"Judicial Ethics" Focus for 1992 Regional Conference Programs

This year's regional program, under the direction of Judge Michael Keasler, 292nd District Court in Dallas and Dean of the Regional Conferences, will focus on Judicial Ethics -- a topic of considerable interest not only in Texas but also throughout the United States at the present time. An excellent faculty of judges from across the state has been assembled to lecture, lead discussions, pose problems, and learn with the participating judges. The program is designed to find practical solutions to problems which occur every day -- a nuts-and-bolts look at ethics.

The conference will begin on Thursday morning and will combine general sessions with small group breakouts. Friday's program will include a report from Judicial Section Chairman Linda B. Thomas, followed by updates on family law, criminal law and civil law. The conference will end at noon on Friday.

Chair's Report
by Justice Linda B. Thomas

Eeh gads!! Where does the time go? One-fourth of my term as Chair has elapsed and I have not reported anything to you. Therefore, as we begin this new year, I wanted to take this opportunity to let you know what has gone on thus far. In this issue of In Chambers, you will find a list of the committee assignments. As you can see, the number of members has been expanded for many of the committees. The purpose in doing this was an attempt to gather input from all segments of our judiciary.

The first meeting of your elected leadership will be on Friday, January 31, 1992. If you have any items of business that you feel should be discussed by either the Executive Committee of the Section or the Board of Directors of the Texas Center, please contact me as soon as possible. Inasmuch as we are in these positions to serve your interests, we need to hear from you. This solicitation of ideas is not limited to continued on page 2

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the January meeting.

At the September 1991 meeting of the Texas Center Board, we formally approved and recognized as a standing committee, the Judicial PEERR Committee (professional efficiency and economic research and recommendation committee; see it was not a typo)!! Most of the judges on this committee had been operating informally since May 1991 and at their initial meeting, they adopted the following goal statement: "The goal of this committee is to concern itself with research, preparation of information, recommendations, and publications conducive to increased (professionalism), efficiency and service in the administration of justice by the judiciary." The work of this committee is burden-some and we anticipate that this will be a continuing project throughout the years. The current membership is subject to being expanded and I anticipate that the final structure will be in place shortly.

You will probably notice that there is another new committee, the Special Study Committee for Section and Texas Center, Re: Structure and Bylaws. Over the past few years, there has been a great deal of conversation concerning the relationship of the Executive Committee and the Texas Center Board and whether our current structure of two governing bodies is the most efficient manner to handle the business of the judiciary. The three philosophies on this issue generally fall out as follows: (1) those who think that things are working pretty well, thus there is no need to change anything; (2) those who think that the leadership, including the chair should be totally split because the focus of each organization is so different; and (3) those who think there should be one governing body for both groups with the elected members wearing one hat for Section decisions and another for Texas Center business. Obviously, any change would necessitate by-laws changes for each organization. Therefore, I formed a committee with the charge that they were to study this issue as well as examine the need for by-law changes in all areas. I have asked the committee to gather input from as many people as possible and to report back to the Executive Committee and the Board with its recommendations at our June meeting. Based upon whatever action is taken, the proposals will be presented to the entire membership at the 1992 Annual Conference. The purpose in explaining all of this is to encourage you to contact Frank Sullivan or any member of this committee with any suggestions.

All of the decisions concerning the activities of the Section and the Texas Center are being made after consultation with Vice-Chairman Weldon Kirk. It is my plan that all long-range programs will continue after my term expires. Therefore, I have asked each of the committee chairs to include Weldon "in the loop" so that he has the benefit of all the background when he takes the reins in September.

As you know, traditionally the Chair attends all of the Regional Conferences in order to report on the business of the Section and the developments within the Texas Center and I will continue that custom. Again, I invite you to take advantage of this opportunity to express your concerns and to voice whatever needs you think should be addressed. Weldon and I very much want to "open up the process" to allow full participation by all of the judges.

That's all for now. I hope that each of you have a wonderful 1992 and I look forward to working for you in the next coming months.

Judicial Section and Texas Center Honor Outgoing Officers

The outgoing members of the Executive Committee of the Judicial Section of the State Bar of Texas and the Board of Directors of the Texas Center for the Judiciary, Inc., were honored during the Judicial Section Annual Conference in Galveston, September 26, 1991.

Pictured are (l-r) George L. Walker, Houston; James F. Clawson, Jr., Temple; Donald R. Jones, Stephenville; R. W. Lawrence, Palestine; Richard P. Dambold, Amarillo; and Joe B. Evins, Edinburg. Outgoing Section Chairman Joe B. Evins presided over the lunch meeting during which the outgoing officers were presented with plaques for their service to the Judiciary. Justice Linda B. Thomas presented a plaque to Judge Joe B. Evins honoring his year of service as Chairman of the Judicial Section and Texas Center.

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No. 138
Appointment to Governmental Committees
Issued November 22, 1991

FACTS ASSUMED: The statutory duties of the Local Government Records Committee are to review and approve the State Library and Archives Commission's schedules and rules for the retention and care of local records, and to advise that Commission on all matters concerning the management and preservation of such records. Government Code Section 441.162 provides that the person who is appointed chairman of the Committee must be an active or retired district judge.

Q. Would an active judge, or a retired district judge subject to assignment, violate Canon 5G of the Code of Judicial Conduct by serving on the Local Government Records Committee?

A. No. The Committee concludes that service on this Committee would not violate the provision of Canon 5G that a judge should not accept appointment to a governmental committee that is concerned with issues of fact or policy other than the improvement of the law, the legal system, or the administration of justice.

The statute referred to in the question manifests a legislative intent to coordinate the record keeping responsibilities of the three branches of government, and the Committee concludes that a judge's participation in that statutory arrangement would serve a proper judicial purpose.

No. 139
Judge As an Expert Witness
Issued November 22, 1991

Q. May a judge testify as an expert witness in a lawsuit in which the defendant is a lawyer who is accused of malpractice that allegedly occurred during a previous trial at which the proposed judge witness was the presiding judge?

A. Not voluntarily. A judge may testify as an expert witness in such a proceeding only if the judge is subpoenaed as a witness and required to testify, but a judge should not testify voluntarily and should discourage a party from requiring the judge to testify as an expert witness.*

The Committee concludes that a judge should not cooperate with a party in becoming an expert witness in such a case, because that would create the appearance of using the prestige of judicial office for the benefit of the party for whom the judge testifies and could also create the appearance of compromising the independence of the judge, by placing the judge on one side of an adversarial proceeding between lawyers who may often appear before the judge.

A judge should not, under any circumstances, accept compensation for testifying.

* Committee Footnote: Compare Joachim v. Chambers, 815 S.W. 2nd 234 (Tex. 1991), holding that under these circumstances a trial judge abused his discretion in refusing to order a party not to call the proposed judge witness.

No. 140
Acceptance by Court Staff of Favors
Issued November 22, 1991

Q#1: May a district judge allow a court administrator to participate in a group weekend trip that is sponsored, organized and paid for by an attorney who practices before the judge?

A: No. Canon 5C(4)(c) provides that a judge should not accept favors from a person whose interests have come or are likely to come before the judge. Canon 3B(2) provides that a judge should require the judge's staff to observe the standards of the Code of Judicial Conduct. The Committee concludes that the trip inquired about would be inconsistent with these provisions.

Q#2: May a district judge allow a court administrator to participate in such a trip if the court administrator pays all expenses involved?

A. The Committee concludes that a judge may allow such participation if the arrangements, social activities, and other circumstances do not reflect on the independence or impartiality of the court, or its staff, or create the appearance of impropriety.

No. 141
Service on Downtown Development Committee
Issued November 22, 1991

Q: May a judge be the chairman of and serve on a committee to encourage and expand the economic development and historical restoration of a downtown area in which the judge owns real property? The committee will solicit funds from private businesses and individuals and from the city to fund the project.

A. No. Canon 2B provides that a judge should not permit the use of the prestige of judicial office for the private interests of the judge or others. Canon 5C(1) provides that a judge should refrain from financial and business dealings that tend to exploit the judge's judicial position.

The Committee concludes that the judge's participation, as chairman of the committee or as a member, in sponsoring a project that may benefit the judge and that using the prestige of judicial office for the benefit of the owners of the downtown property, including the

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ejudge. That activity could also give the appearance of compromising the independence of the judge by permitting a contributor to attempt to curry favor with the judge or to convey the impression that the contributor is in a special position to influence the judge.

No. 142
Justice of Peace in Bail Bond Business
Issued November 22, 1991

Q: May a newly elected Justice of the Peace who has had a bail bond license for several years continue his bail bond business if his son manages the business and does not make bond for accused persons who come before the Justice of the Peace?

A: No. Canon 5C(1) provides that a judge should refrain from financial dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. The Committee concludes that continuing a bail bond business under the circumstances stated in the question would be inconsistent with these provisions of Canon 5C(1).

The Committee does note that Canon 8D(1)(b) provides that the requirement of Canon 5C(3), that a judge should divest financial interests that require frequent disqualification, does not apply to Justices of the Peace. However, the Committee believes that Canon 5C(1), which does apply, controls this question. Canon 9, which is also applicable, provides that a person to whom the Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

No. 143
Service by Justice of the Peace on School Board
Issued November 22, 1991

Q: May a person serving as Justice of the Peace also serve as a school board trustee?

A: Such service would not violate the Code of Judicial Conduct, but this Committee is not authorized to consider the question of law presented by the question.

Canon 8D(1)(b) provides that a Justice of the Peace is not required to comply with the provision of Canon 5G that a judge should not accept appointment to a governmental committee that is concerned with issues of fact or policy other than the improvement of the law, the legal system, or the administration of justice. This Committee has considered only the ethical issue presented under these Code provisions, and respectfully declines to consider or decide any issue of law that may be presented by the question.

No. 144
Service on Board of One Hospital Division of a Nonprofit Corporation
Issued November 22, 1991

FACTS ASSUMED: A nonprofit corporation operates three hospitals that are not separately incorporated, but each hospital is a corporate division with a board of trustees to which the corporate board delegates extensive responsibility.

Q: May a judge serve on the board of trustees of one of the hospital divisions of such a nonprofit corporation?

A: Yes, subject to certain limitations provided by Canon 5B, as stated in the following paragraph. Subject to those conditions, a judge may serve as a trustee of a charitable organization not conducted for the economic or political advantage of its members.

Canon 5B provides that a judge should not serve if the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court. Also, a judge should not solicit funds or permit the use of the judge’s name in fund raising, and a judge should not give investment advice to such an organization.

U.S. Department Honors Judge James Farris

Judge James Farris of the 317th District Court in Beaumont was awarded the Commissioner’s Award for the Prevention of Child Abuse and Neglect on September 9, 1991, in Colorado.

The U.S. Department of Health and Human Services recognizes one individual from each state for the annual award. Wade Horn, Commissioner of the cabinet-level department’s Administration on Children, Youth and Families, presented the award to Judge Farris at the 9th National Conference held in Denver.

Judge Farris helped create a child abuse evaluating committee within the governor’s office and helped develop standards in providing substitute care for children. As Presiding Officer of the Texas Commission on Children, Youth and Family Services, Judge Farris led the Commission through many accomplishments. The Commission’s work resulted in a better service delivery system for Texas children and strong public-private collaborations.

The National Conference on Child Abuse and Neglect, a division within the Administration on Children, Youth and Families, was co-sponsored by the American Association for Protecting Children.
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Fort Worth, TX 76111
(817) 838-4620

Suzanne Stovall
County Court at Law #1
Montgomery County Courthouse
Conroe, TX 77301
(409) 539-7831

Bill M. White
Court of Criminal Appeals
P.O. Box 12308
Austin, TX 78711
(512) 463-1595

Nominating Committee

Carolyn Day Hobson
County Civil Court at Law #3
301 Fannin, Room 512
Houston, TX 77002
(713) 755-5788

Jerry Lewis
County Court at Law #2
Collin County Courthouse, 5th Floor
McKinney, TX 75069
(214) 548-4517
Cynthia Stevens Kent
114th District Court
207 Smith County Courthouse
Tyler, TX 75702
(903) 535-0613

W. Jeanne Meurer
98th District Court
P.O. Box 1748
Austin, TX 78767
(512) 473-9307

John D. Montgomery
309th District Court
1115 Congress, 3rd Floor
Houston, TX 77002
(713) 755-6234

Earl B. Stover
88th District Court
P.O. Box 607
Kountze, TX 77625
(409) 246-5151

Ralph Taite
County Criminal Court #4
133 North Industrial, 3rd Floor
Dallas, TX 75207
(214) 653-5637

Mark S. Tolle
Criminal District Court #3
133 North Industrial Blvd.
Dallas, TX 75207
(214) 653-5922

Ex-Officio Members:
Mr. Cullen Smith
Naman, Howell, Smith & Lee
700 MBank Tower
221 West Sixth Street
Waco, TX 76703

Mr. Bob Wessels
Court Manager, Harris County Criminal Courts at Law
301 San Jacinto, Room 401
Houston, TX 77002
(713) 755-5394

Linda B. Thomas
5th Court of Appeals
Dallas County Courthouse
Dallas, TX 75202
(214) 653-6535

Weldon Kirk
32nd District Court
P.O. Box 528
Sweetwater, TX 79556
(915) 235-3133

Sam M. Paxson
210th District Court
500 E. San Antonio Street, Room 601
El Paso, TX 79901
(915) 546-2130

Charles L. Reynolds
7th Court of Appeals
P.O. Box 9540
Amarillo, TX 79105
(806) 379-2470

Special Study Committee
For Section and Texas Center
RE: Structure & Bylaws

Frank W. Sullivan, III
Chair
322nd District Court
Civil Courts Building
Fort Worth, TX 76196
(817) 884-1427

Thomas H. Bacus
County Court at Law #2
Wichita County Courthouse, Room 353
Wichita Falls, TX 76301
(817) 766-8111

J. Manuel Banales
105th District Court
901 Leopard Street
Corpus Christi, TX 78401
(512) 888-0510

William J. Cornelius
6th Court of Appeals
100 N. State Line Avenue
Texarkana, TX 75501
(903) 798-3046

Darrell B. Hester
197th District Court
974 E. Harrison
Brownsville, TX 78520
(512) 544-0847

Joe Kegans
230th District Court
301 San Jacinto, 6th Floor
Houston, TX 77002
(713) 755-6782

Brenda P. Kennedy
County Court at Law #7
P.O. Box 1748
Austin, TX 78767
(512) 473-9677

Newly-Elected Officers to Meet in Austin

The Executive Committee of the Judicial Section of the State Bar of Texas will meet in Austin on January 31, to establish goals and set judicial priorities for the coming year. Linda B. Thomas, a justice on the 5th Court of Appeals in Dallas, will serve as Chairman of the Executive Committee through September of 1992. Judge Weldon Kirk of the 32nd District Court in Sweetwater serves as Vice-Chairman.

New members elected to the Executive Committee are Judges J. Michael Bradford, 58th District Court Beaumont; John L. Fashing, County Court at Law #2, El Paso; Dan Gibbs, Senior District Judge, Dallas; and Bill M. White, Court of Criminal Appeals, Austin.

The Board of Directors of the Texas Center for the Judiciary, Inc., also will meet in Austin on January 31. The newest members of the board are Judges Fortunato P. Benavides, Court of Criminal Appeals, Austin; Mickey R. Pennington, 38th District Court, Uvalde; and Gus J. Strauss, 2nd 25th District Court, Hallettsville.

The new Executive Committee members and the members of the Board of Directors were elected last September at the Judicial Section Annual Conference in Galveston.
Judicial Calendar

Southeast Texas Judicial Conference
February 19-21, 1992
University Hotel, Huntsville

South Texas Judicial Conference
March 11-13, 1992
Sheraton Fiesta Hotel, San Antonio

Central Texas Judicial Conference
March 25-27, 1992
Wyndham Southpark Hotel, Austin

Northeast Texas Judicial Conference
April 8-10, 1992
Marshall Civic Center, Marshall

West Texas Judicial Conference
April 22-24, 1992
Holiday Inn Centre, Odessa

Constitutional County Judges' Education Course
April 28-May 1, 1992
Plaza Hotel, Lubbock

Criminal Justice Conference
May 13-15, 1992
Sheraton Mockingbird Hotel, Dallas

Trial Court Management Seminar
June 15-19, 1992
University Hotel, Huntsville

Institute for Appellate Court Attorneys
September 9-11, 1992
Location to be announced

Judicial Section Annual Conference
September 22-25, 1992
El Paso Convention Center, El Paso

Texas Association for Court Administration Annual Conference
October 20-23, 1992
Radisson Plaza Hotel, Austin

Juvenile Justice Seminar
November 4-6, 1992
Hotel to be announced, Austin

Constitutional County Judges Education Course
Date and location to be announced

Texas College for New Judges
December 6-11, 1992
University Hotel, Huntsville

New Judges

Ann-Marie Cerda Aaron
37th District Court, San Antonio
Succeeding John Cornyn, III

Richard Barajas
8th Court of Appeals, El Paso
Succeeding Larry Fuller

David Briones
County Court at Law #1, El Paso
Succeeding Philip Martinez

Max Higgs
Probate Court, El Paso
Newly Created Court

Federico G. Hinojosa, Jr.
13th Court of Appeals, Corpus Christi
Succeeding Fortunato P. Benavides

Jess A. Holloway
350th District Court, Abilene
Succeeding Jorge A. Solis

Jeff Kaplan
5th Court of Appeals, Dallas
Succeeding Gordon Rowe

Robert G. Lee
Probate Court #2, San Antonio
Succeeding Keith Burnis

James L. Rex
109th District Court, Andrews
Succeeding James H. Clack

Barbara Rosenberg
5th Court of Appeals, Dallas
Succeeding John H. Whittington

Michael E. Welborn
County Court at Law, Sinton
Newly Created Court

from Southern Methodist University. He was Assistant District Attorney from 1957 until 1959, at which time he was appointed to a domestic relations court. In 1963, he was appointed to the Criminal District Court #4. He served on the bench 20 years.

In Memoriam

Judge Reagan Cartwright
Judge Reagan Cartwright of Houston died December 26, 1991. He was 74 years old. Cartwright received his bachelor's and law degrees from the University of Texas. In 1941 he joined the law firm of Sears, Blades, Moore and Kennerly. He later practiced law with Bates, Cartwright and Bates. In 1969, he was appointed to the 55th District Court in Houston by then Governor John Connally. He served on that bench for 21 years until his retirement in 1990. Judge Cartwright served as president of the Junior Bar Association and in 1980 was selected "Fairest Judge of All" by the Bar poll.

Judge Charles Nick Lundy
Judge Charles Nick Lundy of Dallas died November 5, 1991. He was 52 years old. Lundy received his B.A. from Texas A & M University in 1962 and his J.D. from Southern Methodist University in 1970. He served as Master of the 305th District Court from 1979 until 1986. In January of 1989 he became judge of the County Court at Law #1 in Dallas.

Judge John J. Mead, Jr.
Judge John Mead of Dallas died November 30, 1991. He was 69 years old. Mead received his B.A. and J.D.
Contributions to the Texas Center

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