

CHAMBERS

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CHINA



*Perfection in Moral Integrity,
Excellence in Scholarly Attainments,
and Greatness in Career Pursuits*

Special Feature

By Hon. Sam Griffith,
with Hon. Robert Newsom

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Letter from the Chair

Chief Justice Brian P. Quinn

When I was around 12 and living in El Paso, a kid in the neighborhood began making fun of my friend because my friend was Hispanic. She called him such things as “spic,” “Mexican,” and “taco bender.” Being Hispanic too, I knew that the words were meant to derogate because they had been directed at me one time or another. Yet I did nothing but stand there. Remaining silent has bothered me ever since. I came up with rationalizations as to why I did nothing. Some even sounded good. But in the end, they were just that . . . rationalizations. I should have done or said something.

The need to have acted back then came home again earlier this year. During a Texas Center board meeting last October, I had the opportunity to hear from an NCAA basketball referee. His topic dealt with effective leadership and the difference between “being right versus doing right.” The concept may be a bit hard to grasp since they seem to be the same thing, but they’re not. Being right can, at times, be the same as doing right. More often, though, it simply means getting your way. Doing right, on the other hand, means pursuing what is required by the law or the best outcome for all involved, irrespective of personal whim or interest.

As judges, we often make decisions that run counter to our personal beliefs or desires. I surely have. Believe me, the thought of potential political repercussion pops up when I do that. Being semi-intelligent and a lawyer by trade, I know I can think up ways to side-step difficult matters. Yet that name-calling kid all those years ago affected me.

I don’t want to worry anymore about what I should or could have done after doing nothing. So maybe that makes my choice easy; try to do what’s right and

pray for strength to ignore what others think. While that may not make for good job security, it nevertheless will make it easier for me to live with myself. I have enough feelings of guilt running through my mind, given my upbringing.

Judges play an important role in the eyes of the public. They expect us to be thoughtful and to do right. Of course, that does not mean we will since we are human after all. Indeed, my wife and the high courts often remind me of my fallibility. But there’s still opportunity to learn from being wrong too, or so I tell myself.

My term as Chair of the Texas Center and Judicial Section of the State Bar ends in several weeks. As exciting as it was and as lucky as I was to meet and work with so many great people, I can’t say that I’ll regret its end. Though my actions pleased some and angered others, I can only say I tried to do right by the Texas Center and the judges of Texas. That meant fostering a unified, well-informed, and well-educated judiciary. Such a goal is one we should all work for, and I will continue to do right by it. But for now, let me thank you for the 15 minutes in the spotlight.

Ma, are the kids packed and cat’s out?





New Administrators of Justice

HON. MIKE SEILER
Judge, 435th Judicial District Court
Conroe

HONORS & Achievements

Macias Named President of National Council of Juvenile and Family Court Judges

Judge Patricia A. Macías, Presiding Judge of the 388th Family District Court in El Paso, Texas, was elected President of the National Council of Juvenile and Family Court Judges (NCJFCJ) during the organization's 71st Annual Conference held July 27-30, 2008 in Norfolk, Virginia.

Judge Macías has served on the bench for over 13 years, first as Associate Judge of the Children's Court and for the past seven years as District Judge presiding over high-conflict custody and divorce, domestic violence and child support enforcement cases. Under her leadership, the Children's Court was designated as a Model Court of the NCJFCJ's Child Victims Act Model Courts Initiative and most recently, has developed a state pilot project unifying the El Paso Family Courts.

A graduate of St. Mary's
University School



Rivera-Worley Honored by CASA

Judge Carmen Rivera-Worley, 16th District Court, Denton, has been chosen by the Denton County CASA as their Judge of the Year. This is the second year that Judge Rivera-Worley has been selected (2006-2007) for this honor. Each year Denton County

CASA (Court Appointed Special Advocates) honors its most diligent volunteers and advocates. Congratulations to Judge Rivera-Worley for her achievement!

of Law, Judge Macias has long been involved with state and national organizations focusing on the needs of children. In May 2003, she was named to the Pew Commission on Children in Foster Care. She has been a member of Texas Supreme Court Task Force on Foster Care and was recently named by the Texas Supreme Court to the Permanent Judicial Committee for Youth and Families. A frequent judicial educator, Judge Macías has presented before state judicial conferences and national child advocacy programs.

Judge Macías was honored in 2005 as a "Texas Trailblazer" by the El Paso Bar Association and in 2003 for her outstanding public service with induction into the El Paso Women's Hall of Fame. She received the Public Citizen of the Year Award in 2000 from the El Paso Chapter of the National Association of Social Workers and, in 1996, was named Judge of the Year by the State Foster Parent Association.

Founded in 1937, the Reno, Nevada-based National Council of Juvenile and Family Court Judges, the nation's oldest judicial membership organization, is focused on improving the effectiveness of our nation's juvenile and family courts. A leader in continuing education opportunities, research, and policy development in the field of juvenile and family justice, the 2,000-member NCJFCJ is unique in providing practice-based resources to jurisdictions and communities nationwide.

Summer Conferences a Hit!

If you weren't able to make it to our summer line-up of conferences, you missed excellent programming, top-notch faculty, and irreplaceable camaraderie with your peers. But, as they are capstone offerings, these conferences will be back next year, and we promise to keep making improvements so that your judicial education experiences are the best ever.

We received constructive feedback from this year's attendees, and you can see some of their comments below. Thanks to our expert presenters, attentive participants, and competent TCJ staff, we can call our summer line-up of educational programs a complete success.

See you next year!

DWI COURT TRAINING

I actually thought that since our DWI court was up and running, there would be times I would find the material "old." Not so!! Very helpful for a new court, especially in the area of needing bright lines for eligibility criteria, effects of addiction on the brain, solving some backlog problems, and so much more.

Very educational and intense. The materials supplied will be a great help to take back to our court for implementation.

I learned a practical road path for planning implementing, evaluating, and sustaining DWI court.

I learned how to better structure the entry process to our program and incorporate more positive social cultures for participants.

I learned [it's possible to have] successful accountability if the offender is provided with long term treatment, and that lives can be saved.

I discovered there are many outstanding and knowledgeable people on the "front line" with me.

I discovered that recovery is hard and can take a long time to achieve.

I was surprised that the years of substance abuse [are] not quickly recovered, in respect to the body and brain returning to full capacity.

I was surprised to learn that many of the host DWI court participants had really changed their lives.

I was surprised that the years of substance abuse are not quickly recovered in respect to the body and brain returning to full capacity.

PROFESSIONAL DEVELOPMENT PROGRAM

FOR COURT COORDINATORS, ADMINISTRATORS, AND MANAGERS

Knowledgeable speakers, all were well prepared, good handouts. The entire staff of PDP was very helpful and everything ran smoothly.

Benefit of the PDP program: Brings coordinators together to discuss the specific operations of their courts.

Awesome speakers.

Great interaction with speakers and classmates.

Handouts/information given by speakers will be useful tools that can be – will be – taken and used back at the office.

I have learned to utilize and make changes in my court with all the information (networking) gathered at PDP.

I discovered that most of my classmates had the same problems I had.

I discovered that there are multiple ways to interpret (for better or worse) statistics.

I discovered that I need to be more demanding in leadership.

I love PDP – I really wish you would create a program for Coordinators that have attended all three years of PDP and have a general class on (maybe each day have) legislative updates on family law, criminal law and civil law changes/updates. It would be very helpful for Coordinators with general jurisdiction, but it would help all of us. Thanks to all the PDP staff – you were awesome!

I love these classes. I always go home with so many ideas I want to try.

ASSOCIATE JUDGES CONFERENCE

The Texas Center for The Judiciary does an outstanding job in producing this annual conference. It is better every year – 2008 is the best so far.

Different emphasis this year which focused on children's development, visitation, therapy. I enjoyed the wider focus.

I learned more about forensic/clinical differences in mental health expert roles. More about child's brain development.

I learned that risks for children increase when unrelated people are in the home.

I was surprised that testosterone levels in amniotic fluid can predict future performance of a child. I want to learn more.

I was surprised to learn that some courts have access to even more resources than I thought.

As a result of this conference, I plan to advocate for unified family courts in Texas.

As a result of this conference I plan to closely examine the mental health experts' take in cases (forensic/clinical).

A general theme such as mental health/brain development gave it cohesiveness – one subject played to another.

Application of information to identify with children from Monday's Brain Development topic was great.

The focus on violence and ethics was superb – thank you.

"Irreconcilable Differences: Forensic and Therapeutic Roles" – most helpful session I've heard at any SBOT conference for judges.

One of the most consistent and enjoyable CLE's – wonderful to have courses just for associate judges. Thank you.

I learned why therapeutic and forensic areas are incompatible and how this re-emphasizes the importance of parenting coordination confidentiality.

I discovered that unmarried parents collect only one-half as much child support as divorced parents.

Overall one of the best meetings I have attended in seven years.

As a result of this conference, I plan to create a chart for the bench reflecting the different drug levels, thus helping me interpret the drug results.

As a result of this conference, I plan to talk to my commissioners, judges and OAG re: starting a community supervision program.

EVIDENCE

OF A WINNING JUDICIAL SUMMIT



Hosts of the 2008 Evidence Summit, Hon. Stephen Ables and Hon. Lora Livingston

If you need evidence of a winning judicial education conference, the 2008 Evidence Summit held August 3-5 at the Sheraton Austin Hotel should satisfy any doubts. The first of its kind, the Texas Center for the Judiciary brought together Texas judges and eight Texas law schools to compete for the title of Evidence Summit Champions.

Hosting the Summit were two of the most amazing and entertaining legal minds on the Texas bench today, Honorable Lora Livingston of the 261st District Court, and Honorable Stephen Ables, Presiding Judge of the 6th Judicial Region, 216th District Court.

This gathering was a first for judges and law schools, and based on the highly favorable responses (see next column), a worthy program to continue throughout the years.

How did the Summit work?

Each law school had a "host" team comprised of the law school dean (or his/her designate), an evidence professor, and a judge alumna/alumnus. A distinguished judicial panel also served as a host team. Each panel hosted one hour of Evidence Jeopardy on a high-tech game board with remote transponders at each team's table. Selected categories included Relevancy, Hearsay, Hearsay Exceptions, Contents of Writings, Expert Witnesses, Non-expert Witnesses, Authentication and Identification, and Objections. Each panel administered their own 25 questions from the Jeopardy board.

Competition was Fierce!

The judicial teams consisted of all conference attendees, randomly assigned to a team. Lively discussion and debate ruled the day-an-a-half summit, and our illustrious hosts made certain no harm or foul came to anyone.

Announcing the 2008 Evidence Summit Champions:

First Place: Team 7



L to R: Donald Metcalfe, Ricardo Herrera, Carlos Cortez, Ben Childers, Suzanne Stovall, Virgil Vahlenkamp
(Not pictured: Diane Henson, W.G. Woods)

Second Place: Team 5



L to R: Kenneth DeHart, Don Burgess, Mollee Westfall, Robert Moore (Not pictured: John Nelms, Carter Tarrance)

Third Place: Team 2



Woody Densen, Patrice McDonald, Buddie Hahn, Eric Shepperd, Mike Herrera, Robin Malone Darr, Stephen Yelenosky
(Not pictured: Mary Anne Bramblett, Lee Duggan)

Congratulations on Team 7's victory!

What participants said:

While I left early because of the inclement weather on the way to Houston, I want ya'll to know that this was one of the very best CLEs I've ever attended. I've been licensed for 29 years and in the past I have been a member of the College of the State Bar. I really know what I'm saying. Ya'll just did an amazing job.

I think the table discussions among the different levels, tenures, and ages of the judges were absolutely great to see; and to connect it with the law school professors and deans was brilliant. Thanks so much for letting me be part of the faculty and the fellowship.



Judge Roger Bridgwater
178th District Court
Houston, Texas

Evidence is the "tool" of our trade. For trial judges, it is the most important area to master. I have been waiting a long time for a seminar devoted to this topic.



It was more fun and interesting than any seminar I have attended in a long time. -- Loved it, would recommend it to anyone.



I attended because I felt [this conference] could help in my evidence rulings. It exceeded my expectations.



You hit a home run on this program. Team concept [is] excellent.

Fun and educational and good exchanges of opinions within the teams.

Major strengths of the 2008 Evidence Summit: Covered practical scenarios, was entertaining, and excellent staff!



Major strengths of the 2008 Evidence Summit: Ability to really meet and interact with judges we didn't know before. Helpful to listen to those other judges' rationale for their decisions.

I came to this conference because I thought the format sounded interesting. The days flew by and I thoroughly enjoyed this seminar.



Much better than anticipated! Having to vote under pressure is the same as being in court.



Do it again!

Great interaction with the large group and very meaningful discussions at our tables.



If you missed this year's Summit, fear not. Next year's Evidence Summit will be even better, chock full of new and exciting challenges. Enrollment will be limited, so watch for information in early 2009 on the next Evidence Summit!



**By Hon. Sam Griffith,
with Hon. Robert Newsom**

In 2003 Judge Sam Griffith of the 12th Court of Appeals took advantage of an opportunity to travel to Qujing, China. There he met with local judges to discuss the differences and similarities of the Chinese and American legal systems and enjoyed it so much, he vowed to return. Five years later, Sam did return to Qujing, this time with Judge Robert Newsom, of the 8th District Court, and his wife, Robbie. Here's just a little bit of their experience.

2003 – Sam's Trip

Qujing, in western Yunnan Province, in southwestern China, is what the Chinese regard as a small city, having a population of well over a million people. My visit was a great introduction to the Chinese legal system. The new Qujing courthouse was stunning. In the huge entrance hall was a statue of a blindfolded Lady Justice holding her Scales of Justice and a number of massive, ten-to-twelve feet tall, bas-relief representations of the recognized sources of Chinese law. Although the bas-relief of the English judge with his curly wig was interesting, most intriguing was the bas-relief of a Chinese scholar, writing with a brush at a low portable table while behind him stood a Chinese soldier, AK-47 machine gun at the ready. Evidently, this portrayal of indigenous Chinese legal influence represented the fusion of Chinese Confucianism with Chinese Communism.

My interpreter in Qujing was Professor Liangyun Zhou, who used the western name "Henry." Henry was a law professor at Yunnan Normal University in Kunming, as well as serving as an administrative law judge and being a lawyer. I also had a woman translator. She generally did an excellent job, with Henry filling in when the topic was more law related and the legal concepts less clear to her. But there was one phrase that brought my presentation to a complete halt as Henry, the woman interpreter, and various other Chinese officials who could speak English discussed and tried to grasp—and thus, translate—a most intriguing, confusing term. I had begun my presentation of the American legal system by quoting the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness." It was not the phrase "endowed by their creator," which I explained meant "given to us by God our creator" that confused the interpreters. It was not "inalienable rights." It was the concept of the "pursuit of happiness."

My presentation stopped for several minutes as the interpreters discussed what it meant and I tried to explain the concept. Finally, I just continued my presentation, the "pursuit of happiness" just a chimera—a creation of the imagination; an impossible and foolish fancy—in the minds of my audience. After the three-hour long session, as we were in the car leaving the conference building, my interpreter turned in her seat, looked me in the eye, and said earnestly, in slow, halting English, "I think I would like that 'pursuit of happiness.'" I assured her that she would.

I stayed in contact with Henry, and introduced him to the American legal system when he studied at the University of Texas at Tyler, during the 2004-05 academic year. Henry invited me back to China to teach at Yunnan Normal University School of Law. I accepted but was unable to return to China as soon as I envisioned. In September 2006, I attended the Judicial Conference in Houston with intent to find a judge interested in teaching law in China. While we were both registering, I met Robert Newsom, the judge of the Eighth District Court, which sits in Hopkins, Franklin, Rains, and Delta Counties. Within about five minutes, I invited him to join me in China. We discussed the trip that evening during dinner with his wife, Robbie, a registered nurse. We were unable to go to China in 2007 due to conflicts: Robert went on a mission trip to the Philippines and I went on my second mission trip to Sudan and Uganda. But we determined we would go in 2008.

2008, Sam and Robert's Trip

A week before our departure on April 18, 2008, Henry informed us that the new dean at Yunnan Normal University School of Law had withdrawn our invitation to teach there. But Henry quickly contacted his former professor Dr. Yundong Chen, who was now Dean of Yunnan University School of Law. Dr. Chen immediately and graciously invited us to present a series of lectures about the American legal system to the graduate law students at his law school in Kunming, China. Our lectures were held in a large lecture hall at Yunnan University School of Law, with the idea that we would speak for an hour and a half; then answer questions for another hour and a half. Dr. Chen welcomed us, gave Robert and me beautifully framed certificates of appreciation, and introduced Henry to the assembled students. Henry sat in the audience listening to our presentation. The assemblage of eighty Chinese graduate law students had great fluency in English, but if Henry perceived that our presentation was too convoluted for

them, he would rise and quietly wait until we saw him; then we would pause as Henry explained what we had just said, translating it into Chinese.



L to R: Judge Robert Newsom, Judge Sam Griffith, and Professor Liang Yun Zhou ("Henry")

Our first lecture began with a short video narrated by former United States Supreme Court Associate Justice Sandra Day O'Connor about the Texas legal system. Then Robert introduced his prepared PowerPoint presentation about

the Texas and United States legal systems, demonstrating the hierarchy of courts and their jurisdictions. Robert and I shared the stage, discussing together the various topics, each seamlessly interjecting comments or adding insights as appropriate, each deferring to the other as we expounded on our topics.

"What about jury nullification?" asked one graduate law student.

Robert and I were surprised by the breadth of the students' knowledge of the United States legal system, as the nullification question revealed. But such questions permitted a broad discussion of America's values and the American legal system's emphasis on the importance of the individual and the use of jurors and the value of each citizen bringing his "natural enlightenment," to use Alexis de Tocqueville's phrase, to the jury room to shape the jury's verdict, which results in our system of American justice.



Chinese law students at Judge Newsom and Judge Griffith's lectures.

The conversation with the students, which better describes the Q&A portion after the lectures, was a delight and gave us a better understanding of the core difference between the Chinese legal system and ours: the American emphasis on the individual as opposed to the Chinese emphasis on the group or the Chinese people. We explained that in America we value the individual, and I quoted the old expression that "it is better that ten guilty go free than one innocent person be convicted." The Chinese were astounded that we esteemed the individual and individual liberty so highly.



Students speaking with Americans Robbie Newsom, Judge Robert Newsom, and Judge Sam Griffith

They were further incredulous at our jury system of actually taking ordinary citizens, without any legal training, seating them as jurors, and having them render verdicts, to be the fact-finders and decision-makers in trials. In China the judges are appointed by Communist government officials, and ordinary citizens are not included in the trials in a decision-making capacity.

One day, I read to them de Tocqueville's essay, "On the Jury in the United States Considered as a Political Institution," from his classic 1835 book, *Democracy In America*, to better explain the American viewpoint. The students asked many questions about various United States constitutional amendments contained in the Bill of Rights, especially about applications of the Fourth, Fifth, and Sixth Amendments to criminal cases. After our structured programs ended, we remained for about another hour to answer questions from individual students.

On the way to dinner our first night in Kunming, Henry was driving us across the city, and there was supposed to be a rally by some local citizens to oppose the route of a new road. In response, long before the rally was to begin, the government sent many buses loaded with riot police to the scene. The line of police stretched for hundreds of yards. They wore helmets with Plexiglas face shields pulled down, their bodies covered with Plexiglas the size of a Roman soldier's shield and clubs at the ready. We inched along slowly in the massed "rush hour" traffic, arriving hours late for our dinner. It gave further focus to our presentation about the importance of the individual in society. The line of police ready to pounce demonstrated a significant line of demarcation between the Chinese and American views of the significance of the individual citizen. The concept of individual rights is somewhat ill-defined in China, especially when the individual is weighed against the government.



Judge Newsom, next to wife Robbie, at the Dean's dinner.

Dr. Yundong Chen gave us a dinner after our first day's session. We walked through the beautiful campus of Yunnan University, the old buildings of which reminds one more of Cambridge or Oxford than one would

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expect in China, to the nearby hundred-year-old home of an early Yunnan University professor that had been turned into an elegant restaurant. The home was classic Chinese architecture, a two-story building in the form of a hollow square with a large patio area in the center with a fish pond containing large gold and black Koi. In the banquet room, we sat around a large round table. In the center of the table was a massive, round glass shelf on a pivot, what we would call a "lazy Susan." The guests have about a foot of space between the edge of the table and the edge of the shelf for their plates and cups and chopsticks (and spoons for Westerners). The servers would place the platters of food on the rotating shelf and each person would take what he wanted to eat as the assorted platters of food circled around.

The guests at the dinner were Dr. Chen, Henry, another dean at Yunnan University, a law professor, two law students, and the three of us, Robert, his wife Robbie, and me. Dr. Chen ordered for us, carefully and slowly making his selections from a menu that was as large as any in a fancy American restaurant, but as thick as an old Sears-Roebuck catalogue. I sat next to Dean Chen and could see the menu, which had laminated pages. Next to each item was an extensive description and photograph of the dish. Dr. Chen was meticulous as he carefully crafted the elegant dinner. We had beef. We had fish. We had chicken. We had countless vegetable dishes—some I had seen before, some unknown but very intriguing. We had half a dozen varieties of mushrooms, and we had sautéed white bees and sautéed bamboo worms.

A suggestion: If ever given the choice, choose the bamboo worms. My opinion is due to the fact that when one lightly sautés something with an exoskeleton, like a bee, the heat vaporizes the innards, leaving only a dry husk with big, multifaceted black eyes staring at you. With a bamboo worm, you still have the cooked worm guts. Not as bad as it sounds.

When we left Kunming, we went to Chengdu, in Sichuan Province just north of Yunnan Province, where most of the panda bear exhibitions are located. We had planned to visit Tibet after Kunming, but because of the unrest there, the Chinese government had closed Tibet to tourists. So we had lots of time to spend visiting the rest of China. Robbie especially wanted to see the pandas. The panda exhibits were good, but Peter's Tex-Mex Grill was exceptional! Some long-time American friends in Kunming had recommended Peter's, and they were one hundred percent on target. It was decorated like a Mexican café in San Antonio, and I got all the sweet iced tea I could drink—a special treat for me. The food was great, but in fairness, it was more traditional Mexican than true Tex-Mex, as there was no chili sauce poured over the enchiladas. But that is a small quibble. I not only ate there, but I "got the tee shirt."

Imagine: a tee shirt with "Peter's Tex-Mex" embossed on the upper left front of the shirt, with Mexican sombreros on the back, and under that, in Chinese no less, were written the locations of the three Peter's Tex-Mex Grills scattered across China.



Judge Robert Newsom and wife Robbie with Judge Sam Griffith at the entrance to Peter's Tex-Mex Cafe in Sichuan Province

We saw the terra cotta warriors of Xi'an, a massive burial site for the emperor who united all of China, and after whom China is named, Emperor Qin (pronounced "Chin"). Prior to his death in 210 BC, Emperor Qin had over 700,000 people work for decades to create an army of over eight thousand life-size soldiers formed out of terra cotta to guard him in death. The thousands of beautifully hand-painted warriors, with real weapons in their clay hands, together with 130 chariots pulled by 520 terra cotta horses and 150 terra cotta cavalry horses, were all buried in a vast network of tunnels about five meters deep. Some of the tunnels' corridors are 230 meters long, the warriors carefully arrayed in battle formation to protect Emperor Qin in his afterlife.

Of course, we visited the Great Wall. It is stunning.

It was a great trip, and Robert, Robbie and I would love to go again. The opportunity to discuss the American legal system with lawyers and judges in other countries is a great experience and helps one to refine his beliefs as he answers challenges and questions. And it makes one proud of the American legal system.

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Author's footnote:

People worry about my safety when I go to Sudan. But they felt very comfortable with my travel in China. Yet, there was the massive earthquake two weeks after we left. Chengdu and Sichuan Province were shattered by the earthquake that killed tens of thousands and left hundreds of thousands of Chinese homeless. I emailed our tour guide to see if she and her family were fine. She assured me that both her family and Peter's Tex-Mex Grill were unharmed.

On July 21, two public buses were bombed in Kunming, China, where we taught. Appearances are deceiving. What looks tranquil may be dangerous, and what seems dangerous may be safe. For we truly rate the danger in a personal sense. If we only ride once on a public bus in Kunming, but it is the day that bus was bombed, it was dangerous to ride a bus. If the bald tires on the rickety planes in Sudan land safely, then for that ride, it was safe.

MEDIATOR CREDENTIALING

By Judge John Coselli

Texas law requires that state trial courts be active in promoting alternative dispute resolution and authorizes the courts to refer cases to mediation and appoint mediators. Issues regarding mediator qualifications and ethics have finally resulted in mediator credentialing in an effort to assist the courts, attorneys, and the public in identifying mediators who have accomplished a meaningful level of mediator training and experience and who have committed themselves to practice standards and rules of ethics for mediators enforceable through a grievance procedure.

This paper will provide judges with the following important information about the significance of mediator credentialing to the work of the courts in referring cases to mediation:

1. The court's statutory obligations in making referrals to mediation
2. The statutory criteria the court must consider in making referrals of cases to qualified mediators.
3. The nature and significance of mediator credentialing to the court in making referrals of cases to mediators.
4. Identifying credentialed mediators.

1. The court's statutory obligations in making referrals to mediation.

While the Texas legislature has required the courts to encourage the use of ADR, mediation has become a significant part of the resolution of litigation and the administration of justice in Texas. Judges have been appointing mediators and referring cases to mediation and for many years. Although the courts have broad discretion in the matter, the Texas legislature has established criteria in the Texas Alternative Dispute Resolution Procedures Act (Chapter 154 of the Civil Practices and Remedies Code) for the court to consider in making such referrals and appointments.

Texas law provides that it is the policy of the state to promote ADR (Sec. 154.002 of Title 7 of the Act), that the courts should implement the policy (Sec. 154.003 of the Act), that the courts may refer cases to mediation and appoint mediators in implementing the policy (Sec. 154.021 of the Act), that mediators appointed by the courts must be qualified (Sec. 154.052 and Sec. 154.053 of the Act), that the court may set reasonable mediator fees (Sec. 154.054 of the Act), and that volunteer mediators appointed by the court are immune from liability under certain circumstances when the court appoints a mediator (Sec. 154.055 of the Act).

2. Statutory criteria in appointing a mediator.

A mediator appointed by the court must be impartial and qualified under the Act (Sec. 154.051 of the Act).

To be qualified the mediator must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course approved by the statute, or have legal or other professional training or experience in mediation approved by the court. To be qualified for appointment in a case involving the parent-child relationship, the mediator must have completed an additional 24 hours of training in the fields of family dynamics, child development and family law, or have legal or other professional training or experience in mediation approved by the court (Sec. 154.052 of the Act).

The statute also establishes standards for mediator conduct that the court should attempt to protect by appointing only qualified mediators. Mediators must be neutral and impartial in the matter being mediated, must assist the parties in reaching a resolution of their dispute in an appropriate manner, may not compel or coerce the parties, must protect the parties confidential information shared with the mediator, and must report child and elder abuse (Sec. 154.053 of the Act).

3. The nature and significance of mediator credentialing to the court in making referrals of cases to mediators.

The State of Texas does not license, certify or credential mediators. With the exception of the statutory criteria the courts should use in appointing mediators, mediators and mediation in Texas is unregulated. The only mechanism for policing mediator conduct in cases where the courts appoint mediators is the diligence of the courts in appointing qualified mediators.

With an ever increasing number of the attorneys and others seeking selection by the parties and appointment by the courts to mediate cases, there has been a corresponding number of questions about the qualifications, experience and competence of mediators. It has generally been only by word of mouth, personal experience or mediator advertising that attorneys, the courts and the litigants have been able to identify what appears to be qualified mediators.

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Mediators appointed by the court have the authority of the court to be trusted with and handle the parties' most sensitive and confidential information during mediation. The court's appointment charges the mediator with the responsibility of neutral and impartial conduct, and with the responsibility of conducting themselves in a manner that will not only protect the confidences of the parties, but in a manner that will protect and enhance the opportunity of the parties to resolve their litigation at the time of the mediation. The importance of the court placing this authority only in qualified mediators cannot be overstated. When a court appoints a mediator, the appointment carries with it a representation by the court that the mediator is qualified for the appointment.

The trust and confidence of attorneys and their clients in the capabilities and ethics of court appointed mediators must be protected by the judiciary.

It is reasonable to believe that the level of a mediator's training and experience has a meaningful relationship to the mediator's qualifications. It is also reasonable to believe that mediators who are accountable for their conduct through some grievance process would be perceived as having a greater level of commitment to their work and accountability for their conduct.

If mediators held credentials that were recognized in connection with specific levels of training, experience and commitment, such credentials would be helpful to the courts in identifying qualified mediators for appointment to cases referred to mediation informally or by court order.

With the Texas legislature having mandated that the courts should promote ADR, the Texas Supreme court has expressed concern about the qualifications, conduct and ethics of mediators who are appointed to mediate pending litigation. On May 7, 1996 the Supreme Court signed an order creating an advisory committee on court-connected mediation. In that Order the court expressed its intent by writing that:

"The court has determined that, at a minimum, ethical rules governing court-annexed mediations and mediators should be implemented and enforced. The court is also considering whether some level of credentialing is necessary and appropriate.

Accordingly, the court hereby creates an advisory committee to examine these issues and to make recommendations to the court."

The advisory committee made its recommendations to the court that the court adopts specific rules of ethics for mediator conduct and a procedure for enforcing compliance with the rules.

While the court was considering the advisory committee's recommendations the court was also aware of the work of the Texas Mediator Credentialing Association (TMCA) in addressing mediator qualifications and ethics through

credentialing. After meetings of TMCA representatives with Chief Justice Tom Phillips, Justice Priscilla Owens, and members of the advisory committee, the court decided not to adopt rules for mediator ethics or credentialing. On June 13, 2005 the court signed an "Approval of Ethical Guidelines for Mediators" affirming that the court is committed to ensuring the continued quality of mediators and mediation services in Texas and adopting the Ethical Guidelines for Mediators promulgated by the Alternative Dispute Resolution Section of the State Bar of Texas in 1994. The Ethical Guidelines are aspirational but, when necessary, are to be enforced by the courts through their inherent powers and rules already in existence. The court has not otherwise regulated mediator conduct.

The TMCA began issuing credentials to mediators in 2004. The TMCA is a Texas non-profit, non-governmental corporation with a Sec. 503.c (6) designation under the U.S. Internal Revenue Code that issues credentials to mediators who meet training, experience and commitment qualifications for the credentials. Credential holders must also meet annual continuing education and experience requirements in order to maintain a credential.

The TMCA is uniquely appropriate to issue credentials to mediators, in that its ten-member board of directors is composed of the representatives of major mediation organizations (the Texas Dispute Resolution Centers funded through the ADR Act, the Texas Association of Mediators, the ADR Section of the State Bar of Texas, the Association of Attorney Mediators, the Center for Public Policy Resolution, and the Texas Mediators Trainers Roundtable) who are appointed by each such organization to the board, and representatives of education, consumers, mediator trainers and the judiciary nominated and elected to the board by the organizational members of the board.

The work of the TMCA represents an historic collaboration by mediators and their leaders to take professional responsibility for the quality of mediators in Texas and to provide to the courts and the public credentials through which they could identify mediators who have accomplished and maintain specific levels of training and experience identified with the credentials.

The work of the Supreme Court and the Texas Mediator Credentialing Association has provided significant support to counsel, their clients, and the trial and appellate courts in selecting and appointing qualified mediators. Although credentials do not ensure quality, the enhanced ability to identify and select qualified mediators improves and protects the public's confidence in mediator competency, mediator ethics, and the administration of justice through court ordered mediation.

For more information, contact:

Judge John Coselli
125th District Court, Harris County Civil Courthouse
201 Caroline Street
Houston, Texas 77002
713-368-6133
John_Coselli@justex.net

HELPING THE MOST VULNERABLE

by Ginny Wood, CJA Program Director and Christie Smith

Imagine you're a small child, helpless, neglected and possibly abused. Now imagine that the feelings of helplessness continue as you're subjected to the trauma again and again through well-intentioned, but untrained adults, in a bewildering system of investigation, prosecution and judicial procedures.

That's exactly why The Children's Justice Act (CJA) was created – to put systems in place that would surround child abuse and neglect victims, especially in cases of sexual abuse and exploitation, with a team of professionals capable of guiding them gently through the criminal justice and child welfare systems, typically through Child Advocacy Centers (CACs). The goal is to ensure the child does not endure additional trauma.

CJA, a federal award, funds programs in each state to put these professionals in place. CAPTA amendments to the Keeping Children and Families Safe Act of 2003 expanded the reach of the program by awarding grants to address handling children who also have disabilities or serious health problems. The Governor's Office designated The Texas Center for the Judiciary (Texas Center) to administer CJA funds in Texas.

To meet program requirements, the Texas Center maintains a multidisciplinary task force of professionals with knowledge of and experience with the criminal justice and child welfare systems. The Task Force, chaired by the Honorable Larry Thorne, meets quarterly to monitor the progress of CJA funded projects, as well as ensuring the effective administration of CJA Funds.

Last year the Task Force gathered for a two-day planning session, where they created recommendations that ultimately led to requesting applications for funds. Out of the 35 applications received, CJA chose 16 projects around the state that will begin receiving grant funds October 1.

CJA has in the past provided funds to the Children's Advocacy Centers of Texas (CACTX), an umbrella organization that offers training, resources and some funding to CACs. This year, CJA will continue in that role, but will also begin funding a few local CACs directly.

One of the programs that will receive support is the CAC of Smith County Kids in Court Project. This is a new program that will provide advocacy services tailored to child victims of sexual abuse and their caregivers and family members while the child's case proceeds through the criminal justice system.

In Tom Green County, the CAC will implement a special project that will use CASA (Court Appointment Special Advocate) volunteers to reevaluate cases where children have been placed into permanent managing conservatorship by the state. The project is designed to advocate for permanent placements for these children, so that they won't be moved multiple times during their childhood.

Texas CASA will also continue to receive funds from CJA – this year to support its Quality CASA Advocacy and Volunteer Recruitment programs. Part of this program focuses on ensuring strong advocacy for children in CPS custody by making sure volunteers are well-trained and supervised. The other part of this program focuses on volunteer recruitment. Through a coordinated public outreach campaign, Texas CASA hopes to expand their recruitment efforts. CJA funds will be used to help recruitment efforts in Henderson, Anderson, Cherokee and Navarro counties.

A new program that CJA will fund is the Ft. Bend County Court Team for Maltreated Infants and Toddlers. The Court Team is a community-based initiative of ZERO TO THREE, a national nonprofit organization dedicated to promoting the health and development of infants and toddlers. Currently serving 36 children, this team, led by 328th District Court Judge Ronald Pope, has so far helped 55 abused or neglected infants and toddlers, and 100 siblings and their parents. Pope and Dr. Connie Almeida, Ft. Bend County Community Coordinator, plan to disseminate information and resources to legal professionals throughout the state in hopes of expanding the Court Team project to new communities.

These are just few of the programs that CJA funds that directly help protect the most vulnerable members of our society. Through these programs, CJA makes a difference in the lives of these children. For more information on CJA or how to apply for CJA funding, contact:

Ginny Woods
CJA Project Director
ginnyw@yourhonor.com

Cherisse Robison
CJA Grant Monitor
cherisser@yourhonor.com

Or visit the CJA website at
<http://www.yourhonor.com/CJAsite>

IMPROVE EFFICIENCY

of your court operations

OCA Offers Assistance for Improving the Efficiency of Court Operations

The Office of Court Administration (OCA) provides FREE assistance to courts in evaluating and implementing case management and other administrative programs to improve the efficiency of court operations and the administration of justice—a key element of the OCA’s mission.

Just some of the services offered:

Evaluation of the dockets, systems, practices, and procedures of courts and development of recommendations for improvement;

On-site training and technical assistance for judges and court coordinators in case and calendar management and other administrative matters;

Assistance with the preparation of a court administration manual designed for the requestor’s court that covers such things as preparing the daily court calendar, daily court dockets, etc.; and

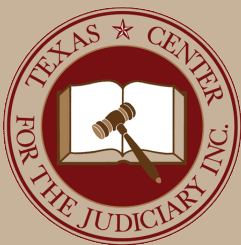
Assistance with the development of forms for case management, dismissal dockets, pretrial scheduling orders, notices, mediation orders, and any other forms that would be beneficial to the court.

To provide resources and information for the efficient administration of the judicial branch of Texas.

To learn more about the services offered by OCA or to request assistance, call Eva Walla, Court Services Consultant, at (512) 475-1777 or email her at Eva.Walla@courts.state.tx.us.

To learn more about the Office of Court Administration, visit the agency’s website at www.courts.state.tx.us/oca.

OCA is a state agency in the judicial branch that operates under the direction and supervision of the Supreme Court of Texas and the chief justice, and is governed primarily by Chapter 72 of the Texas Government Code.



DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT EMAIL ADDRESS?

The Texas Center frequently sends out important information via email. To ensure you receive this information in a timely manner, please keep your email address current with us. To submit or update your email information, please contact Michele Mund, Registrar, at (512) 482-8986, or michelem@yourhonor.com.

LEADERSHIP NOMINATIONS

The Nominating Committees for the Judicial Section, State Bar of Texas, and the Texas Center for the Judiciary have slated the following officers for their open 2008-2009 leadership positions:

Chair: Hon. Suzanne Stovall, 221st District Court, Conroe
Chair-Elect: Hon. David Garcia, County Criminal Court #3, Denton

Judicial Section Board of Directors

Place 2
Hon. Mackey Hancock
7th Court of Appeals, Amarillo

Place 3
Hon. Rick Morris
146th District Court, Belton

Place 4
Hon. Elma Salinas Ender
341st District Court, Laredo

Secretary-Treasurer
Appointed by Chair

Texas Center for the Judiciary Board of Directors

Place 1
Hon. Rick Strange
11th Court of Appeals, Eastland

Place 3
Hon. Frank Rynd
309th District Court, Houston

Place 8
Hon. Monica Guerrero
County Court at Law #1, San Antonio

Place 10
Hon. Dick Alcalá
Senior Judge, Retired, El Paso

Secretary-Treasurer
Appointed by Chair

Note: Additional nominations may be made from the floor at the Judicial Section Annual Conference meeting.

DISTRICT JUDGES

MEET AT JUDICIAL SECTION ANNUAL CONFERENCE

By Judge John Coselli, President Texas District Judges Association

The Texas Association of District Judges will hold its annual business meeting at the Judicial Section Annual Conference Monday, September 15, 2008, at 4:00 p.m. at the Hilton Anatole in Dallas.

If you are a district judge, please plan to attend the meeting. The Texas Association of District Judges was established as a non-profit association at the 1993 Annual Judicial Conference. Membership in the Association is voluntary and is limited to sitting Texas District Court Judges. Annual membership dues are \$20.

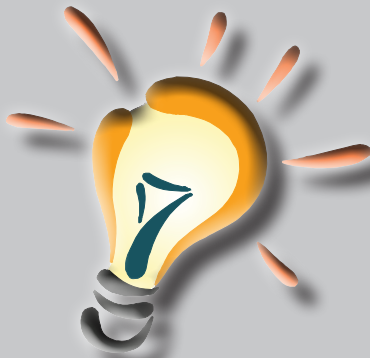
The 2008 Legislative Session required District Judges across the state to take an active role in the legislative process. We

expect the 2009 Legislative Session to involve significant issues of interest to district judges. At the meeting we will provide an update on the status of work impacting court reorganization, complex courts, and court funding legislation. We will also discuss district judge goals for the next legislative session.

Light refreshments will be provided. Contributions from officeholder accounts are permitted to be made to the Texas Association of District Judges.

Please send your annual dues and contributions to the Association payable to: The Texas Association of District Judges, c/o Judge Nanette Hasette, P.O. 1373, Corpus Christi, Texas 78403.

Please also provide the Association with your e-mail address by e-mailing Judge John Coselli at john_coselli@justex.com or call him at 713-368-6133.



Have a Great Idea?

We are always interested in your program ideas and speaker suggestions. Send yours to Anissa Vila, Program Attorney, at anissav@yourhonor.com.

In Memoriam

**Our hearts go out to the families of those honorable souls who
have passed before us and served the bench so well.**

Please join us in remembering:

Hon. Russell P. Austin

Judge
Probate Court #1
Houston, Texas

Hon. James Baker

Texas Supreme Court Justice (Ret.)
Dallas, Texas

Hon. Joe Bruce Cunningham

Senior District Judge
342nd District Court
Ft. Worth, Texas

Hon. Pete Gilfeather

Judge
Tarrant County Criminal Court
Ft. Worth, Texas

Hon. Paul Huser

Senior District Judge
Schulenberg, Texas

Hon. John C. Vance

Justice (Ret.)
Dallas, Texas

Contributions

The Texas Center for the Judiciary thanks you for your generosity.

Lists include contributions made through August 18, 2008.

In Memory of . . .

Amado Abascal, Jr.

Hon. Amado Abascal, III

Hon. Richard Bosworth

Hon. G. Timothy Boswell

Hon. Henry Braswell

Hon. Lloyd Perkins

Hon. Emmett Colvin

Hon. Frank Maloney

Ms. Betty Cooke

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Hon. Lloyd Perkins

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**The Staff of Texas Center
for the Judiciary**

Ms. Tana Petrich

***Contributions to the
Texas Center for the Judiciary***

Hon. Mike Herrera
Hon. Scott H. Jenkins

UPCOMING CONFERENCES

2008

COLLEGE FOR NEW JUDGES
December 7-12
Dallas

2010

JUDICIAL SECTION ANNUAL CONFERENCE
September 21-24
Corpus Christi

COLLEGE FOR NEW JUDGES
December 5-10
Austin

2011

JUDICIAL SECTION ANNUAL CONFERENCE
September 18-21
Dallas

2009

WINTER REGIONAL CONFERENCE
(REGIONS 1, 2, AND 8)
January 25-27
San Antonio

WINTER REGIONAL CONFERENCE
(REGIONS 3, 4, 5, 6, 7, 9)
February 23-25
El Paso

FAMILY VIOLENCE CONFERENCE
March 30 - April 1
Galveston

CRIMINAL JUSTICE CONFERENCE
May 18-20
Dallas

PROFESSIONAL DEVELOPMENT PROGRAM
June 14-18
Austin

JUDICIAL SECTION ANNUAL CONFERENCE
August 30 - September 2
Grapevine

COLLEGE FOR NEW JUDGES
December 6-9
Austin

More conferences await confirmation.
Look for announcements on
www.yourhonor.com
and in future editions of *In Chambers*.
