

In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.

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Summer 2001

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The staff of In Chambers strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for In Chambers. Contact Morgan Morrison, Publications Coordinator, by calling 800-252-9232, faxing 512-469-7664, or e-mailing morganm@yourhonor.com.

The Texas Center for the Judiciary, Inc. is located at 1414 Colorado, Suite 502, Austin, TX 78701-1627.

In Chambers

Volume 28, Number 2
Summer 2001

Editorial Board

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283rd District Court, Dallas

Texas Center for the Judiciary, Inc. Staff

Mari Kay Bickett
Executive Director
mkbickett@yourhonor.com

Tana J. Petrich
Associate Director
tpetrich@yourhonor.com

Betty Ann Hernandez
Administrative Assistant
bettyannah@yourhonor.com

Shirley Irvin
Assistant to the Director
shirleyi@yourhonor.com

Lacy Jemmott
Registrar
lacyj@yourhonor.com

Kim Kernodle
Program Attorney
kimk@yourhonor.com

Morgan Morrison
Publications Coordinator
morganm@yourhonor.com

Jennifer Petre
Conference Coordinator
jenniferp@yourhonor.com

Denise Seal
Financial Officer
denises@yourhonor.com

Resolutions & Bylaw Amendments

THE Judicial Section Resolutions Committee will meet on September 22, 2001, in conjunction with the Judicial Section Annual Conference.

As stipulated in the Judicial Section bylaws, resolutions must be submitted to the chair of the Resolutions Committee no later than 20 days prior to the date set for the annual meeting. Therefore, the deadline for submitting resolutions is September 4, 2001. Submit resolutions to: Hon. Carolyn Wright, Resolutions Committee Chair, 5th Court of Appeals, 600 Commerce Street, 2nd Floor, Dallas, TX 75202 or fax 214-745-1083.

Proposed bylaw amendments should be submitted in writing to Hon. Lamar McCorkle, Judicial Section Chair/Conference Leader, 133rd District Court, 301 Fannin, 5th Floor, Houston, TX 77002 or fax 713-755-5779. ♦



The **Houston Astros** will play home games at Enron Field the week of the **Judicial Section Annual Conference**. Visit the Astros' website, www.astros.com, for more information.

2001–2002 Leadership Nominations

On June 14, the 2000–01 Nominations Committee, chaired by Chief Justice Marilyn Aboussie, slated the following judges for nomination for the 2001–02 Judicial Section Board of Directors and the Texas Center for the Judiciary, Inc. Board of Directors:

Judicial Section Board of Directors

Chair: Hon. Mark D. Atkinson
Judge, County Criminal Court at Law #13, Houston

Chair Elect: Hon. Stephen B. Ables
Presiding Judge, 6th Administrative Region
Judge, 216th District Court, Kerrville

Secretary-Treasurer: Appointed by the Chair

Place 6: Hon. Dean Rucker
Presiding Judge, 7th Administrative Region
Judge, 318th District Court, Midland

Place 7: Hon. Mario Ramierez, Jr.
Judge, 332nd District Court, Edinburg

Place 9: Hon. Vickers Cunningham, Sr.
Judge, County Criminal Court at Law #8, Dallas

Texas Center for the Judiciary, Inc. Board of Directors

Chair: Hon. Mark D. Atkinson
Judge, County Criminal Court at Law #13, Houston

Chair-Elect: Hon. Stephen B. Ables
Presiding Judge, 6th Administrative Region
Judge, 216th District Court, Kerrville

Secretary-Treasurer: Hon. Paula Lanehart
Judge, County Court at Law #3, Lubbock

Place 2: Hon. Rogelio Valdez
Chief Justice, 13th Court of Appeals, Corpus Christi

Place 6: Hon. Guadalupe Rivera
Judge, 168th District Court, El Paso

Place 9: Hon. Lisa G. Burkhalter
Judge, County Court at Law #1, Lufkin

If you are interested in serving on any committees during the 2001–02 term, please contact Hon. Mark D. Atkinson at 713-755-7950 or Mari Kay Bickett at mkbickett@yourhonor.com. ♦

Judicial Section Committees

Legislative (Appellate, Trial)
Bylaws
Ethics
Juvenile Justice
Nominating
Resolutions
Site Selection

Texas Center Committees

Bylaws
Curriculum
Long Range Planning
Nominating
PEER (Bench Book)

Back to School

Judge Cynthia Stevens Kent pursues Doctorate of Judicial Studies

With its natural beauty and abundant resorts, Reno, Nevada, is a top spot for vacationers. But when Judge Cynthia Stevens Kent, 114th District Court, Tyler, travels to Reno this summer, she won't be golfing, water skiing, or sunbathing.

Instead, Kent will spend her vacation in a University of Nevada (UNR) classroom for a week of intensive judicial study. Kent and six other sitting judges from around the country comprise the first entering class of UNR's new Doctorate of Judicial Studies.

This Ph.D. program is the only one of its kind in the U.S. Candidates must be sitting judges and have earned a Master of Judicial Studies (MJS). They must complete 72 credit hours to earn the doctorate degree: 6 credit hours from The National Judicial College, 18 from UNR, and 24 that transfer in from the MJS program. The dissertation is worth

24 credit hours. Requiring 4–5 years to complete, the program is structured so judges may keep their jobs and study during their time off.

Dr. James Richardson, director of the UNR Judicial Studies Program, says, "This new doctorate program is designed to encourage judges with a real bent for research on the judiciary. Some of our master's theses have been much cited in case law and scholarly publications, and we expect more of the same with the dissertations. Judge Kent is just the kind of judge we want in the program. She will do well."

Kent completed her MJS (with straight A's in her coursework) in August 1999. Because the program was so demanding, Kent told her staff, "If they ever come up with a doctoral program, have me committed." But when UNR contacted her about the Ph.D., "The first thing I did was apply," she says.

Many factors convinced Kent to undertake her doctoral studies. For one, she hopes to write and publish a piece that

will help the entire judiciary. Her MJS thesis focused on the Daubert case and admissibility of expert testimony (Cynthia Stevens Kent, *Daubert Readiness of Texas Judiciary: A Study of the Qualifications, Experience, and Capacity of the Members of the Texas Judiciary to Determine the Admissibility of Expert Testimony Under the Daubert, Kelly, Robinson, and Havner Tests*, 6 TEX. WESLEYAN L. REV. 1.). Kent plans on writing her doctoral dissertation on some aspect of criminal law and will begin developing a topic with her dissertation committee this summer.

In addition, Kent sees herself as a trailblazer, inspiring other judges who have received their MJS degrees to apply for the doctoral program.

Mostly, she looks forward to the intellectual challenge. Says Kent, "As judges, we get so involved in the day-to-day routine, we don't have time to think about the philosophy of what we're doing. This program will allow me to fine-tune my skills and think critically about why I do what I do and how to do it better." ♦



Judge Cynthia Stevens Kent

in|the library

THESE publications are now available from the Texas Center library. If you would like to check out these or other materials, please contact Morgan Morrison, Publications Coordinator, at 512-463-1530 or morganm@yourhonor.com.

- **Gender Fairness Strategies Project**

Gender Fairness in the Courts: Action in the New Millennium

- **National Council of Juvenile and Family Court Judges**

Establishing Juvenile Drug Courts: A Judicial Curriculum

- **National Drug Court Institute**

National Drug Court Institute Review (NDCIR), Volume III, Issue I

- **University of New Mexico School of Law**

New Mexico Child Welfare Handbook: A Legal Manual on Child Abuse and Neglect

- **University of Texas School of Law**

Report on the Implementation of the Children's Justice Act Mediation Pilot Projects

Questions About the Official Jury Summons

By Judge Jim D. Lovett¹

6th District Court, Red River, Lamar, and Fannin Counties

Pursuant to §62.0132 Government Code the Official Jury Summons (OJS) was created and circulated for statewide use in October 2000. It is a laudable effort to modernize Texas' venire system but presents questions² of its own efficacy. After directing that disqualified and exempt people do not have to appear the OJS continues,

General Qualifications for Jury Service (Gov't. Code, Section 62.102) To serve as a juror you must meet qualifications: you must ...

2. Be a citizen of this state and a resident of the county in which you are to serve as a juror;
3. Be qualified under the Constitution and laws to vote in the county in which you are to serve as a juror (Note: you DO NOT have to be registered to vote); ...
7. Not have been convicted of theft or any felony; and
8. Not be under indictment or other legal accusation of a misdemeanor theft, felony theft, or any other felony charge.

Did the Texas Legislature intend through enactment of §62.0132 Government Code³ to repeal the conflicting juror qualification provisions of the Government Code, Code of Criminal Procedure, Penal Code, Election Code, and the Rules of Civil Procedure⁴? Unless the Texas Legislature intended to do so, the quoted OJS instructions are incorrect in that:

1. No juror is disqualified for conviction of a Class C misdemeanor theft;
2. There is no disqualification for civil jury service for conviction of Class A or Class B misdemeanor theft;

3. There is no disqualification for criminal jury service for being a non-resident and non-qualified voter in the county.

Yet OJS directs such persons not to report for jury duty. Compare:

- §62.102 Government Code, *General Qualifications for Jury Service* (civil and criminal): "qualified ... to vote in the county ..."; "not convicted of a felony"; "not under indictment or other accusation of misdemeanor or felony theft or any other felony"⁵
- Art. 35.12 C.C.P., *Mode of Testing*, (criminal only): "qualified ... to vote in this county and state"; "... convicted of theft or any felony"; "under indictment or legal accusation for theft or any felony";
- Art. 35.16 C.C.P., *Reasons for Challenge for Cause*, (criminal only): "qualified voter in the state and county"; "convicted of theft or any felony"; "under indictment or other legal accusation for theft or any felony";
- Art. 35.19 C.C.P., *Absolute Disqualifications* together with Art. 35.16 in the last para. of sub-par. (a) (criminal only): "convicted of theft or any felony"; "under indictment or other legal accusation for theft or any felony";
- §11.001 Election Code, *Eligibility to Vote*⁶ (civil and criminal): "... (must) ... be a qualified voter on the day the person offers to vote;
- §11.002 Election Code, *Qualified Voter* (civil and criminal): "Qualified voter means a person who is 18 years of age ... a United States citizen ...

has not been determined mentally incompetent by a final judgment of a court ... has not been finally convicted of a felony or, if so convicted, has fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court or has been pardoned or otherwise released from the resulting disability to vote ..."

- §12.03(c) Penal Code, *Classification of Misdemeanors* (civil and criminal): "Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage⁷."

One must also consider *Mayo v. State*, 4 S.W.3rd 9 (Tex.Crim.App. 1999),

Jury Summons continued on page 12

Texas' Newest Administrators of Justice *As of July 15, 2001*

Hon. Wallace B. Jefferson
Supreme Court of Texas, Austin
Succeeding Hon. Al Gonzales

Hon. Bruce D. Oakley
234th District Court, Houston
Succeeding Hon. Scott Brister

Hon. J. Roland Olvera, Jr.
357th District Court, Brownsville
Succeeding Hon. Rogelio Valdez

High-Tech Times

Using computer technology can improve the judicial process in your court

*By Judge K. Michael Mayes
410th District Court, Montgomery County*

Technology has created a world where we can access information at incredible speeds and disseminate opinions and thoughts to others with the click of a mouse. The same technology that we use in our personal lives, to e-mail friends or surf the Internet, for example, also has the potential to improve our courts.

As the demand for speed permeates all avenues of life, more efficient court

proceedings are needed to clear backlogged dockets and resolve pending disputes. As judges, we have a responsibility to effect timely justice. Consequently, we should encourage our clerks and staff

process. Look at our experiences, and consider how technology can work in your courtroom as well.

E-Mail

E-mail offers fast, convenient communication. A letter sent by e-mail is almost instantaneously received, and the sender may simultaneously copy an unlimited number of recipients.

In the 410th, we use e-mail daily to speed up the judicial process. For example, e-mail simplifies the distribution of Docket Control Orders/Discovery Control Plans to the attorneys involved in every case filed in our Court. For years, we faxed paper copies. Now, Court Coordinator Meredith Dunaway simply attaches all relevant electronic documents to an e-mail, copies the recipients, hits “send,” and is done.

In addition, I use e-mail to facilitate communication with approximately 150 attorneys and 7 Pre-Trial Judges statewide who are involved in the Bridgestone/Firestone and Ford cases (I was appointed to these cases as the Rule 11 Pre-Trial Judge in Region 2).

For two weeks, the other Rule 11 Judges and I worked daily by conference call to prepare a Case Management Order (27 pages) and Protective Order (7 pages) that were needed to move the cases forward. As we discussed the Orders, I made corrections on my

computer. At the conclusion of each telephone call, I e-mailed copies of both Orders, including that day’s changes, to the other Judges. This e-mail took approximately 15 seconds to compose and send. Each Judge then had a full day to review the updated Orders before the subsequent call.

When the Orders were finalized, I e-mailed copies to the Judges, while Meredith e-mailed the 150 attorneys, attaching the Orders for their review and setting a hearing for the following week. The Rule 11 Judges saved days, if not weeks, by using this new technology over faxing or mailing paper copies.

Online Chatting

Chatting offers even faster communication than e-mail, allowing you to “talk” online with your “buddy” by instantaneous written transfer of your message. By setting up a “buddy list” (the chatting software informs you when the people you have named as “buddies” are online and instantly displays your messages to them on their computer screen), you can remain in communication with your staff, even while you are on the bench. We use AOL Instant Messenger (several other programs also facilitate online chatting) to send each other messages that need immediate attention, ending the whispered phone calls and some of the other courtroom interruptions.

The Rule 11 Judges saved days, if not weeks, by using this new technology over faxing or mailing paper copies.

to use all available technology, as well as utilize the technology ourselves. When e-mail and e-filing are options, it is no longer efficient to handwrite all notes and keep paper case files that are so large, our clerks can barely find room to store them, much less keep them current and organized.

The 410th District Court is committed to timely justice and has employed various technologies to speed up the judicial

E-Filing

The next generation in court document storage, e-filing, allows attorneys, court employees, judges, or the public to access electronic copies of court documents from a computer. With help from Deputy Court Clerk Pat Chuber, District Clerk Barbara Adamick, and a company that provides an online platform for accessing court records and processing and filing legal documents and case information, we use e-filing in many of our cases, especially those involving multiple attorneys.

On this company's website, all documents are electronically filed (similar to attaching a document to an e-mail) where they remain for ready access and review. The court and the attorneys can serve all counsel through the website's "notification" procedure. In addition, I am able to electronically sign Orders at my computer by merely "inserting" a signature that has been saved to my hard drive—I never touch a piece of paper.

Our District Clerk maintains a server in her offices that holds all the "original" electronic documents. With the outside company also maintaining a server containing these same documents, the likelihood of losing documents is greatly reduced.

In the Bridgestone/Firestone/Ford cases, I entered an Order requiring e-filing of all pleadings and orders in Region 2. To reduce the lawyers' fear of using this new technology, I demonstrated the technology during a hearing in our Court. The 100+ attorneys watched on our seven Courtroom TV monitors as I showed them how I prepare an Order, sign it electronically, get online, e-file the Order, and serve all attorneys. After seeing the demonstration, one attorney



Judge K. Michael Mayes has three computers on the bench. He uses the laptop computer to work on jury charges that were prepared and submitted to him before the beginning of a trial.

withdrew his written objection about the "delay" he believed using the e-filing procedures would cause.

Website

The 410th District Court maintains a website (<http://www.co.montgomery.tx.us/410dc/index.shtml>), containing a calendar of our daily court schedule, various standing orders and forms, court staff biographies, interesting cases descriptions, and "links" to other legal websites. For example, we have a link to the federal and state websites for the Bridgestone/Firestone/Ford cases (<http://www.insd.uscourts.gov/Firestone/default.htm> and <http://www.casecentral.com>).

Meredith also posts my rulings on our website's weekly Submission Docket (for all civil cases pending in our Court). She also posts every ruling that I make in the tire cases and, at the same time, e-mails these actual orders to the 100+ attorneys with current e-mail addresses on file with the Court.

The 410th website also offers information

for jurors, including a map and directions to the Court as well as staff phone numbers and e-mail addresses. This page can zoom in on various map locations and links to other pertinent sites such as the local weather.

Real-Time Reporting

Robin Cooksey, CSR, RMR (Registered Merit Reporter), Official Court Reporter of the 410th Judicial District Court, provides our Court with "real-time" reporting, which is akin to closed-captioning on a television show. Laptop computers on the attorneys' tables and a computer on the bench carry the transcript of the proceedings in "real time."

Next to our jury box, we also have a computer monitor which is activated for real-time reporting when a juror is hard-of-hearing. While there may be a question as to whether the official reporter should act as both the official reporter and "interpreter," this

Technology continued on page 8

technology has been helpful to the jurors needing assistance.

During a trial or complex hearing, real-time reporting is invaluable. I am able to review the testimony from any day of the current or previous trial. I can immediately review questions that have been objected to and make my rulings accordingly. I also use real time to review testimony when I need to reflect on substantive trial rulings such as Daubert motions, custody issues, suppression matters, etc.

For attorneys, the ability to access testimony in the current trial with the push of a mouse or button is a dream come true. Imagine being able to cross-examine a witness from what was said the previous day or even a few minutes before.

Initially, Robin was worried about attorneys downloading testimony free of charge or claiming the real-time testimony was “certified.” To allay those fears, we disabled the laptops from being able to download to an A-drive, and I clearly tell the attorneys, “While the scrolling testimony is no doubt 99 percent accurate, it is not certified and cannot be claimed as such.”

Real-time reporting’s ultimate advantage is realized when a jury requests a portion of the record to be read back or transcribed. With the use of a “word search,” the attorneys (not just your reporter) can scroll through the record on the laptop at counsel table, find the relevant portions, and reference them by page and line number. If the lawyers disagree, I can decide from the selected portions what is responsive to a jury request and have a read-back ready in practically no time.

For example, during a criminal case involving allegations of serious injury to

a child from an alleged baby-shaking incident, the jury asked for some testimony to be read back that was located in several locations over a multiple day trial. I instructed the attorneys to scroll through their laptops and find all references to those areas. Once they did, I asked them to decide what they wanted read back from the various pages and lines found. My reporter did not get involved until they had reached agreement, and I did not have to get involved until the read-back was typed and ready for the jury. And the best part, determining what needed to be read back from a 600-page transcript, only took 15 minutes!

Visualizer for Exhibits, X-Rays, and Court’s Charge

In our Courtroom we have a visualizer, sometimes called an “Elmo.” Connected to seven TV screens, it features zoom, direct light, x-ray light, contrast, and focus. Especially helpful during jury trials, this device can be used to show exhibits (photos, bullets, sketches, etc.) or x-rays. The exhibits displayed on the TV screens rarely need to be handed to the jury, avoiding the “wait” as each juror studies the exhibit and then passes it to the next juror.

I also use the visualizer during final arguments. Bailiff Alton Mathis shows the Court’s Charge to the jury as I read it to them or, using a “scan converter,” I project the charge onto the screens from



TV monitors in the jury box allow jury members to see x-rays, videotapes, video depositions, and video conferencing.

my computer. By simply laying the pages on the machine or projecting them from my computer, they appear on the TV monitors. This technology helps the jury follow the charge and aids the attorneys in arguing the case, since they also can show the charge while they speak. We no longer have to make 12 copies of the charge to give to the jury during arguments, which we sometimes did in complicated cases.

Video Conferencing

Video conferencing can save courts time and money. I have video conferencing capability between my chambers, my courtroom, and our jail. My computer monitor has a camera that broadcasts me to the receiving computer and vice versa.

I use this technology to read inmates their constitutional rights and set bail. Because the inmates remain jailed during these proceedings, the security risks and costs involved in transporting inmates to the Courthouse have been reduced.

The Code of Criminal Procedure, Article 27.18, allows for video conferencing on other criminal hearings, including pleas. I have

finalized some pleas by this method. Currently, I am working with State Representative Ruben Hope (D-Conroe) to amend this statute to clarify that only a transcript, not a videotape, is required of the hearing.

We also use video conferencing when the witness is overwhelmed by the process or afraid of the defendant (often during victim or child testimony). The technology allows the witness to sit in my chambers and the testimony is broadcast to the Courtroom.

TV Monitors for Jury, Witness, and Bench

Our Courtroom has seven TV monitors; three are in the jury box, one in the witness stand, one with our Court reporter, one on the bench, and one large monitor is located on the side of the Courtroom, facing the attorneys and any spectators.

In addition to using the monitors to show exhibits and the charge, these monitors allow the jury and courtroom observers to see x-rays, videotapes, video depositions, online connections, video conferencing from the jail and chambers, etc. So when I read rights and set bonds by videoconference, the jailed defendant can see his newly-appointed attorney and vice versa.

Showing exhibits on the courtroom monitors avoids those situations where the witness talks toward the exhibit instead of the jury. The monitors allow the witness to remain seated, look at their monitor, and discuss the exhibit facing the jury. If the witness needs to highlight something on the exhibit, he can stand and point on the visualizer—his finger and the exhibit both appear on the screens.

During trial or a hearing, attorneys

can use the monitors to give Power Point slide show presentations. They simply connect their laptop to my scan converter, which then connects to the monitors. This tool is effective for final argument to a jury or presentations to the Court (some of the tire attorneys used this technology during a recent hearing in the 410th District Court).

Laptop

I use a laptop, one of three computers that I have on the bench, to keep personal notes on trials and hearings. In addition, I use this laptop (and my main computer) to work on jury charges that were prepared and submitted to me before the trial began. Once the evidence is closed, I can go straight into final argument (usually after a very brief charge conference), saving everyone's time.

Internet Research

One of my bench computers is connected to the Internet, allowing me to access e-files, chat with my staff, e-mail whomever, and do legal research "online." This access is invaluable when I want an answer to an issue immediately or need to find the best case law.

How Do I Pay for All of This?

At first, your Commissioners may be reluctant to spend money on these technological advances. However, once they realize the advantages, they will likely allow you to acquire the requested technology. Utilizing technology in the courtroom benefits our entire judicial process—it saves time and money, reduces security risks, and improves caseflow efficiency for the litigants, the courts, and the public. I focus on these improvements when I ask our Commissioners for technology funds.

Utilizing technology may seem

overwhelming at times, but I believe its advantages far outweigh its "trials." I encourage each of you to experiment with available technology and discover the possibilities for you, your staff, and your court. ♦

looking ahead

Conference Calendar

2001

Judicial Section Annual Conference
September 23–26, 2001
Houston

College for New Judges
November 11–16, 2001
Austin

2002

Regional Program (Regions 2, 6, 7, & 9)
January 13–15, 2002
Fort Worth

Regional Program (Regions 1, 3, 4, 5, & 8)
February 24–26, 2002
Galveston

Advanced Computers
March 2002 & June 2002
Date and location pending

Family Violence Program
April 2002
Date and location pending

Texas College for Judicial Studies
May 19–24, 2002
Austin

Professional Development Program
June 9–14, 2002
Huntsville

Joint Ethics Program
July 14–17, 2002
San Antonio

Judicial Section Annual Conference
August 25–28, 2002
San Antonio

College for New Judges
December 8–13, 2002
Austin

Legislative Highlights—Selected Bills of Interest

Bills effective 9/1/01

● ADR/Mediation

HB 1363—Provides for a collaborative law procedure in family law matters under written agreement of the parties and their counsel in an effort to reach a settlement. The bill prohibits a court that is notified 30 days before trial that parties are using the collaborative law process from dismissing the case, setting a hearing or trial in the case, imposing discovery deadlines, or requiring compliance with scheduling orders until a party notifies the court that the collaborative law procedures did not result in a settlement. The bill requires the parties to notify the court of a settlement. Until a settlement is reached, the parties must also file periodic reports. If the procedure does not result in a settlement on or before the 2nd anniversary of the date that the suit was filed, the court is to set the suit for trial on the regular docket or dismiss the suit without prejudice.

● Criminal Law

HB 587—Enhances penalties for crimes motivated by hate, prejudice, or bias. If the court makes an affirmative finding that an offense (other than a first degree felony or a Class A misdemeanor) was committed because of bias or prejudice, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. It requires the judge, in the trial of an offense under Title 5 (Offenses Against the Person) or Section 28.02, 28.03, or 28.08 (Arson, Criminal Mischief, or Graffiti) to make an affirmative finding of fact and enter such finding in the judgment of the case if at the guilt or innocence phase of the trial the trier of fact determines beyond a reasonable doubt that the defendant intentionally selected the person or property because of the defendant's bias or prejudice.

● Criminal Procedure

HB 1572—Provides that a party may request and a court may order the exclusion of a witness who for the purposes of the prosecution is a victim, close relative of a deceased victim, or guardian of a victim if the court determines that the testimony of the witness would be materially affected after hearing other testimony at trial. The court must admonish each witness who is to testify as to the persons the witness may or may not talk to about the case. It also provides that a victim, guardian of a victim, or close relative of a deceased victim is entitled to certain rights, including the right, if requested, to be informed by the attorney representing the state of relevant court proceedings, and to be informed by an appellate court of decisions of the court after the decisions are entered but before the decisions are made public. It also makes certain modifications regarding victim impact statements, victim notification of escape or transfer, and the payment of restitution to victims and provides that mediation includes victim offender mediation dialogue thereby extending confidentiality.

SB 7—Establishes the Texas Fair Defense Act that provides legal representation and legal services for indigent defendants.

● Compensation & Retirement

HB 3296—Provides that the state must pay a retired statutory county court judge assigned to serve as a visiting judge in a district or statutory county court, the same salary that is paid to a retired district judge assigned to serve in a district or statutory county court.

SB 372—Authorizes a judge who has not retired to establish service credit in the Judicial Retirement System (JRS) Plan 1 or Plan 2, as applicable, for any calendar year during which the member held an office included in the membership of JRS or was eligible to take the oath for an office included in the membership of JRS. It allows the member to establish credit by depositing with JRS a contribution computed for each month of credit claimed at the rate of 6 percent of the member's current monthly salary plus, if the member does not establish credit before the first anniversary of the first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit. It provides that the JRS Plans 1 and 2 increase by 10 percent of the amount of the applicable state salary or the annuity of a member who on the effective date of retirement has either not been out of judicial office for more than one year or has served as a visiting judge in this state and the first anniversary of the last day of that service has not occurred. It also provides that a member who accrues 20 years of service credit in JRS Plan 1 ceases making contributions.

● Judicial Elections

HB 59—Authorizes the secretary of state to make a voter information guide for judicial elections available to the public on the Internet. If the secretary of state chooses to implement the guide, each judicial candidate may file an informational statement in a format prescribed by the secretary of state. A candidate's statement must include the current occupation, educational and occupational background, biographical information, and any previous experience serving in government.

Questions & Answers

Ethics Opinion Number 274

Is it a violation of the Judicial Canons of Ethics for a county judge to serve on the board of directors of a shrine temple?

Is it a violation of the Judicial Canons of Ethics for a county judge who has judicial responsibilities to serve on the board of directors of a shrine temple? The board has administrative functions over the temple. The judge would not be involved in fundraising or any activities that could be considered an embarrassment to the office of county judge.

No, it would not violate the Canons of Judicial Conduct for a county judge (with judicial responsibilities) to serve on the board of a shrine temple. Canon 4(c) provides that a judge may participate in civic and charitable activities with certain restrictions. The service with the organizations must not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. This Canon specifically authorizes a judge to serve on charitable or civic organizations boards: 1. So long as the organization is not likely to come before the judge in a judicial proceeding; 2. The judge does not solicit funds for the organization; or, 3. The judge does not give investment advice to the organization.

See Opinions 158, 189, 245, 249. ♦

HB 407—Requires a candidate for statewide office who has an opponent whose name is to appear on the ballot to file a supplemental campaign contribution report upon the receipt of political contributions from a person that in the aggregate exceed \$1,000 during the period beginning the ninth day before election day and ending at noon on the second day before election day. Likewise, a specific-purpose committee for supporting or opposing a candidate for statewide office must file a supplemental campaign contribution report upon the receipt of contributions exceeding \$1,000 from a person during that reporting period.

SB 720—Provides that a judicial officeholder or a specific-purpose committee may not, in any calendar year in which the office held is not on the ballot, knowingly make a political contribution to a political committee that exceeds \$250 when aggregated with other contributions to political committees in that calendar year. However, the bill authorizes a contribution to the principal political committee of the state or county executive committee that is made in return for goods and services or is not more than the candidate's pro rata share of the committee's normal overhead and administrative or operating costs. Provides that certain contributions made knowingly by judicial candidates, officeholders, and committees are restricted. ♦

Special thanks to Elizabeth A. Kilgo, J.D., Interim Director, Office of Court Administration—Texas Judicial Council, for providing these legislative updates.

Texas CASA Names New CEO

In 1999, Child Protective Services (CPS) placed 39,488 abused and neglected Texas children into the state's custody. Eventually, these children end up in court.

To ensure that the children receive the best services and placements as quickly as possible, CASA (Court Appointed Special Advocates) volunteers step in on the children's behalf, researching cases and making crucial recommendations to judges.

Formed in 1989, Texas CASA works to expand local CASA programs statewide and help them operate smoothly. Last year, 2,315 Texas CASA volunteers advocated for 11,413 children in 120 counties.

A Texas CASA volunteer since 1995, Megan Ferland became the non-profit's Executive Director in June 2001. She succeeds Jane Piper, who is retiring after 12 years as head of Texas CASA.

Prior to joining Texas CASA, Ms. Ferland was chief of the Attorney General's Juvenile Crime Intervention Division. She has also worked as legislative director for a Texas State Senator and clerked for the House Committee on Urban Affairs.

Ms. Ferland holds a B.A. in economics and communication from Texas A&M University and a master's degree in communication from the University of Texas at Austin. She and her husband, Greg, the policy advisor for a Texas Workforce Commissioner, are the parents of 20-month-old Guy. ♦

For Those Who Served Our State Courts

As of July 15, 2001

Honorable Martin Dies
Retired Chief Justice
9th Court of Appeals, Beaumont

Honorable Robert Faver
Former Judge
County Court at Law, Sweetwater

Honorable Jimmy R. James
Senior District Judge
248th District Court, Houston

Honorable Steve Latham
Retired District Judge
66th District Court, Whitney

Honorable Raul Longoria
Retired District Judge
139th District Court, Liberty

Honorable Oscar Mauzy
Retired Justice
Supreme Court of Texas, Austin

Honorable James Russell
Senior Judge
County Court at Law #1, Belton

Honorable Tom Ryan
Senior District Judge
199th District Court, Plano

Honorable George Storter
Former District Judge
103rd District Court, Brownsville

Jury Summons continued from page 5

holding Art. 35.16 C.C.P. applies to criminal jurors when it conflicts with the Government Code and that the provision of Art. 35.16 relating to being a county “citizen” is part of the definition of being a “qualified voter,” that Art. 35.16 standards are not absolute requirements for criminal jury service that cannot be waived and, by logical extension, that eight of the eleven are challenges for cause to be exercised only by the attorneys, not by the judge⁸.

Mayo holds and implies that a legally insane Oklahoma resident who is a blind, deaf, dumb witness to the offense holding an unchangeably biased view can legally serve on a Texas criminal jury if a lawyer fails to challenge for cause⁹! Blame falls on the wording of Art. 35.16. *Mayo* is simply the messenger.

OJS directs that persons who are not “qualified voter(s)” are disqualified and are not to report for jury service. Since *Mayo* holds lack of citizenship and

voting qualifications are subject only to challenge for cause for criminal jurors, does OJS improperly direct such persons not to report for jury duty?

Incidentally, anecdotal evidence proves that the *Mayo* challenges for cause¹⁰ should be exercised during *voir dire* while the attorneys are making their regular peremptory challenges¹¹. All other times present serious complications¹².

Considering that §12.03(c) Penal Code is a civil rights statute to protect defendants from loss of “... any legal disability or disadvantage” for conviction of a Class C misdemeanor, why is a person disqualified for jury service for conviction of Class C misdemeanor theft¹³? Does OJS improperly direct them not to report for jury duty?

While completion of deferred adjudication is not a disqualifying “conviction,” most laypersons respond affirmatively if asked, “have you ever been convicted of theft or any felony” even when they have successfully completed deferred adjudication. *Davis*

v. State, 968 S.W. 2d 368 (Tex.Crim.App. 1998 *en banc*), holds that when a defendant successfully completes terms of deferred adjudication, proceedings are dismissed, defendant is discharged and defendant may not be deemed to have a conviction for purposes of jury service, citing Art. 42.12 Sec. 4 (e), 5 C.C.P. and Election Code §11.002 (4). Should OJS contain this information?

For convenience, should OJS also contain instructions that the judge cannot excuse jurors for an “economic reason” until all parties are present¹⁴? The statement in OJS that “business reasons are not lawful excuses” is not a statutory ground and is not the same as an “economic reason.”

Moreover inconsistent language contained in the five codes addressing juror qualifications creates questions of interpretation relating to

1. “sound mind¹⁵”, “mentally incompetent¹⁶”; “insane¹⁷”; “mental defect or disease¹⁸”;
2. “citizen¹⁹”; “resident²⁰”; “... 18 years of age²¹ ...”

Challenges to OJS for civil juries will be made under constitutional standards as well as Rule 220 T.R.C.P. and Rule 221 T.R.C.P., if applicable. Criminal challenges will be made under constitutional standards and through Art. 35.05–35.08 C.C.P., if applicable. Note, however, that errors by the trial court in criminal cases are reversible only if the error caused

1. “substantial harm²²”;
2. “significant harm²³”;
3. “structural error²⁴”; and/or
4. “ineffective assistance of counsel²⁵”.

Objections and exceptions to OJS must be properly preserved. Statutes grant trial courts broad discretion in determining qualifications of venirepersons²⁶ and hearsay evidence is sufficient upon which to rule if it appears genuine to the judge²⁷.

To preserve these errors case law requires timely objections and specifications. *Cooks v. State*, 844 S.W.2d 697 (Tex.Crim.App. 1992, rehearing denied), certiorari denied 113 S.Ct. 3048, 509 U.S. 927, 125 L.Ed.2d 732, even if dismissal *sua sponte* of venireperson was error, it was waived absent an objection.

Mere violation of statutes without an explicit showing of injury is not ordinarily reversible error, *Texas & N. O. R. Co. v. Wilkerson*, 260 S.W. 2d 912 (Tex.App. - Beaumont, 1953).

To preserve error where court disqualified juror *sua sponte*, at conclusion of voir dire defendant must claim s/he is about to be tried by a jury to which s/he legitimately objects, specifically identify objectionable juror(s), exhaust all challenges and request additional ones, *Warren v. State*, 768 S.W.2d 300 (Tex.Crim.App. App. 1989), certiorari denied 109 S.Ct. 3253, 492 U.S. 923, 106 L.Ed.2d 599.

Motion to quash venire is proper when directed to legality of panel and court’s attention has been directed to

illegality in summoning jurors, *Bowman v. State*, 41 Tex. 417 (1874).

Motion to quash entire venire where one name in 250-name pool was duplicated, was properly refused, and defendant refused to have additional venireman drawn, *Cavitt v. State*, 15 Tex.App. 190 (1883).

OJS presents a flash point to force judicial interpretation of these provocative questions. Absent legislative correction the potential exists for opposing answers in civil and criminal cases.

A Juror Qualifications and Exemptions Chapter should be adopted in the Government Code and all others repealed. Qualifications and exemptions should be standardized for civil and criminal petit jurors, Grand Jurors and Grand Jury Commissioners²⁸. In SB 395, the 77th Legislature mandated the Texas Judicial Council to conduct a statewide jury service study and report the results to the Legislature no later than January 1, 2003, but it is not clear that the Council’s mandate includes study of the questions raised by this article. ♦

Endnotes

- 1 © Copyright by Jim D. Lovett. Permission to publish this paper is granted *In Chambers*. For further permission please contact Judge Lovett at 903-427-2274.
- 2 First raised immediately after October 2000. See *Lovett’s Judicial Checklists—Texas Criminal Law Edition*, Chapter 7, pages 1–4. For a complimentary copy of an updated checklist for use in qualifying civil and criminal venires, contact Lovett Publications Group, Rt. 4, Box 492, Clarksville, TX 75426; telephone: 903-428-9010; fax: 903-427-2716; e-mail: lovett@neto.com
- 3 §62.0131 Government Code provides that, “(OJS)... *must include* (emphasis added) the exemptions and restrictions governing jury service under Subchapter B (of Title 62 of the Government Code)... A written jury summons *must conform* (emphasis added) with the model established under this section.”
- 4 Even the civil and criminal oaths vary. Compare Rule 226 Rules of Civil Procedure and Art. 35.02 C.C.P.
- 5 Note §62.102(7), (8) Government Code disqualifies a person who is under “accusation” of misdemeanor theft but not one who has been actually convicted of misdemeanor theft!
- 6 See also §1.005 (16), (17) Election Code for definitions of registered voter, residence address and §1.015 Election Code for definition of residence.
- 7 This civil rights statute is ignored by the other codes. Since civil venire qualifications are all contained in the Government Code and it disqualifies only for being “accused” of Class A or Class B misdemeanor theft, not for being actually “convicted”, does OJS incorrectly disqualify such persons?

- 8 1) being “qualified voter” (actual registration not required), 2) having mental or physical defects, 3) being witness in the case 4) having served on grand jury that indicted defendant, 5) having served on petit jury that previously tried defendant, 6) having bias or prejudice in favor of or against defendant, 7) being unable to read or write, 8) holding opinion of guilt or innocence as would influence the juror in finding a verdict.
- 9 In a light moment during a break in 6th District Court action this concept was being discussed. A Texas lawyer commented, “In other words, a typical Okie?” A visiting Oklahoma lawyer replied, “Probably be an improvement!”
- 10 Art. 35.16 C.C.P., Reasons for Challenges for Cause
- 11 This method does, however, complicate the selection procedures for alternate jurors. See §62.020 Government Code and Art. 33.011 C.C.P. The solution is first to determine the makeup of the jury and then exercise the strikes for the alternate jurors in the required manner.
- 12 During qualification of the venire panel there customarily is no court reporter, the attorneys are not present and the lack of a record could leave the process vulnerable to constitutional “structural error” claims. During any other portion of voir dire the attorneys can object that they are being denied their right to make an intelligent determination of how to exercise challenges for cause unless given an opportunity to question the panel adequately. Is there any reason this objection would not apply to Art. 35.16 C.C.P. challenges for cause when it applies to all the others?
- 13 Class C misdemeanor theft is defined by §31.03 (e) (1) Penal Code as the value of stolen property being less than (A) \$50.00; or (B) \$20.00 if the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by §31.06. This is further modified by §31.03 (f) Texas Penal Code that increases Class C theft to Class B theft if the defendant is an employee or a contractor of a public agency.
- 14 ‘62.110 (c) Government Code: “The court or the court’s designee as provided by this section may not excuse a prospective juror for an economic reason unless each party of record is present and approves the release of the juror for that reason.”
- 15 §62.102 Government Code
- 16 §11.002 Election Code: “... not ...determined mentally incompetent by a final judgment of a court ...”
- 17 Art. 35.16 C.C.P.; Art. 35.19 C.C.P.
- 18 Art. 35.16 C.C.P.
- 19 §62.102 Government Code, “citizen of this state and county”; §11.002 Election Code: “... a United States citizen ...”
- 20 §1.015 Election Code: “Residence ... is ... domicile ... determined... with common-law principles ...”; §11.001 Election Code: “... resident of territory”; §11.002 Election Code: “resident of this state”;
- 21 §62.102 Government Code. As noted in *Mayo v. State*, 4 S.W. 3rd 9 (Tex.Crim.App. 1999), “There was a time when the voting age was 18, but the minimum age to serve on a jury was 21.” This emphasizes the difference between the 18 year old requirement of §62.102 Government Code and the definition of “qualified voter” in §11.002 Election Code that set voting age at 21 in past years.
- 22 In violation of Rule 44.2 Rules of Appellate Procedure, *Reversible Error in Criminal Cases*
- 23 In violation of Art. 44.46 C.C.P., *Reversal of Conviction on the Basis of Service on Jury by Disqualified Juror*
- 24 In violation of the U.S. Constitution (*Arizona v. Fulminante*, 499 U.S. at 310, 111 S.Ct. 1246; also see the dissent by Justice O’Connor in *Hegar v. State*, 11 S.W. 3rd 290 (Tex.App. - Houston [1st] 1999 for an excellent discussion and explanation of the concept of “structural error”);
- 25 In violation of the U. S. Constitution, *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).
- 26 62.110 (a) Government Code (civil and criminal venire). “Except as provided by this section, a court may hear any reasonable sworn excuse of a prospective juror and release him from jury service entirely or until another day of the term.”
Art. 35.21 C.C.P. (criminal venires only): “The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon.”
- 27 *Houston City St. R. Co. v. Ross*, 28 S.W. 254
- 28 The complications in determining petit juror qualifications are repeated and multiplied for Grand Jurors and Grand Jury Commissioners.

In a Class of Its Own

New judicial education program offers advanced, specialized training opportunities

The Texas Center for the Judiciary, Inc. is pleased to announce the creation of the Texas College for Judicial Studies (TCJS). Why did we develop the College? Both the Long Range Planning Committee and the Curriculum Committee recognize the desire of judges to have the opportunity to obtain advanced, specialized training in their jurisdictional area so they can excel on the bench. The creation of the College is in keeping with our mission statement at the Texas Center, “Judicial Excellence Through Education.” Read on to learn more about TCJS.

What is the Texas College for Judicial Studies?

TCJS is a multi-year program curriculum designed to provide advanced educational opportunities to judges who desire to improve their adjudication skills and acquire more knowledge in their jurisdictional specialization.

How do I enter the program?

In order to attend any part of this program, you must apply for admission and be accepted into the College.

To be eligible for acceptance, you must be an active judge of a Texas county court at law, district, or appellate court with four years of judicial experience in the county court at law, district, and/or appellate courts.

On your application, you must select your choice of one of four specialty tracks (Civil, Criminal, Family/Juvenile, or Appellate) and sign a letter of intent to complete the program curriculum within five years.

Admission in the College’s opening year will be limited. Admission for those who meet the criteria is first come, first served.

How often will the College program curriculum be offered?

The College program curriculum will be offered once a year in May.

What is the program curriculum?

The College consists of a core curriculum of 16 hours and a specialty curriculum of 27 hours. The core curriculum includes courses important to all members of the judiciary, regardless of jurisdiction. The specialty curriculum is designed to provide you with specific training in your jurisdictional area—civil, criminal, general jurisdiction, family/juvenile, or appellate. The specialty curriculum is offered in 9-hour segments.

How do I complete the program curriculum?

You must take the entire 16-hour core curriculum in one year to receive credit. You must also take each 9-hour segment of your specialty curriculum in its entirety each year to receive credit. It is possible to take the core curriculum and one specialty segment in the same year. To receive a diploma, you must complete the core curriculum plus 27 hours in your selected specialty track.

I’m a general jurisdiction judge. How will I get specialty training?

As a general jurisdiction judge, you hear all types of cases. As a result, your 27-hour specialty curriculum will be composed of a 9-hour segment in each

specialty area of civil, criminal, and family/juvenile law.

How long do I have to complete the College program curriculum?

You may take up to five years to complete the program curriculum; however, it is designed to be completed in three to four years.

Will I be given College credit for other Texas Center courses I have taken?

Only courses taken each May during the College will be applied toward your graduation credits.

What will I receive upon completion of the College program curriculum?

You will receive a diploma recognizing your completion of the coursework at the College. You will also receive recognition on your name badge as a College Alumni at all subsequent Texas Center conferences you attend. Finally, and most importantly, you will receive a higher level of judicial knowledge, expertise, and skill.

How do I maintain my status after completion of the program curriculum?

To maintain your status in the College, you must maintain your active status on the bench as well as attend nine hours of the College’s specialty curriculum at least once every four years. ♦

The Texas College for Judicial Studies is funded through our grant provided by the Court of Criminal Appeals.

Thank You for Your Contributions

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County Court at Law Judges' Association: A Successful Legislative Session

*By Judge Jim Hogan
County Court at Law #1, Wichita County*

As many of you know, the effort to mandate uniform collection of court costs and set County Court at Law Judges' salaries at a minimum of \$1,000 less than District Judges' salaries died in the Texas Senate Jurisprudence Committee.

HB 2300, authored by Rep. Senfronia Thompson (D-Houston), Rep. David Farabee (D-Wichita Falls), and Rep. Buddy West (R-Odessa), easily passed the House. Its failure to pass the Senate disappointed many people who worked diligently on the legislation.

Over the next few weeks, take a few moments to thank those who supported HB 2300 and furthered the judiciary's causes in the Legislature. They performed wonderfully and kept their cool in some difficult situations. My list includes:

- The staff of Representatives Thompson, Farabee, and West for their tireless endeavors;
- Bob Wessels, Court Manager for Houston County Criminal Courts at Law, and County Court at Law Judges Mark

- Owens, Tom Bacus, David Hodges, Penny Roberts, Jim Klaeger, and others, for their work at the Capitol;
- District Judge Lamar McCorkle, Chair of the Judicial Section, for his devotion to all matters concerning the judiciary that came before the Legislature. Every judge in the state owes a debt of thanks to Lamar for his work;
- Lynn Nabers of the Alliance for Judicial Funding for his guidance, wisdom, and support;
- The attorneys (Frank Branson, for one) and organizations (Texas Association of Counties, Texas Association of District and County Clerks, and Texas Trial Lawyers Association) that actively supported our position.

While our pay increase did not pass, I still consider the session a success. For me, success is measured not only by what gets passed into law, but also by what does not get passed. The people named above disposed of many bills that could have created havoc in our courts. But rest assured, judicial pay raises will be before the Legislature again in 2003. ♦



Texas Center for the Judiciary, Inc.
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