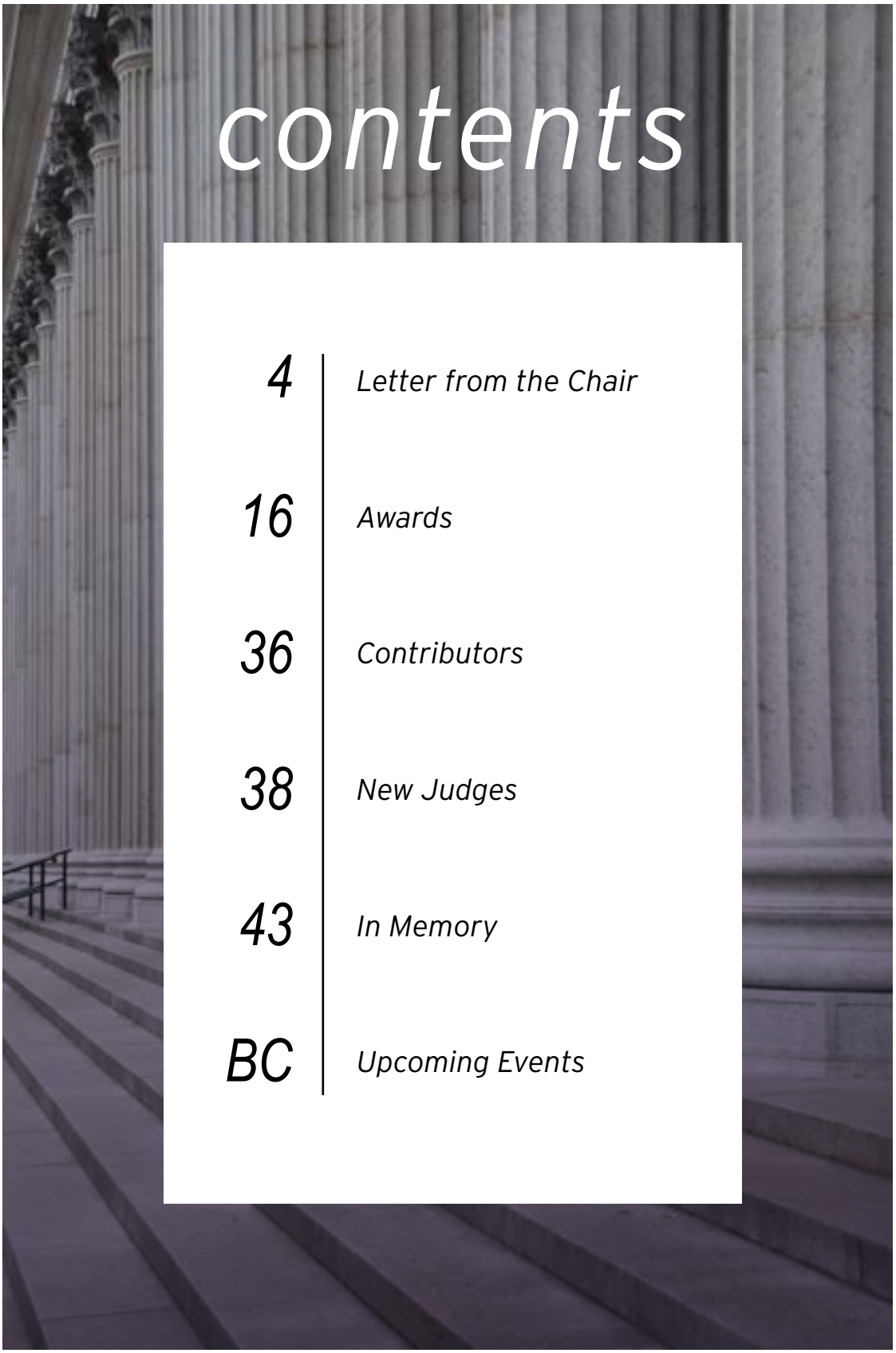
The Official Publication of the Texas Center for the Judiciary

In Chambers

Spring 2023

Leadership and Personnel Matters in the Courtroom • Considering Chapter 7B Protective Orders • Reasonable Doubt—Before, Now, and Beyond • Increasing Access to Justice Digitally: Procedural Rule Changes Can Increase Videoconference Participation



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In Chambers

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Spring 2023

This is the official publication of Texas Center for the Judiciary. The magazine is 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 avail-able 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 Steve Geiser via email at steveg@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.

Contributors

Judge Mark D. Atkinson

Chief Executive Officer
Texas Center for the Judiciary

Judge Mark D. Atkinson took the bench in 1987 and served 24 years as a judge in a Harris County, Texas, criminal court. After six terms of office he retired and was named Judicial Resource Liaison under the Texas Center for the Judiciary's Texas Department of Transportation Traffic Safety Grant Program. He served two years in that capacity before being named Executive Director (now Chief Executive Officer) of the Texas Center for the Judiciary. He has been active in state and national judicial leadership and education, serving as Chair of the Texas Center as well as the Judicial Section of the State Bar of Texas. Judge Atkinson was first licensed to practice law in 1980, and for seven years developed a practice focused on criminal, family, and civil trial law. He earned his BA from the University of Texas at Austin and his law degree from South Texas College of Law Houston. Judge Atkinson has received recognition and awards, including the National Association of Probation Executives George M. Keiser Excellence in Leadership Award, the Texas Center for the Judiciary's Judicial Excellence in Education Award, the Texas Center for the Judiciary Chair's Award of Excellence, the Houston Police Officers Association's Judge of the Year Award, the Houston Council on Alcoholism and Drug Abuse Award, the Mexican-American Bar Association of Houston's Amicus Award and the League of United Latin American Citizens' Certificate of Recognition. He also was elected to serve as the president of the Texas Association of County Court at Law Judges. Judge Atkinson is married to Vicki Atkinson. They have raised four sons together.

Judge Craig Estlinbaum (retired)

Attorney at Law
The Crisis Center

Craig Estlinbaum took office as judge of the 130th Judicial District Court in Matagorda County, Texas in 2001. He retired after serving five full terms and presently works as staff attorney for The Crisis Center, a community-based, volunteer-supported organization that provides shelter and support for victims of family violence, child abuse and sexual assault in Matagorda and Wharton Counties. He received appointment and served as adjunct professor of law at South Texas College of Law from 2004 to 2019. His writings have been published in The Scholar: St. Mary's Law Review on Race & Social Justice, St. Mary's Journal on Legal Malpractice & Ethics and others journals. Judge Estlinbaum earned B.S. and M.Agr. degrees from Texas A&M University and his law degree with honors from South Texas College of Law, where he was Editor in Chief of South Texas Law Review. He co-hosts Hooks & Runs, a podcast about baseball, music and culture. Judge Estlinbaum lives in Bay City with his wife, Julie, a 35-year Texas public teacher and former four-term city councilwoman for the city of Bay City, and their daughter, Shelby, a graduate of Texas A&M's PATHS program.

Judge Hazel B. Jones

Judge
174th District Court

Judge Hazel B. Jones is a native Houstonian. She received her undergraduate degree in Biology from the University of Texas at Austin and her law degree from Howard University Law School in Washington, D.C. After graduating law school, Judge Jones worked as an assistant district attorney for Harris County, Texas from 1996-2003. From 2003-2005, Judge Jones worked as a Special Assistant United States Attorney for the Southern District of Texas –Houston Division where she pursued the federal government initiate of "Project Safe Neighborhoods"–prosecuting dangerous felons with firearms. Judge Jones has also worked as a criminal defense attorney, and a visiting Justice of the Peace in the Houston area. In 2008, she served a 4-year term as State District Judge for the 338th Criminal District Court where she presided over felony cases. Currently, she is in her third term and is the Judge of the 174th Criminal District Court of Harris County, Texas. In addition, Judge Jones serves as a Star Drug Court judge assisting in a team effort to help probationers overcome their drug addictions and successfully complete their probation so that they change their lives for the betterment of themselves and our community.

Judge John B. Stevens Jr.

Judge
Jefferson County
Criminal District Court

Judge John B. Stevens Jr. has served as the Jefferson County Criminal District Court Judge since 2007. He has presided over more than 500 felony trials. Prior to being elected district judge, Judge Stevens was the Criminal Division Chief for the U. S. Attorney's Office for the Eastern District of Texas. He was awarded the U. S. Department of Justice's highest award, the Attorney General's Award for Exceptional Service, as one of the prosecutors of the James Byrd Hate Crime murder.

Judge Victor Villarreal

Judge
Webb County Court at Law
No. 2

Prioritizing reform and building public trust and confidence in Webb County Court at Law No. 2, Judge Victor Villarreal eliminated the court's 20-year case backlog, streamlined procedures, and provided guidance about virtual court proceedings to lawyers and judges during the pandemic. Appointed judge in 2017 by the Webb County Commissioners Court, he transformed Webb County Court-at-Law II from the worst audited court in the state to the only court in the state that has been audited at 100% compliance for guardianship cases in 2018. In 2019, the Texas Judicial Council designated Webb County Court-at-Law II a Judicial Center of Excellence–the first county court in Texas to attain the designation. In 2020, the Court was frequently mentioned as a pioneer in virtual courts and online hearings. He is the administrative judge of the Webb County Courts-at-Law and president of Texas Latinx Judges. He also serves on the Judicial Branch Certification Commission, the Texas Center for the Judiciary Curriculum Committee, on the councils of the State Bar of Texas Judicial Section and Juvenile Section; and he is a Past Chair of the Hispanic Issues Section of the State Bar of Texas. A graduate of Texas A&M International University and the University of Texas School of Law, his favorite activities are traveling with his wife, reading, and reading to his 6-year old and 7-year old daughters. Judge Villarreal recently began his second 4-year term.

RINGING IN THE NEW YEAR

with our In Chambers Spring 2023 issue

Letter from the Chair

On December 4, 2022, The Texas Center for the Judiciary welcomed our newly elected judiciary at the College for New Judges in Georgetown, Texas. Chief Justice Nathan Hecht spoke at the welcome reception along with Presiding Judge Sharon Keller. By the end of the presentation, the judge-elects had a glimpse of the State of the Judiciary and the reason for the esteem that is associated with the title of "the Honorable Judge."

Ringing in a new year also brings new quandaries and new ideas. The Texas Center has worked diligently to be responsive to the judiciary. After each conference, the attendees are asked what topics they want presented to assist in maintaining judicial excellence on the bench. Several commented that they wanted to make sure that the curriculum would continue to be fresh, innovative, and presented from varied perspectives. The new year also brings changes to committee membership and chair positions due to term limitations. Currently, the 2023 Curriculum Chair is Judge Angela Tucker. She is the presiding judge of the 199th District Court of Collin County. Once again, the Texas Center wants to address your educational needs and appreciates any suggestions towards doing so.

The Texas Center is also continuing to lead the way in providing continuing education opportunities for court professionals. Court Coordinators for district and statutory county courts at law are required to have 16 hours of continuing education hours each year. The Texas Center has been tasked by the Court of Criminal Appeals with keeping account of their hours. The first Court Professionals Conference which was held in June 2022 was a huge success with more than 200 court professionals in attendance. The next one will be held July 17-19, 2023 with an expected attendance of 450. Please encourage your court professional to attend.

In addition to the many in-person educational opportunities for you to fulfill your educational requirements (such as Family Violence hours), the Texas Center has online training opportunities, if you are just too busy to be there in person. Check out our webinar library as well as TCJ's monthly e-Newsletter for additional information about online trainings both for judges and court professionals.

Texas Center CEO, Judge Mark Atkinson, has continued to lead the organization in furtherance of its mission to promote judicial excellence by providing the highest quality education. Under his helm, the Texas Center remains financially solvent, and thus, without any debts or encumbrances as it works to provide the most up to date training opportunities to address the important issues that we face in our courtrooms every day.

Lastly and most importantly, much appreciation and thanks to you, our judiciary, for your continued support of the only judge-governed, judge-supported, non-profit organization that educates judges. Your contributions and conference registration donations are greatly appreciated.

May God continue to bless you and the great work you do in protecting and upholding the laws of this State and the United States!

Judge Hazel B. Jones

Chair of The Texas Center for the Judiciary

Presiding Judge of the 174th District Court

"Fīat jūstitia ruat cælum"

Leadership and Personnel Matters in the Courtroom

Judge Mark D. Atkinson
CHIEF EXECUTIVE OFFICER
Texas Center for the Judiciary

> ***When dealing with personnel matters, it states, they should be approached in three ways: psychologically, socially, and managerially.***

When my parents passed away, they each left behind an enormous number of books. They were both academics in different fields and the walls of their house were covered with bookshelves containing volumes on a wide variety of subjects. I kept most of them, and many of them are now in the bookshelves at my house.

My dad served as a Naval officer on a Destroyer from WW2 through the Korean War, followed by years in the Reserves, and his library was filled with books about the sea and Naval history. One book caught my eye, and I took it to my office where it sat on a shelf for some time. The title is *Principles and Problems of Naval Leadership*, published in 1959. It was prepared by the Leadership Staff of the Chief of Naval Personnel and is essentially a textbook on dealing with personnel, both subordinates and superiors. The thin volume contains true scenarios, questions, discussion, and concluding principles. A bonus for me was a folded piece of paper inside with my dad's notes written on it.

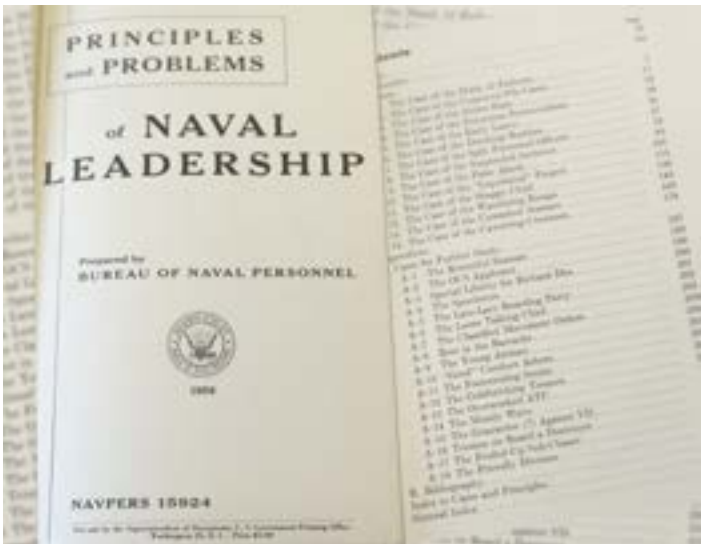
One afternoon, I picked it up and read. The more I read, the more I wanted to read. Based on actual events involving leadership of personnel, it includes scenarios such as *The Stolen Ham, The Cavorting Crewmen, The Goldbricking Yeoman, Tension on Board a Destroyer,* and many more.

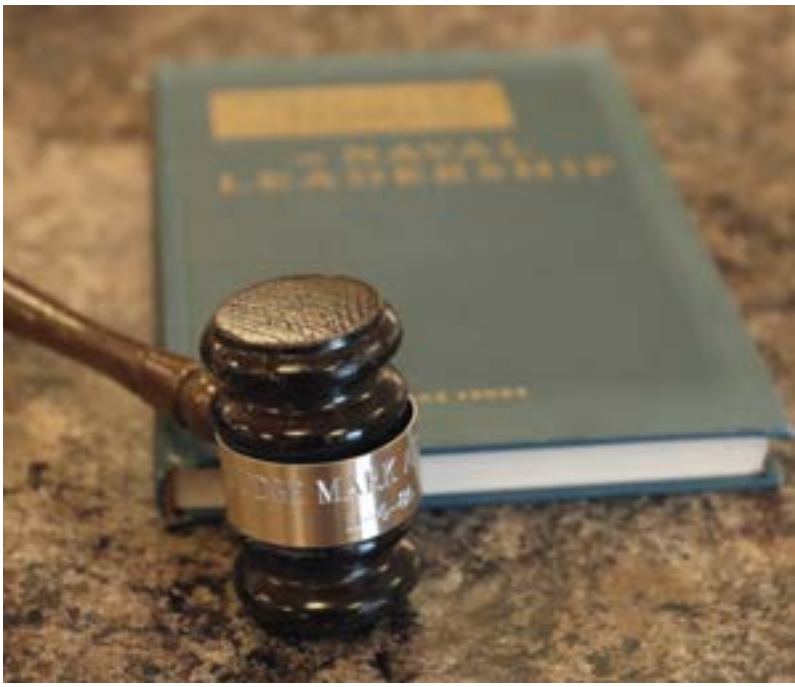
The book's discussions and concluding principles constantly referred to the values required of those in command, and one passage caught my attention. When dealing with personnel matters, it states, they should be approached in three ways: psychologically, socially, and managerially.

Psychologically, by considering what the individual being dealt with has going on as a person, individually.

Socially, requiring the leader's assessing the possible effects on the surrounding group, by either acting or not acting.

Managerially, because the bottom line is that in any event, the institution must be made to operate effectively.





It occurred to me that that approach is one that we judges use with members of our court staff. I was very lucky to have a staff that worked well together, liked each other, and was kind to one another as well, as were they to all who entered the courtroom. But humans being as we are, anyone can occasionally rub someone else the wrong way. With a good staff, incidents resolve themselves quickly and are put into the past. And anyone, even the judge, can have a bad day.

Occasionally, staff members, be they one of the bailiffs, the court reporter, or coordinator, for example, would come to me in chambers, close the door, and complain that another staff member was performing tasks inappropriately—or whatever. I usually asked if they wanted me to get into it, or would they prefer to work on resolving the issue themselves. Nearly always, the person that came to me responded that they would handle it without my getting involved.

On the other hand, I was also capable of making a mess of things that would likely make the authors of the psychological, social and managerial materials shake their heads.

I had a firm policy of wanting the court's phones answered by the third ring. We didn't use voicemail back then. And I myself did not answer, as a rule. (I became convinced that I should not when I answered a phone and the caller said, "Hey Mark, this is Wayne. I need to talk with you about my case next week..." I did not know Wayne, nor did I care to discuss his case with him.) The courtroom staff, which included clerks, a probation officer, and sometimes, an intern, was very good about answering calls between 8 A.M. and 5 P.M. with no more than three rings occurring. One day, the entire staff let a call slip go unanswered, and the caller hung up. It turned out to be an important one, meant for me. When I found out what had happened, I decided to address the issue immediately. But first, I approached the court reporter and coordinator

separately to tell them that I was about to announce my displeasure the with all staff, in my office, but that they would not be the targets of my complaint.

I walked into the courtroom and, politely, I thought, invited all my court staff to stop what they were doing and come to my office. Once they were all crowded in, I said, nicely and quietly mind you, that they knew I expected the phones to be answered by three rings, and that if they did not want to answer by three rings, they did not want to be working in the court. I then thanked them for their time and sent them back to the courtroom.

Not only did that event go down in infamy as "the day the judge yelled at us," but my court reporter and coordinator were just as incensed at being chewed out, never mind the fact that I had assured them they were not the intended targets of the message. They felt chewed out just the same.

The episode passed, with only the legend of that day living on, and we worked together for years thereafter. But what could I have done differently? Maybe I could have considered how high that morning's activity level was, with dozens of cases being churned through. Maybe I could have thought about how a group chewing-out was going to affect the staffs' stress levels and attitudes for the rest of that day. Maybe I could have considered that a missed phone call was not as important at that time as effectively handling that morning's busy docket. Familiarity with the concept of looking at personnel events psychologically, socially, and managerially, as prescribed by the Naval Leadership Handbook, could have helped.

One more thing: the Handbook also refers to "the responsibilities of subordinates to superiors as well as responsibilities of superiors to subordinates – loyalty 'up and down' the line." I'm sure that most, and ideally all, of us judges live by these values. Hopefully, our staffs are as loyal to us as we are to them. It was always the case with my group, and we stay in touch as a "family" to this day, twelve years later. I'm very lucky in that regard.

Considering Chapter 7B Protective Orders

Judge Craig Estlinbaum (retired)
ATTORNEY AT LAW
The Crisis Center

> *Persons who may file include one who is a victim of an offense under designated Texas Penal Code sections and any adult, including parents, guardians or prosecuting attorneys, acting on behalf of a victim of such an offense.*[37]

There are two statutory schemes authorizing Texas courts to enter final protective orders after notice and hearing.[1] The more commonly known protective order remedies are found in Title 4, Texas Family Code. These procedures offer protective relief generally to family or dating violence victims and their household or family members.[2] The Texas Code of Criminal Procedure, Chapter 7B[3], provides the other statutory remedy.

The two statutory frameworks are interrelated. Title 4 sets forth detailed procedures for obtaining a protective order while Chapter 7B is much shorter in length. However, Chapter 7B provides that the procedures in Title 4, Texas Family Code, applies to a Chapter 7B proceeding.[4] This means that unless Chapter 7B conflicts with Title 4 on an issue, the procedures in Title 4 apply in a Chapter 7B proceeding.[5]

Protective orders do not, of course, provide absolute protection against further offenses. Persons who violate protective orders, however, may be punished by contempt of court or may be subject to misdemeanor or felony charges for the violation.[6]

Who May Seek Chapter 7B Relief

Title 4 restricts relief to persons in a defined family or dating relationship with the offender.[7] Chapter 7B provides much broader relief, extending its remedies to any person, "without regard to the relationship between the applicant and the alleged offender."[8] Persons who may file include one who is a victim of an offense under designated Texas Penal Code sections and any adult, including parents, guardians or prosecuting attorneys, acting on behalf of a victim of such an offense.[9]

The designated Penal Code statutes in Chapter 7B are trafficking of persons,[10] continuous trafficking of persons,[11] continuous sexual abuse of a young child or disabled person,[12] indecency with a child,[13] sexual assault,[14] indecent assault,[15] aggravated sexual assault,[16] stalking,[17] and compelling prostitution.[18] Subchapter C also provides for protective order relief from designated crimes committed by the defendant because of bias or prejudice as described in Article 42.014.[19] If the offense alleged as grounds for a Chapter 7B protective order are not among those listed in Article 7B.001 or Subchapter C, the court may not issue a protective order under the chapter.[20]

Where to File?

Title 4 allows an applicant to file in a county where the applicant or respondent resides, or in any county where the alleged family violence occurred.[21] Chapter 7B tracks the same language regarding the applicant's and "alleged offender" resides, but also provides for venue in any county where an element of the alleged offense occurred. Further, Chapter 7B adds venue lies in any court with protective order jurisdiction under Title 4 involving the same parties.[22] Chapter 7B's venue provisions do not expressly incorporate the mandatory provisions in Title 4 regarding venue when the protective order application is filed after a divorce or suit affecting parent-child relationship ("SAPCR") involving the same parties is filed.[23]

A person may file a Chapter 7B application in a district court, a juvenile court with district court jurisdiction, or a statutory or constitutional county court.[24]

The chapter provides that a court may grant temporary *ex parte* relief for the applicant or any other member of the applicant's family or household when the information in the application for protective order supports the finding that a "clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking or other harm to the applicant" exists.[38]

Is Ex Parte Relief Available?

Title 4 provides a protective order applicant may obtain temporary *ex parte* relief without hearing when the request for such relief contains a "detailed description of the facts and circumstances concerning the alleged family violence and the need for the immediate protective order" and is "signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant."[25]

Chapter 7B does not contain this requirement. The chapter provides that a court may grant temporary *ex parte* relief for the applicant or any other member of the applicant's family or household when the information in the application for protective order supports the finding that a "clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking or other harm to the applicant" exists.[26] The phrase "any other harm to the applicant" in this section is broadly stated and suggests temporary *ex parte* relief may be based upon conduct other than the specific offenses listed as grounds for a final protective order.

What is the protective order's duration?

Chapter 7B authorizes courts to enter protective orders that are effective for the duration of the lives of the offender or victim" or for a shorter period specifically stated in the order.[27] The allowable duration is much longer than the two year duration allowed in most Title 4 protective orders.[28] Chapter 7B requires courts to enter protective orders for the duration of the victim's or offender's life when the offender "has been convicted of or placed on deferred adjudication community supervision for an enumerated offence and the offender is required to register for life as a sex offender under Chapter 62, Texas Penal Code".[29]

What findings are required?

To issue a Chapter 7B protective order, a court must find that "reasonable grounds" exist to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking or trafficking.[30] A conviction or placement on community supervision for an offense listed in the chapter constitutes reasonable grounds to issue the protective order.[31] Chapter 7B does not define "reasonable grounds." One Texas Court examined the term while "cognizant of the lower 'preponderance of the evidence standard of proof for a civil case," to find "some evidence" existed to affirm a trial court's reasonable cause finding.[32]

Notably, a Chapter 7B protective order does not require a finding that the offender is likely to reoffend as required in the Title 4 procedures. A finding relating to possible future conduct is required though when the protective order is based upon stalking,[33] or prohibited conduct motivated by bias or prejudice,[34]

What conditions are allowed?

Courts entering Chapter 7B protective orders may require the offender to take action "the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household."[35] The conditions may include restrictions on communication with the victim, going near the victim's residence, work or school, following the victim, and restrictions on possession of firearms.[36]

Conclusion

The protective order remedy provided by Chapter 7B is not as frequently utilized as the remedy afforded by the Title 4, Texas Family Code if the appellate case count is any guide. Chapter 7B, however, affords important protections to crime victim that differ with the remedies in Title 4 in important ways. Family law practitioners, attorneys generally and judges should become award of the various protective order options available to victims of family violence and the enumerated assaultive offenses and be prepared to address the claims for protective order when raised.

References for this article are on page 25

Lifetime Achievement Award, University of Texas Law School Alumni Association

CHIEF JUSTICE
MARILYN ABOUSSIE

Marilyn Aboussie served as a Justice of the Third Court of Appeals for 17 years, including 5 years as Chief Justice. Before that, she was a Judge for the 340th District Court of Texas in Tom Green County. Her judicial career followed a successful law practice in Houston and San Angelo. Since her retirement from the Texas Court of Appeals, she has served as Senior Judge for the State of Texas. She has been a pioneer for women in the legal profession in Texas. She was the first female attorney in each law firm in which she practiced, the first woman on a court in the Concho Valley, and the first woman to serve on the Third Court of Appeals. She was the first woman elected president of the Tom Green County Bar Association and the Young Lawyers Association. She served as chair of the Judicial Section of the State Bar of Texas, the Texas Center for the Judiciary, the Council of Chief Justices, and as a judicial member of the State Bar Board of Directors and the Texas Bar Foundation Board of Trustees.

awards

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Exemplary Speaker Award

JUDGE CLIFF BROWN
147TH DISTRICT COURT
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Judicial Section Lifetime Achievement Award

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JUDGE MARK HOCKER
LUBBOCK COUNTY COURT AT LAW NO. 1
Lubbock

Chair's Award of Excellence

JUDGE DAVID PEEPLES
RETIRED JUDGE – 4TH ADMINISTRATIVE JUDICIAL REGION
San Antonio

REASONABLE DOUBT—Before, Now, and Beyond

Judge John B. Stevens Jr.
Jefferson County Criminal
District Court

> **...the doctrines of moral certainty, used by 17th and 18th Century judicial and evidentiary writers, seem to be profoundly connected to the emergence of *reasonable doubt*.[7]**

Judge Stevens wishes to thank Court Reporter Rene Mulholland and Criminal Courts staff attorney Ken Florence for their invaluable assistance in completing this article.

I.
Genesis of Beyond a Reasonable Doubt

The emergence of *Beyond a Reasonable Doubt* as the required burden of proof to convict criminal defendants is, as was said: "A riddle, wrapped in a mystery, inside an enigma; but perhaps there is a key."[1] Early trial procedures embraced by medieval England consisted of jury-less, inhumane practices of Trial by Ordeal, that relied on miraculous events to save the accused from guilt.[2] In 1215, the Magna Carta, the grand bulwark of liberties, formally replaced Trial by Ordeal with jury trials. However, it was difficult for those pre-modern jurors to judge others when vague oaths, without explanation, required them to "well and truly try, and a true verdict give, according to the evidence."[3] Influential 17th Century British jurist Sir William Coke, deemed the greatest jurist of the Elizabethan and Jacobean eras, advised that "the evidence to convict should be so manifest, as it could not be contradicted."

A compelling argument for why *beyond a reasonable doubt* surfaced as the standard of proof for English and American criminal trials, reasons that "Judge Not, Lest Ye Be Judged" and moral beliefs shadowed over the fulfilling of jurors' duties since medieval time.[5] Substituting the Trial by Ordeal with juries essentially replaced the voice of God with the voice of the people.[6]

Another convincing theory on the genesis of *reasonable doubt* asserts that the doctrines of moral certainty, used by 17th and 18th Century judicial and evidentiary writers, seem to be profoundly connected to the emergence of *reasonable doubt*.[7] John Locke's popular promotion of "reasoning and rational thought" certainly influenced law by the enlightenment and liberal thought movement[8]. It is believed that jury reasoning on criminal evidence law may have first been expressed in Baron Geoffrey Gilbert's 1756 Evidence Treatise.[9] As a result, the phrases "satisfied conscience," "moral certainty" and *reasonable doubt* began to enter the vocabulary in popular legal treatises of the time, and into English criminal courts and trials.[10]

Also, plea bargaining which came into practice in the 19th Century, along with modern factual proof methods including jury unanimity and corroborated confessions, supported the emergence of *beyond a reasonable doubt* by embracing jurors' need for moral comfort and, thereby, raising the bar for the *presumption of innocence*.[11] The gravity of the decision and the severity of its human consequences should make one pause and hesitate even before doing what is clearly and undoubtedly right. [12] So, how can jurors quantitatively determine when *beyond a reasonable doubt* evidence is sufficient to convict?

II.
Reasonable Doubt in America

The Unites States Supreme Court has noted that the requirement for guilt of one charged with a crime be established by proof *beyond a reasonable doubt* dates from America's early years.[13] It is inherent in our Constitution, though not mentioned per se.[14]

The first expression of *beyond a reasonable doubt* as the burden of proof rule for criminal cases in America actually appears in Boston, before America's Independence, and is associated with one of the most sensational episodes in American history. On March 5, 1770, British soldiers fired upon colonial civilians who were protesting their presence in an epic event remembered as the "Boston Massacre."[15] Five civilians were killed, including Crispus Attucks, a free African-American, who was shot twice in the chest.[16]

Prominent colonial attorney, John Adams, was requested to help defend British Captain Thomas Preston, who commanded the British regiment.[17] He accepted stating: "Counsel ought to be the very last thing that an accused person should want in a free country…the bar ought to be independent and impartial at all times and in every circumstance."[18]

At trial, each juryman was asked to search his conscience, with neither side offering clear guidance or suggestion, as "there had been little instruction on advising (the jury) how to assess the meaning of reasonable doubt."[19] Adams, in his jury argument, urged mercy rather than punishment by echoing the esteemed English Jurist Lord Chief Justice Matthew Hale: "It is always safer to err in acquitting than punishing, on the part of mercy than justice, for it is better five guilty persons should escape unpunished than one innocent person should die."[20] Expressing remarkable foresight, Adams told the jury this case would "reverberate through history becoming part of developing law."[21] Final argument made by Prosecutor Robert Treat Paine directed jurors to heed the law, yield to doubts if they conformed to reason, and convict if the evidence was convincing *beyond a reasonable doubt*.[22]

Thus, history is made with the first recorded use of *reasonable doubt* at trial. Six of the eight defendants were acquitted including John Adams' client.[23] Subsequently, "Reasonable Doubt" clearly appears after 1782 in the English Old Bailey[24] trials with the criminal jury instruction: "If on the other hand there is any reasonable cause for doubt…you will acquit."[25]

Legal experts have tirelessly attempted to define *beyond a reasonable doubt*, and the United States Supreme Court has long noted that attempts to explain *reasonable doubt* do not usually result in clarity for jurors.[26] "When there are doubts and the evidence uncertain, it is better to leave the malefactor's misdeed unpunished than to convict since in doubtful cases, punishments are better made milder than harsher" was a 15th Century maxim legal experts have connected to the subsequent reasonable doubt standard.[27] An early attempt to describe reasonable doubt quoted the influential 19th Century Scottish jurist Lord Gillies in *McKinley's Case* (1817): "To overturn (the presumption of innocence) there must be legal evidence of guilt carrying home a degree of conviction short only of absolute certainty."[28]

The Supreme Court has ruled that, so long as the Court instructs the jury on the necessity that the defendant's guilt be proven *beyond a reasonable doubt*, the Constitution does not require particular defining language for it.[29] However, jury instructions, taken as a whole, must correctly convey the concept of reasonable doubt.[30]

In 1970, the Supreme Court's *In re Winship* decision pronounced that the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution protect criminal defendants from conviction except upon proof *beyond a reasonable doubt* of every element of the offense.[31] Such a standard supports the *Presumption of Innocence*, ensuring against unjust convictions and reducing the risk of errors in judicial proceedings.[32] It symbolizes the significance the United States attaches to the criminal sanction, and to liberty itself, by impressing upon the factfinder the requirement to reach a subjective state of near certitude of an accused's guilt.[33] Justice Harlan's concurring opinion noted that, although courts have attempted to define *beyond a reasonable doubt,* there exists no method of measuring the intensity of human belief.[34]

A few years later, the Supreme Court equivocated that *reasonable doubt* at a minimum is one based upon reason.[35] But like saying "a white horse is a horse that is white", the Supreme Court did not assist juries with a more definitive meaning for reasonable doubt.[36]

Although failing to instruct jurors on the presumption of innocence is not a Constitutional violation, it is fatal error not to instruct on the reasonable doubt standard.[37] Furthermore, the Supreme Court has warned that error in defining *reasonable doubt* is never harmless.[38]

In 1994, the Supreme Court in *Victor v. Nebraska* thoroughly analyzed the Constitutionality of commonly used jury instructions defining *reasonable doubt* that arguably led to convict on lesser proof necessary to meet the Due Process standard as expressed in *Winship*.[39] The Court deemed that the words "substantial" and "grave" used in the *Cage* jury charge, as commonly understood, suggest a higher degree of doubt than is required for acquittal under the *reasonable doubt* standard.[40] Also, the trial court's reference to "moral certainty" rather than "evidentiary certainty" could have misled the jury in convicting on a lesser degree of proof than required by Due Process.[41] Justice Ginsburg's concurrence suggested the term "moral certainty" be avoided as it is unhelpful in describing *reasonable doubt*.[42] The test for evaluating the constitutionality of a *reasonable doubt* instruction became whether there is a reasonable likelihood the jury understood it to allow conviction based on insufficient proof to meet the *reasonable doubt* standard.[43]

Even federal circuit courts are divided on whether reasonable doubt should be defined.[44] Some jurisdictions mandate a criminal jury instruction defining *beyond a reasonable doubt*; others allow it; still others forbid it.[45] The Fifth Circuit has approved the jury instructions for *beyond a reasonable doubt* as evidence of "a convincing character that you would be willing to rely and act upon it without hesitation in making the most important decisions of your own affairs."[46]

The author of this article has presided over more than 500 felony jury trials. It is naïve to believe that a random selection of 12 citizens can unanimously agree on the meaning of an undefined legal term such as reasonable doubt. In fact, one jury, while deliberating on a verdict sent me a note stating the jury was unable to agree on the meaning of "unanimous."[47]

III.
Reasonable Doubt in Texas

In Texas, it is firmly established that the Constitutionally-required burden of proof to convict in criminal cases is that the State prove all elements of an offense *beyond a reasonable doubt*.[48] For the purposes of proving guilt *beyond a reasonable doubt*, direct and circumstantial evidence are equally compelling.[49] It has long been the duty of Texas criminal courts to instruct juries on the presumption of innocence along with the principle of *reasonable doubt*, even though no request be made to do so.[50]

As early as 1896, the Texas Court of Criminal Appeals ruled it was improper to define *reasonable doubt*.[51] The rule against defining reasonable doubt for the jury was reaffirmed in 1973, by Texas' highest criminal court emphasizing the term "reasonable doubt" needs no amplification, nor attempt on the part of the trial court to explain it.[52] Thus, juries are as competent as judges to make the determination of *beyond a reasonable doubt*.

Then, in 1991 the Geesa v. State decision, for the first time, required Texas criminal trial courts to define *reasonable doubt* by combining Section 2.01 of the 1974 Texas Penal Code along with federal jury instructions.[53] In 1996, in *Reyes v. State*, the Court of Criminal Appeals reinforced the *Geesa* decision by ruling that the failure to submit the *Geesa*-approved jury charge constituted automatic reversible error, whether requested or not.[54]

Four years later in *Paulson v. State*, the Texas Court of Criminal Appeals reversed itself on its earlier *Geesa* and *Reyes reasonable doubt* instruction requirements which it

deemed as "poorly reasoned."[55] Paulson noted the *Geesa* Court's reliance on the earlier Supreme Court decisions in *Jackson v. Virginia* and *Holland v. United States*, which implied the requirement of a full definition of *reasonable doubt* in the jury instructions.[56] The *Paulson* Court cited to the Supreme Court ruling in *Victor v. Nebraska*, decided after the decisions in *Jackson, Holland* and *Geesa*, which declared that "the Constitution neither prohibits trial courts from defining *reasonable doubt* nor requires them to do so as a matter of course."[57] As long as the jury is instructed on the defendant's *presumption of innocence* and the necessity that guilt be proved *beyond a reasonable doubt*, the Constitution does not require any particular form of words be used advising the jury of the government's burden of proof.[58] Since the words *reasonable doubt* have a commonly accepted meaning, it is improper for a court to discuss its meaning, as a jury is as competent as a court to make that determination.[59] The *Paulson* court recommended the better practice of not providing a definition of *reasonable doubt* to the jury since it is not mandated by the Constitution or Texas statute and over 100 years of pre-*Geesa* Texas precedent discouraged it.[60] The court did advise that if both parties were to agree to give the *Geesa* jury instruction, it would not constitute reversible error if the trial court so instructed the jury.[61]

Only 11 states, including Texas, generally prohibit juries from being instructed on a definition of "Reasonable Doubt."[62] The other 39 states allow the trial judge to define "Reasonable Doubt" in the absence of approved pattern jury instructions.[63]

IV.
Proposed Solution

Trying to define *reasonable doubt* has been called "the equivalent to playing with fire," as any general definition seems to favor one side or the other.[64] Numerous empirical studies have shown that mock juries, without being instructed on a definition, choose different probabilities when applying the *beyond a reasonable doubt* standard.[65] In fact, in one study, mock jurors who were assigned undefined *reasonable doubt* instruction acquitted at a lower rate than jurors instructed to use the preponderance of evidence standard.[66]

Based upon the psychological principle of "contrast affects," generally, life's decisions are made by evaluations from comparisons.[67] A rational method for judiciously instructing jurors on *beyond a reasonable doubt* is to compare it with the lower legal evidentiary proof standards of "preponderance" and "clear and convincing."[68]

To be a worthy safeguard, the *reasonable doubt* standard must have a tangible meaning, capable of being understood by those who are required to apply it, and accurately stated with the precision owed to those whose liberty or life are imperiled.[69] A Jury Instruction as proposed herein would provide a context of proof levels for jurors to relate or compare to the highest, and most nebulous, standard required for criminal convictions, thereby providing jurors with more information to appreciate the highest legal standard.[70]

1 Winston Churchill, Bbc Broadcast ("The Russian Enigma"), (London, Oct. 1, 1939).
2 *See* John B. Stevens, Jr., *Homage to the Presumption of Innocence,* 84 Tex. B.J. 226 (2021).
3 4 William Blackstone, Commentaries On The Laws Of England 348 (1769).
4 4 William Blackstone, Commentaries On The Laws Of England 355, n.X (11th ed. 1791).
5 James Q. Whitman, The Origins Of Reasonable Doubt: Theological Roots Of The Criminal Trial 90 (Yale University Press 2008) (quoting *Matthew* 7:1-3 (King James ed.)).
6 *Id.* at 53-54.
7 T. Waldman, *Origins of the Legal Doctrine of Reasonable Doubt, Journal of the History or Ideas,* Vol. 20, No. 3, at 299-316 (Jun.-Sep. 1959).
8 Barbara J. Shapiro, Beyond Reasonable Doubt And Probable Cause: Historical Perspectives On The Anglo-American Law Of Evidence (1991).
9 Steve Sheppard, *The Metamorphosis of Reasonable Doubt: How Changes in the Burden of Proof Weakened the Presumption of Innocence,* 78 Notre Dame Law Review 1189-90 (2003).
10 *Id.* at 1195-1204.
11 Whitman, *supra* at 18-20, 24, 114-24.
12 *Paulson v. State,* 28 S.W. 3d 570, 572 (Tex. Crim. App. 2000).
13 *In re Winship,* 397 U.S. 358, 361 (1970).
14 *Id.* at 374.
15 D. Abrams & D. Fisher, John Adams Under Fire: The Founding Father's Fight For Justice In The Boston Massacre Murder Trial (Toronto: Hanover Square Press 2020).
16 *Id.* at 29-30, 55.
17 *Id.* at 36.
18 *Ibid.*.
19 *Id.* at 250.
20 *Id.* at 225-26.
21 *Id.* at 337.
22 *Id.* at 249-50.
23 *Id.* at 273-75.
24 The Old Bailey was the principal criminal court of England and Wales.
25 Whitman, *supra* at 197-98.
26 *Miles v. United States,* 103 U.S. 304, 312 (1880).
27 John Langbein, *Historical Foundations of the Laws of Evidence: The View from the Ryder Sources,* 96 Ca. L. Rev. 1168, 1199 n.152 (1996).
28 *Coffin v. United States,* 156 U.S. 432, 456 (1895).
29 *Holland v. United States,* 348 U.S. 121, 140 (1954).
30 *Ibid.*.
31 *In re Winship,* 397 U.S. at 364.
32 *Id.* at 363.
33 *Id.* at 364.
34 *Id.* at 369 (citing 9 J. Wigmore, Evidence 325 (3d. ed. 1940)).
35 *Jackson v. Virginia,* 443 U.S. 307, 317 (1979).
36 *See, Paulson v. State,* 28 S.W.3d 570-572 (Tex. Crim. App. 2000) (Judge Keasler's opinion of the Court).
37 *Arizona v. Fulminante,* 499 U.S. 279, 291 (1991).
38 *Sullivan v. Louisiana,* 508 U.S. 275 (1993).
39 *Victor v. Nebraska,* 511 U.S. 1, 6 (1994).
40 *Id.* at 6.
41 *Id.* at 22 (citing Cage v. Louisiana, 498 U.S. 39, 41 (1990).
42 *Id.* at 24.
43 *Id.* at 27-28.
44 Miller W. Shealy, Jr., *A Reasonable Doubt About Reasonable Doubt,* 65 Okla. L. Rev. 225, 251-68 (2013).
45 *See,* e.g., Hon. James Shapiro & Karl Muth, *Beyond a Reasonable Doubt: Juries Don't Get It,* 52 Loyola University Chicago Law Journal 1029-32 (2021).
46 *United States v. Creech,* 408 F. 3d 264, 268 (5th Cir. 2005); Fifth Circuit District Judges Association Pattern Jury Instructions Committee, Pattern Criminal Jury Instructions, Sec. 1.05 (2019).
47 I briefly considered sending the following response: "ALL OF YOU?!"
48 *Crocker v. State,* 573 S.W. 2d 190, 207 (Tex. Crim. App. 1978) (Op. on r'hrg).
49 *Hankins v. State,* 646 S.W. 2d 191, 199 (Tex. Crim. App. 1983) (Op. on r'hrg).
50 *E.g., Black v. State,* 1 Tex. Ct. App. 368, 377 (1876).
51 *Abram v. State,* 35 S.W. 389, 36 Tex. Crim. App. 44, 47 (Tex. Crim. App. 1896).
52 *Whitson v. State,* 495 S.W. 2d 944, 946 (Tex. Crim. App. 1973).
53 *Geesa,* 820 S.W.2d at 161-62.
54 *Reyes v. State,* 938 S.W.2d 718, 721 (Tex. Crim. App. 1996).
55 *Paulson,* 28 S.W.3d at 571-72.
56 *Id.* at 572-73.
57 *Id.* at 573.
58 *Ibid.*
59 *Id.* at 571 (citing Abram, 35 S.W. at 390).
60 *Id.* at 573.
61 *Ibid.*
62 Bobby Greene, *Reasonable Doubt: Is it defined by whatever is at the top of the Google Page?,* 50 J. Marshall L. Rev. 933, 914 (2017).
63 *Ibid*.
64 Casey Reynolds, *Implicit Bias and the Problem of Certainty in the Criminal Standard of Proof,* 37 Law and Psychological Review, 229, 230 (2013).
65 See Michael D. Cicchini, *Reasonable Doubt and Relativity,* 76 Wash. & Lee L. Rev. 1443, 1456-60 (2019).
66 *Id*. at 1460 n.90.
67 *See* Cicchini, *supra* at 1456-60.
68 *Ibid*.
69 *Victor,* 511 U.S. at 29 (Blackmun, J., concurring in part and dissenting in part).
70 Cicchini, *supra* at 1464-67; *See also,* L. White & M. Cicchini, *Is Reasonable Doubt Self Defining?* 64 Vill. L. Rev. 1-2, 19 (2019); *See also,* Hon. John Shapiro & Karl T. Muth, *Beyond a Reasonable Doubt: Juries Don't Get It,* 52 Loyola University Chicago Law Journal 1029, 1042-43 (2021).

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Endnotes

1 A third type protective order, a magistrate's order for emergency protection, may be issued by a magistrate upon releasing a defendant from jail after the alleged offender committed certain designated offenses, including sexual assault and family violence offenses. This protective order is entered without hearing and is effective for not more than 91 days. *See* Tex. Code Crim. Pro. Art. 17.291, *et seq*.
2 Tex. Fam. Code. §81.001 (allowing a protective order "if the court finds that family violence has occurred and is likely to occur in the future").
3 The Texas Legislature repealed Chapter7A, Texas Code of Criminal Procedure in the 2019 legislative session and recodified that chapter into Chapter 7B without substantive amendment. The recodification took effect January 1, 2021. *Yeung v. Yeung*, No. 01-21-00124-CV, 2023 W.L. 17537 at n.1 (Tex.App.—Houston [1st Dist.] January 3, 2023, n.p.h.) Some references in the article or earlier cases may therefore refer to Chapter 7A.
4 Tex. Code Crim. Pro. Art. 7B.008.
5 *Protection of S.M.*, 658 S.W.3d 876, 879-80 (Tex.App—El Paso 2022, n.p.h.) (holding Article 7B implicitly authorizes courts to enter agreed protective orders without evidentiary hearing because such agreed orders are authorized in Title 4 and "no part of Chapter [7B] of the Code of Criminal Procedure prohibits agreed protective orders") (quoting *Torres v. State*, No. 08-19-00209, 2021 WL 3400598 at *4 (Tex.App.—El Paso Aug. 4, 2021, no pet.) (not designated for publication)).
6 *See* Tex. Pen. Code §25.07.
7 Tex. Fam. Code §82.002.
8 Tex. Code Crim. Pro. Art. 7B.001(a).
9 *Id.*, Art. 7B.001.
10 Tex. Pen. Code §20A.02.
11 *Id.*, §20A.03.
12 *Id.*, §21.02.
13 *Id.*, §21.11.
14 Id,. §22.011.
15 *Id.*, 22.012.
16 *Id.*, §22.021.
17 *Id.*, §42.072.
18 *Id.*, §43.05.
19 Tex. Code Crim. Pro. Art. 7B.101 *et seq*. (proving for protective order relief for offenses under Title 5, Texas Penal Code or Penal Code sections 28.02 (Arson), 28.03 (Criminal Mischief) or 28.08 (Graffiti) committed because of bias or prejudice as described by Article 42.014).
20 *Protection of P.B. v. V.T.*, 575 S.W.3d 921, 928 (Tex.App.—Austin 2019, no pet.).
21 Tex. Fam. Code §82.003.
22 Tex. Code Crim. Pro. Art 7B.001(b).
23 Tex. Fam. Code §82.005 ("A person who wishes to apply for a protective order with respect to the person's spouse and who is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship that is pending in a court must file the application as required by Subchapter D, Chapter 85.") (emphasis added).
24 Tex. Code Crim. Pro. Art. 7B.001(b)(1).
25 Tex. Fam. Code §82.009.
26 Tex. Code Crim. Pro. Art. 7B.002(a).
27 Tex. Code Crim. Pro. Art.7B.007(a).
28 Tex. Fam. Code §85.025(a-1).
29 Tex. Code Crim. Pro. Art. 7B.007(a-1).
30 *Id.*, Art. 7B.003.
31 *Id.*, Art. 7B.003(c).
32 *Webb v. Schlagal*, 530 S.W.3d 793, 803 (Tex. App.— Eastland 2017, no pet.). The term "reasonable grounds" also appears in the Texas Court of Criminal Procedure in the Chapter 64 motion for forensic DNA testing procedures. Specifically, an indigent person is entitled to appointed counsel in a Chapter 64 proceeding when "the court finds reasonable grounds for a testing motion to be filed." Tex. Code Crim. Pro. Art. 64.01(c). One court defined "reasonable grounds" to mean "the facts stated in the request for counsel or otherwise known to the trial court reasonably suggest that a plausible argument for testing can be made." *In re Franklin*, No. 03-07-00563-CR, 2008 WL 2468712 at *2 (Tex.App.--Austin, June 19, 2008, n.p.h.).
33 Tex. Code Crim. Pro. Art. 7B.052 (requiring the court to find probable cause to believe staking occurred and based upon the conduct, finding that the defendant is likely to engage in the enumerated conduct in the future). A person may commit the offense of stalking by (a) engaging in conduct that constitutes harassment under Section 42.07 or (b) engaging in conduct that the other person would regard as threatening bodily injury or death or an offense against the person's property. Tex. Pen. Code. §42.072(a).
34 Tex. Code Crim Pro., Art. 7B.102 (requiring the court to find probable cause of the offense committed because of bias and prejudice and that the nature of the scheme or course of conduct engaged in by the defendant in committing the offense suggests the defendant is likely to engage further in the prohibited conduct
35 *Id.*, Art. 7B.005(a).
36 *Id.*, Art. 7B.005. But see, United States v. Rahimi, No. 21-11001 (5th Cir., February 2, 2023) (holding that 18 U.S.C. §922(g)(8), a federal statute prohibiting possession of a handgun while under a domestic violence restraining order, is unconstitutional on Second Amendment grounds).
37 *Id.*, Art. 7B.001.
38 Tex. Code Crim. Pro. Art. 7B.002(a).

Increasing Access to Justice Digitally: Procedural Rule Changes Can Increase Videoconference Participation

Judge Victor Villarreal

Webb County Court at Law No. 2

When I first took the bench, I realized that saving 1 minute per case during a 60-case docket would save us an hour. Similarly, saving 2 minutes per case saves an hour during a 30-case docket.

"My client is trying to log in" followed by "What is the meeting link for this hearing, judge?" can be frequently heard from lawyers attending court by videoconference at the beginning of court hearings. When I first took the bench, I realized that saving 1 minute per case during a 60-case docket would save us an hour. Similarly, saving 2 minutes per case saves an hour during a 30-case docket. Now, technology can greatly increase or decrease time at videoconference court hearings. For example, during traditional in person court hearings, the judge's bench, at the front and center of the courtroom, is the focal point of the courtroom. As a symbolic matter, it denotes that the law is at the center of court proceedings. As a practical matter, technology decentralizes and is now, the focal point. For example, even when the speaker screens are spotlighted, the judge (or the judge's bench) is no longer the central point of the hearing. Additionally, arriving to the hearing is different. In person court hearings require a physical direction and, in many instances, a floor or suite number. Remote hearings require both access to technology, and also unique meeting identification numbers, e.g. a Zoom meeting ID. Although the pandemic created many instances for improvement, such as near universal use of remote hearings for safe access to justice, it left other questions,

such as: Are litigants being provided adequate information about whether a court hearing is in person or online? If a court setting is virtual, how can courts communicate log-in information better? And how can we reduce any time spent answering technological questions during a court hearing? Of course, reducing litigant and attorney wait time and reducing log-in information confusion increases judicial economy and lawyer output.

To address and answer these questions in part, the Texas Supreme Court amended TEXAS RULES OF CIVIL PROCEDURE (TRCP), Rule 21. Effective on February 1, 2023, the changes to TRCP 21 mandate additional information in the notices of settings. Necessary information, pursuant to TRCP 21(b), now includes:

1. The information needed for participation in the proceedings;
2. The hearing location;
3. Instructions for logging in electronically, if held by videoconference;
4. The court's contact information; and
5. Instructions for submitting evidence.

Plus, the information needed for participating in proceedings must be published.

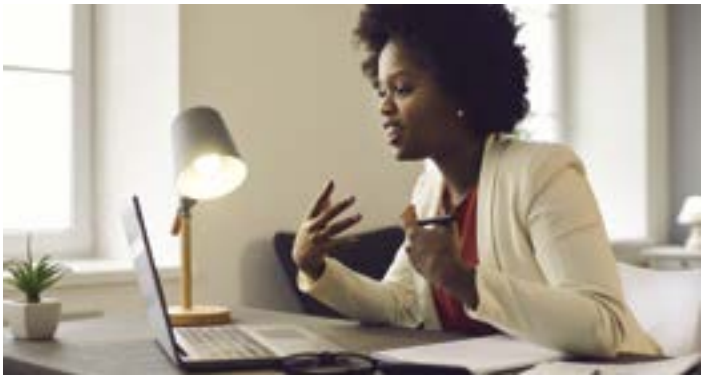
Webb County Court at Law No. 2 continues to set and hold hybrid court hearings, giving lawyers and litigants the option of attending court in person or by video conference. This translates into the choice of attending court online or

in-person in over 90% of hearings (excluding jury selection conferences and jury trials). My court staff and I revised the notices of setting that the court sends electronically and the notices that are given to self-represented litigants in person and also to represented litigants attending court in person if they, or their lawyers, ask for it.

Addressing the rule changes and the end of the Texas Supreme Court's emergency orders which expired March 1, 2023, we undertook a two-step process: 1) create local rules and 2) create both new notices of settings and new notices of resets.

Effective January 1, 2023, local rules must be published on the Office of Court Administration's (OCA) website in order to be effective.[1] The Supreme Court of Texas requirement of review of local rules was, in effect, eliminated, so long as the local rules are a) published and b) do not conflict with other laws or rules. Thus, in December 2022, Webb County Court at Law No. 2 uploaded its First Order on

Rules Governing Court Hearing Participation by Video Conference in the County Court at Law No. 2 of Webb County, Texas to OCA's Local Rules, Forms and Standing Orders website. Per our local rules, participation by videoconference at a court hearing is allowed, but not mandated or required – unless otherwise directed by the court in writing that participation must be in person. Additionally, the local rules set clear guidelines on individual participation at videoconference court settings. For example, lawyers, parties, and witnesses must appear on camera, and be audible, while the case is called. Sworn testimony may only be given if connected to both audio and video. Plus, witnesses must disclose, under oath, on the record, and prior to testifying, who, if anyone, is in the room with them or in their general presence. Other requirements include instructions for how to share evidence online and details hybrid hearing policy. Our local rules were effective on January 1, 2023, when the amended TRCP 3a also became effective.



Once our local rules allowed for videoconference participation in court hearings including guidance for participants on policies, procedures and expectations, the next step was to communicate all of that information in individual notices as required by TRCP 21(b). The question we had to answer was how to take a written or electronic notice and link it to our hearing links and website. Our solution: Our new notices convert the paper notice copy into a digital link by adding QR codes so that litigants and participants may log in easier. Litigants are unlikely to take a paper notice and type in a long www.com address into their browser or smartphone app. They will, however, point their smartphone's camera lens at a QR code and click on the appearing link.

The first section of our new Notice of Setting includes checkboxes for a) in-person settings, b) Zoom settings, and c) hybrid settings. For hybrid settings (which comprise more than 90% of the court's hearings), court users can choose to attend in person or on Zoom. The next section of the notice has the first QR code which opens to our website and allows them to "Join Virtual Courtroom" which is a Zconnect[2] portal. The notice also instructs everyone that devices on Zoom must be connected to a power source. In addition to registering and joining the Zoom hearing, members of the public can "Watch the Court Live" on Youtube because the Zoom session is the electronic well of the court and the Youtube site is the court's public audience area. Although welcome to watch court proceedings, just like we do not allow friends and family into the well of the court, we do not allow them into the Zoom session either. They are welcome to watch on Youtube.[3]

Thomson Reuter's Case Center provides the court's evidence submission platform and comprises the next section of our new notices. Here, we have included another QR code that takes users directly to the court's website that has the Case Center link, further instructions, and other resources including a tutorial. The notice indicates that evidence must be uploaded to Case Center 24 hours before a court proceeding. Once uploaded, the court and opposing counsel are sent an email. This eliminates frequently heard "I object because I've not been provided a copy of the document." There are electronic confirmations when documents are uploaded. Pro Tip: Because Case Center documents are not part of the case file[4] and not

publicly viewable, it also answers the "I'd like to provide the court documents for in camera inspection" conundrum. All sides have access to the same information that is confidentially provided to the court.

Also necessary for Webb County Court at Law No. 2 are Spanish versions of notices since the court is located on the Texas U.S.-Mexico border and many litigants are Spanish speakers. Spanish-speaking persons can view the instructions in Spanish on their smartphone by using the last QR code in their notice. This reduces the amount of space on the notice necessary to convey the information.

Our Notice of Reset is similar to our Notice of Setting. A paper copy of the Notice of Reset is provided to self-represented litigants that appear in person and also to represented litigants appearing in person if they request a copy.

Once the local rules and notices were ready for use and publication, we emailed information to court practitioners with instructions and asked that they share it with their clients for their convenience in logging in and attending court. Pro Tip: Since the Zconnect and Case Center links do not change, the QR codes will never change. Pro Tip Plus: The local rules, which do change, are uploaded to a Google Drive file which we control – meaning we can easily upload new, amended documents (and delete old ones) and they are live and available instantaneously.

Utilizing rule changes to increase participation at videoconference court hearings requires the use of available technology. Implemented correctly, technology eliminates wait times, increases participation, increases lawyer output, decreases litigants' costs, increases judicial efficiency, and is ultimately in the interest of justice in many instances. "What is the log in information?" is never asked in our court now. "You're on mute, counsel," however, will never go away.

1 TEXAS RULES OF CIVIL PROCEDURE, Rule 3a.
2 Zconnect is a platform that registers users for Zoom hearings so that all persons are identified before they log into court, saving the judge and court staff much time.
3 The Youtube streaming of court hearings was meant to comply with the open courts mandate of the Texas Constitution. Although no longer a requirement if the courtroom doors are open to the public, we continue to broadcast hearings live in the interest of transparency; and we unpublish the live feed once court is over – just like missing an in person hearing if a person is late.
4 Case Center documents are not part of the case file until they are admitted into evidence by the court.

Judge Victor Villarreal
Webb County Court-at-Law II
Webb County Justice Center, 4th Floor
1110 Victoria St., Suite 404
Laredo, Texas 78040
(956) 523-4332

NOTICE OF SETTING

February 1, 2023

Re: Cause Number 2023FLA123456C3; Jane Doe v. John Dominguez

This case is hereby set for **Final Pre-Trial Hearing on February 2, 2023 at 2:00 p.m.**

The hearing will be held:
❒ in-person in the courtroom at the address above;
❒ on Zoom; or
❒ hybrid (You can attend either in person or Zoom).

Zoom Participation. For all persons appearing by Zoom:
1. Your audio and video must be ***connected and working*** to participate, otherwise you may not make an appearance or testify;
2. Devices on Zoom must be connected to a power source; and
3. Only lawyers, litigants/parties, and witnesses may be on Zoom. Members of the public, who are not in the courtroom, may watch on YouTube.

YouTube Public Viewing of Court Proceedings. The public may observe court proceedings live in the courtroom or may observe the proceedings live at https://www.youtube.com/@judgevictorvillarreal.

Evidence. All evidence and exhibits must be uploaded to Thomson Reuters Case Center at least 24 hours before the court start time. Evidence and exhibits uploaded late may not be reviewed by the court or opposing counsel and their consideration may be waived. *Do not e-file exhibits.*

SO ORDERED.

JUDGE VICTOR VILLARREAL

Instrucciones en Español

Served on the following person(s), via the method specified:

Lawyer 1	Texas E-Serve
Lawyer 2	Texas E-Serve
Pro Se 3	Texas E-Serve
Pro Se 4	USPS

For additional information, visit www.webbcountytx.gov/countycourtatlawII.

Judge Victor Villarreal
Webb County Court-at-Law II
Webb County Justice Center, 4th Floor
1110 Victoria St., Suite 404
Laredo, Texas 78040
(956) 523-4332

NOTICE OF RESET

Date: _____ Cause Number: _____

Style: _____

This case has been reset for _____, 2023 at _____AM/PM.

The hearing will be held:

❒ in-person in the courtroom at the address above;
❒ on Zoom; or
❒ Hybrid (You can attend either in person or Zoom).

NOTICE: ❒ This is a **criminal** ❒ **juvenile** case. Failure to appear will result in a **warrant** being issued for your arrest to make sure you come to court.
❒ This is a **civil** case. Failure to appear will result in the court hearing the case and making a decision without your presence or participation.

Zoom Participation. If you are appearing by Zoom:

1. Your audio and video must be ***connected and working*** to participate, otherwise you may not make an appearance or testify;
2. Your device must be connected to a power source;
3. Dress and act as though you were in court in person; and
4. Only you, your lawyer(s), and witness(es) may be on Zoom. Friends and family may watch on YouTube.

YouTube Public Viewing of Court Proceedings. The public may observe court proceedings live in the courtroom or may observe the proceedings live at https://www.youtube.com/@judgevictorvillarreal.

Evidence. All proposed evidence and exhibits should be uploaded to Thomson Reuters Case Center at least 24 hours before the court start time. Late-filed evidence and exhibits may not be reviewed by the court or opposing counsel and their consideration may be waived.

No further notice will be given. Whether you attend in person or on Zoom, you should arrive at least 15 minutes before the hearing start time.

Instrucciones en Español

For further instructions and information, visit www.webbcountytx.gov/countycourtatlawII.

ADMINISTRATIVE ORDER 22-1229-2

LOCAL RULES OF	**§**	**COUNTY COURT-AT-LAW II**
	§	
ADMINISTRATION	**§**	**WEBB COUNTY, TEXAS**

FIRST ORDER ON RULES GOVERNING
COURT HEARING PARTICIPATION BY VIDEO CONFERENCE
IN THE COUNTY COURT-AT-LAW II OF WEBB COUNTY, TEXAS

1. **Application.** The following rules govern appearances and participation in court hearings by video conference in the County Court-at-Law II of Webb County, Texas.

2. **Purpose.** To provide parties, witnesses, attorneys and the public the greatest access to justice; to reduce costs to litigants; to accommodate witness testimony; to foster greater efficiency for lawyers; to safely provide timely access to justice; to avoid case backlogs and unnecessary delays; and in the interest of the safe and efficient administration of justice, Webb County Court-at-Law II hereby adopts these local rules.

3. **Authority.** Pursuant to Rule 3a, TEXAS RULES OF CIVIL PROCEDURE, Webb County Court-at-Law II hereby adopts these local rules allowing, but not mandating, court hearing participation by video conference.

4. **Remote Participation.** Subject to constitutional limitations and review for abuse of discretion, Webb County Court-at-Law II may allow any person– including but not limited to a party, attorney, witness, court reporter, court recorder, court coordinator, interpreter, district clerk, county clerk, or other Webb County employee providing judicial support to the court–involved in any hearing or other proceeding of any kind to participate remotely by video conference.

    a. To participate by video conference, lawyers, parties, and witnesses must appear on-camera while the case is called and heard. Appearances solely by audio means are disallowed.

    b. Counsel, whose clients or witnesses appear by video conference, shall provide adequate instructions on video conference technological requirements prior to the commencement of the hearing. Failure to prepare clients and witnesses prior to the hearing may waive their appearances.

    c. No person shall operate a motor vehicle while a case is called and heard.

5. **Sworn Testimony.** Webb County Court-at-Law II may consider as evidence sworn testimony given remotely, outside the courtroom, by video conference.

    a. Witnesses appearing by video conference must be connected to audio and video. Witnesses must be on camera. Testimony solely by audio means is disallowed.

    b. Witnesses shall disclose, under oath, on the record, and prior to testifying, who, if anyone, is in the room with them or in their general presence.

    c. Witnesses shall not communicate with any person, including by text message, during their testimony. Failure to adhere to this rule may waive the witness's testimony.

6. **Online Evidence Sharing.** All exhibits—including but not limited to documents, photographs, audio recordings, maps, and deeds—shall be uploaded to Thomson Reuters Case Center prior to the commencement of the court proceeding.

    a. During their hearing, counsel shall request court staff to prompt a document on Case Center by referencing the document number assigned by Case Center or the "bates-stamped" number on Case Center.

7. **Hybrid Court Hearing Policy.** Unless otherwise directed by the Court in writing, attorneys, parties, and witnesses may participate in court hearings or other court proceedings either by video conference on Zoom or in person at the Webb County Court-at-Law II courtroom.

    a. All persons opting to participate by video conference on Zoom must first register on Z-connect.

    b. Persons participating by video conference should log-in to the court session at least 10 minutes before the court setting to be admitted before the court session begins. Otherwise, participants will be admitted into the video conference when their case is called not when the general court session begins and other cases are called.

    c. Members of the public and non-participating court attendees are not permitted into the video conference session (i.e. the electronic well of the court) but may view court proceedings live, consistent with the open courts mandate of the Texas Constitution, either in-person at the Webb County Court-at-Law II courtroom or on YouTube.

    d. The Court shall call cases in the order of appearance of counsel, first those appearing in person and then those appearing virtually as measured by their log-in time, unless unusual circumstances require otherwise.

8. **Jury Trials.** Unless consented to by all parties in writing and filed with the court, jury trials shall be held in-person.

9. **Recordings.** All persons attending or viewing court proceedings are ordered not to record any portion of the court proceedings. Only the court reporter and/or court recorder can record court proceedings and provide the official record. Any violation of this order is subject to contempt hearings.

10. **Other Provisions.** Subject to further orders by the Texas Supreme Court and/or the Texas Court of Criminal Appeals, all other statutes and rules governing the procedures for civil and criminal court appearances and participation remain unchanged.

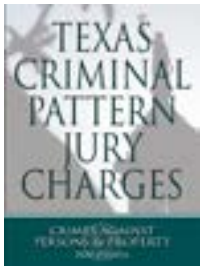
ADOPTED and **SIGNED** on December 29, 2022 and **EFFECTIVE** January 1, 2023.

JUDGE VICTOR VILLARREAL
Webb County Court-at-Law II

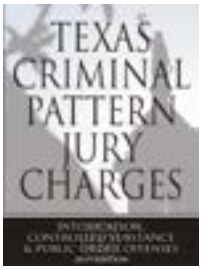
TEXAS BAR BOOKS ONLINE
CRIMINAL PATTERN JURY CHARGES

The Texas Criminal Pattern Jury Charges have moved ONLINE!

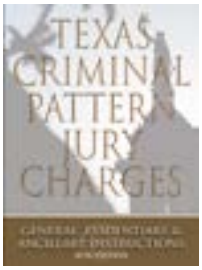
As a TEXAS JUDGE, access to all four criminal charges is FREE!



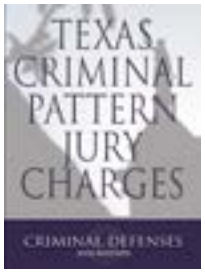
Crimes against Persons and Property



Intoxication, Controlled Substance, and Public Order Offenses



General, Evidentiary and Ancillary Instructions



Criminal Defenses

To access the most current edition of all FOUR volumes:

1. Go to **www.yourhonor.com**
2. Select Resources
3. Select Texas Pattern Jury Charges
4. Click on the Criminal Pattern Jury Charges Online link
5. Follow the instructions provided

SCAN HERE for a brief introduction to the *Texas Criminal Pattern Jury Charges Online*

The NEW *Texas Criminal Pattern Jury Charges Online* includes:

- A charge selector tool to help you efficiently locate and assemble your charge
- Streamlined, customizable, downloadable templates that omit redundant text
- Vetted, straightforward language to provide greater clarity for your jury
- Updated offense commentary and instructions based on current law
- Organization of charges that aligns with the Penal Code for ease of use
- Convenient Fastcase links to Texas and federal case and statutory citations

If you need technical assistance with this product or to receive your own free version of the *Texas Criminal Pattern Jury Charges Online* that you can access at any time please contact us via email at salesdesk@texasbar.com, chat at www.texasbarpractice.com, or by phone at 512-427-1411.

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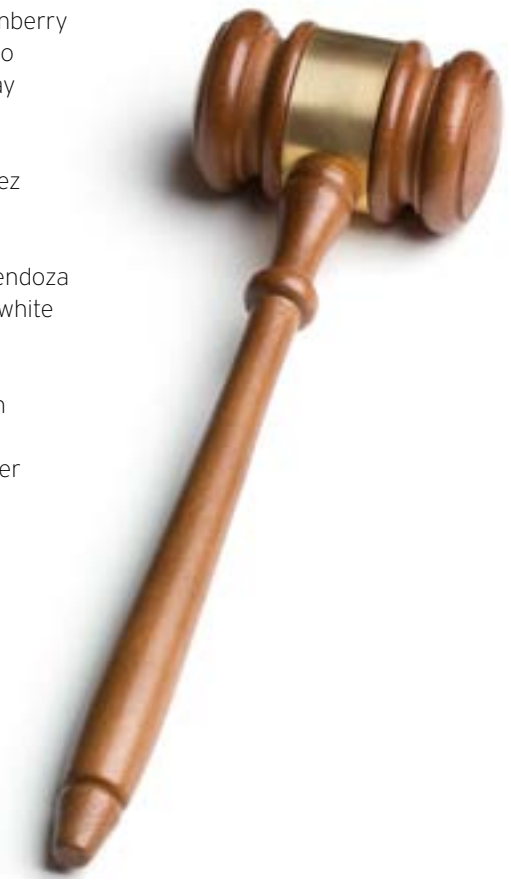

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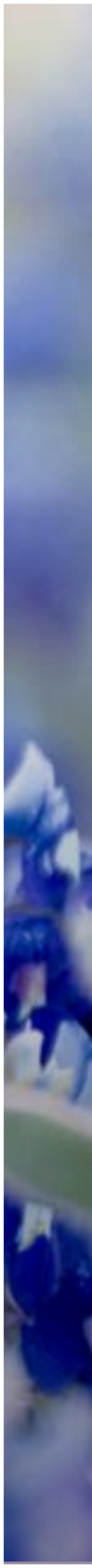

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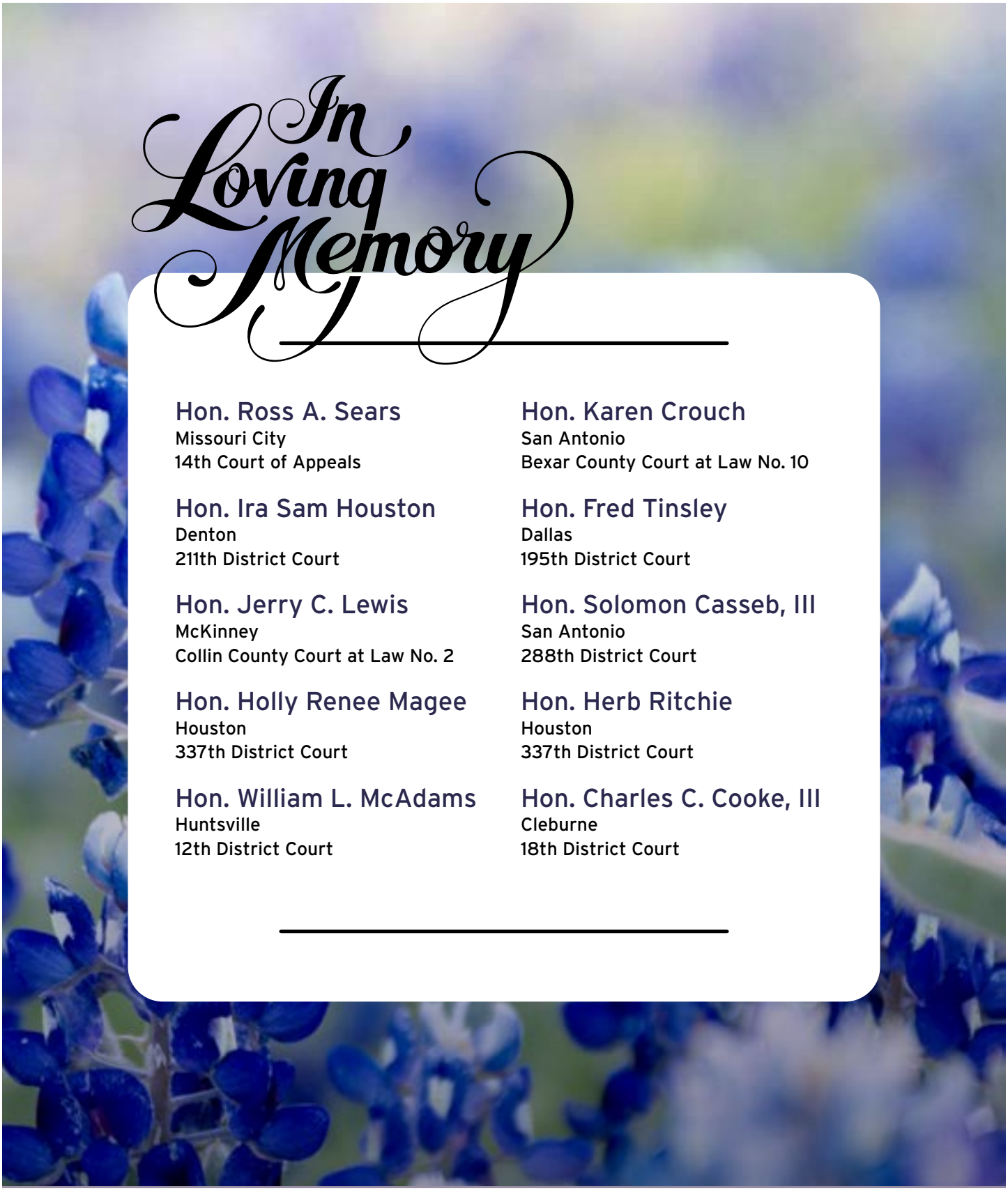

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upcoming events

Regional A (Regions 2, 5, 6, 7, 9, 11)
Irving, TX
April 17–18

Regional B (Regions 1, 3, 4, 8 10)
Irving, TX
May 22–23

Court Professionals Conference
Irving, TX
July 17–19

Impaired Driving Symposium
Odessa, TX
July 31-August 1

Annual Conference
Houston, TX
September 6–8

Child Welfare
Georgetown, TX
October 23–25

College for New Judges
Round Rock, TX
December 11–14

Family Justice Conference
Georgetown, TX
January 18–19

Criminal Justice Conference
Austin, TX
February 22–23

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