobbyist for providing lobbying services to a corporation. Assuming that the contributions to the committee were given for the specific purpose of financing the committee's administrative expenses, and that the funds were not provided to the committee for the purpose of compensating a lobbyist, the committee would not be required to register solely by using the contributions to compensate the lobbyist.

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

None for this time period.

## *State Commission on Judicial Conduct – Public Statements*

None for this time period.

## *American Bar Association's Ethics Opinion*

[Formal Opinion 470: Judicial Encouragement of Pro Bono Services \(May 2015\)](#) - A state supreme court judge may sign a letter printed on the judge's stationery that is duplicated and mailed by the unified state bar association directed to all lawyers licensed in the state encouraging those lawyers to meet their professional responsibility under Rule 6.1 of the Model Rules of Professional Conduct and provide pro bono legal services to persons in need and to contact the bar association for information about volunteer opportunities.

# Disciplinary Actions

(March 2, 2015 – June 30, 2015)

## State Commission on Judicial Conduct

### Public Sanctions

**Public Warning:** District Court Judge became the subject of local and national media attention for alleged misconduct, which caused the Commission to initiate its own investigation. The media reports contained allegations that District Judge used illegal drugs and hired prostitutes; used officeholder funds and campaign contributions to take vacations with his former girlfriend; committed assault on his former girlfriend; and was the subject of a criminal investigation for sexual assault. A grand jury declined to indict the District Judge in the assault case, and the Commission found insufficient evidence to support the allegations of drug use and engaging prostitutes.

Therefore, the Commission focused its investigation on information that came to light subsequent to the grand jury decision during which the former girlfriend held a press conference and released audio and video recordings of conversations between herself and District Judge. These recordings depicted District Judge engaged in “lewd, profane, and derogatory language,” descriptions of physical violence committed by District Judge, accusations that District Judge posted nude photos of her to the Internet in retaliation, and discussions of trips the two had taken together. The Commission found that these allegations cast public discredit not only District Judge, but the judges in Dallas County and Texas as a whole. His actions drew negative media attention and criticism by the public, and District Judge’s own conduct provided plenty of information for the media to use against him. The Commission held that this conduct violated Article V, §1-a(6)A of the Texas Constitution.

Furthermore, the audio and video recordings that were released during the press conferences raised questions about District Judge’s use of campaign funds for personal vacations. During the fall of 2013, District Judge reimbursed himself for travel expenses out of his campaign fund without disclosing the details of those expenses, and District Judge could not provide the Commission with evidence that he was entitled to such reimbursements. District Judge alleged that it was the fault of the attorney who prepared the reports on his behalf, but was not able to provide any records to substantiate that the expenses were accurate. In October 2014, District Judge claimed reimbursement of \$51,000 for a dinner meeting with constituents. He admitted to filing this report on his own, but told the Commission that the amount was not accurate and was due to a typo, and said that he would file amended reports. The Commission found that the District Judge’s actions in this regard constituted willful and/or persistent violations of Canon 2A.

**Public Admonishment:** Appellate Judge was stopped by police for speeding. During the stop, the officer became suspicious that Appellate Judge was driving under the influence. Appellate Judge admitted to having consumed “about five beers.” After failing the officer’s sobriety test, Appellate Judge became uncooperative. The dash cam video of the event showed Appellate Judge repeatedly identifying herself as a judge, pleading for leniency, and accusing the officer of ruining her life and career. The Appellate Judge’s arrest, the later dismissal of charges, as well as the dash cam video drew media attention both locally and nationally. The Commission found that by repeatedly identifying herself as a judge to the officer, Appellate Judge attempted to use her position to obtain favorable treatment in violation of Canon 2B. Furthermore, her conduct and arrest cast public discredit on the judiciary and the administration of justice in violation of Article V, § 1-a(6)A.

**Public Reprimand and Order of Additional Education:** The Commission found that Justice of the Peace (JP) demonstrated a lack of professional competence in two cases. Among other problems, in both cases JP issued inappropriate criminal summons (they were civil cases), failed to reduce her decisions to written judgments, did not maintain complete and/or accurate records, and conducted informal private mediations of disputes without proper notice to parties. In a vehicle sale case, JP ordered a car to be returned to the plaintiff, and later ordered defendant to make monthly payments to plaintiff, neither of which were memorialized with a written judgment. JP also threatened defendant with criminal action, and later issued a criminal summons without any criminal proceeding pending against the defendant. JP told the Commission that all of defendant's court appearances were informal.

In a separate complaint, JP was accused of improperly intervening in a divorce case that was filed in a district court. Testimony in front of the Commission indicated that the mother of the petitioner in the divorce case was in a special relationship with the JP and had threatened respondent that she would have the JP intervene in the dispute over couple's Jeep Wrangler. JP issued a criminal summons that was served on Respondent by police officers, and Respondent appeared in JP's court the following day. Respondent informed JP that divorce proceedings were pending in a district court and that the Wrangler was community property that would be divided during that proceeding. JP ordered possession of the Jeep to Petitioner. The Commission determined that JP not only lacked jurisdiction to order possession of the Wrangler to Petitioner, an audio recording of the hearing demonstrated that JP was aware of facts and evidence that she obtained through ex parte or extra-judicial communications. It also found that JP's records of the proceeding were woefully incomplete, including no filed petition or complaint, lack of proof of service on Respondent, no entries on the court docket sheet, etc. JP told the Commission that she did not meet with any party prior to the hearing, that the hearing was an informal mediation, and that she mistakenly issued the criminal summons.

For these reasons, JP violated Canons 2B, 3B(2), and 6C(2). In addition to the public admonishment, JP must obtain four additional hours in education in the areas of: (1) the proper use of criminal and civil summonses; (2) the proper role of the judge as a neutral, fair and impartial arbitrator when hearing and deciding civil cases; (3) the open courts doctrine; (4) alternative dispute resolution procedures under Rule 503.5 of the Texas Rules of Civil Procedure; (5) avoiding both the appearance and the reality of improper ex parte communications; (6) proper record-keeping procedures, including but not limited the requirement to reduce judgments and orders to writing; (7) rules and procedures governing a litigant's right to appeal a judgment; and (8) trial settings and notice requirements under Rule 503.3 of the Texas Rules of Civil Procedure.

**Public Admonition and Order of Additional Education:** District Judge maintained a public Facebook page. During the time that she presided over a major trial, the *Wiescekel* case, District Judge posted information about the trial to her public Facebook page. The public postings ranged from the announcement of the start day of the case to a news article about the specific case which contained extraneous offense information. Most of these comments were posted to the Facebook page after she gave the jury instructions admonishing them to not do any independent investigation of the facts and only use evidence in the courtroom, which was a rule she acknowledged applied to her as well. Defense counsel made a motion to recuse District Judge based on her conduct on Facebook and after the case was transferred to a new court, the new judge granted defense counsel's motion for a mistrial. All of these events led to media scrutiny. District Judge told the Commission that her Facebook page promoted transparency, that her comments did not demonstrate bias, and that the article she linked was objective. The Commission also found other posts by District Judge noting that a jury was deliberating punishment in a child pornography case and how difficult viewing the images had been on them, as well as a comment about finishing sentencing with a "very challenging defendant." District Judge argued that neither of these posts indicated unfair treatment or suggested a decision in a case. The Commission found that District Judge "cast reasonable doubt on upon her own impartiality and violated her own admonition to jurors by turning to social media to publically discuss cases pending in her court, giving rise to a legitimate concern

that she would not be fair or impartial in the *Wieseckel* case and other high-profile cases.” For these reasons, District Judge did not properly perform her duties and cast public discredit on the judiciary, in violation of Canons 3(B)(1) and 4A, as well as Article V, Section 1-a(6) of the Texas Constitution. In addition to the admonishment, District Judge was ordered to obtain four hours of education in the area of the proper and ethical use of social media by judges.

**Public Reprimand and Order of Additional Education:** District Judge’s jurisdiction included almost all cases filed under Chapter 841 of the Texas Health and Safety Code for the purpose of determining whether repeat sexual offenders should be deemed sexually violent predators, which would require involuntary civil commitment after their release. If an offender is determined to be a predator, District Judge maintains continuing jurisdiction. The State Counsel for Offenders Office (SCFO) was created to provide representation to indigent offenders during these civil commitment proceedings.

The Commission found that District Judge treated attorneys from the SCOF, as well as one of their expert witnesses, in a discourteous and undignified manner. The conduct was so bad that it led to a perception that District Judge held a bias against these attorneys and their witness, and that SCFO could not obtain a fair trial in his courtroom. The Commission noted several occasions where District Judge’s comments were rude and demeaning to SCFO attorneys, including comments “that [attorney] was ‘wasting’ everyone’s time; that [attorney] had a law degree and needed to ‘use it,’” that the attorney’s “ability to practice law” was very frustrating to him, and threatened to throw attorneys out of the courtroom and/or not let them practice in his court. His treatment of attorneys even led to a potential juror noting during *voir dire* that District Judge was clearly bias. The Commission also noted that his demeanor was undignified towards an expert who often testified for SCFO, and that District Judge spoke to him in angry tones on several occasions.

Furthermore, the District Judge made inappropriate comments and displayed images that were in poor taste while speaking at a PAC meeting. While discussing the role of his court, District Judge displayed pictures of Hannibal Lector and referred to defendants as “psychopaths.” He also divulged specific information about several cases, including the name and picture of predators in cases he presided over. In fact, District Judge referred to a predator whose case was ongoing in his court as a “pedophile rapist,” which led to that offender filing a motion to recuse against him. The Commission concluded that District Judge’s presentation could cause a reasonable person to perceive that he would not be fair and impartial while presiding over civil commitment proceedings, and that his public comments about specific offenders whose cases were subject to his court’s continuing jurisdiction suggested to a how he would rule when those individuals come before the court in future proceedings.

Finally, the Commission also pointed out that District Judge had been the subject of at least 16 recusal motions in just over six months, eight of which were granted. The Commission held that District Judge violated Canon 3B(4), 3B(5), 3B(10), 4A(1), 4A(2), and Article V, §1-a(6)A. In addition to the public reprimand, he must complete four hours in the areas of: (1) the appropriate treatment of attorneys, witnesses, and others with whom the judge deals in an official capacity; (2) avoiding bias and the appearance of bias; and (3) avoiding extrajudicial conduct that casts doubt on a judge’s capacity to act impartially and/or interferes with the proper performance of the judge’s duties.

**Public Admonition and Order of Additional Education:** District Judge refused a district attorney entry into her courtroom. She also later made several references to this attorney being a “New York Jew,” both directly to him and in the presence of others. District Judge told the Commission that she only made the reference to explain a cultural difference. Two months later, she told a different assistant district attorney that his beard made him look like a Muslim, and that she wouldn’t hire him. The Commission found that her use of the term “New York Jew” and her statement about the attorney’s beard manifested a religious and/or cultural bias. They further found that her refusal to allow the district attorney into her courtroom violated the “Open Courts” doctrine, demonstrating a lack of professional competence in the law and a failure to comply with the law. Finally, the Commission held that District Judge failed to

treat litigants and attorneys with patience, dignity, and courtesy when she held a marathon court session for probation revocation cases beginning at 1:00 p.m. in the afternoon on July 2, and concluding at 4:00 a.m. on July 3. This marathon session did not have any formal breaks scheduled, and led to the litigant in the last case appealing her conviction because “fair consideration could not have possibly been given at 4:00 a.m. after a 19 hour day.” District Judge violated Canons 2A, 3B(2), 3B(4), and 3B(6). In addition to the public admonition, District Judge was ordered to receive four hours of additional education in the areas of: (1) the “Open Courts” doctrine and (2) recognizing and eliminating explicit and implicit bias and/or prejudice.

**Public Admonition:** On two occasions, Municipal Judge denied citizens, both of whom were alleged victims in cases filed in her court, access to court records. Municipal Judge relied erroneously on an Attorney General Opinion in both complaints. The Commission also noted that several witnesses observed Municipal Judge “engaged in a shouting match” with a woman outside the courtroom. The witnesses believe that Municipal Judge was upset with the woman for criticizing the way she handled one of the cases above. Additionally, a local law firm audited Municipal Judge’s court and found “chronic and systematic problems.” Based on the findings of this report (i.e. improper fiscal management, failing to hold jury and bench trials, failing to provide public information, etc.), the Commission found that Municipal Judge failed to comply with the law and demonstrated a lack of professional competence in violation of Canons 2A and 3B(2).

**Public Admonishment:** County Court at Law (CCL) Judge was the subject of local and national media attention for inefficient management of her courtroom and discourteous treatment of attorneys. The accounts of CCL Judge’s behavior include speaking to attorneys in a threatening manner, treating attorneys in an undignified and discourteous manner, an inability to be unbiased towards certain attorneys, denying an attorney the opportunity to represent his client because he was wearing shorts due to a recent knee surgery (he wore a clearly visible knee brace), and having an inefficient courtroom. CCL Judge denied these claims. On one particular occasion examined by the Commission, a defense attorney stated during a recusal hearing that he has never been treated so poorly by a judge. An assistant district attorney supported the defense attorney’s assertion by testifying that CCL Judge disliked defense attorney to a point that she could not be fair and impartial. The recusal motion was granted in this case. When the CCL Judge discovered that she was recused, she filed her own Motion for Reconsideration. The Fifth Court of Appeals granted a mandamus on CCL Judge’s Motion to Reconsider, and held that the judge’s motion was “wholly improper and without authority.” CCL Judge argued that her actions in filing the motion were appropriate because she was not given notice of the hearing, which violated her due process rights.

The Commission found that CCL Judge’s treatment and actions towards certain attorneys became widely known in her community and caused recusal motions to be filed, drawing the attention of local and national media to the judiciary in an unfavorable manner. It noted that the CCL Judge’s poor judicial demeanor created an appearance, if not a reality, of bias and impropriety in violation of Canon 3B(4) and Article V, §1-a(6)A of the Texas Constitution. Furthermore, the Commission found that CCL Judge’s attempts to intervene in the recusal motions filed against her demonstrated a lack of competence in performing her duties and a failure to follow the law in violation of Canon 2A and Article V, §1-a(6)A.

### **Private Sanctions**

Summaries are taken directly from the State Commission on Judicial Conduct’s website: <http://www.scjc.state.tx.us/pdf/actions/SummariesofPrivateSanctions8-31-14.pdf>

No private sanctions have been issued since the date of the last publication.

## Suspensions

Judge	Court	Status
Hon. Alfred Lee Isassi	County Court at Law Kingville, Kleberg County	Pending criminal trial

## Resignations

Judge	Court	Agreement Date
Bronson, Clifford	Former Associate Judge Fort Worth, Tarrant County	02/18/15
Caballero, Betty	Former Justice of the Peace, Pct. 1 Pleasanton, Atascosa County	02/18/15
Hon. Timothy L. Wright, III	County Court at Law No. 2 Georgetown, Williamson County	04/08/15

# Texas Ethics Commission

## Sworn Complaints

*(March 1, 2015 – June 1, 2015)*

There were no sworn complaint orders involving appellate, district, or county court-at-law judicial campaigns issued for this time period. For the full text of the orders, visit: [http://www.ethics.state.tx.us/sworncomp/orderlst\\_issued.html](http://www.ethics.state.tx.us/sworncomp/orderlst_issued.html).

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as of 7/1/15

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Hon. Charles Dibrell In Memory of Judge Charles G. Dibrell Sr.  
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Hon. Gladys Oakley In Honor of Shirley Irvin at the Center  
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[Bench Card for Appointment of Independent Fiduciaries](#)

[Statewide Ruled Governing E-filing in CRIMINAL Cases](#)

[Juvenile Board Guide](#)

[FV Bench Guide](#)

[2014 Family and Probate Pattern Jury Charges](#)

Go to the [Texas Center website](#) for all the resources the Texas Center has to offer.



## 2015 Regional Conferences

{photo lineup}



Some of the presenters at the Regional Conferences. Clockwise, top left: Julia Joplin Swallow, Charla Bradshaw, Judge Elsa Alcalá.



# {photo lineup}



{photo lineup}



# Judge Lora J. Livingston Receives National Recognition

Judge Lora J. Livingston received the National Center for State Courts' (NCSC) 2015 Distinguished Service Award for a State Trial Court Judge, one of the highest awards presented by the organization. The Distinguished Service Award is presented annually to those who have made significant contributions to the justice system and who have supported the mission of NCSC.

Judge Livingston was elected judge of the 261st District Court in Travis County in 1998 after serving as an associate judge for the Travis County District Courts since 1995. She has received numerous awards for her achievements, including: the Texas

Center for the Judiciary Exemplary Judicial Faculty Award in 2009 and 2006; the Women of Distinction Award by the Lonestar Girl Scouts Council in 2006; the Texas Access to Justice Commission Pro Bono Champion Award, and the Texas Equal Access to Justice Foundation Harold F. Kleinman Award in 2005. Judge Livingston is a 1982 graduate of UCLA School of Law and began her legal career as a Reginald Heber Smith Community Lawyer Fellow assigned to the Legal Aid Society of Central Texas.

NCSC presents six Distinguished Service awards annually to those who have made significant contributions to the court system and to the work of the NCSC. The awards recognize one person from each of the following categories: current or former state appellate judge; current or former state trial judge; state-level court administrator or employee; trial-level court administrator or employee; attorney or other individual not employed by the courts; and current or former international judge or court executive.<sup>1</sup>



*From Left: Chief Justice Nathan Hecht, Judge Lora Livingston, William Hubbard, Jo-Ann Wallace, Mary K. Ryan*

## Endnotes:

<sup>1</sup> Montgomery, Lorri. National Center for State Courts. "Texas Judge Named Recipient of National Court Organization's Distinguished Service Award," Press Release, May 8, 2015, available at <http://www.ncsc.org/newsroom/news-releases/2015/texas-judge-named-recipient-of-national-court-organizations-distinguished-service-award.aspx>. ♦

# AWARDS &

# MADD Names Judge Rebecca Simpson Outstanding

## Criminal Justice Judge of 2015



**J**udge Rebecca Simpson received the 2015 Outstanding Criminal Justice Award from Mothers Against Drunk Driving this month. In discussing their decision, MADD praised Judge Simpson for her assertive and firm approach to ensuring that first time drunk driving offenders won't become repeat offenders and her less than one percent dismissal rate for all impaired driving offenders. Judge Simpson presides over Gregg County Court at Law No. 1 and has been on the bench for 16 years. Judge Simpson stated that the award is a demonstration of her community's commitment to reducing alcohol-related deaths and injuries. She believes that Gregg County is blessed

to have "an extremely pro-active and committed district attorney's office with strong leadership and dedicated prosecutors." She also commended the local police force as being the "front line" and doing an outstanding job at identifying intoxicated drivers. ♦

## Judge Mary Murphy Receives L.A. Bedford Distinguished Jurist Award

**F**ounded in 1952, J.L. Turner Legal Association ("JLTLA"), is the African-American bar association in Dallas, Texas. Each year, in recognition of judicial excellence in the Dallas courts, the JLTLA acknowledges the efforts of one local outstanding judge. Since its creation many years ago, the L.A. Bedford Distinguished Jurist Award has recognized the excellence, vigorous service, and inspiration of local jurists who have and continue to adhere to the highest ideals of judicial service. Any member of the municipal, state or federal bench, whether active or retired, who has made a significant, positive impact on the quality and administration of justice in the Dallas/Ft. Worth Metropolitan Area is eligible for consideration. This year, JLTLA has selected Presiding Judge of the First Administrative Judicial Region, Judge Mary Murphy, as its recipient.



Judge Mary L. Murphy has served as the Presiding Judge, a position to which Governor Rick Perry appointed her, since October 2, 2013. She retired as a justice of the Fifth District Court of Appeals to accept the appointment, a position she had held since January 1, 2009. From January 1, 2001 through December 31, 2008, she served in the 14th District Court as a civil district judge. ♦

# & HONORS

## University of Houston Law Center Alumni Association Honors Three Texas Judges

### Justice Jeff Brown Received 2015 Alumnus of the Year

The Honorable Jeff Brown was appointed to the Texas Supreme Court by Governor Rick Perry in September 2013. Previously, he served on the 14<sup>th</sup> Court of Appeals from 2007 to 2013 and the 55th District Court from 2001 to 2007. He earned his bachelor's degree in English from the University of Texas and his law degree with high honors from the University of Houston Law Center in 1995. While in law school, he served as chief note and comment editor of the Houston Law Review.

### Justice Laura Carter Higley Received 2015 Public Sector Achievement Award

The Honorable Laura Carter Higley was elected as Justice of the First Court of Appeals in November 2002. Justice Higley received her undergraduate degree from Vanderbilt University and her masters' degree in Latin American Studies from the University of Texas in Austin. In 1986, Laura returned to the University of Houston Law School receiving her Juris Doctorate in 1989. Justice Higley graduated among the top of her class, having been selected as an associate editor of the Law Review, a member of the Order of the Barons and the Order of the Coif.

### Judge R. K. Sandill Received 2015 Public Sector Achievement Award

Ravi K. Sandill is the Judge of the 127th District Court in Harris County. Judge Sandill was elected in November 2008 and became the first south Asian to be elected county-wide, as well as the first south Asian to be elected to the district court bench in Texas. Judge Sandill is a 2001 graduate of the University of Houston Law Center.



Photo by UH Law Center and Thomas Dubrock. Pictured: Justice Jeff Brown, Justice Laura Carter Higley, and Judge R. K. Sandill.

# AWARDS &





Justice Laura Higley (first row, fourth from the right); Justice Jeff Brown (first row, far right); Judge R. K. Sandill (first row, third from left).

# & HONORS