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# IN CHAMBERS

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## ISSUES IN CREDIT CARD CASES – PART I



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by RANDALL L. SAROSDY<sup>1</sup>

In 2008 the housing bubble burst, the financial markets collapsed and the economy entered into a severe and prolonged recession. Not only did millions of Americans default on their mortgages, many millions also defaulted on their credit card debt. Credit card issuers generally sought to recover this debt in one of two ways: by filing collection actions themselves against the credit card holders or by selling the accounts and the right to collect the debt to a third party. Thousands of cases have been filed in Texas courts over the last four years seeking to collect millions of dollars in outstanding credit card debt. Many of the defendants in these cases appear *pro se*.

These cases have presented Texas courts with issues relating to: (1) the business records exception to the hearsay rule; (2) the proper use of requests for admissions; (3) liquidated damages; (4) the statute of limitations; and (5) proof of assignment of the debt. This article addresses the business records exception to the hearsay rule; subsequent articles will address the remaining issues.

### **I. The Business Records Exception to the Hearsay Rule**

Parties seeking to collect credit card debt typically rely, either on summary judgment or at trial, on the business records exception to the hearsay rule as a means of admitting into evidence monthly account statements documenting the debt owed by the defendant. The most vexing issue that has arisen is who may sponsor the business records.

If the plaintiff is the credit card company itself (or an affiliate) it will be able to submit an affidavit from a witness with personal knowledge of its record keeping practices. But if the plaintiff is a third party to whom the account was sold (or a subsequent assignee as is often the case), then the plaintiff will not have a witness within its own organization who has personal knowledge of the record keeping practices of the entity that extended the credit and created the records sought to be admitted under the business records exception. In that case may the plaintiff nevertheless rely on one of its own employees to sponsor the records or must the plaintiff obtain an affidavit from a custodian of records of the entity that created the business records? The courts are split on this question.

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**A. The Business Records Exception**

Rule 801(d) of the Texas Rules of Evidence defines “hearsay” as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Tex. R. Evid. 801(d). The proponent of hearsay has the burden of showing that the testimony fits within an exception to the general rule prohibiting the admission of hearsay evidence. *Volkswagen of America, Inc. v. Ramirez*, 159 S.W.3d 897, 908 n.5 (Tex. 2004); *FIA Card Services, N.A. v. Frausto*, 2011 WL 6260653, at \*3 (Tex. App.—Amarillo Dec. 15, 2011, no pet.).

The exception for business records is found in Rule 803(6) of the Texas Rules of Evidence:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Tex. R. Evid. 803(6); see *In re E.A.K.*, 192 S.W.3d 133, 141 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).

Rule 902(10) provides a means of admitting business records through an affidavit rather than live testimony of the sponsoring witness:

Any record or set of records . . . , which would be admissible under Rule 803(6) or (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), that such records attached to such affidavit were in fact so kept as required by Rule 803(6) or (7) . . . .

Tex. R. Evid. 902(10)(a). The rule also provides a form for an affidavit seeking to admit records under the business records exception:

My name is \_\_\_\_\_. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of \_\_\_\_\_. Attached hereto are \_\_\_ pages of records from \_\_\_\_\_. These said \_\_\_ pages of records are kept by \_\_\_\_\_ in the regular course of business, and it was the regular course of business of \_\_\_\_\_ for an employee or representative of \_\_\_\_\_, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

Tex. R. Evid. 902(10)(b).

**B. Business Records Created by the Proponent or an Affiliate**

When the proponent is the entity (or an affiliate) that created the business records, the application of Rules 803(6) and 902(10) is straightforward and routine. For example, Citibank has frequently chosen to collect debt owed by the users of its credit cards by bringing suit directly in its own name. See, e.g., *Singh v. Citibank (S.D.)*,

N.A., 2011 WL 1103788 (Tex. App.—Austin March 24, 2011, no pet.); *Citibank (S.D.), N.A. v. Tate*, 2010 WL 5117466 (Tex. App.—Houston [1st Dist.] Dec. 16, 2010, no pet.); *Damron v. Citibank (S.D.), N.A.*, 2010 WL 3377777 (Tex. App.—Austin Aug. 25, 2010, pet. denied); *McFarland v. Citibank (S.D.), N.A.*, 293 S.W.3d 759 (Tex. App.—Waco 2009, no pet.). In these cases Citibank relies on an affidavit of a vice president or litigation analyst of a servicing company, Citicorp Credit Services, Inc., who avers that monthly account statements are business records kept in the regular course of Citibank's business and that it is the regular course of Citibank's business for an employee with knowledge of the events recorded to make such records. *Id.* Texas courts have uniformly upheld the admissibility of the business records when sponsored by an employee of a Citibank affiliate in this manner:

The rules of evidence do not require that the qualified witness who lays the predicate for the admission of business records be their creator or have personal knowledge of the contents of the record; the witness is required only to have personal knowledge of the manner in which the records were kept.

*Singh*, 2011 WL 1103788 at \*4. See also *Damron*, 2010 WL 3377777 at \*4; *McFarland*, 293 S.W. 3d at 762; *Wynne v. Citibank (S.D.), N.A.*, 2008 WL 1848286, at \*2 (Tex. App.—Amarillo Apr. 25, 2008, pet. denied); *Jones v. Citibank (S.D.), N.A.* 235 S.W.3d 333, 337 (Tex. App.—Fort Worth 2007, no pet.); *Bridges v. Citibank (S.D.) N.A.*, 2006 WL 3751404 at \*2 (Tex. App.—Fort Worth Dec. 21, 2006, no pet.); *Hay v. Citibank (S.D.), N.A.*, 2006 WL 2620089, at \*3 (Tex. App.—Houston [14th Dist.] Sept. 14, 2006, no pet.). A similar approach has been followed by American Express Centurion Bank. See, e.g., *Devine v. American Express Centurion Bank*, 2011 WL 2732583, at \*3 (Tex. App.—Beaumont July 14, 2011, no pet.) (affidavit sponsoring Amex's business records was signed by in-house attorney for Amex).

### **C. Business Records Created by a Party other than the Proponent**

In many, if not most, suits to collect credit card debt the party bringing suit is not the bank or financial institution that extended credit to the defendant but a third party to whom the account has been sold and the right to collect the debt has been assigned. Sometimes the initial buyer of the account in turn sells the account and assigns the right to collect the debt to another party. See, e.g., *Nice v. Dodeka, L.L.C.*, 2010 WL 4514174, at \*3 (Tex. App.—Beaumont Nov. 10, 2010, no pet.) (JPMorgan Chase Bank, which created the business records, sold the account to Unifund Portfolio A, LLC, which in turn transferred the account to Unifund CCR Partners, which transferred the account to Dodeka). In this situation the party bringing the suit to collect the debt is not the party who created the business records.

In order to establish that the documents relied on to prove the debt fall within the business records exception the proponent could serve the bank or financial institution that extended the credit with a subpoena and also notice the custodian of records for a deposition upon written questions under Rule 200 of the Texas Rules of Civil Procedure. This procedure, requiring only a court reporter or other notary to appear at the offices of the entity that created the business records, can be completed in a matter of minutes with no more than a dozen written questions and at minimal expense.<sup>2</sup>

Assignees of credit card debt, however, have generally chosen not to invoke this procedure. Instead, they typically submit an affidavit from one of their employees asserting that the documents relied on to prove the debt fall within the business records exception because they have been kept in the regular course of their business and also of the business of the entity that generated the records. They certainly may have sufficient personal knowledge of the record keeping practices of the entity that employs them to be able to so testify. But do they have personal knowledge of the record keeping practices of the bank or financial institution that extended credit to the defendant and created the records? And if they do not have such personal knowledge does it make any difference in establishing the predicate for admissibility of the records under the business records exception?

<sup>2</sup> The proponent could also serve requests for admissions under Tex. R. Civ. P. 198 or obtain an affidavit from the custodian of records of the entity that created the records.

## 1. The Martinez Rule

One line of authority holds that such persons do not have the requisite personal knowledge and that it does indeed make a difference in whether the documents fall within the business records exception. In *Martinez v. Midlandcredit Management, Inc.*, 250 S.W.3d 481 (Tex. App.—El Paso 2008, no pet.), the court held that an affidavit was not sufficient to establish the admissibility of documents under the business records exception where the affiant did not indicate that he had any knowledge of the predecessor’s record keeping practices or that the records were trustworthy. The court held:

Although rule 803(6) does not require the predicate witness to be the record’s creator or have personal knowledge of the content of the record, the witness must have personal knowledge of the manner in which the records were prepared. In re K.C.P., 142 S.W.3d 574, 578 (Tex. App.—Texarkana 2004, no pet.). **Documents received from another entity are not admissible under rule 803(6), if the witness is not qualified to testify about the entity’s record keeping.** See *Powell v. Vavro, McDonald, & Assoc., L.L.C.*, 136 S.W.3d 762, 765 (Tex. App.—Dallas 2004, no pet.)(custodian of records for travel agency was not qualified to testify as to records received from third-party company, showing credits to customers’ credit card account). In this case, the affiant does not provide any information that would indicate that he (or she) is qualified to testify as to the record-keeping practices of the “predecessor.” The affiant does not identify the predecessor, nor does he provide any information concerning the acquisition of the attached record. The affiant does not indicate in any way that he has any knowledge of the predecessor’s record-keeping policies or that the records are trustworthy. In fact, the affiant does not even provide his full name. As such, the Mart Affidavit did not satisfy the requirements of rule 803(6), and the trial court erred by admitting it.

250 S.W.3d at 485 (emphasis added). Accord *Riddle v. Unifund CCR Partners*, 298 S.W.3d 780, 783 (Tex. App.—El Paso 2009, no pet.).

Likewise, in *Abrego v. Harvest Credit Management VII, LLC*, 2010 WL 1718953 (Tex. App.—Corpus Christi April 29, 2010, no pet.), an account had been assigned by Chase Bank to CreditMax and then by CreditMax to the plaintiff, Harvest Credit. An affidavit filed by Harvest Credit was held to be insufficient to establish the business records exception where the affiant did not have personal knowledge of the record keeping practices of either Chase Bank or CreditMax. The court held:

[I]n his affidavit, Ravin does not state that he has personal knowledge of, or is qualified to testify regarding: (1) either CreditMax LLC’s or Chase Bank’s record keeping practices or policies; or (2) the trustworthiness of the attached monthly statements from Chase Bank to Abrego.

We conclude that the Ravin Affidavit does not satisfy the requirements of rule 803(6), and the trial court erred in admitting it. See *Martinez*, 250 S.W.3d at 485 (holding that the affiant was unqualified to testify where he failed to provide any information to indicate that he was qualified to testify as to the predecessor’s record keeping practices).

Under this line of authority the sponsoring witness must have personal knowledge of the record keeping practices of the entity that created the records.

## 2. Simien and its Progeny

In *Simien v. Unifund CCR Partners*, 321 S.W.3d 235 (Tex. App.—Houston [1st Dist.] 2010, no pet.), the

court took a different approach. Michelle Simien had opened a credit card account with Citibank. As of December 18, 2002, the amount owed on the account was allegedly \$10,540.51. On November 29, 2005, Unifund purchased the debt on Simien's account from Citibank and on September 12, 2007, Unifund filed suit against Simien seeking \$34,600.08 in unpaid principal and interest. 321 S.W.3d at 239. At trial the court admitted a business record affidavit signed by a Unifund employee, Joseph Lutz, attaching three Citibank monthly statements and other documents. Simien's attorney objected to the admissibility of the Lutz affidavit and the monthly statements on grounds of hearsay. The trial court overruled the objection and admitted the affidavit and statements under the business records exception. *Id.*

Relying on the standard for admitting third-party documents in *Bell v. State*, 176 S.W.3d 90 (Tex. App.—Houston [1st Dist.] 2004, no pet.), the court affirmed the trial court's ruling admitting the documents under the business records exception. Under *Bell v. State* “[a] document authored or created by a third party may be admissible as business records of a different business if: (a) the document is incorporated and kept in the course of the testifying witness's business; (b) that business typically relies upon the accuracy of the contents of the document; and (c) the circumstances otherwise indicate the trustworthiness of the document.” *Id.* at 240-41. See also *Harris v. State*, 846 S.W.2d 960, 963-64 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd).

The court of appeals found that Unifund had satisfied each of these requirements. First, Lutz had stated in his affidavit that the documents received from Citibank were “kept by [Unifund] in the regular course of its business as permanent records of the company.” 321 S.W.3d at 242. Lutz also stated that the files were maintained under his supervision and control and that he had reviewed them and was Unifund's designated agent for the file. Based on this testimony, the court of appeals concluded that Unifund had incorporated the Citibank documents.

Second, the court found that Unifund had reasonably relied on the accuracy of the contents of the documents it received from Citibank even though the Lutz affidavit did not state that he had confirmed the accuracy of the records. *Id.* at 243. The reliance by Unifund was found in the fact that it used the Citibank documents to determine the existence and value of Simien's debt which was the basis for its lawsuit. *Id.*

Finally, the court found that the circumstances indicated the trustworthiness of the Citibank documents because Citibank had to “keep careful records of its customer's credit card debt, otherwise its ‘business would greatly suffer or even fail.’” *Id.* at 244 (quoting *Harris*, 846 S.W.2d at 963). The court rejected Simien's contention that Lutz was not qualified to testify about the Citibank documents because neither he nor anyone “from Unifund knew of the events or conditions recorded in Citibank's records or had knowledge of the manner in which Citibank prepared the documents.” 321 S.W.3d at 244. The court held that “[p]ersonal knowledge of the record-keeping practices of the third-party is not required under the line of authority represented by *Bell* and federal precedent.” *Id.* To the extent that *Martinez* and *Powell* conflict with *Bell* and prior opinions of the First Court and federal precedent, the court held, “we decline to follow them.” *Id.*

The court concluded its analysis by noting that the “primary concern in admitting records such as these is their reliability. . . . Simien does not attack the reliability of the records, but contends Unifund's proof supporting the admission of the records is inadequate. Unifund presented evidence to the trial court that met the three factors in *Bell*. Therefore, the trial court properly admitted the Citibank records as the records of Unifund under the business records exception.” *Id.* at 245.

The First Court has applied *Simien* in similar cases. See *Wood v. Pharia L.L.C.*, 2010 WL 5060621, at \*3 (Tex. App.—Houston [1st Dist.] Dec. 9, 2010, no pet.) (documents created by Chase and obtained by Pharia from Unifund were admissible based upon an affidavit of a Pharia employee stating that the documents were “kept by Pharia L.L.C. in the regular course of business,” that they were in the “care, custody and control of Pharia, L.L.C.,” and that the affiant was the custodian of the records and had reviewed them and had personal knowledge of them); *Smith v. Federated Financial Corp. of America*, 2012 WL 682258, at \*6-\*9 (Tex. App.—Houston [1st Dist.] March 1, 2012, no pet.) (records created by Advanta and acquired by Federated were admissible based upon an affidavit of a Federated employee stating that Advanta's records were now kept by Federated “in the regular course of its

business as permanent records of the company and it was the regular course of business for an employee with personal knowledge of the act, event, or condition recorded, to make the memorandum or record, or to transmit information thereof to be complete in such attached memorandum or record; and the memorandum or record was made at or near the time of the act, event, or condition recorded or indicated in said record, or reasonably soon thereafter.”).

Three other courts of appeals have followed *Simien* in holding that the business records exception may be established by an affidavit of an employee of a party acquiring credit card debt who has no personal knowledge of the record keeping practices of the entity that extended the credit. See *Nice v. Dodeka*, 2010 WL 4514174, at \*4 (Tex. App.—Beaumont Nov. 10, 2010) (where Chase Manhattan Bank sold an account to Unifund Portfolio A, LLC, which assigned its interest in the account to Unifund CCR Partners, which in turn sold the account to Dodeka, L.L.C., an affidavit from a Dodeka employee stating that she was Dodeka’s custodian of records, that she was personally familiar with how Dodeka prepared and maintained its records, had personal knowledge of Unifund’s business record practices and vouched for the accuracy of the records originally created by Chase<sup>3</sup> was sufficient to meet the business records exception); *Dodeka, L.L.C. v. Campos*, 2011 WL 6396417, at \*4-\*5 (Tex. App.—San Antonio Dec. 21, 2011, no pet.) (court of appeals reversed the trial court’s ruling sustaining the defendant’s hearsay objection to the affidavit and documents offered by a Dodeka employee having no personal knowledge of the record keeping practices of Chase Bank, from which Dodeka acquired the account); *Troung v. Dodeka, L.L.C.*, 2011 WL 2693504, at \*2-\*3 (Tex. App.—Houston [14th Dist.] July 12, 2011, no pet.) (court of appeals affirms trial court’s admission of a Chase credit card agreement and a bill of sale between Chase and Unifund based on a business records affidavit of a custodian of records of Dodeka). See also *Ekpe v. Cach, LLC*, 2011 WL 1005379, at \*3 and n. 1 (Tex. App.—Austin March 16, 2011, no pet.) (noting in dicta that “this Court and others have recognized that a witness may have personal knowledge and competence to testify regarding the record-keeping practices of a person other than his or her employer.”)<sup>4</sup>

In short, the cases following *Simien* allow documents to be admitted under the business records exception even though the sponsoring witness has no personal knowledge of the record keeping practices of the entity that created the records.

### 3. Issues Raised by *Simien*

The approach followed by the court in *Simien* raises two issues for consideration in cases dealing with the business records exception: (1) under what circumstances is a document “incorporated” into a subsequent party’s business; and (2) has the court shifted the burden from the opponent to show the documents are untrustworthy to the proponent to show they are trustworthy?

#### a. When Are Documents “Incorporated” into Another Party’s Business?

The court in *Simien* applied the test it had articulated in *Bell v. State* permitting a document created by a third party to be admitted as a business record of a different business if, among other things, the document “is incorporated and kept in the course of the testifying witness’s business.” 321 S.W.3d at 240-41. But under what circumstances is a document truly “incorporated” into the receiving party’s business?

To answer this question it is helpful to review the facts of *Bell v. State*. In that case Daniel Bell had left a tractor and trailer for repairs at a facility owned by HeavyQuip, a business that repairs heavy equipment.

<sup>3</sup> The court did not explain how a Dodeka employee could “vouch for the accuracy of business records prepared by Chase.”

<sup>4</sup> The court in *Ekpe* cites two cases for this dicta: *Simien* and *Damron v. Citibank (S.D.) N.A.*, 2010 WL 3377777 (Tex. App.—Austin Aug. 25, 2010, pet. denied). *Simien* does not hold that a witness “may have personal knowledge and competence to testify regarding the record-keeping practices of a person other than his or her employer.” As discussed above, *Simien* holds that despite a lack of personal knowledge the records may be admitted if the three-part test adopted in *Bell v. State* is satisfied. In *Damron* the custodian of records was an employee of a Citibank affiliate who did have personal knowledge of the record keeping practices of Citibank. Therefore, the court’s dicta goes beyond the actual holdings of the two cases cited.

176 S.W.3d at 91. Some time later Bell came to the site to check on the status of the repairs and left towing a trailer similar to his but “brand new” that had been left by B&D Construction. B&D claimed its trailer had been stolen and HeavyQuip filed a loss claim with its insurance carrier, St. Paul Guardian Insurance Company. At Bell’s trial for felony theft a HeavyQuip employee testified that she had received two letters from St. Paul to HeavyQuip stating that it had offered to settle, and had settled, B&D’s claim for \$7,125. *Id.* at 92. Both of these letters were admitted as business records of HeavyQuip. *Id.*

On appeal Bell argued that in order for the business records exception to apply “the same ‘business activity’ must both make and keep the records in question.” *Id.* The First Court rejected this contention adopting the three-part test discussed above and adopted in *Simien*. See *supra* at 5-6. But the circumstances in which the records were created and incorporated into the testifying witness’s business in *Bell v. State* are substantially different than in *Simien* and similar cases.

In *Bell v. State* the letters from St. Paul that were offered in evidence by the HeavyQuip custodian of records were sent by St. Paul directly to HeavyQuip in connection with a loss claim for a trailer that had been located on HeavyQuip’s premises. The letters were addressed to HeavyQuip and in response to HeavyQuip’s claim on its insurance policy with St. Paul. HeavyQuip and St. Paul had an ongoing business relationship. The HeavyQuip witness could therefore testify from her personal knowledge that the letters were in response to HeavyQuip’s claim on its policy with St. Paul, and that HeavyQuip had relied on the letters to settle the loss incurred by B&D. Due to its ongoing business relationship with St. Paul, HeavyQuip could have sought clarification from St. Paul if there were any questions concerning the contents of the letters. In addition, HeavyQuip and St. Paul generally had a common interest in determining the fair market value of B&D’s tractor and trailer in order to settle the loss claim.

Similarly, in *Harris v. State, supra*, which the First Court relied on in *Bell v. State*, the issue was whether a certificate of record generated by General Motors and sent to one of its dealers, Lester Goodwin Pontiac-Honda-GMC, could be admitted as a business record of the dealer. The court said yes: the certificate of record could be sponsored by the dealer because it possessed a high degree of trustworthiness and was kept in the regular course of the dealer’s business. 846 S.W.2d at 964. As in *Bell v. State* the dealer had an ongoing business relationship with General Motors and the certificate of record had been sent to the dealer in connection with that ongoing relationship. The dealer’s custodian of records could therefore testify from personal knowledge about the use of the certificate of record by the dealer and that it was trustworthy.

These are not the circumstances when a bank or credit card issuer sells its accounts to a collections company such as Unifund or Dodeka. First, the documents relating to the credit card account are not transferred to the collections firm as part of an ongoing business relationship, as were the letters from St. Paul to HeavyQuip or the certificate of record from General Motors to Lester Goodwin Pontiac. The credit card issuer does not have any ongoing business relationship with the collections firm; it has simply engaged in a single transaction by which it has sold one or more accounts to the collections firm. The credit card issuer’s ongoing business relationship is with the **credit card holder**, not the collections firm. The custodian of records of the collections firm therefore cannot testify that the documents were received and used in connection with an ongoing business relationship which could give rise to knowledge of an irregularity in the documents and the means to clear up any such issues with the party that created the documents.

Further, in the absence of such an ongoing business relationship it is significant that the nature of the acquiring business is not the same as the business that created the records. If Chase Bank sold a credit card account to Citibank, and Citibank developed an ongoing business relationship with the credit card user and dealt with the user as its own customer, Citibank would in effect “incorporate” Chase’s records into its own records and should be able to treat the documents acquired from Chase as its own for purposes of the business records exception. Citibank would have an inherent interest in maintaining true and accurate records, just as Chase did when it created and maintained the records. The party extending credit (whether Chase or Citibank) also has the same interest as the credit card user in keeping accurate records. The rationale of *Harris v. State, supra*, may very well apply in those circumstances.

By contrast, Unifund and Dodeka (by way of example) are not in the business of extending credit. They buy debt at steep discounts and their sole purpose is to collect the debt. They do not have “customers” for whom it is important to maintain accurate and correct business records lest their business “suffer or fail.” Indeed, they do not have “customers” at all in the usual sense. Their only relationship with the credit card users is adversarial: they mean to collect the debt allegedly owed and they expect to have to file suit to do so. Their interest lies in maximizing the return on their investment by recovering the maximum claim possible with a minimum of overhead. In short, they acquired the account (and the records relating to it) not for normal business purposes but for purposes of collection and litigation.<sup>5</sup>

It could be suggested that these collection firms still have an incentive to make sure the records are accurate because their ability to collect will suffer if they present unreliable evidence and courts begin to mistrust them. But recent practices with respect to mortgage foreclosures, including “robo-signing” and affidavits from individuals who had never reviewed the documents relied on, suggest that the pressure for quick and inexpensive recoveries may trump other considerations. See HUD Audit Mem. No. 2012-KC-1801, at 4-5 (3/12/12), [http://www.hudoig.gov/reports/featured\\_reports.php](http://www.hudoig.gov/reports/featured_reports.php) (concluding that affiants routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not; affiants signed large volumes of foreclosure documents without reviewing the supporting or source documents referenced in them; notaries routinely notarized documents without witnessing affiant signatures; and that “[a]s judicial States and jurisdictions routinely resolved foreclosures through summary judgment, the accuracy and propriety of the documents were essential to ensure the integrity of the foreclosure process.”) After all, it would be a simple matter to obtain testimony from the custodian of records of the credit card issuer by means of a deposition upon written questions under Rule 200 of the Texas Rules of Civil Procedure, or even by means of an affidavit from the issuer’s custodian of records, or to serve requests for admissions on the defendant to verify the accuracy of the records. But many collection firms apparently do not wish to incur even that de minimis expense.

It is accordingly suggested that documents might be considered to be “incorporated” into the receiving party’s business under the *Bell v. State* test only if the receiving party has an ongoing business relationship with the transmitting party, as in *Bell v. State* and *Harris v. State*, or if the receiving party’s business is the same as the transmitting party.

### **b. Has the Court Shifted the Burden?**

The second question raised by *Simien* and the cases that have followed it is whether the courts have shifted the burden from the opponent to show that the documents are untrustworthy to the proponent to show that they are trustworthy.

The third prong of the *Bell v. State* test adopted in *Simien* requires the proponent of the business records to show “that the circumstances indicate the trustworthiness of the third-party documents.” 321 S.W.3d at 240, 243. But it is well-established that “[o]nce the necessary predicate [under Rule 803(6) has been] laid, it [becomes] appellant’s burden to show that there was some underlying reason why the records were inadmissible.” *Troung v. Dodeka, L.L.C.*, 2011 WL 2693504, at \*3, quoting *Texon Energy Corp. v. Dow Chem. Co.*, 733 S.W.2d 328, 330 (Tex. App.—Houston [14th Dist.] 1987, writ ref’d n.r.e., and *Graef v. Chem. Leaman Corp.*, 106 F.3d 112, 118 (5th Cir. 1997) (“The burden of establishing the untrustworthiness of such documents is on the opponent of the evidence.”). Does the third prong of the *Bell v. State* test adopted in *Simien* shift this burden from the opponent of the evidence to the proponent?

The issue is illustrated by *Old Republic Ins. Co. v. Edwards*, 2011 WL 2623994 (Tex. App.—Houston [1st Dist.] June 30, 2011, no pet.). The defendant, Marlana Edwards, allegedly entered into a home improvement contract with Nationwide Building Systems. Nationwide assigned the contract to First Mutual Bank, which

<sup>5</sup> The same considerations arguably apply to other businesses, such as the sale of a medical practice. A new physician acquiring a medical practice from a retiring physician would have a common interest with the patients in maintaining accurate records. By contrast, a collections firm to whom delinquent accounts have been assigned would not share a common interest with the patients.

assigned the contract to the plaintiff, Old Republic Insurance Company. At trial Old Republic sought to prove its case with a business records affidavit of the custodian of records of Old Republic to which were attached a copy of the agreement and 23 pages of account records. *Id.* at \*2. The defendant disputed that she had signed the contract, that the work was done or that she owned the house but was not present at the trial. *Id.* Counsel for the defendant objected to the admission of the business records affidavit on the ground that the contract and documents were not business records and that the affidavit was not executed by anyone purporting to have personal knowledge of how First Mutual’s records were kept. *Id.* at \*3. A witness for Old Republic testified that the defendant’s signature was on the agreement and that Old Republic “took ownership of these records when First Mutual Bank provided us their old originals.” *Id.* He also testified that Old Republic had been in possession of the records since the assignment from First Mutual and that it was the “nature of [its] business, to keep records in [its] file from the moment of assignment on.” *Id.* The trial court sustained the defendant’s objection to the introduction of the documents and rendered a take nothing judgment in favor of the defendant.

On appeal Old Republic relied on *Simien*, which had been decided after the trial of its case, to argue the documents were admissible. Following a thorough review of *Simien*, and while noting that other courts of appeals “require a sponsoring witness to have personal knowledge of the way records were created and kept by the original creditor to be admissible,” *id.* at \*7, citing *Riddle v. Unifund Partners*, 298 S.W.3d 780, 783 (Tex. App.—El Paso 2009, no pet.), the court noted:

We are faced with a different posture in this case than *Simien*, a case in which the issue was whether the trial court abused its discretion in admitting certain business records. The issue here is whether the trial court abused its discretion by excluding two exhibits . . . proffered under the business records exception to the hearsay rule. We conclude, given the totality of the unique circumstances the trial court was presented with, Old Republic has not established that the trial court abused its considerable discretion in excluding these documents.

*Id.* at \*9.

The court found that “the first two *Bell* factors—(1) incorporated and kept in the course of business and (2) reliance on accuracy of documents—were satisfied by [the witness’s] testimony.” *Id.* But the court concluded that the “trial court here could have . . . determined that Old Republic did not establish that the circumstances indicated the trustworthiness of the documents as required by the third *Bell* factor. *Id.* at 10. The court distinguished the *Simien* case on the ground that *Simien* “did not attack the reliability of the records.” *Id.* Whereas *Simien* “involved a credit card debt that *Simien* never disputed that she entered or breached,” and “[t]here was no allegation or evidence that the original contract or payment information was incorrect,” in *Old Republic* the defendant had filed a sworn denial and “directly challenged the original making of the business record at issue.” *Id.* at \*11.

In a concurring opinion, Justice Harvey Brown succinctly identified the issue:

I write separately to note that I believe that *Simien* misplaces the burden of proof by requiring the proponent of the admission of business records from a third party that are integrated into a company’s records to demonstrate the records’ trustworthiness. The proponent of the evidence does not bear the burden of proving the trustworthiness of business records offered that otherwise satisfy the requirements of Texas Rule of Evidence 803(6); such records are presumed to be trustworthy and admissible. [citations omitted]

Justice Brown’s concurrence crystallizes the second issue raised by *Simien*. The proponent of evidence clearly does not have the burden of proving the trustworthiness of business records that “otherwise satisfy the requirements” of Rule 803(6)<sup>6</sup> but are those requirements satisfied when the proponent does not have personal

<sup>6</sup> As noted above, the proponent of hearsay has the burden of showing that the testimony fits within an exception to the general rule prohibiting the admission of hearsay evidence. *Volkswagen of America, Inc. v. Ramirez*, 159 S.W.3d 897, 908 n.5 (Tex. 2004); *FIA Card Services, N.A. v. Frausto*, 2011 WL 6260653, at \*3 (Tex. App.—Amarillo Dec. 15, 2011, no pet.). See *supra* at 1.

knowledge that “it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness.” Tex. R. Evid. 803(6). In lieu of requiring such personal knowledge, *Simien* adopted the *Bell v. State* test imposing the burden on the proponent of the records to show that the “circumstances indicate the trustworthiness of the third-party documents.” As discussed above, this could be done in *Bell v. State* and *Harris v. State* but cannot be done in the credit card cases because of the absence of an ongoing business relationship between the party receiving and the party transmitting the documents. See *supra* at 8.

Therefore, in practice *Simien* and the cases following it **simply assume** that the documents are trustworthy because businesses generally have an interest in maintaining accurate records. See *Simien*, 321 S.W.3d at 244 (“Citibank must keep careful records of its customers credit card debt, otherwise its ‘business would greatly suffer or even fail.’ See *Harris*, 846 S.W.3d at 963. Also the failure to keep accurate records could result in criminal or civil penalties.”); *Wood v. Pharia L.L.C.*, 2010 WL 5060621, at \*3 (“[T]he trustworthiness of the documents at issue here is supported by the fact that Pharia’s predecessors in interest must keep careful records of their customer’s debts or else their business would suffer or fail, and inaccurate records could result in civil or criminal penalties.”); *Smith v. Federated Financial Corp. of America*, 2012 WL 682258, at \*9 (quoting *Simien*); *Dodeka v. Campos*, 2011 WL 6396417, at \*5 (“[T]he creator of documents, Chase, must keep careful records of its customer’s accounts, otherwise its ‘business would greatly suffer or even fail.’”). The courts have not actually required **any** showing by the proponent that the “circumstances indicate the trustworthiness of the third-party documents.” *Id.* Indeed such a showing would be difficult, if not impossible, since the proponent has no personal knowledge of the record keeping practices of the entity that created the documents. To this extent the concerns of Justice Brown are satisfied because as a practical matter the burden will still rest on the opponent of the evidence to show that the documents are untrustworthy, as in *Old Republic*.<sup>7</sup>

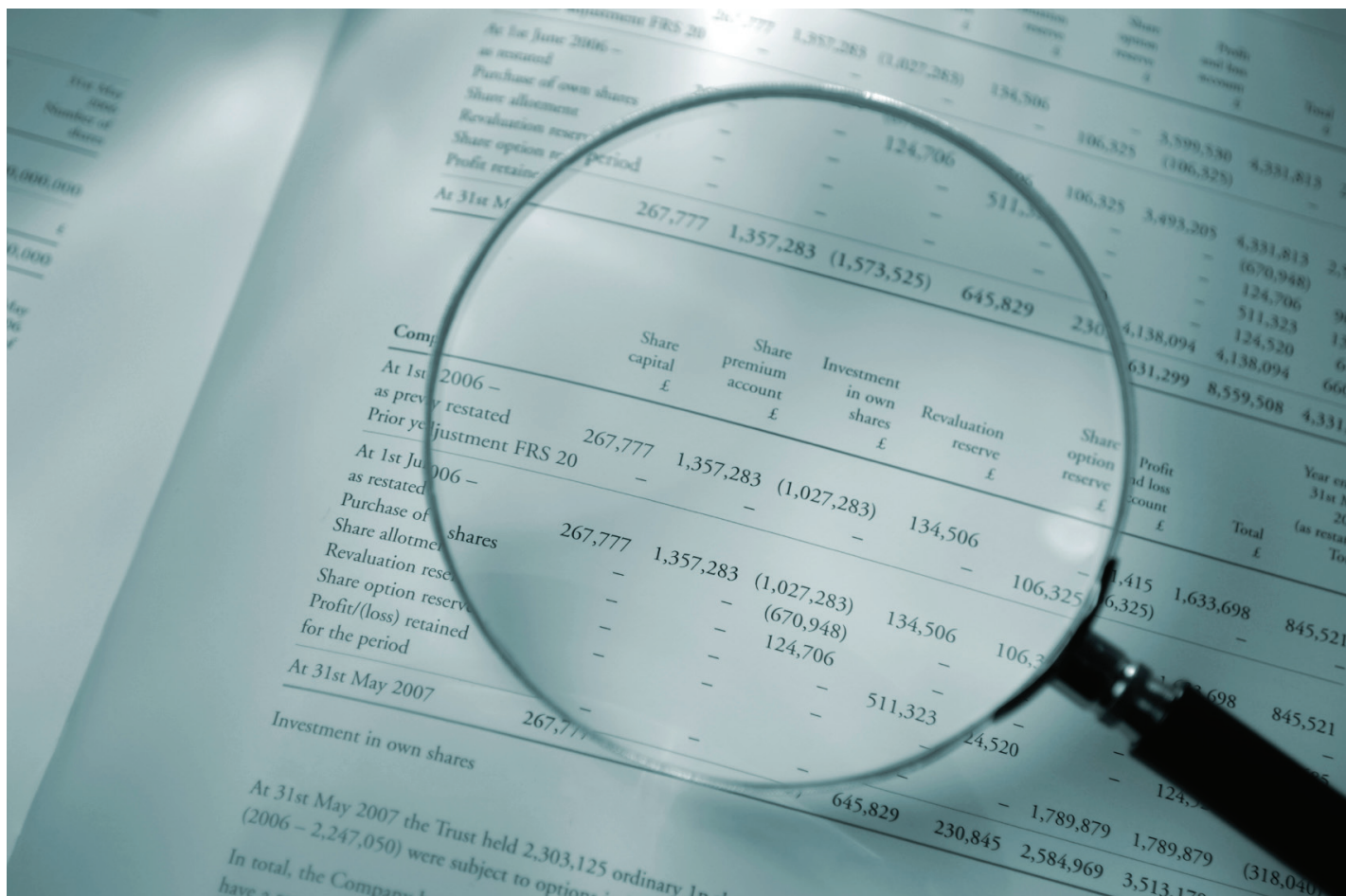
In any event, regardless of who has the burden under *Simien*, the trial court has broad discretion in determining whether the circumstances indicate that the documents are trustworthy. See *Troung v. Dodeka, L.L.C.*, 2011 WL 2693504, at \*4 (Tex. App.—Houston [14th Dist.] July 12, 2011, no pet.) (the determination of whether the source of information or the method or circumstances of preparation of business records indicate a lack of trustworthiness rests within the sound discretion of the trial court); *Old Republic Ins. Co. v. Edwards*, 2011 WL 2623994, at \*11 (“Old Republic has not demonstrated that the trial court abused its discretion by refusing to admit the Agreement and credit application into evidence.”).

## D. Conclusion

The courts of appeals are divided on the issue of whether the proponent of business records acquired from another party must have personal knowledge of the record keeping practices of the party that created the documents. One line of cases holds that personal knowledge is required. A second line of cases applies the test adopted in *Bell v. State* and holds that such personal knowledge is not required as long as “(a) the document is incorporated and kept in the course of the testifying witness’s business; (b) that business typically relies upon the accuracy of the contents of the document; and (c) the circumstances otherwise indicate the trustworthiness of the document.” 176 S.W.3d at 240-41. But this formulation raises further potential issues for future consideration, if and when presented, concerning the circumstances in which a document is “incorporated” in the testifying witness’s business and who has the burden of showing the documents are trustworthy (or untrustworthy).

<sup>7</sup> Notably, the *Simien* test was crafted from *Bell v. State* and *Harris v. State*, which relied upon cases decided under the Federal Rules of Evidence. See *Bell v. State*, 176 S.W.3d at 96 and n. 2 (citing federal cases and noting that “cases that interpret the federal rules guide us unless the Texas rule clearly departs from its federal counterpart”); *Harris v. State*, 846 S.W.2d at 964. One of the principal federal cases relied upon, *United States v. Hines*, 564 F.2d 925, 928 (10th Cir. 1977), *cert. denied*, 434 U.S. 1022 (1978) holds: “The test of whether such records should be admitted rests on their reliability.” To the extent that *Simien* is adopting a general reliability standard for the admission of business records, it is noteworthy that the Federal Rules of Evidence have a residual hearsay exception in Rule 807 (formerly Rule 803(25)) but the Texas Rules of Evidence have not adopted a residual hearsay exception. Therefore, insofar as the *Simien* test has become simply whether the documents are shown to be reliable by the proponent (or unreliable by the opponent), it may be engrafting a residual hearsay exception onto the Texas Rules of Evidence comparable to Rule 807 of the federal rules. On the other hand, if reliability is not an issue, then all that really needs to be shown to admit the documents under *Simien* is authenticity because that is essentially all that a custodian of records of a collections firm can establish.

# HELPFUL TIPS FOR CAMPAIGN FINANCING: Keeping Your Name Out of the News Alerts



by Courtney A. Gabriele  
& Hon. Alfonso Charles<sup>1</sup>

Every day you are called upon to decipher, interpret and apply complex laws to the facts before you. You listen to arguments, read briefs, and possibly conduct independent research; but some of the most complex and ambiguous laws to understand apply not to the cases before you, but to the way you get elected to the bench. The reality of Texas campaign finance law is that it is often so broad and convoluted it leaves well-meaning officeholders and candidates open to criticism, public scrutiny, and civil and criminal penalties.

An organization by the name of the Texas Ethics Advisory Board (TEAB) has provided a perfect example of how judges making good faith efforts to comply with campaign finance laws can come under fire. In recent months, TEAB has issued press releases containing allegations that local and state judges are not accurately reporting their campaign contributions and expenditures. The allegations range from improper use of campaign funds to failing to properly list the employer of a contributor. The TEAB is a General-Purpose Political Committee (GPAC) formed in April 2009 by Jim Jenkins of Spring, Texas, but many of the complaints the organization files with the Texas Ethics Commission are by one of their members, William Elmer of Huntsville, TX. On *The Texas Independent's*

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political website, Elmer was quoted boasting “I dare say, if you look at the TEC website, 40 percent of those rulings resulted from [TEAB] complaints.”<sup>2</sup>

All judges understand that public scrutiny comes with the job and are prepared to handle attacks by media, opponents, and groups such as TEAB. However, in case you need a refresher, the following is intended to highlight some common mistakes judges make with campaign financing, as well as provide helpful tips for keeping your name out of the daily news alerts.

## I. Contribution Limits in General

One of the keys to meeting campaign reporting requirements is being aware of the applicable contribution limitations. Under Section 253.155(b) of the Texas Election Code, a judicial candidate or officeholder may not knowingly accept political contributions from an individual (this does not apply to general-purpose committees) that in the aggregate exceeds the following limits:

- A. statewide judicial office: \$5,000
- B. any other judicial office:
  - 1. \$1,000 if population of judicial district is less than 250,000;
  - 2. \$2,500 if population of judicial district is from 250,000 to 1,000,000;
  - 3. \$5,000 if population of judicial district is more than 1,000,000.<sup>3</sup>

Under Section 253.157, a judicial candidate or officeholder may not accept a political contribution in excess of \$50 from a person if:

- A. the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm; **and**
- B. the contribution when aggregated with all political contributions accepted by the candidate or officeholder from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.<sup>4</sup>

**Exception:** The above restrictions do not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity.<sup>5</sup> **However, contributions from in-laws do not fall under the exception and are subject to limits of §253.155(b).**<sup>6</sup>

**Be Careful:** Contributions made by an individual’s spouse or child count as a contribution made by that individual.<sup>7</sup> Also ensure that you are aggregating contributions made by members of a firm correctly. A law firm is a “person” for purposes of the Judicial Campaign Fairness Act.<sup>8</sup> Thus, if a check is made on behalf of a firm, it cannot exceed the limits of Section 253.155(b).<sup>9</sup>

2 Brendel, Patrick, *Ethics allegations against Straus ‘absolutely’ meant to impact Texas House speaker’s race*, The American Independent, Jan. 6, 2011, <http://www.americanindependent.com/164327/ethics-allegations-against-straus-absolutely-meant-to-impact-texas-house-speakers-race>.

3 Tex. Elec. Code Ann. § 253.155(b).

4 § 253.157(a)(1)-(2).

5 § 253.159.

6 In the Matter of Melissa Goodwin, SC-3100385, Before the Texas Ethics Commission, Order and Agreed Resolution, 1-3 (2011); See also In the Matter of Debra Lehrmann, SC-311004125, Before the Texas Ethics Commission, Order and Agreed Resolution, 1-2 (2011).

7 EAO No. 274 (1995); §253.158.

8 EAO No. 342 (1996).

9 EAO No. 274 (1995); §253.157.

The common way that this occurs is where you receive the maximum contribution from 6 attorneys in the firm. Once you have reached the maximum amount allowed to that law firm, you cannot receive any additional contributions that can be attributed to the firm. This also applies to a general purpose committee of a law firm.

In connection with any one election, a judicial candidate or a specific-purpose political committee for supporting or opposing a judicial candidate may not accept a contribution of more than \$50 from a member of a law firm's restricted contributor class if the total of all contributions already accepted from members of the law firm's restricted contributor class exceeds the following limits (or if the contribution would cause the total to exceed the following limits)<sup>10</sup>:

- A. \$30,000 for candidates for statewide judicial offices;
- B. \$30,000 for candidates for courts of appeals, district courts, statutory county courts and statutory probate courts if the population of the judicial district is more than one million;
- C. \$15,000 for candidates for courts of appeals, district courts, statutory county courts and statutory probate courts if the population of the judicial district is from 250,000 to one million; and
- D. \$6,000 for candidates for courts of appeals, district judgeships, statutory county courts and statutory probate courts if the population of the judicial district is less than 250,000.

**Helpful Tip:** If you realize that you have inadvertently accepted political contributions from individual members of a firm, or from the firm itself, that exceed the permissible amount, Section 253.155(e) allows you to return the excess amount by the last day of the reporting period or the fifth day after the contribution is received.

## II. Limits on Contributions Made to Other Candidates, Officeholders, and Political Committees<sup>11</sup>

A. *Political Contributions by Candidates or Political Committees Supporting/Opposing Candidates.* A judicial candidate or officeholder or a specific-purpose political committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder.<sup>13</sup> This \$100 limit is per candidate.

B. *Contributions to Political Committee in Connection With Primary Election.* A judicial candidate or a specific-purpose political committee for supporting or opposing a judicial candidate may not use a political contribution to make political contributions to a political committee in connection with a primary election.<sup>14</sup>

<sup>10</sup> Tex. Ethics Comm'n, Campaign Finance Guide for Judicial candidates and Officeholders 13 (Rev. March 19, 2012).

<sup>11</sup> Id. at 16-17.

<sup>12</sup> Id.

<sup>13</sup> § 253.1611(a).

<sup>14</sup> § 253.1611(b).

C. *Contributions to Political Committee in Connection With General Election.* A judicial candidate or a specific-purpose political committee for supporting or opposing a judicial candidate may not use a political contribution to make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in connection with a general election, exceeds \$500.<sup>15</sup>

D. *Contributions in Nonelection Years.* A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250.<sup>16</sup>

**Note:** None of the above prohibitions apply to personal funds. If you are making a political contribution using your personal funds, your donation would be subject to the same restrictions of Section 253.155(b), *supra*.

### III. Campaign Expenditure Limits

Furthermore, to avoid campaign reporting mistakes, candidates and officeholders must know the applicable limits on campaign expenditures set by The Judicial Campaign Fairness Act. Under §251.001(10) of the Election Code, a “political expenditure” includes both campaign and officeholder expenditures. TEC Rule § 22.33 provides that: (1) an officeholder expenditure is attributed to the next election in which the officeholder is a candidate that occurs after the expenditure is made; and (2) a campaign expenditure is attributed to the election for which the expenditure is made.<sup>17</sup> With this in mind, the voluntary limits on political expenditures are as follows<sup>18</sup>:

- A. \$2 million for a candidate for a statewide judicial office;
- B. \$500,000 for a candidate for chief justice or justice of a court of appeals if the population of the judicial district is more than 1 million;
- C. \$350,000 for a candidate for chief justice or justice of a court of appeals if the population of the judicial district is 1 million or less;
- D. \$350,000 for a candidate for a district court, a statutory county court, or a statutory probate court if the population of the judicial district is more than 1 million;
- E. \$200,000 for a candidate for a district court, a statutory county court, or a statutory probate court if the population of the judicial district is 250,000 to 1 million;
- F. \$100,000 for a candidate for a district court, a statutory county court, or a statutory probate court if the population of the judicial district is less than 250,000.

<sup>15</sup> § 253.1611(c).

<sup>16</sup> § 253.1611(d).

<sup>17</sup> Tex. Ethics Comm’n Rule § 22.33.

<sup>18</sup> § 253.168. See also Tex. Ethics Comm’n, Campaign Finance Guide for Judicial candidates and Officeholders 17-18 (Rev. March 19, 2012).

## IV. Failure to Timely File Reports

A study of sworn complaints filed with TEC in 2008 listed the most common alleged violations and among them were violations of the requirements for the general content of reports, semiannual reporting, and opposed candidates reports.<sup>19</sup>

- A. **Personal Financial Disclosure Statement.** Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, an individual who is a partisan or independent candidate for an office as an elected officer shall file the financial statement required by this subchapter.<sup>20</sup>
1. A Nonjudicial officeholder who becomes a judicial candidate must report both nonjudicial and judicial financial activity. They can do so in separate reports or a combined report.
  2. If the deadline under which a candidate files an application for a place on the ballot, other than the regular filing deadline for an independent candidate, or files a declaration of write-in candidacy falls after the date of the regular filing deadline for candidates in the general primary election, the candidate shall file the financial statement not later than the 30th day after that later deadline. However, if that deadline falls after the 35th day before the date of the election in which the candidate is running, the candidate shall file the statement not later than the fifth day before the date of that election.<sup>21</sup>
  3. An individual who is a candidate in a special election for an office as an elected officer shall file the financial statement not later than the fifth day before the date of that election.<sup>22</sup>
  4. An individual nominated to fill a vacancy in a nomination as a candidate for a position as an elected officer under Chapter 145, Election Code, shall file the financial statement not later than the 15th day after the date the certificate of nomination required by Section 145.037 or 145.038, Election Code, is filed.<sup>23</sup>

**Helpful Tip:** SB 1269 was passed last session that eliminated the necessity for the judges to report reimbursements for meals, lodging and transportation for judicial conferences on their Personal Financial Statements, which was originally required by the Texas Ethics Commission Advisory Opinion 484 issued in 2009.

- B. **Semiannual Reports.** Every officeholder or candidate must file semiannual reports of contributions and expenditures by January 15 and July 15 of each year.<sup>24</sup>
- C. **Pre-Election Reports for Opposed Candidates.** The filing authority must receive a report of contributions and expenditures by a candidate who is opposed on by the 30th day prior to the election, and a second report on the 8th day prior to the election. To be opposed, the candidate must have an opponent whose name is on the ballot. If opponent is a write-in candidate, the candidate is not considered opposed for the purpose of these reports.
1. **30-day report:** includes contributions and expenditures from the first day of the last reporting period until the 40th day prior to the election. Thus, if your last report was due July 15, this report would cover a time period of July 16 through the 40th day before the election.

19 Texas Ethics Commission, Most Common Sworn Complaint Violations, available at [http://www.ethics.state.tx.us/whatsnew/Most\\_Common\\_Sworn\\_Complaint\\_Violations.pdf](http://www.ethics.state.tx.us/whatsnew/Most_Common_Sworn_Complaint_Violations.pdf).

20 Tex. Gov't Code § 572.027(a).

21 § 572.027(b).

22 § 572.027(d).

2. 8-day report: includes contributions and expenditures from the first day after the last required report was due and the 10th day before the election. Using the example from above, if the 40th day before the election was October 1, the reporting period for the 8 day report would include contributions and expenditures from October 2 through the 10th day before the election.

**Be careful:** There are many ifs, ands, and buts relating to the filing of reports. If you are in a unique situation, make sure you do some research and determine whether you are required to file any additional reports. There are special requirements relating to runoff elections, candidates who do not intend to receive or spend more than \$500 (modified reporting), officeholder reporting, opposed candidates who receive more than \$1,000 within the 9 days prior to the election (special re-election report), and ending candidacy requirements.<sup>25</sup>

**Also Be Careful:** The total amounts must be specific to that reporting period. You cannot have any “running totals” that span across numerous reporting periods.<sup>26</sup>

## V. Failure to Properly Report Contributions

### A. Properly Disclosing Contributor

1. *Corporations.* In response to the Supreme Court opinion in *Citizens United*, Section 253.094 no longer prohibits political expenditures by corporations and labor organizations.<sup>27</sup> However, it does still prohibit political contributions. A contribution is a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer.<sup>28</sup> For example, it is a violation to hold a campaign fundraising event at a department store if that department store is incorporated. The use of their facilities would be an “in-kind” political contribution by a corporation in violation of Section 253.094.<sup>29</sup>

**Exception:** Receiving a political contribution from a professional corporation is permissible.<sup>30</sup>

2. *Employment.* In the past, the TEC has found it permissible to report a contributor as self-employed, instead of reporting the name of the company or business that the contributor owns, if you can tell from the name of the business that it is owned by the contributor.<sup>31</sup> For example, if you receive a contribution from Sam Walton, you would not report that he is self-employed, but that he is owner-CEO or President of Wal-Mart. If you receive a contribution from John Doe who is a self-employed relator, then you could use self-employed.<sup>32</sup>

**Helpful Tip:** When in doubt, use the company or business name. For instances, in the example above regarding the realtor, it would be preferable if you used John Doe Realty instead of self-employed. For solo practicing attorneys, use the Law Office of John Doe instead of self-employed.

25 id

26 In the Matter of Ruben George “R.G.” Bowers, Jr. SC-3110493, Before the Texas Ethics Commission, Order and Agreed Resolution, (2011); Tex. Elec. Code Ann. § 254.031(a)(6).

27 I will address the legislative and TEC response to *Citizens United* in more detail in the next issue of *In Chambers*.

28 § 251.001(2).

29 Tex. Ethics Comm’n Rule §20.1(8). See *In the Matter of Barbara E. “Barbie” Scharf-Zeldes* SC-31007235, Before the Texas Ethics Commission, Order and Agreed Resolution (2012).

30 *Supra* note 10, at 14.

31 Telephone interview by Hon. Alfonso Charles with Tim Sorrells, Attorney, Texas Ethics Commission (Feb. 24, 2012)

32 *Id.*

## B. “In-Kind” Contributions

The following are examples that qualify as “in-kind” contributions and **must** be disclosed on campaign finance reports:

**Example 1:** If a third-party offers to host a campaign event and provides the venue, food, and drinks – this is an “in-kind” contribution which needs to be disclosed on the finance report for that period.

**Example 2:** If members of a political committee send letters to the public seeking support of a candidate and the individual members of the committee pay directly for the expense of sending the letters, the committee must report that as an “in-kind” contribution.<sup>33</sup>

**Example 3:** If a candidate transfers personal equipment to a specific-purpose political committee, the committee must report that as an “in-kind” contribution from the candidate.<sup>34</sup>

**Example 4:** Providing office space for a judicial candidate or officeholder is an “in-kind” contribution.<sup>35</sup>

**Example 5:** An item donated to be auctioned at a fundraiser is an “in-kind” campaign contribution. The purchase of the item at the auction is also a contribution.<sup>36</sup>

On the other hand, not all in-kind contributions need to be reported. For example, if an individual performs personal services for which they are not compensated, you are not required to disclose the service as a political contribution.<sup>37</sup> However, personal services are an in-kind contribution and are still subject to the contribution limits of Section 253.155(b). For example, a campaign volunteer is making a contribution in the form personal services.<sup>38</sup> You are not required to report the volunteer’s personal services as a contribution in your finance reports, although you may if you want to. However, his or her services do count towards the individual limits of Section 253.155(b). This opens the door for questions such as how do you estimate the worth of each volunteer’s time and how do you keep track of hours? These are questions that cannot be readily answered. The more clear cut example that I was given by a staff attorney at TEC was that of a singer playing at a candidate’s fundraiser. If Kelly Clarkston agrees to play a concert for you and receives no compensation, then it would be an “in-kind” contribution for which you do not have to report. However, she would still be violating Section 253.155(b) because her time is conceivably worth much more than the individual contribution limits set forth in that section.

## VI. Failure to Properly Report Expenditures

A. *Description of Expenditure.* A political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure.<sup>39</sup>

1. “A critical factor in determining whether the respondent sufficiently described the purposes of a political expenditure is the respondent’s level of involvement with the expenditure. For instance, if the respondent directed a political consultant’s activity by telling the consultant how to spend funds, the respondent would have been required to disclose the ultimate recipient as the payee and describe the purpose of the expenditure in more detail than ‘campaign services/expenses.’ On the other hand, if the respondent gave money to the

33 EAO No. 74 (1992).

34 EAO No. 271 (1995).

35 Supra note 10, at 7.

36 Id. at 8.

37 § 254.033.

38 Supra note 10, at 8.

39 Tex. Ethics Comm’n Rule § 20.61(a).

consultant knowing that the consultant would pay other service providers but did not exercise discretion over the details of how the consultant made the payments, the respondent would comply with the law by reporting the payment to the consultant, and describing the purpose of the expenditure as being for ‘consulting or campaign services’ would be sufficient.”<sup>40</sup>

**Helpful Tip:** Review your recent filings to ensure that your descriptions are complete and accurate. If you feel that a description needs more detail, you can correct the report using form COR-C/OH. If you make the correct within 14 days of discovering the error and the error was made in good faith, there will be no penalty.

**Examples:** Click here for a list of expenditure descriptions compiled by the Ethics Commission. This list is for illustrative purposes only and is not an exhaustive or an exclusive list. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

- B. *Description of to Whom Expenditure was Made.* Same as with political contributions, spell out the full name. Even if you believe it is a recognized organization, spell it out! For example, reporting a political expenditure to “WCNAA” is insufficient because it is not the full name of the political committee and WCNAA is not a recognized acronym.<sup>41</sup> However, reporting a political expenditure to or “PVL-New Era” is sufficient because that is the full name of the political committee.<sup>42</sup>

**VII. Converting Political Funds for Personal Use**

TEC’s study of 2008 sworn complaints also listed improper reimbursement of personal funds as one of the most common allegations.<sup>43</sup>

- A. *Restrictions on Personal Use of Contributions.* Election Code § 253.035(a) prohibits a person who accepts a political contribution from converting the contribution to personal use; section 253.035(b) prohibits a specific-purpose committee that accepts a political contribution from converting the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder. These prohibitions include the personal use of an asset purchased with the contribution and the personal use of any interest earned on the contribution.<sup>44</sup>

“Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or holder of a public office.<sup>45</sup>

For example, a candidate or officeholder could not use a political contribution to purchase a car solely for his private use or the use of his family members. Nor may a candidate or officeholder knowingly make a payment from a political contribution to purchase real property or to pay for the rental or purchase of real property from a person related within the second degree of consanguinity or from a business in which the candidate or officeholder (or a relative within the second degree) has more than a 10 percent interest or serves as an officer or board member.<sup>46</sup>

40 In the Matter of Barbara E. “Barbie” Scharf-Zeldes, at 4.

41 In the Matter of Yvonne Davis, SC-2912294, Before the Texas Ethics Commission, Order and Agreed Resolution (2011).

42 Id.

43 Supra, note 19.

44 Id. § 253.035(c).

45 Id. § 253.035(d).

46 § 253.038(a) and (a-1). *Compare Texas Ethics Comm. v. Goodman*, 2010 WL 323544 (Tex. App.—Fort Worth Jan. 28, 2010, no pet.).

The Texas Ethics Commission has issued advisory opinions addressing specific situations concerning the personal use of political contributions. A list these advisory opinions as of January 23, 2012, may be found at the following: Personal Use of Funds. Set forth below is a brief description of some of the permissible and impermissible uses of political contributions addressed in the Commission's Advisory Opinions. If you are in doubt, do not assume that the use is permissible; call the Ethics Commission Legal Division at 512-463-5800.

### 1. Permissible Uses of Political Contributions

- The purchase of electronic equipment for official use in a courtroom or a judge's chambers.<sup>47</sup>
- A donation of surplus political contributions to a charity or uses set out in Election Code § 254.204 (relating to disposition of unexpended contributions).<sup>48</sup>
- Legal expenses in defending a lawsuit to collect a campaign loan.<sup>49</sup>
- A spouse traveling to campaign for a candidate or in connection with officeholder duties.<sup>50</sup>
- The operation and maintenance of a personal asset (a plane) for campaign or office holder purposes.<sup>51</sup>
- A judge's expenses in moving from home city to city in which the court sits.<sup>52</sup>
- A donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens (where the officeholder was employed in a non-executive position by the organization and a family member was served by organization).<sup>53</sup>
- Spanish lessons in a district with a large Hispanic population.<sup>54</sup>
- The cost to purchase, prepare, and mail Christmas cards to constituents.<sup>55</sup>
- A portrait of a retiring county judge for the county courthouse.<sup>56</sup>
- The payment of a fine for a late Title 15 filing.<sup>57</sup>
- The cost to purchase, prepare, and mail congratulatory letters (e.g. birth, graduation).<sup>58</sup>
- Expenses in connection with a sworn complaint alleging a Title 15 violation.<sup>59</sup>

47 Advisory Opinion 25 (1992).

48 Advisory Opinion 47 (1992).

49 Advisory Opinion 105 (1992).

50 Advisory Opinion 111 (1992).

51 Advisory Opinion 129 (1993).

52 Advisory Opinion 133 (1992).

53 Advisory Opinion 149 (1993).

54 Advisory Opinion 157 (1993).

55 Advisory Opinion 190 (1994).

56 Advisory Opinion 199 (1994).

57 Advisory Opinion 206 (1994).

58 Advisory Opinion 209 (1994).

- Responding to a grievance filed with the State Bar regarding conduct as a candidate.<sup>60</sup>
- Small gifts (e.g., flags or souvenirs) for volunteers or constituents.<sup>61</sup>
- A mobile phone for candidate or officeholder purposes.<sup>62</sup>
- A judge's payment of state bar dues if the office requires being licensed.<sup>63</sup>
- A judge's payment to assist in the preparation of a thesis for a masters of law in judicial process.<sup>64</sup>
- A judge's attendance at a legal seminar related to the judge's duties of office.<sup>65</sup>
- Expenses of defending a lawsuit filed because of status as a judge.<sup>66</sup>
- A judge's payment from surplus political contributions for continuing legal education.<sup>67</sup>
- A judge's payment for a social event sponsored by a bar association if connected with candidate or officeholder activities.<sup>68</sup>
- Legal expenses for investigation of public corruption.<sup>69</sup>
- Damage to property caused while discharging official duties.<sup>70</sup>
- Membership costs in a nonprofit organization when membership benefits are primarily connected with officeholder activities.<sup>71</sup>
- Defense against charges of judicial misconduct.<sup>72</sup>
- A payment to a niece or nephew for campaign work.<sup>73</sup>
- A donation of an unexpended political contribution to any generally recognized affiliate of former officeholder's political party.<sup>74</sup>
- Former elected officeholder's payment from surplus political contributions for expenditure made in connection with current non-elected position at state agency.<sup>75</sup>

60 Advisory Opinion 222 (1994).

61 Advisory Opinion 241 (1995).

62 Advisory Opinion 241 (1995).

63 Advisory Opinion 245 (1995).

64 Advisory Opinion 247 (1995).

65 Advisory Opinion 267 (1995).

66 Advisory Opinion 276 (1995).

67 Advisory Opinion 279 (1995).

68 Advisory Opinion 284 (1995).

69 Advisory Opinion 310 (1996).

70 Advisory Opinion 313 (1996).

71 Advisory Opinion 423 (1999).

72 Advisory Opinion 433 (2001).

73 Advisory Opinion 434 (2001).

74 Advisory Opinion 437 (2001).

75 Advisory Opinion 462 (2005).

- Payment by a former candidate and former officeholder to pay legal expenses incurred in connection with a defamation lawsuit he brought in his status as a candidate.<sup>76</sup>

## 2. Impermissible Use of Contributions

- Laundry and dry cleaning expenses (considers IRS standard).<sup>77</sup>
- A judge's expenses in maintaining a residence in the city in which the court sits and commuting expenses.<sup>78</sup>
- Certain investments, such as the purchase of stock primarily to support a family business or the purchase of an investment instrument (e.g., a work of art) that is displayed in the candidate/officeholder's home; or a loan of political funds, especially to the family.<sup>79</sup>
- Expenses of defending lawsuits brought in private professional capacity.<sup>80</sup>
- Family recreation or entertainment.<sup>81</sup>
- Costs attributable to the personal use of asset (must apportion car cost).<sup>82</sup>
- A license fee unless the license is required for the office held or sought.<sup>83</sup>
- Contributions accepted as a municipal court judge to campaign for office of statutory county court judge.<sup>84</sup>
- A contribution to a trust fund established for the benefit of an individual to pay for medical needs.<sup>85</sup>

B. *Restrictions on Reimbursement of Personal Funds.* Election Code § 253.0351(a) provides that a “candidate or officeholder who makes political expenditures from the candidate’s or officeholder’s personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan.” If the expenditures are not reported as a loan under Section 253.0351(a), then a candidate or officeholder who makes political expenditures from the candidate’s or officeholder’s personal funds may reimburse those personal funds from political contributions only if the expenditures were fully reported under Section 253.035(h).

Section 253.0351(c), which was added on July 19, 2011, effective September 28, 2011, provides that a “candidate or officeholder who deposits personal funds in an account in which political contributions are held shall report the amount of personal funds deposited as a loan and may reimburse the amount deposited as a loan from political contributions or unexpended personal funds deposited in the account

76 Advisory Opinion 498 (2011).

77 Advisory Opinion 104 (1992).

78 Advisory Opinion 133 (1993).

79 Advisory Opinion 224 (1994).

80 Advisory Opinion 363 (1995).

81 Advisory Opinion 405 (1998).

82 Advisory Opinion 405 (1998).

83 Advisory Opinion 432 (2001).

84 Advisory Opinion 439 (2001).

85 Advisory Opinion 483 (2009).

The reimbursement may not exceed the amount reported as a loan. Personal funds deposited in an account in which political contributions are held are subject to Section 253.035 and must be included in the reports of the total amount of political contributions maintained required by Sections 254.031(a)(8) and 254.0611(a).”

The Texas Ethics Commission has adopted rules in Section 20.63 concerning reporting the use and reimbursement of personal funds<sup>86</sup> and in Section 22.19 concerning general restrictions on reimbursement of personal funds.<sup>87</sup>

A recent Ethics Commission publication provides the following explanation of these restrictions and reporting requirements when reporting expenses from personal funds:<sup>88</sup>

**Spending your own money on your campaign? Avoid common reporting errors!** If you intend to seek reimbursement of *any amount* from political contributions for a political expenditure made from your personal funds, report the expenditure in one of three ways. Method 3 is a new method that [became] available on September 28, 2011. We think that Method #1 is the simplest method. Keep in mind that this reporting system is not an accounting system and duplication of expenditures is not uncommon when reporting transactions related to expenditures made from personal funds.

**Method #1:** Itemize the expenditure on the “Political Expenditures Made From Personal Funds” schedule (Schedule G) and check the box to indicate that you intend to seek reimbursement from political contributions. (You may not correct a report to allow reimbursement without subjecting yourself to a possible penalty.) When you reimburse yourself, which could be months or years later, report the reimbursement on the “Political Expenditures” schedule (Schedule F).

**Example:** On December 1, 2007, Candidate A spends \$500 of her own personal funds to purchase political advertising signs. She reports the expenditure to the vendor on Schedule G and checks the box to indicate that reimbursement is intended. One year later, Candidate A reimburses herself from political contributions. She reports the reimbursement on Schedule F. Candidate A is the payee and the purpose of the expenditure is to reimburse herself for a political expenditure made from personal funds on December 1, 2007.

We stress that if you intend to seek reimbursement from political contributions for a political expenditure of *any amount* made from personal funds, you must itemize the expenditure on Schedule G.

**Method #2:** Report the political expenditures made from your personal funds as a loan to your campaign on the “Loans” schedule (Schedule E). Next, report the political expenditures made from that loan on the “Political Expenditures” schedule (Schedule F). Remember, the amount you report as a loan in a reporting period may NOT exceed the amount you actually spent from personal funds in that reporting period. In other words, do not report a \$100,000 loan to your campaign if the amount actually spent from personal funds in the reporting period was \$5,000. When you reimburse yourself, which could be months or years later, report the reimbursement on the Schedule F.

**Example:** In one reporting period, Candidate B spends \$5,000 of his own personal funds to purchase political advertising materials. He spends \$3,000 at Business One and \$2,000 at Business Two. He reports the expenditures as a \$5,000 loan on Schedule E and then itemizes each of the two expenditures as a political expenditure on Schedule F. A year later, Candidate B reimburses himself from political contributions by disclosing the reimbursement on Schedule F. He reports the reimbursement on Schedule F. The payee in this instance is Candidate B, the category

86 <http://www.ethics.state.tx.us/legal/ch20p1.html#20.63>

87 <http://www.ethics.state.tx.us/legal/ch22.html#%C2%A7%2022.19>

88 [http://www.ethics.state.tx.us/whatsnew/tips\\_personal\\_funds.html](http://www.ethics.state.tx.us/whatsnew/tips_personal_funds.html)

of the expenditure is "Loan Repayment/Reimbursement," and "political expenditure made from personal funds reported as a loan" is an acceptable brief description.

**Method #3:** Deposit personal funds in an account in which your political contributions are maintained and report that amount as a loan on the "Loans" schedule (Schedule E). Next, report the political expenditures made from that loan on the "Political Expenditures" schedule (Schedule F). When you reimburse yourself, which could be months or years later, report the reimbursement on the Schedule F. (Note that the reimbursement may not exceed the amount reported as a loan. Also note that personal funds deposited in an account in which political contributions are held are subject to the personal use restriction.)

**Example:** In one reporting period, Candidate C opens a campaign bank account and deposits \$5,000 of her own personal funds into the account. She makes one \$3,000 expenditure for political advertising. Candidate C has no other activity in the reporting period. She reports the \$5,000 as a loan on Schedule E, itemizes the \$3,000 expenditure for the political advertising on Schedule F, and includes the remaining \$2,000 on her contributions maintained at the end of the reporting period total. A year later, Candidate C reimburses herself from political contributions by disclosing the reimbursement on Schedule F. The payee in this instance is Candidate C, the category of expenditure is "Loan Repayment/Reimbursement," and "political expenditure made from personal funds reported as a loan" is an acceptable brief description.

If you have questions concerning your reporting requirements, you may call the Ethics Commission legal department at 512-463-5800.

### VIII. Conclusion

If you found this article to be useful, be on the lookout for the next issue of *In Chambers*. It will feature an article addressing recent statutory and TEC rule changes relating to campaign financing.

# QUALIFIED SIGN LANGUAGE INTERPRETERS IN TEXAS COURTS

by Cheryl Sloan



In the 1925 case of *Terry v. State of Alabama*, the decision handed down was that it would be impossible for a deaf defendant to comprehend the legal charges and accusations against him or her without an interpreter present to facilitate communication of the legal proceedings.<sup>1</sup> Since that ruling, numerous changes have been made and laws enacted for equal access of communication in the courts today for deaf and hard of hearing clients. One such law is the Americans with Disabilities Act (ADA). The ADA stipulates who is qualified to interpret in court and provides a concise definition of an interpreter. For a vast majority of Texas courts, especially in rural areas, hiring a qualified sign language interpreter for a proceeding that involves a deaf or hard of hearing client tends to be a difficult and frustrating process. Many courts' staff do not have the resources or the ability to identify and contract qualified sign language interpreters with the appropriate training, knowledge

and experience for the complex task of court interpreting. Also, staffs do not have the linguistic or cultural knowledge of deaf or hard of hearing clients to make qualification assessments of what type of interpreting services those individuals need. Therefore, to assist courts and staff members in alleviating the stress of hiring a qualified sign language interpreter, this article will focus on the ADA definition of a "qualified interpreter," what is American Sign Language and using a Certified Deaf Interpreter.

## Who is a qualified interpreter?

The Department of Justice has defined the meaning of a qualified interpreter as one "who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary."<sup>2</sup> To do so, a court interpreter is one that is highly skilled and has extensive training, experience and supervision while working in a plethora of legal and court settings. In Texas courts, a "qualified interpreter" means an interpreter who holds the Court Interpreter Certification (CIC) from the Department of Assistive and Rehabilitative Services – Deaf and Hard of Hearing Services or a Specialist Certificate: Legal (SC:L) from the National Registry of Interpreters for the Deaf (RID).<sup>3</sup>

The first prerequisite for an interpreter to obtain the CIC, he or she is required to have a valid general certification from the Texas Board of Evaluation of Interpreters, or a certificate from RID or the National Association of the Deaf. This certification verifies that the interpreter's skills have been tested and have met or exceeded the minimum requirements to hold that level of certification. For the second prerequisite of the CIC, the interpreter

1 Terry v. State, 21 Ala. App. 100,105 So. 386,387 (1925).

2 28C.F.R. §35.104.

3 TEX CR.CODE ANN.§ 38.31 (g)(2) and Civ. Prac. & Rem. Code § 21.003

must obtain a minimum of 120 hours of approved classroom instruction with the emphasis of courtroom interpreting, or 120 hours of actual practice mentored by a certified court interpreter, or a combination of both. This training emphasis includes: criminal law process, civil litigation, legal terminology and ethical practices for court interpreters. Once court certification is obtained, interpreters are required to earn twenty hours of court-related studies within a five year period, pay an annual fee to renew that certification, maintain their general certification and be in good standing with the Board for Evaluation of Interpreters.<sup>4</sup>

Effective March 15, 2011, the ADA expanded the definition of a qualified interpreter in regards for “effective communication.” The definition states that public accommodations cannot require the deaf or hard of hearing person to rely on an accompanying adult, companion, or child to facilitate communication with the exception of imminent threat or safety to the person or where no interpreter is available.<sup>5</sup> Court interpreting is a complex process that requires linguistic, cognitive and technical skills which many family members, companions and children do not possess. In addition, court interpreting requires highly skilled and trained interpreters because of the significant consequences to the deaf and hard of hearing client involved in the event of failed communication.

### What is American Sign Language?

American Sign Language (ASL) is a distinct and separate language from spoken English. It is just as distinct as Farsi, Arabic or Portuguese is from English. ASL is a highly developed language that contains all the fundamental features with its own grammar, syntax and cultural complexities that affect the way the language is used among deaf people. American Sign Language is the native language of many North American deaf and hard of hearing individuals.<sup>6</sup>

American Sign Language incorporates not only signs, but it also uses facial features such as eyebrow motion, lip-mouth movements and body orientation as part of the grammatical system. Also, ASL incorporates the use of space near the signer to describe places and people that are not present. For individuals not familiar with these features of ASL, a grave misunderstanding can occur. One example occurs when judges and lawyers ask ASL interpreters not to use facial grammar and body movements which are a necessary part of the language. Such requests have been made by courts as these movements are deemed as distracting to other individuals in the courtroom. Ordering the ASL interpreter not to use all the aspects of the language will distort information and cause facts to be lost.<sup>7</sup> It is imperative to remember that ASL is **not** simply English on the hands.

It should also be noted that no one form of sign language is universal. Different sign languages are used in different countries. For example, Mexican Sign Language is different from ASL, and not all deaf Latinos will understand ASL. Furthermore, ASL has regional accents and dialects. Just as certain English words are spoken differently in various parts of the country, ASL has regional variations as well. Interpretation between English and ASL requires an interpreter who is bi-lingual and bi-cultural of both communities in order for the interpretation to be effective.<sup>8</sup>

### Using a Certified Deaf Interpreter

When the court is notified that a sign language interpreter is needed, the ASL interpreter will be the first professional to assess the deaf or hard of hearing person communication needs. If communication is not established between the interpreter and the deaf or hard of hearing individual, a certified deaf interpreter (CDI) may be required. A CDI is an individual that is deaf or hard of hearing themselves and often times work as a team with a hearing sign language interpreter. A deaf interpreter is a specialist with a vast knowledge of deafness and deaf culture which many ASL interpreters do not possess.<sup>9</sup>

4 Texas Board for Evaluation of Interpreters.

5 28C.F.R. §36.303 (c)(ii)(2)(3)(i)(ii)(4).

6 National Association of the Deaf (NAD).

7 Hewitt, W. (1995). Court Interpretation: Model Guides for Policy and Practice in the State Courts. Williamsburg, VA: National Center for State Courts.

8 National Association of the Deaf. <http://www.nad.org>.

9 Certified Deaf Interpreter. (1997). Standard Practice Papers. Registry of Interpreters for the Deaf, Retrieved from <http://www.rid.org>.

Professional sign language interpreters are tested and certified using the most commonly standardized signs used among deaf and hard of hearing individuals in America. However, there are some deaf and hard of hearing clients that use a unique idiosyncratic or individualistic form of sign language different from the standardized signs. This means there is neither a base language of English or ASL that the interpreter can establish communication with. Therefore, in order for communication to be effective, and thus ensure the accuracy of the record, the court may be informed of the need to engage the services of a CDI, who possesses the necessary education, training and specialized skills to ensure the effectiveness of communication. As stated previously, the CDI will work with the certified hearing interpreter as part of a team. The interpreting process resembles that of a relay operation. The interpreter who can hear will interpret in ASL the spoken information or question to the deaf interpreter. The deaf interpreter will then sign, mime, gesture, use pictures, drawings or other necessary props to convey the information or question to the deaf client. In response the interpreting process will be reversed.

Reasons for the need of a deaf interpreter vary in each case. After the assessment has been made, it has been found that the deaf or hard of hearing person:

- Uses idiosyncratic, nonstandard signs or gestures, commonly referred to as “home signs,” that are unique to the family only;
- Uses a foreign sign language;
- Uses signs particular to a given region, ethnicity, or age group;
- Relies on uniquely deaf experiences that are unfamiliar to the hearing interpreter;
- Has no language foundation because of inadequate education;
- Is dealing with mental health issues;
- Is a juvenile;
- Is experiencing problems caused by drug abuse; or
- Has delayed language.

This interpreting process requires time to ensure communication is clear and comprehended. The court should allow a period of two or three times longer than what is required for a noninterpreted proceeding.<sup>10</sup>

In Texas court rooms today, judges are confronted with language and cultural differences often and cannot be expected to know or to be an expert for each language. Courts that recognize the importance of hiring the services of a qualified ASL interpreter and seeking their advice on how best to communicate with the deaf person will preserve the fairness and integrity of the court proceedings for all who are involved.

For a complete list of Texas certified court interpreters, access <http://www.dars.state.tx.us/dhhs/beiterpsearch.shtml>. For interpreters holding the RID legal certificate, the SC:L, access <http://www.rid.org/>. Likewise, for additional assistance and recommendations when working with ASL and/or CDI interpreters, access a copy of A Bench Card for Judges at <https://www.yourhonor.com/judicial-resources/Bench-Cards>.

10 Registry of Interpreters for the Deaf, Inc., 1997.

## CHILD-FRIENDLY COURTROOMS: ITEMS FOR JUDICIAL CONSIDERATION



by ANGIE VON PAGELER, J.D. *and*  
MEGHAN M. WELLER, J.D.

Last fall, a children's advocacy center staff person searched for a lifeline for a young child sexual abuse victim. This little girl was to testify in criminal proceedings against her alleged perpetrator, a family member. The thought of appearing before this particular defendant in a room filled with strangers to recount the details of such a painful, personal trauma caused the child to break down. Prosecutors became concerned that they would be unable to proceed without the girl's testimony. The director of the local children's advocacy center charged with facilitating the case reached out to colleagues for help in identifying a solution. Suggestions came in the form of an electronic copy of a bench book, *Child-Friendly Courtrooms: Items for Judicial Consideration*. One recommendation seemed to fit this situation perfectly, and following a discussion with the judge and defense counsel, accommodations were made to ensure that the child could testify in a more comfortable manner while preserving the rights of the defendant and the integrity of the criminal justice system.

Each day, children across the country become involved in the judicial system through no fault of their own. While many court cases are instituted to protect the best interests of the child in question, the complex nature of the legal process may further traumatize an already vulnerable person. Courtroom furnishings are built to accommodate adults. Chairs may be too low and railings too high - obstructing a small person's view of the courtroom and its parties. Authoritative figures preside over and participate in courtroom proceedings. An adult with a gun guards the door, and a person frequently wearing all black wielding a large, wooden hammer tells everyone what to do. By nature, traditional courts of law were not created with an eye for the special developmental needs of children. Rather, they were established to address the grievances and transgressions of adults, and they are intended to command both attention and respect. Interactions with the American justice system may be enough to rattle the average adult, and the anxiety felt by a child in the justice system is only magnified. In some cases a child may be the only witness available to testify, and the verdict may depend on the child's ability to accurately articulate events from memory. The adult memory can

be tricky, tempered by stress, perspective and the passage of time. In turn, a frightened child's ability to recall traumatic events may be negatively affected by perceived pressure or misinterpretations stemming from legal proceedings that the child may not understand. Because of the crucial role these children play in the execution of justice, there is a pressing need to modify conventional practices to protect and facilitate children's involvement in judicial proceedings, while preserving the integrity of the judicial system.

Through grant funding provided by the Children's Justice Act and the Court Improvement Program through the Supreme Court of Texas, Permanent Judicial Commission for Children, Youth and Families (Children's Commission), Children's Advocacy Centers of Texas, Inc. (CACTX) was able to research, draft and release *Child-Friendly Courtrooms: Items for Judicial Consideration*, a bench book and reference sheet intended to aid courts in determining appropriate accommodations for child witnesses. The development of this tool was further guided by a judicial advisory committee who graciously lent their expertise and perspective to forming the content and format of this publication. *Child-Friendly Courtrooms* provides an overview of the current state of Texas law regarding child-friendly court accommodations and recommendations based on the unique developmental needs of child witnesses.

*Child-Friendly Courtrooms* was researched and drafted last year, and followed on the heels of Senate Bill 578, a bill authored by Texas State Senator Troy Fraser during the 82nd Legislature. SB 578 codifies judicial discretion in permitting certain child-friendly court accommodations. As amended, Texas statute now provides judges significant latitude to modify certain procedures surrounding a child witness' testimony in court. Several elements of child-friendly modifications were addressed. First, the legislation establishes that courts shall conduct proceedings surrounding a child's testimony in an age-appropriate manner. Children, particularly school-aged children, generally do not have control over many aspects of their day-to-day activities. The adults who care for them dictate when they will eat, when they will sleep, and when they are permitted to play. As such, children are usually not accustomed to asking for breaks. The updated statute allows for age-appropriate breaks. The age-appropriate provision in statute reminds participants in legal proceedings to be mindful of a child witness' unexpressed needs. Children, like adults, have unique internal clocks that lend themselves to varied levels of energy and awareness throughout the day. This may result in a more alert and expressive child in the morning and a more withdrawn or easily distracted child in the afternoon. Such tendencies directly affect a child's ability provide clear and accurate testimony. As such, the amended statute provides that consideration shall be given to the time of day in which a child testifies to maximize the child's understanding of the questions and proceedings, and to limit trauma to the child.

This new legislation also authorizes the presence of support persons and comfort items for children in criminal cases. Some courts have permitted a parent or victim advocate to accompany a child witness to the stand, provided that the view of the witness box remains unobstructed during any testimony. Child witnesses are also permitted to have a comfort item (such as a toy or security blanket) during testimony. Research shows that the physical touch of a comforting personal belonging often leads to a psychological sense of well-being, decreased anxiety and increased speech and memory functions. In line with these findings, some Texas counties have implemented courtroom animal programs that provide a trained facility (therapy) dog to accompany a child witness to court. Courts nationwide have commented on the visible effects a therapy animal has on a child's demeanor on the stand. Some have observed that the presence of a therapy dog in court is not unlike the use of other service animals, such as seeing-eye dogs.

Further, this legislation provides that courts shall use child-friendly language in administering oaths and posing questions during the examination of the child witness. Oaths may be modified to ensure that children understand what is expected of them while testifying. Modifications may include breaking up the traditional oath given to adults and posing shorter, more digestible questions to the child. Some courts choose to have a conversation with the child, wherein the judge asks if the child understands the difference between the truth and a lie, and if the child understands that he or she must tell the truth while testifying. Questions containing multiple parts, double negatives or difficult vocabulary can confuse a child and needlessly obstruct the fact-finding process. Short questions using simple language are most effective in eliciting clear answers from children. In the event that the child becomes confused or does not understand a question posed, the statute provides that the court shall explain to the child that he or she has the right to ask for clarification or restatement of a question.

Finally, this legislation establishes that a court may set any other conditions and limitations on the taking of a child's testimony that it finds just and appropriate, considering the interests of the child, the rights of the defendant, and

any other relevant factors. This provision gives judges the greatest latitude in protecting the rights and needs of child witnesses while safeguarding the rights of the accused. Courts may choose to prioritize dockets and expedite cases that involve child witnesses. Delays and continuances are not only economically burdensome, but may also negatively impact the outcome of a case. Administrative adjustments may ensure that cases involving children are resolved in a timely manner, thus preserving crucial memories that may fade over time while minimizing the trauma that can result from a prolonged court experience. Courts may also choose to permit child witnesses to use testimonial aids, such as anatomically correct dolls and drawings, to assist in eliciting clear and intelligible testimony. Such aids may help a child overcome fear or an inability to find the right words to describe his or her thoughts. Particularly in cases of sexual abuse, young children often lack vocabulary to clearly describe their own body parts, particularly in the kind of detail required in court proceedings. Testimonial aids can assist in reducing some of the anxiety that accompanies such wrenching testimony in young witnesses. Courts may also consider providing a child-friendly waiting area for children waiting to testify. Hearings and trials can be unpredictable, and a child scheduled to provide testimony may spend hours in hallway waiting to be called. A space dedicated to child witnesses might ease a child's anxiety about his or her upcoming testimony. Such an area need not be elaborate, however a separate space equipped with a few age-appropriate diversions, snacks, or a comfortable seating area for the child to do homework or listen to music would go far in diminishing anxiety prior to testimony.

Two legal interns were hired by Children's Advocacy Centers of Texas to assist in researching and drafting the *Child-Friendly Courtrooms* project. Two professional groups, a Judicial Advisory Committee and a Stakeholder Advisory Committee, were formed to provide critical and practical feedback for the project. The Judicial Advisory Committee, comprised of judges with experience in child-related cases from across the state, was crucial in lending guidance regarding the needs of the judicial audience. "The information in *Child-Friendly Courtrooms* is useful to all child advocates, however, it was essential that the guide be most accessible for members of the judiciary who preside over these cases and require up-to-the-minute information on child-friendly courtroom practices," stated Judge Chris Oldner, chair of the Judicial Advisory Committee. Stakeholder committee members included prosecutors, mental health professionals, and advocates who work with child victims and witnesses. Despite demanding schedules, members of each committee made themselves available to review and critique drafts of *Child-Friendly Courtrooms*, providing an invaluable contribution. Thanks to the input of members of the Judicial Advisory Committee, what began as an idea grew to include not only a 40-page bench book, but also a condensed bench card as a means of providing an easy and abbreviated reference to judges pressed for time. Members of the Stakeholder Committee were able to provide points of view from the field to shape *Child-Friendly Courtrooms* into a relevant discussion of real challenges as encountered by child witnesses.

Copies of *Child-Friendly Courtrooms* have been distributed to members of the Texas judiciary, district and county attorneys, local CASA programs, Department of Family and Protective Services regional attorneys, and each of the 65 local children's advocacy centers across the state. The content of the project will also be presented at the Winter Regional Conferences for New Judges, held by the Texas Center for the Judiciary. CACTX is currently collecting feedback from judges across the state as they review the project and critique its relevance. Of the evaluations received to date, 100% of respondents report an increased awareness of the challenges facing child witnesses in the courtroom.

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*Child-Friendly Courtrooms: Items for Judicial Consideration* may be downloaded from [www.cactx.org](http://www.cactx.org). Hard copies may be requested via email at [avonpageler@cactx.org](mailto:avonpageler@cactx.org).

Children's Advocacy Centers of Texas, Inc. is the statewide membership association, representing the Texas network of 65 local children's advocacy centers. Founded in 1994, CACTX is the largest state association of CACs in the nation. Our membership reflects the vast diversity of Texas, each with their own unique approach to fulfilling our shared mission of protecting and providing for children through facilitating a coordinated and child focused approach to the investigation and prosecution of crimes against children.

# THE TEXAS CENTER CONGRATULATES ALL GRADUATES OF THE 2011 COLLEGE FOR NEW JUDGES!

On December 4, 2011, newly elected and appointed Texas judges began a week long education and training program sponsored by the Texas Center. Although the class was among the Texas Center's smallest with only 20 judges, it was in no way lacking in judges eager to learn, discuss, and analyze the issues most important to the judiciary. We would like to extend warm congratulations to the following 2011 graduates:



Special thanks and recognition go to the College's co-deans, Judge Lora Livingston and Judge Kathleen Hamilton, whose countless hours organizing, supervising and teaching ensured that this year's College was a resounding success. Our faculty likewise did an outstanding job in making sure the topics covered were always relevant, informative and well-presented. And the judges who served as group

discussion leaders provided a unique opportunity for the new judges to participate in small discussion groups to address best practices, common problems, issues and concerns and to have a sounding board and an advisor and mentor. This year's discussion group leaders were Judge Stephen Ables, Judge Mark Atkinson, Justice Gina Benavides, Judge Linda Chew, Judge Paul Davis, Judge Kathleen Hamilton, Judge John Hyde, and Judge Laura Weiser.

The Texas Center is proud to continue the tradition of outstanding judicial education represented by this year's College for New Judges. This education is made possible by the dedication and commitment of experienced, knowledgeable and very able judges who volunteer their time and energy for the benefit of the Texas judiciary as a whole.

- Hon. Jonathan Mark Bailey
- Hon. Courtney Burch-Arkeen
- Hon. Rolando Cantu
- Hon. Jeremy Fowler
- Hon. Jack M. Graham
- Hon. Rebeca Aizpuru Huddle
- Hon. Daniel Eric Kalenak
- Hon. Trey Edward Loftin
- Hon. Debra Ibarra Mayfield
- Hon. Missy Medary
- Hon. Cynthia Mendoza
- Hon. Amanda Putman
- Hon. Jennifer James Robin
- Hon. James Rush
- Hon. Joseph F. Sterlitz
- Hon. David Stith
- Hon. Steven Ray Thomas
- Hon. Kerry D. Woodson
- Hon. Stephen Wren
- Hon. John W. Youngblood



# 2012 WINTER REGIONAL CONFERENCES



At the Winter Regional Conferences this year, judges got to enjoy the beautiful weather of San Antonio, as well as the beautiful conference facilities of the Hyatt Hill Country and JW Marriott. While this year's Winter Regional Conferences offered many of the traditional courses that judges enjoy, such as case law updates and evidence issues, several sessions covered areas of developing law, such as social media and the use of iPads. The conference also offered a variety of breakout tracks that allowed judges to choose topics that were of interest to them, such as guardianships, expert witnesses, DWI

topics, and litigation issues relating to closely held companies, to name just a few.

We had over 550 judges in total attend the regional conferences. Overall, both received very good reviews. Regional A received a 6.38 out of 7 and Regional B received a 6.55 out of 7. Below are some of the comments from the overall evaluations:

## Regional A:

- Excellent speakers discussed relevant topics and issues. Breakout sessions allowed us to attend areas of special interests or problems that arise in our special courts.
- Sessions were very good overall.
- Breakout selections were very good.

## Regional B:

- Very good instructors.
- Legal topics useful and relevant. Presenters excellent.
- Class and materials provided were excellent.
- Venue and collegiality; topics were helpful and well-presented.
- Excellent speakers, great opportunity to confer with other judges and exchange ideas. Evidence Jeopardy was excellent. Good rooms for meeting and excellent sound system.
- Relaxed setting – good interaction with other judges; Evidence Jeopardy and table discussion helpful.
- Good topic selection. Presenters were generally good. Looks like you have screened the presentation ability of the speakers.

Many thanks to the TCJ Curriculum Committee, especially Judge Jennifer Rymell, for selecting another excellent slate of speakers for the 2012 Winter Regional Conferences!

## IMPLICIT BIAS CONFERENCE

The Third Annual Implicit Bias Conference, funded by a generous grant from the Texas Supreme Court Commission for Children, Youth and Families, and attended by 43 judges from throughout the state, was held in Austin on February 6 and 7, 2012. Chief Justice Wallace Jefferson opened the conference with inspirational remarks on the progress we have made as a society in addressing racial prejudice and on the importance of fair

and impartial judicial decision making. Joyce James, Associate Deputy Executive Commissioner of the Texas Health and Human Service Commission, introduced individuals who had actually experienced the foster care system in Texas personally and whose lives had changed as the result of past efforts to reduce disproportionality within the child welfare system. One of the individuals recognized and thanked one of the judges in attendance, Judge Richard Garcia, for his actions and comments from the bench many years before that were instrumental in changing his daughter's life. Professor Ariela Gross, Professor of Law and History at the University of Southern California, and Dr. Kimberly Richards and Joseph Barndt with the People's Institute in New Orleans,



then discussed elements of the legal and institutional history of race in America. Dr. Thomas Shapiro, Professor of Law and Social Policy at Brandeis University, explained the effects of disparities in family assets. Marc Mauer, Executive Director of the Sentencing Project in Washington, D.C., and Professor Alan Dettlaff described the effects of high incarceration rates in minority communities and the stress this places on families. Finally, Kimberly Papillon explained the neuroscience and psychology of decision making. Comments from the judges who attended the conference were extremely positive. For example: "I have been going to judicial conferences for a long time. This is the first time my attention has been so 'intense'" – I was 'captivated' by the interest that was constantly 'triggered' within me!" "Thought conference was great. This type of training should be required of all new judges at New Judges school." "Bias matters!!! There are ways to prove measure and eradicate bias."

## FAMILY VIOLENCE CONFERENCE



*March 28-29, 2012  
Galveston, Texas*

The Family Violence Conference was held March 28-29 at the Tremont House in Galveston, Texas. The program was well received by those judges attending with an overall rating of 6.2 out of 7. Many thanks to Judge Kathleen Hamilton, 359th District Court of Montgomery County, who chaired the development of the conference and was instrumental in designing the curriculum.

Recent statutory changes, new case law and evidentiary issues were address. Judge Hamilton provided judges with useful bench sheets and checklists designed to be used as an every day reference when presiding over family violence cases. Justice Harvey Brown reviewed evidentiary standards in family violence cases, highlighting two recent cases that he believes will be pivotal. And Mr. Randy Harris provided judges with helpful tips to keep their courtrooms safe, which is especially important in high-conflict cases such as family violence.

Topics also included training in areas of developing interest in family violence, such as the Batterer's Intervention and Prevention Program (BIPP), implicit bias, firearm prohibition and relinquishment, and immigration. Although harder to apply to every day cases than the nuts and bolts material, the sessions were designed to give judges information and tools to assess their current courtroom practices and ways to incorporate new ideas.

If you were not able to attend the Family Violence Conference this year, be sure to sign up next year. The conference will be held at the San Luis Hotel, March 7-8, in Galveston. We hope to see you there!

# DWI COURTS OPERATIONAL TUNE-UP MEETING

*by* JUDGE MARK D. ATKINSON, JUDICIAL RESOURCE LIAISON  
FOR THE TXDOT TRAFFIC SAFETY PROGRAM



For those Texas courts conducting the Drug Court modeled DWI Court dockets, the Spring, 2012, meeting of the judges of those courts was an opportunity to examine current practices and trends in the operating of these courts, both across Texas and nationwide. The meeting, held in conference and court rooms in the Harris County Criminal Justice Center, was more practical than theoretical, and more conversational than lecture based. Approximately 25 Texas DWI Court judges participated. The meeting was conducted more in the format of a meeting of a Board of Judges than of a classroom event. The judges, themselves, led most of the discussions. The topics covered were developed by the judges, the DWI Curriculum Committee and the TxDOT Traffic Safety Grant Program.

Following is a brief synopsis of the meeting.

## **Constitutionality Issues in Texas Specialty Courts**

Judge Ruben Reyes, Lubbock County District Court judge and recently appointed Chair of the Governor's Criminal Justice Advisory Council, led a discussion concerning issues which have been raised, in courts around the United States, regarding Constitutional, ethical and liability-related issues.

## **Defining the Roles of DWI Court Team Members**

Judge Ray Wheless, Collin County District Court judge and recently appointed member of the Governor's Specialty Courts Advisory Council, and Judge Tim Wright, Williamson County Court at Law judge engaged the group in a conversation aimed at defining the roles and interactions of the team members of Texas Courts.

## **Recidivism Researcher's Report**

Pierre Rivolta, Ph.D. Candidate and Doctoral Teaching Fellow, Sam Houston State University Criminal Justice Center, the researcher with whom the TxDOT Traffic Safety Grant Program has contracted to conduct a study of recidivism of all of Texas DWI Court participants, expressed to the judges the goals and methodology of his Texas Statewide Evaluation of DWI Courts, the first stage of which will be completed and presented by September, 2012. He stated his intention to visit these courts and described the data needed for his study.

## **Web-based DWI Court Participant Tracking Shareware and Automated Occupational Driver's License Generator**

Harry Leverette, Assistant Court Manager for Information and Technology, Harris County Criminal Courts at Law, reviewed the DWI recidivism studies prepared for the Harris County Criminal Courts and demonstrated an interactive website (MS Sharepoint) that facilitated the collaboration between the courts, the Court Manager's Office, and Community Supervision and Corrections Department in developing the Harris County SOBER Court program. The presentation included a demonstration of the Occupational Driver's License Generator software, which features a "decision tree" for specifying conditions and producing final orders.

## **Developing Performance Standards for Texas DWI Courts**

Judge Reyes and Judge Dib Waldrip, Comal County District Court judge, led a discussion among the judges in an attempt to identify and define the essential characteristics of Texas DWI Courts, the goals being to assist DWI Court judges, researchers, funding providers, policy-makers and others.

## **Financial Sustainability**

Judge Robert Anchondo, El Paso County Court at Law judge, spoke on the issue of funding of both the courts and attendant goals of the DWI Court programs. He described the foundation which has been established in his county, before engaging the judges in conversation regarding various funding vehicles.

## **Future Goals**

Judge Mark Atkinson, Judicial Resource Liaison, led the group in identifying future goals and potential initiatives of the state's DWI Court judges. These include desired legislation, a commitment to continue to communicate with each other, both through in-person meetings, such as the Operational Tune-up, as well as by the use of the DWI Courts Listserv established by the TxDOT Traffic Safety Grant Program.

The judges at this meeting were enthusiastic and engaged. Their attendance and participation made this a meeting a great success. The TxDOT Traffic Safety Grant Program will continue to facilitate such meetings in the future.

## CONGRATULATIONS TO THE TEXAS COLLEGE



*Pictured from Left to Right* **Row 1:** Hon. Charles Nolen, Hon. John Byron McMaster, Hon. Lamar McCorkle (Dean); **Row 2:** Hon. Lorraine A. Raggio, Hon. Dennise Garcia, Hon. Pamela Cook Sirmon, Hon. Pamela Foster Fletcher, Hon. Vicki Menard, Hon. Teresa Ann Drum, Hon. Elisabeth A. Earle, Hon. Michael Jergins; **Row 3:** Hon. Alva Gene Calvert, Jr., Hon. Jeff M Addison, Hon. Jay K. Weatherby, Hon. Henry Hollis Horton, Hon. Tom Fuller, Hon. James Corley Henderson, Hon. James Patrick Fallon, Hon. Howard V. Tygrett, Hon. Oscar J. Hale, Jr. **Not pictured:** Hon. Charles Benjamin Akers, Hon. Linda Chew, and Hon. A. Lee Harris

This year 130 judges attended the Texas College for Judicial Studies. Always a popular conference, this year's College received some of the best ratings yet. Attendees noted the speakers were excellent and that the small class sizes allowed for substantive coverage of the topics.

The Criminal Law track had sessions ranging from suppression and search and seizure to hot topics such as specialty courts and writs. One judge praised the “nuts and bolts approach [and] superior presenters.” He went on to say, “[t]he materials were exceptional for future reference when specific issues or cases present themselves.” The Juvenile Law track, a breakout within the Criminal Law track, covered search and seizure issues specific to juveniles, hot topics such as sexting and bullying, and placement options.

The Civil Law track covered business litigation issues, such as jury charges, fiduciary and insurance litigation, business valuation, damages, discovery and experts. Attendees especially liked the session on jury charges, where one judge noted that this session “was the best that I have heard on this subject.”

The Family Law track focused on practical areas in family law such as third-party standing, court appointed advocates, electronic evidence, and pro se/ex parte issues. One attendee commented that this was the “best information given at any conference [he] had attended. No wasted time on topics [he] will not really use.”

Finally, the Appellate Law track focused on religion, the Constitution, standards of review, and writing.

The Texas College is a multi-year program in which judges can earn advanced degrees in their jurisdictional area. Each year, the Texas College offers classes in four jurisdictional specialties: Civil Law, Criminal/Juvenile Law, Family Law and Appellate Law. Additionally, judges must complete a three day core curriculum within five years to graduate from the college. The core curriculum covers topics relevant to all judges regardless of jurisdiction and explores subjects from judicial stress to creating a bias-free court.

The Texas Center staff and Curriculum Committee congratulate Judge Lamar McCorkle, Dean, and Judge Robin Malone Darr, Assistant Dean, of the 2012 Texas College for Judicial Studies, for an outstanding program.

Judges interested in applying to the Texas College can learn more about the program at <https://www.yourhonor.com/tcj-programs/Texas-College-for-Judicial-Studies>.

# MIDLAND AND ECTOR COUNTY YOUNG LAWYERS PAY TRIBUTE TO JUDGE JOHN G. HYDE



On March 29, 2012, the Midland and Ector County Young Lawyers celebrated their 5th Annual Evening with the Judges. In addition to raising money for Legal Aid of Northwest Texas, the young lawyers paid tribute to the Honorable John G. Hyde. Judge Hyde was a loyal supporter of the Midland bar and the community. Rick Fletcher, of the Fletcher Law Firm, and the Honorable Dean Rucker, of the 318th District Court, provided the guests with anecdotes that truly exemplified the greatness of Judge John Hyde. Below are Judge Rucker's comments.

*Judge Dean Rucker on Judge John Hyde as a Mentor*

It is always an honor to be able to talk about my friend, Judge John Hyde. I have spoken or written about him as a friend and colleague, and tonight, I want to talk about him as a mentor, because he was one to me and he was one to many of you.

I first met John right after I had taken the bar exam and returned home to Midland to begin practicing law with my father, Hal. My father had wisely associated John on a custody case, and he asked me to assist John in the preparation of the case for trial. Not having taken moot court in law school, not having ever been inside a courtroom and frankly just being a little intimidated by the whole process, I wasn't sure how much help I could offer. John asked me to conduct witness interviews. He told me the areas into which I needed to inquire and showed me how to conduct the questioning. After some brief instruction, I felt some confidence and did what I was asked. Never once did he make me feel stupid or make me feel as though I were taking up his valuable time. His gentle guidance gave me reassurance that I could do the job I was asked to do. He showed no hesitation in helping a very green lawyer learn about his craft.

It didn't stop there. After I became licensed, when I had questions or needed pointers, particularly in family law cases, I felt comfortable calling on John for his wisdom and guidance. It was always freely given, never judgmental, and it was always correct. I was not the only one who was a beneficiary of this wonderful man's instruction. Mary Ann Oakley, Bill Ward, Carmen Eiker, and Gayle Shackelford are only a few of the many lawyers whom he mentored all those many years ago.

Many of you here tonight have also been the beneficiaries of Judge Hyde's mentorship. The door to his office at the courthouse was always open and he enjoyed it when young lawyers would come in after a case was over and ask him to critique their work. In his customary manner, Judge Hyde would give the benefit of his incisive comments on one's trial performance. He never belittled or embarrassed an attorney. His goal was always to reassure, to educate and to improve.

Judge Hyde's mentorship was not limited exclusively to attorneys. He was a frequent lecturer at judicial conferences on a variety of topics. The program nearest and dearest to his heart was the College for New Judges, held in December of every year. There, newly appointed and elected judges meet for a week-long educational program designed to assist them in making the transition from attorney to judge. In addition to any lectures he gave, Judge Hyde was also a small group mentor and I personally believe that the judges in his small group were fortunate because they were getting that sound, practical advice that was sure to make that judge an invaluable asset to the judiciary. Long after each College for New Judges was a wrap and judges had returned to their communities, Judge Hyde continued to receive and answer questions from these judges as they became accustomed to their new positions. He loved educating new judges so much that this past December, despite feeling quite ill, Judge Hyde traveled to Austin and stayed for the entire program. Nobody except those closest to him knew that he wasn't feeling well. Stoic as always, he freely dispensed his wise and practical advice to the State's newest jurists. I told him how courageous I thought he was for his actions, and he simply responded that he was doing something he loved.

As difficult as it is to come to grips with the fact that Judge Hyde is gone, I am comforted to know that a little of him lives on in those he mentored and supported over the years. You and I are the lucky ones for having known him. Like me, I know you miss him and you wish he was here to counsel you once again. Know that he is with us...he is in your hearts and in your work.

God bless John Hyde. There will never be another one like him!

# TEXAS ACCESS TO JUSTICE FOUNDATION HONORS LAREDO JUDGES



(Pictured Left to Right) Mr. Israel Reyna, Hon. Jesus Garza, Hon. Elma Teresa Salinas Ender, Hon. Alvino "Ben" Morales, Ms. Fabiola Flores.

The Texas Access to Justice Foundation honored several Laredo judges and lawyers for their outstanding pro bono efforts benefiting the local community. The Pro Bono Star Awards were presented by the Supreme Court of Texas, in conjunction with their historic visit to hear oral arguments in Laredo.<sup>1</sup> The judges honored include:

- Judge Oscar J. Hale, Jr. 406th District Court
- Judge Joe Lopez, 49th District Court
- Judge Monica N. Notzon, 111th District Court
- Judge Elma Teresa Salinas Ender, 341st District Court
- Judge Jesus "Chuy" Garza, County Court At Law No. 2
- Judge Alvino "Ben" Morales, County Court at Law No. 1

In April 2003, County Court at Law No. 1 Judge Alvino "Ben" Morales, in conjunction with Israel Reyna, director of Texas Rural Legal Aid (TRLA), presented this project to the Board of Judges. A resolution was passed by all of the Judges in Webb County.<sup>2</sup> The purpose of the Social Justice Night Court is to "provide representation for indigent persons residing in Webb County who need assistance with uncontested legal matters."<sup>3</sup>

Legal Aid advocates with TRLA take applications for legal services and make two determinations: (1) whether the applicant is financially eligible for legal aid; and (2) whether the applicant is requesting assistance with an uncontested matter that may be handled and disposed of by a pro bono lawyer.<sup>4</sup>

The Night Court takes the following types of cases<sup>5</sup>:

- Uncontested divorces
- Adoptions, after biological parents have signed relinquishments
- Uncontested custody cases
- Uncontested guardianships
- Name changes
- Declaration of heirships
- Wills
- Powers of attorney
- Occupational licenses.



Hon. Monica N. Notzon (pictured right)

The clinic is equipped with 4 laptop computers provided by TRLA and is staffed by judges, attorneys, court reporters, interpreters, bailiffs, legal secretaries, notaries public and representatives of both the County and District Clerk's office, all participating on a volunteer basis.<sup>6</sup> The SJNC is held regularly on the second Tuesday of every month.<sup>7</sup>

1 Texas Access to Justice Foundation, "Awards Presented to Laredo Judges and Lawyers During Historic Texas Supreme Court Visit, Press Release, February 28, 2012, available at <http://www.teajf.org/news/releases/LaredoAwardsPresentation.aspx>.

2 <http://www.webbcountytx.gov/CountyCourtatLaw1/SocialJusticeNightCourt/>

3 <http://www.trla.org/pai/social-justice-night-court>.

4 *Supra*, note 1.

5 *Supra*, note 2.

6 *Id.*

7 *Id.*

## JUDGE MARIA T. JACKSON NAMED “BEST CRIMINAL COURT JUDGE OF 2011” BY HOUSTON PRESS

HOUSTON, TX. - DECEMBER 5, 2011 JUDGE MARIA JACKSON, PRESIDING JUDGE OF THE 339TH STATE DISTRICT COURT, COMMUNITY LEADER, NATIVE TEXAN AND DEMOCRAT WAS RECENTLY NAMED AS “BEST CRIMINAL COURT JUDGE OF 2011” BY THE HOUSTON PRESS MAGAZINE

This recognition is particularly noteworthy because Jackson is the first African American in Harris County to be acknowledged as “Best Criminal Court Judge.” Elected to this position in 2008, replacing a respected Republican incumbent, emerging from municipal courts and having never served as a Harris County prosecutor, the Houston Press noted, “She had three strikes against her” and “most pundits thought she’d be way over her head,” well they were wrong and she has simply and effectively “gone about the business of dispensing justice.” Jackson states, “I am honored and humbled to be recognized by the distinguished attorneys that appear and practice in my court. Every day I strive to make a positive and impactful difference while properly employing the rule of law. I am so appreciative of this recognition.”



Not only revered by those who practice in her court, colleagues, elected officials and residents of Houston, she was noticed for her diligent service in the City of Houston’s Municipal Courts. Judge Jackson received numerous accolades from citizens which led to her being the first judge to garner recognition in the Mayor’s Spotlight for the City of Houston’s newspapers. “Dispensing justice in an impartial and accurate way is a weighty responsibility,” said Mayor Bill White. “Judge Jackson’s determination to see every case to a fair conclusion while adding humanity and compassion is invaluable to Houston’s citizens. I hope all our employees will try to offer the same level of service.”

An added honor to note, Jackson was chosen as one of twenty-four judges from across the country by the partnership between the United States Secret Service, Department of Homeland Security, the Alabama District Attorney’s Association and the National Judicial College to represent Texas and attend the National Computer Forensics Institute (NCFI).

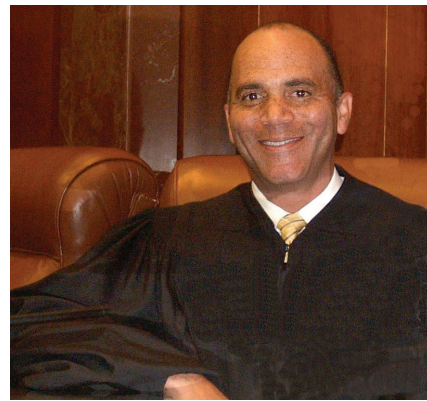
Judge Jackson serves on the Board of District Judges Administration of Justice and the Legislative Committees. She is a member of the State Bar of Texas, Texas State Bar College, a Fellow of Texas Bar Foundation, American Bar Association, Houston Lawyers Association, Houston Bar Association where

she co-chairs the Speakers Bureau Committee. She has served as a trainer and instructor for the Texas Municipal Courts Education Center. Jackson’s community involvement includes being a lifetime member of the Houston Livestock Show and Rodeo, serving on the Lamb & Goat Committee. She is also an active member of the Houston Chapter of Links Incorporated, where she served as Chairman on the Services to Youth program facet, a member of Delta Sigma Theta Sorority and a sustaining member of the Harris County Democratic Party. In addition, Judge Jackson is a member of Windsor Village Methodist Church. Judge Jackson earned a B.A. in Political Science in 1987 from the University of Texas at Arlington (Honors) and a Juris Doctor in 1998 from Texas Wesleyan University School of Law.<sup>1</sup>

<sup>1</sup> Press Release, AdRehab Marketing, Judge Maria T. Jackson Recently Names “Best Criminal Court Judge of 2011” by the Houston Press (Dec. 5, 2011).

## CHIEF JUSTICE JEFFERSON RECEIVES BRODY AWARD

On April 1, Colby College (Waterville, Texas) honored Chief Justice Jefferson with the 2012 Morton A. Brody Distinguished Judicial Service Award. He was nominated by U.S. District Judge Barbara Lynn, who said “Chief Justice Wallace Jefferson has been vigorous in advocating for adequate funding for our state courts, fair access to justice, quality defense for the indigent and nonpartisan judicial selection while remaining an approachable and active member of his community.”<sup>1</sup> Chief Justice Jefferson was also given an honorary doctor of laws degree from the school.



The Brody Award, named for the late Judge Morton A. Brody, of Waterville, honors an outstanding federal or state judge who embodies the qualities of integrity, compassion, humanity and judicial craftsmanship. Judge Brody taught at Colby and was the husband of Judith Levine Brody, a 1958 Colby graduate and retired associate dean of admissions at the college.<sup>2</sup>

On September 14, 2004, Chief Justice Wallace B. Jefferson made history when Governor Rick Perry promoted him to Chief Justice. Chief Justice Jefferson is the first African-American to serve on the Texas Supreme Court and now the first to lead it. He practiced law in San Antonio from 1988 with Groce, Locke & Hebdon, until he helped found Crofts, Callaway and Jefferson in 1991, an appellate specialty law firm. He served as the San Antonio Bar Association president from 1998–99 and was named the San Antonio Young Lawyers Association’s Outstanding Young Lawyer in 1997. He was among the “40 Under 40 Rising Stars” named by the San Antonio Business Journal in 1996 and received the “Pillars of the Foundation” award by the Northside Independent School District in San Antonio. Professional activities include serving on the Supreme Court of Texas Advisory Committee and the Texas State Commission on Judicial Conduct and chairing the host committee for the 2000 Fifth Circuit Judicial Conference. Chief Justice Jefferson has served as a director of the San Antonio Public Library Foundation and the Alamo Area Big Brothers/Big Sisters and on the education committee of the San Antonio Area Foundation. He is a graduate of the James Madison College at Michigan State University and the University of Texas School of Law. Chief Justice Jefferson, who won two cases decided by the United States Supreme Court, is certified in civil appellate law by the Texas Board of Legal Specialization.

1 Colby to Honor Texas Judge with Brody Award, MORNING SENTINEL. March 21, 2012, available at [http://www.onlinesentinel.com/news/colby-honors-texas-judge-with-brody-award\\_2012-03-20.html](http://www.onlinesentinel.com/news/colby-honors-texas-judge-with-brody-award_2012-03-20.html)

2 Id.

## GOVERNOR PERRY APPOINTS JUDGE RUBEN REYES AS CHAIR OF THE CRIMINAL JUSTICE ADVISORY COUNCIL

On March 5, 2012, the Governor’s Office issued a notice that Governor Rick Perry has appointed the Honorable Ruben Reyes as Chair of the Criminal Justice Advisory Council. The Council also consists of 8 other members, including: Joel Bennett (Austin), Hon. Robb Catalano (Fort Worth), Alan “Clay” Childress (Leander), Mary Covington (Houston), Becca Crowell (Dallas), Debra Fesperman (Sherman), Tara George (Houston), and Hon. Dibrell “Dib” Waldrip (New Braunfels). The Council is charged with advising the Governor on the creation, staffing, operations and performance of specialty courts. Specifically, Executive Order RP77 lists the Council’s duties as advising the Governor on:



- Best practices relating to the creation, staffing and operation of specialty courts in Texas.
- Measures by which the effectiveness of individual specialty court programs can be evaluated.
- Methods of ensuring that the rights of participants in specialty courts are respected and protected.
- Any other matters the governor may designate.

Judge Ruben Reyes is judge of the 72nd Judicial District Court in Lubbock and Crosby counties, and presiding judge of the Lubbock County Adult Drug Court. He is a board member of the National Association of Drug Court Professionals, Lubbock Dream Center Advisory Board and Foundation for the Education of Young Women Advisory Board. He is also a member of the Lubbock County Bar Association, past president of the Texas Association of Drug Court Professionals, a past member and officer of the South Plains Family Law Association, and a past member of the State Bar of Texas Family Law Section. Reyes received a bachelor’s degree from Yale University and a law degree from Baylor University.

# LETTER FROM THE EXECUTIVE DIRECTOR, RANDALL L. SAROSDY

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Dear Judges:

I would like to take this opportunity to update you on the activities and efforts of the Texas Center on your behalf under the leadership of our Chair, Justice Gina Benavides, and our Board of Directors. But first I want to thank you for your tremendous support of the Texas Center – not only through your exceptionally generous financial donations but also through the contribution of your invaluable time, energy and ideas, all of which have made the Texas Center a stronger and better organization. Your active participation in the Texas Center makes an enormous difference in the services we are able to offer. I cannot thank you enough for your dedication and commitment to this organization!

Due to the outstanding work of our Curriculum Committee, chaired by Judge Chris Oldner, and with the exceptional assistance of our Program Attorney, Courtney Gabriele, the Texas Center continues its long tradition of offering outstanding judicial education programs to Texas judges. So far this year we have conducted two Winter Regional Conferences in San Antonio, the Implicit Bias Conference in Austin, the Family Violence Conference in Galveston, a DWI Court “Operational Tune Up” Conference in Houston and the Texas College for Judicial Studies in Austin. And we have had record attendance at these programs with a total of 854 judges participating altogether! That translates to a total of 8,198 hours of judicial education in the first 14 weeks of 2012! If we continue at this pace (and one glance at our schedule of upcoming conferences gives every indication that we will: <http://www.yourhonor.com/tcj-programs/Conferences>), the Texas Center will provide 30,450 hours of first rate judicial education this year!

I am also pleased to report that we are currently updating the Texas Bench Book under the leadership of Judge George Gallagher and with the hard work and dedication of your Bench Book Committee. To assist in this process we have enlisted the help of the University of Texas School of Law which has provided seven law students to conduct legal research and work directly with the judges on the Committee. Our goal is not only to update the Bench Book but also to make it as user friendly and helpful as possible. We expect to complete the revised Bench Book within a few months.

Another important initiative is the work of the Judicial Resources Committee under Justice Lee Gabriel of the Second Court of Appeals. The committee is currently reviewing how we can enhance judicial resources and make meaningful resources more readily available to all Texas judges. We will be contacting you in the near future to solicit your input and suggestions.

We are also beginning a review of the direction and mission of the Texas Center in the coming years through the Long Range Planning Committee chaired by Chief Justice Sherry Radack of the First Court of Appeals. And we will again be soliciting your input as the Committee conducts an assessment of the Texas Center and make recommendations to guide us in the coming decade.

In order to keep you better informed about our programs and to provide you with greater access to more resources we have recently updated and expanded the Texas Center website: <http://www.yourhonor.com/>. You can now view and register for upcoming conferences online, subscribe to News Alerts and Opinion Alerts, check your CJE hours directly, read current and past issues of In Chambers, review Texas Center policies and Board minutes, and access six separate bench books and many other useful judicial resources. We will continue to add other features and links in the coming months.

The Texas Center is extremely fortunate to have Judge Mark Atkinson as its Judicial Resource Liaison with the Texas Department of Transportation. As many of you know, Judge Atkinson served for 24 years as the Judge of Criminal County Court at Law No. 13 in Harris County where he presided over more than 100,000 criminal cases, including 20,000 DWI cases. While on the bench Judge Atkinson implemented innovative DWI sentencing practices, particularly with regard to repeat offenders, many of which were adopted by DWI Courts. Judge Atkinson has now brought this wealth of experience and knowledge to the Texas Center and together with our TxDOT Program Director, Holly Doran, and our DWI Curriculum Committee, chaired by Judge Patrice McDonald, has developed exceptionally valuable programs that show judges how to create a DWI Court and how to deal with the many issues and challenges they face. Judge Atkinson's work has become known outside Texas and he has recently been invited to conferences in Washington, D.C., New Orleans and Wyoming to explain the "Texas model" for the benefit of other states who are interested in following our lead. Judge Atkinson and Ms. Doran have created a DWI Resource site within the Texas Center website to provide valuable information and resources to Texas judges: <http://www.yourhonor.com/dwi/>. Please visit this site to learn more about DWI resources available through the Texas Center, including the DWI newsletter: <http://www.yourhonor.com/dwi/news/newsletter>.

The Texas Center also administers a federal grant under the Children's Justice Act which is designed to bring together child-protection and criminal justice experts to improve the state's response to cases of child abuse and neglect. Specifically, the grant is provided to assist states in (1) developing programs and procedures designed to reduce the trauma to child victims of abuse, especially child sexual abuse, (2) improving the chances of successful prosecution or legal action against child abusers and molesters, and (3) improving procedures for protecting children from abuse. To be eligible for CJA funding, states are required to establish a multidisciplinary Task Force to make recommendations regarding reforms needed to improve the state's response to child sexual abuse in each of these three areas. The current Chair of the Task Force is Judge Dean Rucker and Judge Chris Oldner also serves as a member of the Task Force. Under the direction of the Task Force, our CJA Program Director, Ginny Woods, and our CJA Program Administrator, Heidi Penix, are currently undertaking a comprehensive assessment of the program to recommend the direction of the program over the next three years. Please visit the CJA Program website to learn more about this vitally important program: <http://www.texascja.org/>

The Texas Center has a dedicated and very hard working staff who are eager to help you perform your judicial responsibilities at the highest level. Please call us, email us or come by to see us when you are in Austin and let us know how we can better support you in the important work you do for the citizens of Texas. We look forward to seeing you at one or more of our upcoming judicial conferences!

Best regards,

Randall L. Sarosdy  
Executive Director



## SPOTLIGHT ON THE TEXAS CENTER STAFF

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### **Randall L. Sarosdy**

Randy Sarosdy has served as Executive Director for the Texas Center since September 1, 2010. Prior to joining the Texas Center Randy practiced law for nearly 30 years in the Washington, D.C. and Austin offices of Akin, Gump, Strauss, Hauer & Feld, L.L.P. where he specialized in complex commercial, labor and employment, environmental and intellectual property litigation. He served as managing partner of the firm's Washington litigation section for three years and was an Adjunct Professor of Law at George Mason University School of Law. He has tried cases and argued appeals in state and federal courts throughout the nation. He also taught Justices of the Peace throughout the state for several years. He is a Sustaining Life Fellow of the Texas Bar Foundation and a member of the State Bar College. Randy is a native Texan. He graduated from the College of William and Mary in Virginia with high honors in 1974 and from the University of Texas School of Law in 1977 where he served as Associate Editor of the Texas Law Review. His interests include history, hiking and triathlon.

### **Heidi Penix**

Heidi Penix has worked at the Texas Center since June 2009 where she has been involved in both the Children's Justice Act and Court Improvement Program grants. Heidi graduated with honors from Smith College with a B.S. in Government and continued her education in international relations and finance at graduate programs at George Washington University and Harvard University. She worked at The New Republic magazine, the Council on Foreign Relations, Harvard University and the University of Texas prior to landing at the Texas Center. As you might be able to tell by her blinding pallor, Heidi is not a native Texan and is still trying to believe that exposure to this much sunshine will not cause her to melt. When not immersed in child abuse programming, Heidi can be found enjoying live music and Austin's impressive trailer cuisine. She shares her domicile with two bossy and possibly deranged cats.

### **Gail Bell**

Gail Bell joined the Texas Center in July 2010 as Conference Coordinator, where her responsibilities include selecting menus for conferences which, according to Gail, is the most stressful part of her job because she has yet to select something that everyone likes! Gail graduated with honors from the American University in Washington, D.C. with a B.A. in International Relations. During college she studied abroad for a semester at the Freie Universität in Berlin and at the American University in Rome but unfortunately her skills in German and Italian do not extend beyond the ability to say "hello," "goodbye," and "where is the bathroom?" However, Gail did attend high school in France as an AFS Exchange student and speaks fluent French with a pronounced American accent. Prior to joining the Texas Center, Gail worked in marketing at a community development financial institution in Chicago and at an Educational Service Center in Austin where she planned a statewide conference for Title I schools. After 8 years in Chicago, the thing Gail likes best about Texas is that no matter how hot the summers get, she will never have to shovel her car out of the heat.

## ADVISORY BOARD

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Hon. Steve Ables    Hon. Marilyn Aboussie    Hon. Harvey Brown  
 Hon. Paul Davis    Hon. Kathleen Hamilton    Hon. Bud Kirkendall  
 Hon. Dean Rucker    Hon. Ben Woodward

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### THE LEGACY OF ONE JUDGE – *HOOK ‘EM HORNS!*

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*Did you know that one of our own first introduced the famous “Hook ‘em Horns” hand sign?*



Taken By Wayland D. Clark, copyright 2011

In 1955, Judge Harley Clark was a 19-year-old college junior at the University of Texas and head yell leader. Back then UT was in the Southwest Conference and preparing for a football game with conference leader Texas Christian University. Some time prior to the Friday night pep rally, fellow student Henry Pitts showed Clark an unusual hand sign and mentioned how closely it resembled a longhorn steer. Later during the pep rally at Gregory



Gym, Clark surveyed his classmates to see what they thought of the hand sign. “The sign was initially panned as corny,” Clark said. Despite the lackluster response Clark introduced the unique hand sign to approximately 5,000 UT students, proclaiming it as the “official hand sign” of the University of Texas – after all rival Texas A&M had used the thumbs up “gig ‘em” sign for years. The following Saturday the east side of the stadium was full of students chanting “Hook ‘em Horns” while waving the new hand sign. By half time the hand sign had made its way around to the non-student section. Enthusiastic students were seen leaving the stadium holding their horns high. Almost 60 years later the hook ‘em horns hand sign is nationally recognized and synonymous with the University of Texas.

# UPCOMING EVENTS

## APRIL 2012

### **DWI Court Team Training**

April 23-26, 2012 | Westin Oaks | Houston

## MAY 2012

### **Actual Innocence**

May 6-7, 2012 | Omni Hotel - Park West | Dallas

### **Criminal Justice Conference**

May 7-9, 2012 | Omni Hotel - Park West | Dallas

### **Evidence Summit**

May 29-31, 2012 | The Pearl | South Padre Island

## JUNE 2012

### **Child Welfare Judicial Conference**

June 4-6, 2012 | Westin La Cantera | San Antonio

### **Professional Development Program (PDP)**

June 17-22, 2012 | Westin Austin at the Domain | Austin

## JULY 2012

### **DWI College for DWI Court Teams, ALJs, and SCOs**

July 30-August 1, 2012 | Omni Hotel | Austin

## SEPTEMBER 2012

### **Annual Judicial Education Conference**

September 9-12, 2012 | Westin Galleria | Houston

## OCTOBER 2012

### **The Permanency Summit**

October 8-9, 2012 | Hilton Bella Harbor | Rockwall

### **The Immigration Law Conference**

October 11-12, 2012 | Hilton Bella Harbor | Rockwall

## DECEMBER 2012

### **College for New Judges**

December 2-7, 2012 | Westin at the Domain | Austin

## JANUARY 2013

### **Regional Conference A**

January 8-9, 2013 | Hyatt Regency Lost Pines | Lost Pines

## FEBRUARY 2013

### **Regional Conference B**

February 7-8, 2013 | Omni Bayfront Hotel | Corpus Christi

## MARCH 2013

### **Family Violence**

March 7-8, 2013 | San Luis Hotel | Galveston

## APRIL 2013

### **Texas College for Judicial Studies**

April 8-12, 2013 | Westin at the Domain | Austin

## MAY 2013

### **Criminal Justice Conference**

May 20-21, 2013 | Hilton Bella Harbor | Rockwall

## JUNE 2013

### **2013 Professional Development Program - 1st & 2nd Year**

June 17-June 21, 2013 | Embassy Suites | San Marcos

## JULY 2013

### **You Asked For It, You Got It**

July 1-July 2, 2013 | Barton Creek Hotel | Austin

## SEPTEMBER 2013

### **2013 Annual Judicial Education Conference**

September 3-6, 2013 | JW Marriott | San Antonio

## DECEMBER 2013

### **College for New Judges**

December 1-4, 2013 | Hyatt Lost Pines | Lost Pines

# NEW JUDGES

as of April 18, 2012

Hon. Stephen Bristow	90th District Court	Graham
Hon. Theresa Chang	County Court at Law No.2	Houston
Hon. Mark Hocker	County Court at Law No. 1	Lubbock
Hon. Don Minton	County Criminal District Court No.1	El Paso
Hon. Craig Mixson	1st District Court	Jasper

# IN MEMORIAM

as of April 18, 2012

Hon. William E. Bachus	264th District Court	Temple
Hon. Lawrence L. (Larry) Fuller	8th Court of Appeals	El Paso
Hon. Herman Gordon	309th District Court	Houston
Hon. Joe Greenhill	Supreme Court of Texas	Austin
Hon. Frank Hernandez	County Court at Law	Dallas
Hon. John Hyde	238th District Court	Midland
Hon. Pat McClung	5th Court of Appeals	Dallas
Hon. Robert Montgomery	100th District Court	Chandler
Hon. Crawford Parker	County Court at Law	Carthage
Hon. Mary Pearl Williams	53rd District Court	Austin

## CONTRIBUTIONS IN HONOR

as of April 19, 2012

Hon. Ogden Bass in honor of Texas Center for the Judiciary Staff

Hon. Nancy Berger in honor of Justice William Brigham

Hon. Sandy Bielstein in honor of Judge Jay Burnett

Hon. Mike Engelhart in honor of Israel Shafir

Hon. Gladys Oakley in honor of Judge Naomi Harney

Hon. Sam Paxson in honor of Judge Mary Ann Bramblett

Hon. Sam Paxson in honor of Ms. Becky Henderson

Hon. Billy Stubblefield in honor of Judge. B.B. Schraub

Hon. Carroll Wilborn in honor of Judge Olen Underwood

Hon. Carroll Wilborn in honor of Texas Center for the Judiciary Staff

Hon. Carolyn Wright in honor of Judge Charlye Ola Farris

## CONTRIBUTIONS IN MEMORY

as of April 19, 2012

Hon. Marilyn Aboussie in memory of Curt Steib

Hon. Marilyn Aboussie in memory of Earl Smith

Hon. Susan Baker in memory of Andrew Baker

Hon. Robert Barton in memory of Judge John Hyde

Hon. Robert Blackmon in memory of Jack Blackmon

Hon. Charles Chapman in memory of Judge John Hyde

Hon. Harley Clark in memory of The Honorable Don Morgan

## SUPPORTERS

Hon. James Clawson in memory of Judge William Bachus

Hon. Joe Clayton in memory of Judge Bill Bachus

Mr. George Cowart in memory of Judge Hugh Snodgrass

Mr. George Cowart in memory of Judge Jim Lovett

Hon. Robin Malone Darr in memory of Judge John G. Hyde

Hon. Rex Davis in memory of Judge John Hyde

Hon. Richard Davis in memory of Judge Merrill Hartman

Hon. James Fry in memory of Judge R.C. Vaughn

Hon. Ana Lisa Garza in memory of Judge Ricardo H. Garcia

Hon. Joseph Gibson in memory of Judge CV Milburn

Hon. Buddie Hahn in memory of James Farris

Hon. Buddie Hahn in memory of Tom Mulvaney

Hon. David Hall in memory of Judge Rusty Ladd

Hon. Lee Hamilton in memory of Judge John Hyde

Hon. Naomi Harney in memory of Judge Hugh Snodgrass

Hon. Maria Jackson in memory of Judge Andrew Jefferson

Hon. John Jackson in memory of Smoky Stover

Hon. Bobby Lockhart in memory of Judge John Hyde

Hon. John MacLean in memory of John A. James

Hon. John MacLean in memory of Judge Frank G. McDonald

Hon. Francis Maloney, Jr. in memory of Mary Pearl Williams

Hon. Pat McDowell in memory of Judge William Bachus

Hon. James Mehaffy in memory of Mr. Bob Keith

Hon. Lisa Michalk in memory of Judge John Hyde

Hon. John Miller in memory of Shirley Pesek

## **SUPPORTERS**

Hon. John Mischtian in memory of Judge William Bachus

Hon. Kelly Moore in memory of Judge John Hyde

Hon. Marvin Moore in memory of Judge John Hyde

Hon. Martin Muncy in memory of Judge John Hyde

Hon. Gladys Oakley in memory of Judge John Hyde

Hon. Lloyd Perkins in memory of Judge Henry Braswell

Hon. Lloyd Perkins in memory of Judge Temple Driver

Hon. Mark Price in memory of Judge John Hyde

Hon. Graham Quisenberry in memory of RE (Bob) Thornton

Hon. George Robertson in memory of Judge John Hyde

Hon. Robert Rolston in memory of Judge John Hyde

Hon. Dean Rucker in memory of Hon. Rusty Ladd

Hon. Jeff Steinhauer in memory of Judge John Hyde

Ms. Ouida Stevens in memory of Judge Graham Purcell

Ms. Ouida Stevens in memory of Judge RE (Bob) Thornton

Ms. Ouida Stevens in memory of Mrs. Lucy Harrison Hudston

Hon. Kathleen Stone in memory of Alexander J. Stone

Hon. Thomas Thorpe in memory of Judge Hugh Snodgrass

Hon. John Weeks in memory of Judge John Hyde

Hon. Laura Weiser in memory of Judge John Hyde

Hon. Laura Weiser in memory of Judge Rusty Ladd

Hon. Guy Williams in memory of Judge John Hyde

Hon. Loyd Wright in memory of Judge Russell Austin

Hon. Timothy Yeats in memory of Judge John Hyde

Seventh Court of Appeals in memory of Jane Dodson

# LEVELS OF GIVING

as of April 19, 2012

## 2011-2012

### BRONZE

Hon. Maurice Amidei	Hon. Tamorah Butts	Hon. Rex Davis
Hon. Robert Anchondo	Hon. Darlene Byrne	Hon. Richard Davis
Hon. Courtney Arkeen	Hon. Carlos Carrasco	Hon. Kenneth DeHart
Hon. Susan Baker	Hon. Solomon Casseb, III	Hon. John Delaney
Hon. Jeannine Barr	Hon. Randy Catterton	Hon. Woody Densen
Hon. Robert Barton	Hon. Charles Chapman	Hon. Robert Dohoney
Hon. Ogden Bass	Hon. Phil Chavarria	Hon. Brendan Doran
Hon. Lance Baxter	Hon. Linda Chew	Hon. Teresa Drum
Hon. Gina Benavides	Hon. Ben Childers	Hon. Willie DuBose
Hon. D'Metria Benson	Hon. Harley Clark	Hon. Lee Duggan
Hon. Bascom Bentley	Hon. Reagan Clark	Hon. Bud Duncan
Hon. Webb Biard	Hon. Joe Clayton	Hon. Billy Edwards
Hon. Laurine Blake	Hon. B.F. Coker	Hon. Mike Engelhart
Hon. Ron Blann	Hon. Stacy Blanchette	Hon. Drue Farmer
Hon. Charles Bleil	Hon. Margaret Cooper	Hon. Wilford Flowers
Hon. Sam Bournias	Hon. Weldon Copeland	Hon. Robert Francis
Hon. Wayne Bridewell	Mr. George Cowart	Hon. Kem Frost
Hon. Harvey Brown	Hon. Lonnie Cox	Hon. W. Bernard Fudge
Hon. Spencer Brown	Hon. Richard Dambold	Hon. Eduardo Gamboa
Hon. Don Burgess	Hon. Robin Malone Darr	Hon. Anne Gardner
Hon. Jay Burnett	Hon. L. Clifford Davis	Hon. Sarah Garrahan

**BRONZE CONTINUED**

Hon. Leonard Giblin	Hon. Phil Johnson	Hon. Vincent Messina
Hon. Daniel Gilliam	Hon. Brock Jones	Hon. Donald Metcalfe
Hon. Julie Gonzalez	Hon. Donald Jones	Hon. Lisa Michalk
Hon. Noe Gonzalez	Hon. Hazel Jones	Hon. Jack Miller
Hon. Joe Grubbs	Hon. Linda Jones	Hon. John Miller
Hon. Aleta Hacker	Hon. David Keltner	Hon. John Mischian
Hon. Bonnie Hagan	Hon. Evelyn Keyes	Hon. Sally Montgomery
Hon. Buddie Hahn	Hon. Oliver Kitzman	Hon. Fred Moore
Hon. Brett Hall	Hon. Elizabeth Lang-Miers	Hon. Kelly Moore
Hon. David Hall	Hon. Monte Lawlis	Hon. Louis Moore
Hon. Kathleen Hamilton	Hon. Janet Leal	Hon. Robert Moore
Hon. Lee Hamilton	Hon. Thomas Lee	Hon. Roy Moore
Hon. Naomi Harney	Hon. Don Leonard	Hon. James Morgan
Hon. Richard Hatch	Hon. John Lipscombe	Hon. Martin Muncy
Hon. Michael Hay	Hon. Lora Livingston	Hon. Watt Murrah
Hon. Wyatt Heard	Hon. Bobby Lockhart	Hon. Menton Murray
Hon. William Heatly	Hon. Jose Longoria	Hon. Lana Myers
Hon. Maria Herr	Hon. Abe Lopez	Hon. Robert Newsom
Hon. Bill Hicks	Hon. John MacLean	Hon. Gladys Oakley
Hon. Rob Hofmann	Hon. Ed Magre	Hon. John Ovard
Hon. Nancy Hohengarten	Hon. Albert McCaig	Hon. Quay Parker
Hon. Walter Holcombe	Hon. C.H. Terry McCall	Hon. Juan Partida
Hon. Scott Jenkins	Hon. Pat McDowell	Hon. Dan Patterson
Hon. Derwood Johnson	Hon. James Mehaffy	Hon. Sam Paxson
Hon. Joel Johnson	Hon. Bill Meier	

**BRONZE CONTINUED**

Hon. Peter Peca	Hon. Dean Rucker	Hon. Thomas Thorpe
Hon. K. Kyle Peeler	Hon. Kerry Russell	Hon. Roger Towery
Hon. David Peoples	Hon. Robin Sage	Hon. Harold Towslee
Hon. Mickey Pennington	Hon. Maria Salas-Mendoza	Hon. Mary Ann Turner
Hon. Pete Perez	Hon. William Savage	Hon. Raul Vasquez
Hon. Bob Perkins	Hon. Daniel Schaap	Hon. Juan Velasquez
Hon. Lloyd Perkins	Hon. Ross Sears	Hon. Carlos Villa
Hon. Leon Pesek, Jr.	Hon. Robert Seerden	Hon. Joaquin Villarreal
Hon. Donald Pierson	Hon. Jerry Shackelford	Hon. Meca Walker
Hon. Ronald Pope	Hon. Carol Siebman	Hon. Roger Walker
Hon. Frank Price	Hon. Mark Silverstone	Hon. R.H. Wallace
Hon. Charley Prine	Hon. James Simmonds	Hon. Barbara Walther
Hon. Cecil Puryear	Hon. Patrick Simmons	Hon. Ralph Walton
Hon. Amanda Putman	Hon. William Smith	Hon. Lee Waters
Hon. Brian Quinn	Hon. Ruby Sondock	Hon. Sandra Watts
Hon. Roy Quintanilla	Hon. Thomas Spieczny	Hon. Laura Weiser
Hon. Lorraine Raggio	Hon. Jeff Steinhauser	Hon. Thomas Wheeler
Hon. Charles Ramsay	Hon. Susan Stephens	Hon. Carroll Wilborn
Hon. Jerry Ray	Ms. Ouida Stevens	Hon. Guy Williams
Hon. Donna Rayes	Hon. Rick Strange	Hon. Jerry Winfree
Hon. George Robertson	Hon. Billy Stubblefield	Hon. Cara Wood
Hon. Jesus Rodriguez	Hon. Timothy Sulak	Hon. Jerry Woodlock
Hon. Liza Rodriguez	Hon. Ralph Taite	Hon. Kerry Woodson
Hon. Robert Rolston	Hon. Martha Tanner	Hon. James Worthen

**BRONZE CONTINUED**

Hon. Carolyn Wright

Hon. Loyd Wright

Hon. Timothy Yeats

Hon. Genie Wright

Hon. Ronald Yeager

Hon. Phillip Zeigler

**SILVER**

Hon. Marialyn Barnard

Hon. Jaime Garza

Hon. Robert Pate

Hon. Robert Blackmon

Hon. Joseph Gibson

Hon. Carl Pendergrass

Hon. Todd Blomerth

Hon. Oscar Hale, Jr.

Hon. John Placke

Hon. Charles Butler

Hon. Bill Hughes

Hon. Richard Podgorski

Hon. James Clawson

Hon. Maria Jackson

Hon. Neel Richardson

Hon. Charles Coussons

Hon. Gregory King

Hon. Charles Schulte

Hon. Harold Entz

Hon. Gracie Lewis

Hon. Eric Shepperd

Hon. Enrique Fernandez

Hon. Francis Maloney, Jr.

Hon. Kathleen Stone

Hon. James Fry

Hon. Richard Mays

Hon. Carroll Wilborn

Hon. David Garner

Hon. Cynthia Muniz

**GOLD**

Hon. Marilyn Aboussie

Hon. Don Chrestman

Hon. Robert Pfeuffer

Hon. Dick Alcala

Hon. Pedro Gomez

Hon. Sherry Radack

Hon. George Allen

Hon. Guy Griffin

Hon. Milton Shuffield

Hon. Sandy Bielstein

Hon. Sylvia Matthews

Hon. Ralph Strother

Hon. G. Timothy Boswell

Hon. Charles Mitchell

Hon. Robert Brotherton

Hon. Kenneth Molberg

**PLATINUM**

Hon. Nancy Berger

Hon. Vickers Cunningham

Hon. Don Stricklin

**DIAMOND**

Hon. Bobby Flores

Hon. Juergen "Skipper" Koetter

Hon. Olen Underwood

Hon. Ana Lisa Garza

Hon. Douglas Robison

# TEXAS CENTER RESOURCES

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## **Bench Books**

### **Texas Bench Book**

The Texas Bench Book is a practical aid and quick reference for trial court judges in performing their judicial responsibilities. It contains a compilation of information by the Texas Center for the Judiciary's Bench Book Committee and Texas Tech School of Law. Texas trial court judges will find several resource formats, including checklists, sample scripts for hearings and trials, and guidelines. Note that the Texas Bench Book is not designed to dictate judicial procedures, but is meant to assist a trial court judge while on the bench.

### **Capital Cases Bench Book**

The Capital Cases Bench Book is written by Texas judges for the benefit of Texas judges presiding over a capital trial. Judicial authors, Texas Wesleyan University School of Law, Texas Wesleyan Law Review editors, Texas Court of Criminal Appeals staff counsel, and the Texas Center for the Judiciary staff collaborated to write, proof, make suggestions, and edit the Capital Cases Bench Book. It is reviewed and updated on-line under the supervision of the Texas Center for the Judiciary and through the collaborative efforts of Texas judges and the Texas Wesleyan Law Review editorial staff. Note that the Capital Cases Bench Book is not designed to dictate judicial procedures, but is meant to assist capital case trial court judges. Judges presiding over capital cases should always double check the suggested substantive and procedural law for any changes in the law or unique differences in the specific case over which they are presiding.

### **CPS Bench Book**

Judges across the state now have access to essential information on child welfare law in a user-friendly, online CPS Bench Book. The Bench Book, which is the first of its kind, allows judges to navigate the bench book like a website. It was authored by seasoned district and associate judges with dozens of years on the bench presiding over CPS cases. The book is designed to benefit new judges and experienced judges alike. When researching with the Bench Book, a judge is able to search chronologically by event (e.g., investigations, removals, adversary, status, permanency, placement, final hearing, appeals, and adoption) and topically (ICPC, ICWA, Medical Care, or Permanency Care Assistance). The information is set out in a simplified format to facilitate real-time use from the bench. Or if further research is needed, all of the case law and statutory references are directly linked to Lexis/Nexis, free of charge. Through the Texas Center for the Judiciary's website, the CPS Bench Book provides secure access to checklists, practice notes, national and statewide policies, and numerous links to helpful guidelines, forms and other websites.

### **Public Health Law Bench Book**

The purpose of this bench book is to serve as a guide for judges who evaluate public health control measures, such as quarantine and isolation, particularly in the face of a catastrophic event such as a pandemic flu. The Texas Constitution discusses Texas' open courts policy, which is based on the importance of everyone having access to justice and to a day in court. The likelihood that this important aspect of our society could be disrupted during a public health emergency, such as a major hurricane or a more long-term emergency such as a pandemic flu, has led to the creation of this bench book and the forms included in its appendix. This book briefly lays out which laws govern during a public health emergency and what role the courts play in ensuring that the balance between public safety and individual rights is not forgotten.

### **Family Violence Bench Book**

This bench book provides the Texas judiciary with a single, comprehensive reference for family violence law. In addition to identifying and organizing the relevant primary sources (state and federal statutes annotated with case law), the benchbook also takes advantage of current technology by providing hyperlinks to the online resources discussed in each chapter's comments section. It is a project of the Office of Court Administration and funded with a grant from the Criminal Justice Division of the Office of the Governor in conjunction with the U.S. Department of Justice Office of Violence Against Women's STOP program.

## **Judicial Resources**

### **American Bar Association**

The ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

### **Employees Retirement System of Texas**

Visit this website to review the JRS-II booklet which provides information regarding retirement benefits available to eligible justices, judges or commissioners of specified courts in the State.

### **JERITT**

The Judicial Education Reference, Information and Technical Transfer (JERITT) Project is the national clearing-house for information on continuing judicial branch education for judges and other judicial officers; administrators and managers; judicial branch educators; and other key court personnel employed in the local, state, and federal courts.

### **Judicial Committee on Information Technology**

### **Judicial Ethics Opinions**

This section of the OCA website lists all the current opinions given by the Committee on Judicial Ethics.

### **Office of the Attorney General, State of Texas**

### **The Office of Court Administration**

The Office of Court Administration (OCA) is a state agency that provides administrative support and technical assistance to all of the courts of Texas. The agency was created in 1977 and operates under the direction of the chief justice of the Texas Supreme Court.

### **Out-of-State Meal and Lodging Rates**

Traveling to a conference out-of-state? Find out how much is authorized for meals and lodging.

### **Secretary of State, Elections Division**

### **State Commission on Judicial Conduct**

The 2010 State Commission on Judicial Conduct is the independent Texas state agency that is responsible for

investigating allegations of judicial misconduct or judicial disability, and for disciplining judges.

**Texas Courts Online**

### **Case Law, Rules and Statutes**

**Court of Criminal Appeals Opinions**

**Court of Criminal Appeals Summaries 2007-2008**

**Family Violence Judicial Training Statute**

**Procedures and Rules Revisions**

**Rules of Judicial Education**

**SCOTUSblog**

**Texas Constitution**

**Texas Registrar**

**Texas Rules of Appellate Procedures**

**Texas Rules of Civil Procedure**

**Texas Rules of Evidence**

**Texas Statutes**

**Texas Supreme Court Opinions**

### **Legal Research**

**Cornell Law School's Legal Information Institute**

The site features the U.S. Code and state constitutions and codes, a collection of all recent opinions of the U.S. Supreme Court and state judicial opinions, overviews of various legal topics, and links to sites offering court decisions, statutes, regulations and other legal materials.

**Federal 5th Circuit Opinions**

Visit FindLaw's searchable database of the 5th Circuit Court decisions since July 1997. Also, review an archive of Opinion Summaries since September 2000. Browsable by year and searchable by docket number, case title, and full text.

**findlaw.com**

This website offers resources on general laws and various legal topic.

### law.com

A comprehensive legal destination, law.com allows visitors to track breaking developments in the law, research issues and cases, explore nationwide job openings in the legal industry, and much more.

### Texas Legislature Online

## Publications

### Indigent Defense Archives

### Standardized Felony Judgment Forms

The Office of Court Administration, in collaboration with Texas criminal justice professionals, has prepared and promulgated the standardized felony judgment forms pursuant to Section 42.01 of the Texas Code of Criminal Procedure. Effective 01/11/02.

### Mechanisms of Injury in Childhood

Mechanisms of Injury in Childhood is now available on the Texas Center's website. This DVD resource utilizes sophisticated and detailed medical illustrations and animation as well as radiographs to demonstrate the location, characteristics, and biomechanics of injuries in young children that involve internal structures (fractures, head injuries, abdominal injuries). This DVD provides a realistic demonstration of injury mechanisms that go well beyond the capabilities of the typical two-dimensional illustrations. The goal for users of the DVD is an improved knowledge of injuries and findings in abuse cases, an understanding of the actual physical mechanisms of the injuries, and increased confidence in the assessment and investigation of cases of suspected child abuse. The DVD was produced by the UT Health Science Center under the direction of Dr. James D. Anderst, MD MSCI and Dr. Nancy D. Kellogg, MD and made possible by a grant from the Texas Children's Justice Act program.

## Associations, Institutes, & Agencies

### ABA Family Law Section: Military Committee

Find the Military Committee's Judges' Guide to the Soldiers' and Sailors' Civil Relief Act here.

### Correctional Management Institute of Texas

The Correctional Management Institute of Texas is responsible for developing and delivering professional development training programs for personnel in juvenile and adult institutional and community corrections agencies.

### Department of Information Resources

### Judicial Family Institute

The Judicial Family Institute serves as a clearinghouse for judicial officers and their families to be in contact with individual state and national judicial educational organizations for answers to questions that arise ranging from ethical issues to practical matters.

### Judicial Section of the State Bar of Texas

### The Judicial Section of the State Bar of Texas

### **National Association of Women Judges**

Founded in 1979, NAWJ is a non-profit organization with more than 1,400 members, including both female and male judges, from every state and all levels of the judiciary. The association's mission is to provide strong, committed judicial leadership to improve the administration of justice and to ensure fairness, gender equality and diversity in American courts.

### **National Center for State Courts**

Founded in 1971 by U.S. Chief Justice Warren E. Burger, the National Center for State Courts (NCSC) is a non-profit organization that promotes justice through leadership and service to the state courts. Through numerous programs and divisions, the NCSC is committed to improving the administration of justice in the United States and abroad.

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

The National Council of Juvenile and Family Court Judges is dedicated to serving the nation's children and families by improving the courts of juvenile and family jurisdictions. Our mission is to better the justice system through education and applied research and improve the standards, practices and effectiveness of the juvenile court system.

### **The National Judicial College**

Since 1963, The National Judicial College has provided educational and professional development opportunities to over 58,000 judges worldwide. From limited jurisdiction judges to U.S. Supreme Court justices, attendees from all areas of the judicial system have benefited from the very best in judicial education offered at the College.

### **State Bar of Texas**

The State Bar of Texas is an administrative agency of the judicial branch in Texas. Every licensed attorney is a member of the State Bar, which provides a wide array of services to its members and the public.

### **State of Texas**

The State of Texas website is intended to serve as the official compilation of Texas government electronic resources, both at the state and local levels, and as an index of Texas governmental or taxing authority web sites and services.

### **Texas Access to Justice Commission**

The Supreme Court of Texas created the Texas Access to Justice Commission to coordinate services for people who need legal help but may not be able to afford it or find it. The Commission's goals include reducing barriers to the justice system and increasing resources and funding for Legal Aid.

### **Texas Association for Court Administration (TACA)**

TACA is organized to encourage and promote continuing education and maintenance of professional standards for Court Administration in the State of Texas.

### **The Texas Association of District Judges (TADJ)**

#### **Texas CASA**

Texas CASA advocates for abused and neglected children in the court system through the development, growth and support of local CASA programs.

#### **Texas Department of Criminal Justice**

#### **Texas Ethics Commission**

#### **Texas Lawyer Press**

#### **Texas Lawyers for Children**

Texas Lawyers for Children provides statewide assistance to judges and attorneys who handle child abuse and neglect cases. TLC's mission is to improve case outcomes for abused and neglected children by enhancing the quality of legal services they receive.

#### **Texas State Cemetery**

The Texas State Cemetery serves as the burial ground for Texas' most notable sons and daughters. The Cemetery includes the graves of 11 Governors, three Lieutenant Governors, two American Revolutionary War veterans, 64 Republic of Texas veterans, and 2,200 Confederate veterans and their spouses.

#### **Texas Statutes**

These files include revisions to the Texas Statutes through the 81st Regular Session of the Texas Legislature.

#### **Texas Trial Lawyers Association**