

In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.
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Inside this Issue:

- The Access To Justice Movement In Texas
- A Shot In The Arm For Justice
- All Rise: Comprehending The Texas Court System

Plus Departments:

- Making The News
- New Judges
- In Memoriam



TABLE OF CONTENTS

Features

Judge Mentality: The Access To Justice Movement In Texas	3
A Shot In The Arm For Justice	4
State Commission on Judicial Conduct: Public Statement No. PS-2006-1	6
How Texas Judges Can Improve the Lives of Children in Foster Care	8
Alternative Dispute Resolution of Criminal Disputes in the 12th Judicial District	10
All Rise: Comprehending the Texas Court System	11
Texas Judiciary Donates \$10,000 to Hurricane Relief Efforts	13

Departments

Making The News	5
Texas' Newest Administrators of Justice	7
Ethics Opinions	7
Contributions And Memorials	14
In Memoriam	15
Looking Ahead	16

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

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In Chambers

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JUDGE MENTALITY

The access to justice movement in Texas

by Judge Lora Livingston, 261st District Court

In this article I would like to share some information with you about the access to justice movement in Texas and explore some ways in which judges can have a positive impact on the legal needs of the poor in our state.

Justice Lewis Powell eloquently expressed the importance of equal access to the justice system when he said, "Equal justice under law is not only a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is fundamental that justice should be the same, in substance and availability, without

for years by *pro bono* programs all across this state. Lawyers routinely volunteer their time, often traveling to remote locations that are convenient to individuals without transportation. Now judges are doing this, too. Some judges hold court once a month at schools in economically depressed neighborhoods. While only uncontested matters are heard at these evening clinics, this is one way judges can be responsive to the needs of the people the courts are

poor, or middle class people who can't afford to hire counsel? The opportunity to address a grievance and have the case fairly adjudicated in court is doubtful at best, absolutely denied at worst.

The Texas Access to Justice Commission (TATJC) is working on solutions to these problems. By working within the framework of the TATJC, the judiciary can influence both the administration of justice and the public's perception of

"Equal justice under law is not only a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is fundamental that justice should be the same, in substance and availability, without regard to economic status."

-Hon. Lewis Powell

regard to economic status."

Judges are uniquely positioned to lead the way toward a justice system that is as comprehensive as it is fair. Unfortunately, for too long, judges have taken a less active role in designing the way the system operates. Traditionally, judges have focused on what happens inside the courtroom and not on what happens outside the courtroom. Fortunately, that is beginning to change. For example, judges have become more accessible to citizens who have a difficult time getting to the courthouse during traditional business hours.

Evening clinics have been operated

supposed to serve. The court clerks and court reporters volunteer their time at these clinics as well. This joint effort produces a collective benefit to our court system.

By and large, our system works great if you have a lot of money. Wealthy people and wealthy corporations do very well in court. They have the best legal representation money can buy, and they always get their day in court. They don't always win, but they do always have an opportunity to be heard. That's really all our system guarantees—that the courts will be open and available to hear grievances and make fair decisions.

But what about the poor, working

justice. Because the judiciary's role is critical in access to justice issues, there are two designated positions for judges (an urban judge and a rural judge) on the

Commission, as well as for a member of the Supreme Court of Texas who serves as the Court's liaison to the Commission.

Low-income people face enormous obstacles in the courts. Very often low-income people are literally challenged when they try to file a lawsuit by court clerks in some counties who automatically dispute *in forma pauperis* affidavits. Aside from the humiliation that has to be endured, an individual's right to petition the court for relief is threatened by this action. The Supreme Court of Texas has put a stop to this practice in a recent amendment to Texas Rule of Civil Procedure 145 that prohibits a

continued on page 12

A SHOT IN THE ARM FOR JUSTICE

By Jay Patterson, Judge, 101st District Court

When Governor Perry signed SB 1704 on June 19, Texas gave its jury system the best shot in the arm it has had in over fifty years. As of January 1, 2006, jurors will be paid \$40.00 a day starting with their second day of service. This increase will dramatically improve the turnout of citizens for jury service and help remedy the shortfall in representation reported by the Dallas Morning News after the survey it conducted with SMU a few years ago.

To the dismay of many, the survey showed weaker turnout from certain groups in our Dallas community such as Hispanics. Most thought economic factors were primarily to blame.

In 1866, when Texas first decided to pay jurors, the legislature set a rate of \$2.00 per day to match what was considered a daily minimum working wage. The last increase was from \$4.00 to \$6.00 per day in 1954. Today the \$6.00 a day rate forces jurors to make a sacrifice no one else in the courtroom is expected to make because the amount is not enough to cover transportation, parking, lunch and other out of pocket expenses.

That sacrifice has contributed to a response rate of 21% by those summoned. News of the increased juror pay should improve the turnout rate considerably.

There is no better way to assure that people are fairly treated in our courts than to have independent citizens with no ax to grind, and no vested interest in a dispute

participate in the process. The dedication of jurors is inspiring and affirms the wisdom of the Seventh Amendment to the U. S. Constitution that guarantees “the right of trial by jury”.

The United States is the last bastion of the right to trial by jury. Canada uses juries to a limited extent and Russia is experimenting

Texas gave its jury system the best shot in the arm it has had in over 50 years

with them, but for all intents and purposes, the United States remains alone and has enjoyed the right to trial by jury for over 200 years. It is a cornerstone for our system based on the rule of law.

I have tried hundreds of jury trials and believe strongly that using juries has the following real benefits:

- Jurors capture the innate fairness and honor that most Texans are strongly committed to, a deal is a deal, a person’s word is her bond.

- No matter what level of formal schooling the jurors have had, as a group, the jury demonstrates experience, common sense and wisdom that we can be proud of (a verdict that seems to be inflated based on the evidence is extremely rare; day in and day out, reasonable verdicts just do not seem newsworthy so many people are unaware of them).

- The patience, attentiveness,

purposefulness and persistence of jurors to reach a correct decision are impressive.

- The willingness of jurors to make personal sacrifices to serve is inspiring.

- Juries seem to have the intelligence of their most intelligent members and the memory of their members with the best memories.


- Juries provide excellent checks and balances for our justice system.

- The jury is a democratic institution that requires participation by all citizens over time. That alone serves

to legitimize decision making by jurors.

- The jury selection system is designed to allow the parties to eliminate bias and prejudice. The jurors take an oath to make decisions based on the law and evidence from the trial.

In short, “Juries invest each citizen with a sort of magisterial office; they make all...feel that they have duties toward society and that they take a share in its government. By making men pay attention to things other than their own affairs, they combat that individual selfishness which is like rust in society.”—Alexis de Tocqueville, *Democracy in American* (1833).

Let us hope the wise increase of compensation for jurors will fuel a better realization of the ideals expressed by de Tocqueville so long ago. 



MAKING NEWS

Honors & achievements of Texas Judges

Retired Texas Chief Justice Thomas Phillips received the NCSC’s Harry L. Carrico Award for Judicial Innovation for his tireless work in promoting innovations in Texas’s judicial selection system, which left an imprint nationally. “Chief Justice Phillips battled for his entire tenure against a perception that money could buy justice, or at least influence it, in those states that elect judges,” said Texas Chief Justice Wallace B. Jefferson. To combat the perception, Phillips championed restrictions on judicial campaign fund raising during his first statewide race for chief justice.



The State Commission on Judicial Conduct announces that the Texas Supreme Court has appointed **Judge Sid L. Harle** to the Commission. Judge Sid L. Harle has been judge of the 226th Judicial District Court in San Antonio since 1988. In addition to his 16 years of service on the bench, Judge Harle’s judicial experience includes serving as the Bexar County Criminal Administrative Judge (1994-1996, 1996-1998) and as a Special Master appointed by the Texas

Supreme Court to preside over formal proceedings instituted by the State Commission on Judicial Conduct (2003). For more information about the Commission, please contact Seana Willing, Executive Director, at (512) 463-5533.



Describing him as a “very positive icon in the community,” the Parenting Programs of Methodist Healthcare Ministries honored **Judge John J. Specia Jr.**, judge of the 225th District Court, as Child Advocate of the Year for his long-term commitment to children in Bexar County. Specia said he was humbled to receive the award, but credited the staff at the courts for making dramatic changes on the behalf of children. He said that early in his career he had the opportunity to work with neglected and abused children who were wards of the state. “It’s kind of driven my career,” Specia said. “I’ve worked on cases involving millions of dollars, but it’s when you are affecting the lives of kids that’s really important.” Specia has served as administrative judge in charge of the children’s court since 1995.



DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT E-MAIL ADDRESS?

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

STATE COMMISSION ON JUDICIAL CONDUCT

Public Statement No. PS-2006-1

In July of 2004, a press conference was held by a parents' rights group to announce the filing of a complaint against a judge who they accused of violating the Texas Code of Judicial Conduct for his extrajudicial service on several boards, including Texas CASA ("Court Appointed Special Advocates"). Based on the notoriety caused by the announcement, the State Commission on Judicial Conduct determined that the best interests of the judiciary and the public would be served by issuing this Public Statement addressing the Commission's position regarding the propriety of judges who serve on the Texas CASA board of directors.

Texas CASA, Inc. is a statewide, nonprofit organization devoted to the recruitment, training, and oversight of volunteers who serve as court-appointed special advocates for abused and neglected children in juvenile dependency proceedings. Volunteers for CASA are specially trained to advocate for the best interests of a child involved in a court proceeding. Although CASA may differ in some ways from typical advocacy groups such as MADD ("Mothers Against Drunk Drivers") or ATLA ("Association of Trial Lawyers of America"), it is nonetheless a victim advocacy group whose volunteers are partisan, not neutral, in the judicial process. In many cases a CASA volunteer's recommendations may conflict with the position taken by attorneys for the birth parents or even the minors themselves, all of whom are parties

in the proceedings before the judge.

In general, judges are required to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2. In order to promote public confidence in the judiciary, it is not enough that a judge be fair and impartial when deciding cases, he must also appear to be fair and impartial. Canon 4A(1) of the Texas Code of Judicial Conduct addresses the appearance of impropriety and partiality by

"a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge."

-Canon 4A(1) of the Texas Code of Judicial Conduct

stating that "a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge." While judges are encouraged to engage in civic and charitable activities, their participation is restricted to activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. Canon 4C. Likewise, if the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court, a judge should not serve as an officer, director, trustee or non-legal advisor of the organization. Canon 4C(1).

In order to avoid the appearance

of impropriety and partiality, judges should be cautious about serving an organization, even one as noble and praiseworthy as CASA, when such an organization advocates a particular legal philosophy or position. This is especially true when the organization will be involved in proceedings likely to come before the judge. See Jeffrey Shaman, et al., *Judicial Conduct and Ethics* §9.10 (3d ed. 2000). While it is true that judges who serve any sort of advocacy group run the risk that the public will perceive that the judge supports the policy positions of that organization, judges who serve an organization like CASA would likewise endanger the public perception of the judge's impartiality for it would not be unreasonable

for the public to believe that a judge who is affiliated with CASA would endorse and be partial to CASA and the CASA volunteer's recommendations. When asked to rule in a case involving CASA, a judge's relationship with the organization may cause a perception that the CASA volunteer's opinion will be afforded greater weight because of the judge's connection with CASA. This would be true regardless of whether the board on which the judge would serve was local or statewide.¹

The Commission's position regarding a judge's service on CASA should be limited to those judges who hear cases in which CASA volunteers appear as advocates, or who have appellate jurisdiction over such cases. The Commission

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would note that the appearance of impropriety in some cases could be cured with a full disclosure of the judge's affiliation with CASA, on the record, followed with the informed consent of the parties and their counsel to allow the judge to continue to hear and decide the case. Naturally, if a judge were asked to recuse from cases too frequently because of the relationship with CASA, that judge should step down from his or her membership on the board. Canon 3B(1).

Finally, in concluding that such service by a judge could be improper,

the Commission is not criticizing any judge's desire to serve CASA, nor is it suggesting that CASA is not a praiseworthy organization. Further, the Commission's position is based on the Texas Code of Judicial Conduct as it currently is written. If future revisions to the Code were to allow for such service by a judge, or if the Legislature were to provide statutory authority for a judge to serve such an organization, this Public Statement would have no further effect.

This Public Statement, issued pursuant to the authority granted by Article 5, §1-a(10) of the Texas

Constitution, is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 18th day of November, 2005.

**ORIGINAL SIGNED BY
Honorable James A. Hall,
Chair, State Commission on
Judicial Conduct**

FOOTNOTES:

1. See also Nebraska Judicial Ethics Opinion 05-1, issued January 20, 2005. 

Texas' Newest Administrators of Justice As of March 2, 2006

Hon. Danny Clancy

Judge, Criminal District Court #6
Newly Created Court

Hon. John W. Smith

161st District Court
Succeeding Hon. Tryon D. Lewis

Hon. Ada Elene Brown

County Criminal Court at Law #1
Succeeding Hon. Danny Clancy

Hon. Nancy Thomas

160th District Court
Succeeding Hon. Joseph M. Cox

Hon. W. Edwin Denman

412th District Court
Newly Created Court

Hon. Judy Warne

257th District Court
Succeeding Hon. Linda Motheral

Hon. Glenn A. Fitzmartin

County Criminal Court #3
Succeeding Hon. Dan Wyde

Hon. Rick Williams

279th District Court
Succeeding Hon. Thomas Mulvaney

Hon. Becky Gregory

283rd Judicial District Court
Succeeding Hon. Vickers Cunningham



ETHICS OPINIONS Question & Answer

No new ethics opinions have been issued since December 2005. To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct (877.228.5750).

2006 ETHICS COMMITTEE MEMBERS

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- Hon. Cathy Cochran
- Hon. Lora J. Livingston
- Hon. Menton Murray
- Hon. Kathleen Olivares
- Hon. Brian Quinn
- Hon. Penny Roberts
- Hon. Mark Rusch
- Hon. Melissa Goodwin
- Hon. Robin Ramsay

How Texas Judges Can Improve the Lives of Children in Foster Care

Recommendations from the Pew Commission on Children in Foster Care

By Tiffany Roper, Policy Analyst, Center for Public Policy Priorities

You may have heard of the Pew Commission on Children in Foster Care, a national, blue-ribbon panel of experts that launched by The Pew Charitable Trusts in 2003. Texas has one of its own on the commission, Judge Patricia Macias of the 388th District Court of El Paso County.

The commission's goal is to improve existing federal financing mechanisms so that children can be moved from foster care into safe, permanent families faster, and to enhance court oversight of child welfare cases to facilitate better and timelier decisions related to children's safety, permanence, and well-being. The Texas Supreme Court Task Force on Foster Care has endorsed the Pew Commission's court recommendations.

The Pew Commission recognizes the importance of an involved judiciary and the pivotal role that courts play in foster children's lives. After a year-long study, the commission has concluded that judges need better tools, increased accountability, and judicial leadership in order to form better decisions for children entering the foster care system. To strengthen child welfare courts, the commission recommends that:

- Court justices and state courts must act as the foremost champions for children in their court systems by promoting and enhancing judicial and other leadership in each state;
- Courts must adopt performance measures to track children's progress, identify groups of children in need of attention, and identify sources of delay in court proceedings to improve outcomes for children and to assist in allocating resources in the court system;
- Children and their parents must

have a direct voice in court, effective representation, and the timely input of those who care about them, so that children's best interests in abuse and neglect proceedings can be safeguarded; and,

- Courts and public agencies should be required to demonstrate effective collaboration on behalf of children.



JUDICIAL CHAMPIONS

The commitment of Texas judges to foster care youth is vital because it shows all members of the child protection community that the safety and well-being of abused and neglected children is of utmost importance. The Pew Commission makes the following recommendations to enhance judicial leadership:

- Chief justices should embed oversight responsibility and assistance for dependency courts within their Administrative Office of the Courts;
- State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues;
- State judicial leadership should actively promote: 1) resource, workload, and training standards for dependency courts, judges, and attorneys; 2) standards of practice for dependency judges; and 3) codes of judicial conduct

that support the practices of problem-solving courts; and,

- State court procedures should enable and encourage judges who have demonstrated competence in the dependency courts to build careers on the dependency bench.

COURT PERFORMANCE MEASURES

Acquiring data regarding Child Protective Services (CPS) cases and using this data wisely can improve outcomes and assist courts in the allocation of limited resources. The Pew Commission recommends that:

- Every dependency court should adopt the court performance measures developed by the nation's leading legal associations and use this information to improve their oversight of children in foster care;
- State judicial leadership should use this data to ensure accountability by every court for improved outcomes for children and to inform decisions about allocating resources across the court system;
- Congress should appropriate \$10 million in start-up funds and additional money as necessary to build capacity to track and analyze case loads.

EFFECTIVE REPRESENTATION AND A VOICE IN COURT

The Pew Commission recognizes the critical function that attorneys play in child dependency cases and the importance of recruiting competent attorneys who are committed to and educated about child welfare issues. Additionally, the commission believes that in order to obtain the best outcomes, parents and children need a significant voice in the proceedings. To reach these goals, the commission

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advocates that:

- Courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings;
- Congress should appropriate \$5 million to expand the Court Appointed Special Advocates (CASA) program;
- States should adopt standards of practice, preparation, education, and compensation for attorneys in dependency practice;
- To attract and retain attorneys who practice in dependency court, Congress should support efforts such as loan forgiveness and other demonstration programs; and,
- Law schools, bar associations, and law firms should help expand the pool of qualified attorneys available to children and parents in dependency courts.

EFFECTIVE COLLABORATION

Collaboration among interested stakeholders effectively promotes changes in policy and practices. Because the Pew Commission believes that collaboration leads to better outcomes for children, it proposes that:

- The Department of Health and Human Services (HHS) should require that state IV-E plans, Program Improvement Plans, and Court Improvement Program plans demonstrate effective collaboration;
- HHS should require states to establish broad-based state commissions on children in foster care, ideally led by the state’s child welfare agency director and the Chief Justice;
- Congress should appropriate \$10 million to train court personnel, a portion of which should be designated for joint training of court personnel, child welfare agency staff, and others involved in protecting and caring for children; and
- Courts and agencies on the local and state levels should collaborate and jointly plan for the collection and sharing of all relevant aggregate data and information, which can lead to

better decisions and outcomes for children.

PEW RECOMMENDATIONS IN ACTION

In February 2006, as part of the Deficit Reduction Act of 2005, Congress passed legislation that implements many of the Pew Commission’s court recommendations. The legislation authorizes federal funds to develop court performance measures, conduct multi-disciplinary training and to require collaboration among organizations involved in child welfare cases, including state courts. Specifically,

- \$50 million (over 5 years) in new grants to state Supreme Courts to strengthen state courts’ oversight of children in foster care by adopting and using court performance measures;
- \$50 million (over 5 years) in new grants to state Supreme Courts to train judges, attorneys, and other personnel in child welfare proceedings, with a portion of these training funds to be used for joint training with child welfare agency personnel; and,
- New requirements that state courts, child welfare agencies, and Indian tribes demonstrate “substantial, ongoing,

and meaningful collaboration” in administering child welfare services as a condition for receiving federal child welfare funds.

Each state needs to apply for these new court improvement funds and demonstrate that they are meeting expectations for meaningful collaboration.

Of note, Congress did not approve additional funds to expand CASA programs or to create programs to attract and retain attorneys who practice in child welfare courts. Texas is fortunate to have a very active CASA presence and scores of attorneys dedicated to child welfare practice, but more money is always needed to continue expansion of CASA programs and to increase the number of qualified attorneys handling CPS cases.

Although the recent federal legislation fails to include all of the recommendations made by the Pew Commission, it underscores the important responsibility that courts hold in determining the future of foster care youth and creates a framework for changing how child protection cases move through the legal system. ↗

FOR MORE INFORMATION

The Center for Public Policy Priorities (CPPP), a nonprofit, nonpartisan research organization recently produced and distributed a short brochure to spread awareness of the court improvement recommendations. CPPP is involved in this work as the Texas partner of Home At Last, an organization designed to support outreach and educational efforts, both nationally and in targeted states, that encourage action on the recommendations of the Pew Commission on Children in Foster Care in order to improve outcomes for children in foster care. For an electronic copy of the brochure, please visit: www.cppp.org/research.php?aid=492&cid=4.

To learn more about the Pew Commission, its recommendations, and the initiatives launched to support its recommendations, please visit:

- Pew Commission on Children in Foster Care...www.pewfostercare.org
- Home At Last.....www.fostercarehomeatlast.org
- Fostering Results.....www.fosteringresults.org
- Center for Public Policy Priorities.....www.cppp.org

To obtain a print copy of the CPPP brochure or the Pew Commission’s Final Report, Executive Summary, or DVD Presentation, contact CPPP at 512-320-0222, ext. 100.

Alternative Dispute Resolution of Criminal Disputes in the 12th Judicial District

From Judge William L. McAdams and Attorney Sherry Wetsch

This article is a follow up discussion to the Spring 1998 *IN CHAMBERS* publication regarding the mediation of criminal disputes in the 278th Judicial District, which was written by the Honorable Jerry Sandel and Sherry Wetsch. It is not intended as a repeat of the contents therein. Since that publication, the use of Alternative Dispute Resolution for cases on the criminal dockets in Walker County, has been implemented by the 12th Judicial District.

The cases that have been ordered to an ADR process in the 12th Judicial District, have been referred pursuant to Chapter 154 of the Texas Civil Practice and Remedies Code. Some of the files are referred to ADR upon motion of the parties. At times the Court on it's own motion refers a case. The impartial third party neutral appointed to a case serves in the capacity of a conference judge or mediator. Typically, the court issues an order to the parties appointing the third party neutral. A copy of the rules of mediation and a scheduling order stating the date, time and location of the mediation should accompany the referral order. The Court Coordinator serves as the administrator of the mediation. The settlement conference is usually held at the Courthouse in an empty court room or jury room. If a Defendant has more than one case pending, all open files are usually included in the referral to ADR. If the Defendant is unable to afford counsel, the court will appoint an attorney who represents the Defendant at the settlement conference. The State is represented by the District Attorney's office. The fees of the neutral are paid by the Court as Court costs.

Article 26.13(g) of the Code of Criminal Procedure states that prior to

accepting a plea of guilty or a plea of *nolo contendere* and on the request of the victim, the court may assist the victim and the Defendant in participating in a victim-offender mediation program. However, Article 26.13(i) dictates that the court shall not order the state to participate in an ADR procedure unless upon written consent of the state. That aside, it is unlikely that the state would object to participating in a victim requested mediation.

Although Section 154.073 of the Texas Civil Practice and Remedies Code governs the confidentiality of

The settlement conference allows all suitable and interested parties to participate on some level, in a community approach, to tailoring a settlement that best meets everyone's needs.

communications in an ADR procedure, the parties may request that the Court include a provision in the referral order that all communications made, including demeanor, during the procedure will not be used at a subsequent trial. Additionally, the use of private caucus is a tool which may be used by the parties and the conference judge. At the start of each conference, the conference judge should stress the issue of confidentiality. The parties are to be reminded that they may speak to the conference judge and/or their attorney in private, regarding any sensitive issues prior to divulging the information in a general session.

The use of ADR as an alternative to traditional plea bargaining can have many benefits. During a settlement conference of a criminal case, it is not uncommon for victims, witnesses and family members of both the victim and Defendant to participate. Each party is

responsible for arranging the appearance of their witnesses and other interested third parties. If witnesses or other third parties are going to attend the settlement conference, it is helpful to have the Victim/Witness Coordinator available to provide assistance. Allowing the victim an opportunity to vent and be heard allows that individual more complete closure. It also gives the Defendant and victim an opportunity to gain a realistic assessment of the options. For example, if the case concerns the burglary of a residence, the victim may appear at the procedure to discuss restitution.

Sometimes victims and family members have questions that they want to ask the Defendant and each other. The conference gives the Defendant opportunities to take responsibility for the dispute. The settlement conference allows all suitable and interested parties to participate on some level, in a community approach, to tailoring a settlement that best meets everyone's needs. The settlement agreements are oftentimes creative. It should be noted that the success of the program is partly due to the flexibility and skill of the attorneys who participate in the process.


It is not uncommon for the settlement conference to be the first opportunity that the victim and Defendant have had since the incident, to discuss the issues. These ADR procedures can have tremendous healing effects. For example, in a manslaughter case, family members of the Decedent and the Defendant may know each other. However, due to pending civil and criminal litigation, communication between them is broken. The settlement conference allows these individuals to

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share the pain and discuss issues such as the Defendant asking the family members of the Decedent for permission to visit the Decedent's grave. There have been cases wherein family members of the Decedent and the Defendant end up hugging each other and crying together over what has happened. Sometimes parties agree to stay in contact after the mediation has ended.

Not all criminal cases are suitable for referral to ADR. Victims should never be forced into attending an ADR procedure. Legislation exists which states that victims of family violence are not to be ordered to ADR (Article 5.08, Code of Criminal Procedure). That aside, if the parties and victims want to use the process, then most cases are appropriate for referral. The conference judge needs to use discretion as to who to allow in the room at any given time. The types of cases that have been referred in the 12th Judicial District include but is not limited to: aggravated sexual assault, aggravated assault with a deadly weapon, delivery of a controlled substance, indecency with a child and intoxicated manslaughter. When a case settles during the conference, the parties write up a settlement agreement which the conference judge inserts into the Court's file. If a District Court Judge is available at the time of settlement, the parties should be encouraged to have the Defendant make the plea at that time. At the conclusion of the conference, the conference judge files a report with the Court regarding the status of the case. The report indicates which files need to be set for plea, trial or other setting.

The use of ADR for felony files in Walker County has had many years of success. The settlement rate is good. Upon the completion of each session, new reasons are often identified to continue the program. However, the main reason for considering the use of ADR for felony files, is the impact the process has on the people involved in the case. 


ALL RISE



COMPREHENDING THE
TEXAS COURT SYSTEM

Have you ever wanted to visit a classroom, but did not know what to present or how to arrange a visit? The All Rise! - Comprehending the Texas Court System program is designed to help build public awareness and understanding of the Texas judiciary. Presiding Judge Sharon Keller of the Texas Court of Criminal Appeals enlisted the help of the Law-Related Education Department of the State Bar of Texas to create a new curriculum, which will provide judges with the tools to conduct successful classroom presentations to fourth and seventh grade students.

Funded by the Texas Bar Foundation, the curriculum has a variety of on-line classroom activities. One of the components of All Rise is an interactive computer game that will help students understand the role of Texas courts. First, students are challenged to identify the functions of the individual courts. Second, a scenario is presented involving actions that result in cases being brought to court, and students will identify the correct court to hear the case. Third, students are challenged to follow a criminal or civil case through the court system, from trial through all possible appeals. The final challenge will reinforce this learning, as students will answer questions submitted by Texas judges. The curriculum is entertaining as well as educational, and the time commitment is minimal – a judge may volunteer to teach as few as one or two classes.

What can you do to help kick off this important project for Texas students? Learn more about this program, register, or submit questions about your court by going to www.texaslre.org. 

contest of an affidavit of inability to pay costs if the petition is accompanied by a certificate indicating that the party is represented by a lawyer on behalf of an entity that receives IOLTA funding.

The truth of the matter is that more and more people are finding themselves facing serious legal issues without the assistance of counsel. While very few statistics exist, we know from reliable anecdotal evidence that the number of self-represented litigants is growing at a significant pace. The development of *pro se* assistance programs that are fair and ethical will provide a vehicle for judges to help the public and the administration of justice.

If we make the process easier to negotiate, if we make the courthouse more user friendly, and if we provide people with the information they need to take care of their affairs, dockets will speed up, the quality of the documents presented to the court will improve, and *pro se* litigants will have unimpeded access to justice.

Court-based *pro se* assistance programs are but one example of how this can be accomplished. In one such program, an attorney whose salary is paid by the county law library first reviews every *pro se* order presented at an uncontested docket. The attorney does not create an attorney-client relationship, and their primary responsibility is to make sure that the order presented to the judge is in the proper form, that it is clear and unambiguous, and that the language is enforceable. They are available to give legal information to the self-represented litigant, but under no circumstances do they give legal advice.

Orders that protect people, mostly women and children, from domestic violence are also important. In some counties, especially rural ones, prosecutors refused to help victims

of domestic violence because of staff shortages. Also, some judges refused to sign Protective Orders when they were presented by *pro se* litigants. After this came to the attention of the TATJC, the Texas Supreme Court established a task force to consider these issues.

The result of that work was the creation of a Protective Order Kit with instructions and forms approved by the Supreme Court for use by self-represented litigants in Protective Order cases throughout Texas. Easy to use and understand information is available on a CD,



and it has been translated into Spanish and Vietnamese. Women who were once victims of violence and victims of a dysfunctional justice system can now help themselves and protect their children with valid court orders. In at least one county, this has led to a judge, after seeing several women represent themselves with the kit in his court, inquiring of the prosecutor why he was not representing victims of domestic violence—an unintended but positive result of the kit. While we all understand that people are better off with an attorney to represent them, especially in domestic violence cases, due to very limited resources, that is not always possible. Thus, effective *pro se* assistance is crucial.

There are many model programs that offer a variety of legal assistance to low-income Texans. I encourage

you to find out more about them and use them as blueprints to create programs in your respective communities. Judges must partner with other stakeholders in an effort to ensure that justice is carried out. Those other stakeholders include clerks, law librarians, security officers, elected officials, attorneys, law professors, the information technology experts, and all the staff who support courthouse operations.

You will discover as you begin to consider these issues that together with your colleagues, you can implement small changes that will significantly improve the way you do business. There are a number of successful programs all around the state. I encourage you to learn about how these programs work and about the benefits they confer.

But also be aware that what may work well in one part of the state, may not work as well or at all in another part of the state. Each judge will need to consider the uniqueness of his or her county. It is important to avoid imposing urban influences on rural sensibilities. It is also important to enlist the services of local literacy programs to help develop forms that are easy to understand and available in multiple languages. Be creative and innovative. Ask colleagues about the programs in their counties.

Many court-based programs around the state have provided assistance to *pro se* by making information available on the Internet. Downloadable forms are widely available. These sites also provide general information about courthouse facilities, maps, courtroom procedures, and a list of community resources. However, many poor people have very limited or no access to the Internet. Therefore, making such materials available in hard copy at the courthouse and other locations may also be important.

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Simply providing legal information can be extremely helpful to people trying to solve a legal problem. One of the benefits of giving good legal information—not advice—but information, is that the information can be used to help evaluate the degree of difficulty of the legal problem. A little useful information can go a long way toward convincing someone they need to hire a lawyer because of the complexity of the problem. A useful tool for the public is www.TexasLawHelp.org, a website of legal information for low-income Texans.

Of course, any program needs funding. Obviously, some funding can come from county budgets. The TATJC is working to create an endowment as a permanent funding source for legal services. The TATJC also has created a committee of corporate general counsels to work on *pro bono* and funding issues. The committee was recently successful in obtaining \$50,000 donations from both ExxonMobil and ConocoPhillips to help with the increased demands for legal services to the poor as a result of Hurricanes Katrina and Rita. Corporations are beginning to demonstrate a commitment to access to justice by making donations to a statewide fund that helps poor people get free legal services. The TATJC is the perfect entity to coordinate these resource development efforts.

These are just a few simple examples of what can happen when we start to rethink how we treat litigants and how we conduct our business. This process may require a complete paradigm shift for many of us, but if we want to allow greater access to justice, we will have to challenge our old way of thinking. I'm willing to do more, within the confines of the judicial cannons, and I hope you will join your colleagues and me around the state in this effort. ⚖️

TEXAS JUDICIARY DONATES \$10,000 TO HURRICANE RELIEF EFFORTS

County Court at Law, District, and Appellate judges across the state of Texas came together and, in conjunction with the Texas Center for the Judiciary, raised \$10,000 to assist victims of Hurricane Katrina.

“Texas judges from all over the state made personal donations to the Texas Center for those ravaged by Hurricane Katrina to aid in their recovery,” Judge Laura Weiser of County Court at Law #1 in Victoria and

this donation will help the effort to bring relief to the people of the Gulf Coast.”

The funds were presented to the Bush-Clinton Katrina Fund on March 1, 2006 by Judge Weiser, Judge Dean Rucker of the 318th District Court in Midland and Presiding Judge of the 7th Judicial Administrative Region, and Ms. Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary. Former President George Bush was on hand to receive the gift at his office in Houston, TX. ⚖️



From Left: Judge Laura Weiser, Former President George Bush, Judge Dean Rucker, and Ms. Mari Kay Bickett

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Thank you for your contributions

Includes contributions received as of March 2, 2005

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167th District Court, Austin

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2nd Court of Appeals, Fort Worth

Honorable John F. May
Judge (Retired)
81st Judicial District, Austin

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Senior Judge
County Court at Law No. 5, El Paso

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LOOKING AHEAD

Judicial Conference Calendar

2006

Mental Health Conference
March 27 - 29, 2006
Galveston

Texas College for Judicial Studies
April 23 - 28, 2006
Austin

Professional Development Program
June 19 - 23, 2006
Austin

Criminal Justice Conference
August 2 - 4, 2006
Frisco

Judicial Section Annual Conference
September 10 - 13, 2006
Houston

College for New Judges
December 2 - 8, 2006
Austin

2007

Regional Conference (Regions 1, 6, 7, 8 & 9)
February 11 - 13, 2007
Dallas

Judicial Section Annual Conference
September 16 - 19, 2007
Galveston

2008

Judicial Section Annual Conference
September 14 - 17, 2008
Dallas



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