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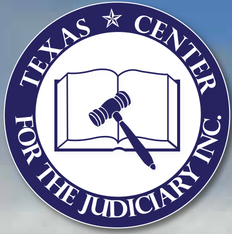

In Chambers

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On the cover: *Aerial view, Lake Buchanan, June 2014, courtesy, Lower Colorado River Authority.*

This is the the official publication of Texas Center for the Judiciary. The magazine is published three times a year and funded in part by a grant from the Texas Court of Criminal Appeals. In Chambers strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center's mission of "Judicial Excellence Through Education" as our guiding premise.
Readers are encouraged to write letters and submit questions, comments, or story ideas for In Chambers. To do so, please contact Courtney Gabriele, Curriculum Director, at 512.482.8986 or toll free at 888.785.8986, or via email at courtneyg@yourhonor.com. Articles subject to editing for clarity or space availability.
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In Chambers

The official publication of the Texas Center for the Judiciary

Spring 2015

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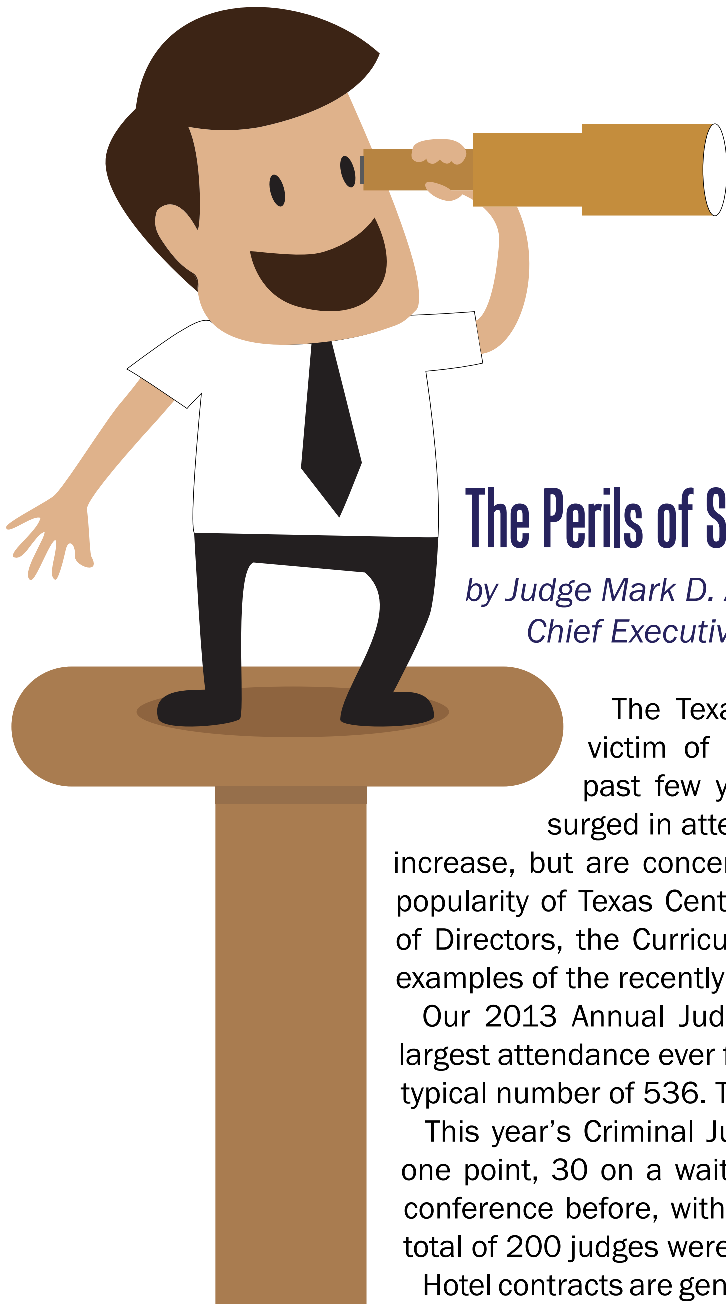

View from the Top

The Perils of Success

by Judge Mark D. Atkinson,
Chief Executive Officer

The Texas Center appears to be a victim of its own success. Over the past few years TCJ conferences have surged in attendance. We at the Texas Center are thrilled to see the increase, but are concerned when we cannot get everyone in. The apparent popularity of Texas Center programs is a result of the work by the TCJ Board of Directors, the Curriculum Committee and TCJ staff. Following are just two examples of the recently developing circumstances.

Our 2013 Annual Judicial Conference was attended by 652 judges – the largest attendance ever for a TCJ event. Attendance the year before was a more typical number of 536. The 2010 Annual was attended by 510.

This year's Criminal Justice Conference had 170 judges registered with, at one point, 30 on a waiting list. We've never had more than 140 attend that conference before, with numbers around 110 more typical in the past. So, a total of 200 judges were seeking to attend.

Hotel contracts are generally executed a year or two in advance of a conference (with a longer lead time needed for the Annual Conference), so budgeting and accommodation projections are based on data and information available at the time of booking.

Once a conference is full, TCJ staff begins placing judges on a waiting list. We honor the list on a first

> "Our 2013 Annual Judicial Conference was attended by 652 judges - the largest attendance ever for a TCJ event.

come, first served basis. In fairness, we cannot have folks offer their place to other judges, for instance. The limitations in attendance are not solely based on the number of sleeping rooms contracted for, but also on meeting room space. Occasionally, a judge, upon learning that he or she has been placed on a waiting list, offers to find a room at a separate hotel, just planning to attend classes. But, that presents problems, too, as not only do the classrooms get full, but the breakfasts and lunches we have contracted for are limited to the number of registrants.

We hope our judges realize that we are running full-occupancy operations and register as soon after registration opens as possible. Additionally, judges canceling at the last minute for other than health or similar serious reasons, creates hardship for TCJ staff, who then try diligently to contact judges on the waiting lists – some who have given up and made other plans.

As far as budgeting for conferences goes, we have ever-increasing attendance at the same time that hotel and meal costs are increasing. We have to do the best attendance projecting we can, a year or so in advance of an event. We will continue to work to get as many judges registered and admitted, working with both our attendance and budget projections in mind.

The other staff-members and I greatly appreciate the courtesy and understanding of our judges as work to get them all into our popular programs.

Yours,
MDA ♦

Upcoming Conferences

College for New Judges II Regions 2, 6, 7, 9
April 22, 2015
Hilton Anatole, Dallas

Regional A (2, 6, 7, 9)
April 23-24, 2015
Hilton Anatole, Dallas

College for New Judges II Regions 1, 3, 4, 5, 8
May 13, 2015
Hilton Anatole, Dallas

Regional B (1, 3, 4, 5, 8)
May 14-15, 2015
Hilton Anatole, Dallas

Professional Development Program
June 15-19, 2015
Embassy Suites, San Marcos

Impaired Driving Symposium
July 27-28, 2015
Omni Austin Hotel Southpark, Austin

Child Welfare Conference
August 17-19, 2015
Westin at the Domain, Austin

Annual Judicial Education Conference
September 27-30, 2015
Sheraton Dallas, Dallas

College for New Judges
December 6-9, 2015
Hyatt Regency, Lost Pines

Family Justice Conference
January 25-26, 2016
Hyatt Regency, Lost Pines

DWI Court Team Training
February 8-10, 2016
Sheraton Austin Capitol, Austin

DWI Court Team Conference
February 11-12, 2016
Sheraton Austin Capitol, Austin

Criminal Justice
February 22-23, 2016
Sheraton Austin Capitol, Austin

feature

> "The Texas Legislature adopted the Edwards Aquifer Act in 1993, but...the Act did not become effective until 1996.

Lake Travis aerial view, June 2014. Courtesy LCRA

Texas Water Rights

New Developments in Water Law

by Robin A. Melvin

Editor's Note: *This is Part II of a two-part piece on water rights in Texas. Part I provided an overview of the basics of surface water and groundwater rights in Texas. This article will address a handful of statewide hot topics in Texas water rights in 2014.*

Current Regulation of Surface Water Use

Groundwater Ownership and Takings

In 2012, in *Edwards Aquifer Authority v. Bragg*, the Texas Supreme Court announced that Texas landowners own the groundwater "in place" beneath their property, and that landowners may have a valid claim for compensation from the government if regulations go too far in limiting groundwater production and take their private property. A 2013 San Antonio court of appeals case, *Edwards Aquifer Authority v. Bragg*, applies the regulatory takings analysis in *Day* and illustrates that it may take a number of landowner lawsuits asserting takings claims against groundwater districts – each based on unique facts and circumstances – before enough case law is developed to provide clearer guidance on how much groundwater regulation is too much. A June 2014 Amarillo court of appeals case attempts to apply Day's groundwater ownership analysis, demonstrating at least one ownership issues not settled by *Day*.

Edwards Aquifer Authority v. Day – ownership and takings.

On February 24, 2012, the Texas Supreme Court issued a long-awaited opinion on the ownership of groundwater.[1]

Background. The *Day* case arose from a dispute between the Edwards Aquifer Authority and two farmers who owned land in the district. The Edwards Aquifer Authority Act allowed persons who had used groundwater before the Act became effective to apply for an initial regular permit. An applicant for an initial regular permit was required to prove, by clear and convincing evidence: (1) beneficial use of groundwater from the Edwards

Aquifer by themselves or a predecessor-in-interest during the historical period—June 1, 1972 through May 31, 1993; and (2) the maximum amount of water pumped and used without waste during any one year of the historical period. The farmers applied to the Authority for an initial regular permit authorizing them to pump 700 acre-feet of water per year for irrigation.

At a contested case hearing, the farmers presented the testimony of two witnesses who described two methods of irrigation used during the historical period. In one method, water from an artesian well flowed through a ditch to a 50 acre-foot reservoir, then was pumped from the reservoir to a mobile sprinkler system. In the second method, the ditch was dammed and 5 to 7 acres were irrigated by flooding. One witness testified that the reservoir was on Post Oak Creek. The Authority ruled that the reservoir was on a natural watercourse and the groundwater became state water when it entered the reservoir, so that state water rather than private groundwater, was being used for irrigation under the first method. The Authority issued an initial regular permit authorizing the use of 14 acre-feet of groundwater, 2 acre-feet for each of the 7 acres irrigated by flooding.

The farmers appealed. Among other things, they argued that Authority's final order resulted in a taking of their groundwater rights, in violation of the Texas Constitution. The trial court dismissed the farmer's taking claim on summary judgment on the ground that the farmers had no vested right in groundwater, so no vested right could have been taken. The San Antonio court of appeals reversed. It held that: "landowners have some ownership rights in the groundwater beneath their property. Because Applicants have some ownership rights in the groundwater, they have a vested right therein."[2] The court of appeals remanded for a trial of the farmers' taking claim.

Ownership. In its briefing in the Supreme Court, the Authority argued that landowners cannot have a vested right to the groundwater beneath their property because the rule of capture allows the groundwater to be produced by others. The Court rejected this argument, relying on earlier decisions on the relationship between the rule of capture and the ownership of oil and gas in place. The Court quotes a portion of its opinion in *Elliff v. Texon Drilling Co.*,[3] that "restated the law regarding ownership of oil and gas in place:"

> In our state the landowner is regarded as having absolute title in severalty to the oil and gas in place beneath his land. The only qualification of that rule of ownership is that it must be considered in connection with the law of capture and is subject to police regulations. The oil and gas beneath the soil are considered a part of the realty. Each

feature

owner of land owns separately, distinctly and exclusively all the oil and gas under his land and is accorded the usual remedies against trespassers who appropriate the minerals or destroy their market value.

The Court then concludes: "We now hold that this correctly states the common law regarding the ownership of groundwater in place."[4]

Regulatory takings. While the Court was very clear about ownership of groundwater in place, the opinion gives much less guidance about exactly how far a groundwater district may limit pumping before it amounts to a taking of private property that entitles a landowner to compensation. The Court admitted the difficulty of establishing a clearly defined standard for these "regulatory takings." and quotes the U.S. Supreme Court, which said the general rule is that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking," adding "this is a question of degree – and therefore cannot be disposed of by general propositions."[5]

Ultimately, the Court concluded that it did not have sufficient evidence before it to decide the takings claim as a matter of law, and affirmed the court of appeals' decision to remand the case to the trial court. But first, the Court discussed the application of the case law to the EAAA and the landowners. The Court noted that federal case law has developed three analytical frameworks for courts to apply when engaging in an ad hoc, factual inquiry into whether a regulatory taking has occurred. First, a per se taking occurs when government requires an owner to suffer a permanent physical invasion of his or her property. Second, a per se taking occurs when regulation deprives an owner of all economically beneficial use of the property. Third, outside the two per se categories, regulatory takings are governed by the standards set out in *Penn Central Transp. Co. v. New York City*.[6] *Penn Central* identified three factors for courts to consider in making regulatory takings decisions: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; (3) the character of the governmental action.[7]

The Court noted that there was no physical invasion in the *Day* case, so the first per se takings category does not apply.[8] The Court found that the evidence before it is not sufficient to establish whether the Authority's decision deprived the farmers of all economically beneficial use of the property, the second per se takings category.[9]

As to the *Penn Central* factors, the court found that the evidence was not sufficient to establish the economic impact of the regulation under the first *Penn Central* factor.[10] The Court acknowledged that the second *Penn Central factor* – interference with investment-backed expectations – "is somewhat difficult to apply to groundwater regulation under the [Act]," and noted that "there is little in the record to illuminate what [the landowners'] expectations were or reasonably should have been."[11]

In discussing the third *Penn Central* factor, the Court did not question districts' rights to limit groundwater production: "Unquestionably, the State is empowered to regulate groundwater production."[12] But the Court expressed concern that the Act's production limits,

which are based solely on historic use, may be "too restrictive of [a landowner's] groundwater rights and without justification in the overall regulatory scheme." The Court expressly contrasted this historic-use-only production limit with the types of production limits that other groundwater conservation districts are authorized to adopt under Chapter 36 of the Texas Water Code: "Chapter 36 allows districts to consider historical use in permitting groundwater production, but it does not limit consideration to such use. Neither the Authority nor the State has suggested a reason why the [Act] must be more restrictive in permitting groundwater use than chapter 36, nor does the Act suggest any justification."[13]

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Edwards Aquifer Authority v. Bragg -- takings.

In August 2013, the San Antonio court of appeals issued a decision in which it applies *Day* to a case in which the trial court found a taking and awarded compensation.[14]

Background. In 1979, the Braggs purchased the sixty-acre Home Place Orchard, which is their homestead and a commercial pecan orchard. Soon after purchasing the property, the Braggs cleared the land and planted 1,820 pecan seedlings. In 1980, the Braggs drilled an Edwards Aquifer well and installed an irrigation system on the Home Place Orchard property. In 1983, the Braggs purchased the forty-two-acre D'Hanis Orchard, which since 1979 had been planted with 1,500 pecan trees and is a commercial pecan orchard. Initially, the D'Hanis trees were adequately irrigated from shallow, non-Edwards Aquifer wells on neighboring property. Later the water produced from these wells became inadequate, and in 1995, the Braggs obtained a permit to drill from the Medina County Groundwater Conservation District and drilled an Edwards Aquifer well on the D'Hanis Orchard property.

The Texas Legislature adopted the Edwards Aquifer Act in 1993, but, due to lawsuits challenging its validity, the Act did not become effective until 1996. After the Act became effective, the Braggs applied for initial regular permits for the Home Place Orchard well and the D'Hanis Orchard well. They requested a permit for 222.85 acre-feet of water per year for the Home Place Orchard well and 193.12 acre-feet per year for the D'Hanis Orchard well. The Authority granted a permit to withdraw 120.2 acre-feet per year from the Home Orchard well based on the maximum actual production from the well during the statutory historical period – 1972 to 1993. The application for the D'Hanis Orchard well was denied, because no water was produced from that well until 1995. The Braggs filed suit for an alleged taking of their property.

Following a bench trial, the trial court ruled that the Braggs did not suffer a *per se* taking – there was no physical invasion and their property still had value – but the granting of the application for the Home Orchard for an amount less than requested, and the denial of the application for the D'Hanis Orchard well amounted to a regulatory taking. The trial court awarded the Braggs $597,575.00 in compensation for the taking of the Home Orchard well and $134,918.40 in compensation for the taking of the D'Hanis Orchard well.

Regulatory taking. In its review of the trial court's takings determination, the San Antonio court of appeals reviewed the three *Penn Central* factors discussed in *Day.*

At to the first *Penn Central* factor, economic impact, the court concluded: "To reduce their water consumption, the Braggs reduced the number of trees by thirty to fifty percent and reduced the watering of the remaining trees. This, in turn, resulted in the Braggs' inability to raise a commercially viable crop on their properties, unless they purchased or leased water under the permit scheme. Despite what might amount to only a ten percent increase in their irrigation expense, we do not consider this merely an incidental diminution in value. The result of the regulation forces the Braggs to purchase or lease what they had prior to the regulation—an unrestricted right to the use of the water beneath their land. Thus, we conclude this factor weighs heavily in favor of a finding of a compensable taking of both orchards."[15]

As to the second *Penn Central* factor, reasonable investment-backed expecta-

> "This, in turn, resulted in the Braggs' inability to raise a commercially viable crop on their properties...

tions, the court held that the Braggs had a reasonable investment-backed expectation that they would be able to use groundwater from the Edwards Aquifer to maintain a commercial pecan orchard on the Home Orchard property because: "Mr. Bragg had an extensive understanding of pecan crops, no permit was required when they drilled their well, they correctly understood that they owned the water under the land, and no regulatory entity existed that governed the use of their water."[16] The court also concluded that the Braggs had a reasonable expectation that they would be able to use groundwater from the Edwards Aquifer to maintain a commercial pecan orchard on the D'Hanis Orchard property, even though the well was not drilled until 1995, because: "When they purchased the orchard in 1983, they intended to drill a well because they knew the available drip well was inadequate for maturing trees, but for financial reasons could not do so until 1995. Although the Act had been enacted prior to the completion of the well, the property itself was purchased as an existing pecan orchard almost ten years before the enactment date. And, of relevance to the Braggs' expectations, although they were aware of the Act before drilling the well, the Act was not implemented until 1996."[17]

As to the third *Penn Central* factor, the nature of the regulation, the court concluded that this factor weighed heavily against a finding of compensable taking given the important purposes of the Act – "to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state."[18]

The court then held, without further discussion, that "the record supports the conclusion that the permitting system imposed under the Act resulted in a regulatory taking of both the Home Place Orchard and the D'Hanis Orchard." Although the court noted the Authority's argument that the Act actually improved the value of the Bragg's property by regulating other users' pumping, thereby protecting them from the law of the biggest pump, and by creating a piece of property, a permit, that could be leased or sold, it concluded that it "misconstrues the nature of the takings claims asserted here and the analysis of whether a taking has occurred."[19]

Compensation. The court determined that the property time for valuation of the property was when the taking occurred, which was when the Act was applied to the Home Place Orchard in 2005 and to the D'Hanis Orchard in 2004.

For the Home Place Orchard, the trial court calculated the compensation owed as the difference between the market value of the 228.85 acre-feet of water the Braggs requested and the market value of the 120.2 acre-feet of water they actually received. For the D'Hanis Orchard, the trial court calculated the compensation owed as the difference between the per acre market value price of farm land with no water rights and the per acre market value price of farm land with water rights.

The court of appeals concluded that these calculations were incorrect, because the Braggs were not in the business of selling water – they were in the business of commercial pecan farming. The value of the property that was taken was the difference between the value of the commercial pecan orchards immediately before and immediately after the Act was applied to the two Bragg properties.[20] Any enhancement to the value of the property that resulted from the taking may not be considered.[21]

The Edwards Aquifer Authority and Bragg have filed petitions for review of the court of appeals' decision, which are currently pending at the Texas Supreme Court.

City of Lubbock v. Coyote Lake Ranch, LLC – ownership.

On June 17, 2014, the Amarillo Court of Appeals issued its opinion in *City of Lubbock v. Coyote Lake Ranch,*[22] holding that the "accommodation doctrine," which applies to the mineral interests owner's use of the surface where mineral ownership has been severed from surface ownership, did not apply to restrict the City's use of the surface of the Coyote Lake Ranch's land to develop the City's groundwater rights under the land.

In 1953, the City of Lubbock bought the rights to groundwater under the land now owned by Coyote Lake Ranch, separately from the surface estate. In the deed, the City acquired all groundwater rights, and "the full and exclusive rights of ingress and egress in, over and on said lands so that the Grantee of said water rights may at any time and location drill water wells and test wells on said lands for the purpose of investigating, exploring, producing, and getting access to percolating and underground water." The deed granted the right to lay water lines, build reservoirs, booster stations, houses for employees, and roads, "together with the rights to use all that part of said lands necessary or incidental to the taking of percolating and underground water and the production, treating and transmission of water therefrom and delivery of said water to the water system of the City of Lubbock only."

In 2012, the City proposed a well field plan for the property and began testing and development under that plan. Coyote Lake Ranch sued, asking for a temporary injunction to halt the City's activity. Coyote claimed that the City failed to accommodate Coyote Lake Ranch's existing uses of the property (the opinion does not say what those uses are), and that the City could use alternatives that would lessen damage to Coyote Lake Ranch's use of the land. The trial court granted the temporary injunction, holding that Coyote was likely to be able to show at trial that the City's plan could be "accomplished through reasonable alternative means that do not unreasonably interfere with [Coyote Lake Ranch's] current uses." The City appealed.

> "In 2011, 2012 and 2013, in response to the severe drought... TCEQ began curtailing diversions under surface water rights.

In the court of appeals, the City made two arguments: first, it argued that the accommodation doctrine does not apply to the relationship between the owner of the surface and the owner of groundwater. Canyon Lake Ranch, relying on the language in *Day* that drew an analogy between oil and gas ownership and groundwater ownership, argued that "the accommodation doctrine should govern the relationship between owners of the severed groundwater estate and the surface estate in much the same way that it governs the relationship between the mineral estate owner and the surface estate owner."[23] The court of appeals agreed with the City and held the accommodation doctrine does not apply to limit the rights of holders of severed groundwater rights.

The court held that the analogy between oil and gas ownership in place and groundwater ownership in place in the *Day* case was not sufficient to indicate that the Texas Supreme Court intended to apply other oil and gas doctrines to groundwater rights: "Nowhere in *Day* … does the court speak to the implied rights of a severed groundwater estate owner to use the surface in production of groundwater. Nor does it define and delineate the rights and duties as between owners of the severed groundwater estate and the surface estate."[24] The court stated that: "If *Day* is to be read to support such an extension of its analogy between groundwater and oil and gas, then this Court respectfully defers to the Texas Supreme Court to recognize and pronounce such an extension, especially in light of the dramatic implications it could have in the area of water law in Texas."[25]

In its second argument, the City argued that the express language in the water rights deed would prevail over general accommodation doctrine principles. The opinion does not address that argument.

Severance of groundwater from the surface estate is not as common in Texas as severances of minerals. But it has taken place in the Panhandle and in other areas of Texas.[26] And with increased demands for and value of groundwater, such severances will become more common, and other conflicts between the surface owner and the owner of groundwater will likely arise.

Groundwater Planning and Permitting – GMAs, DFCs, and MAGs

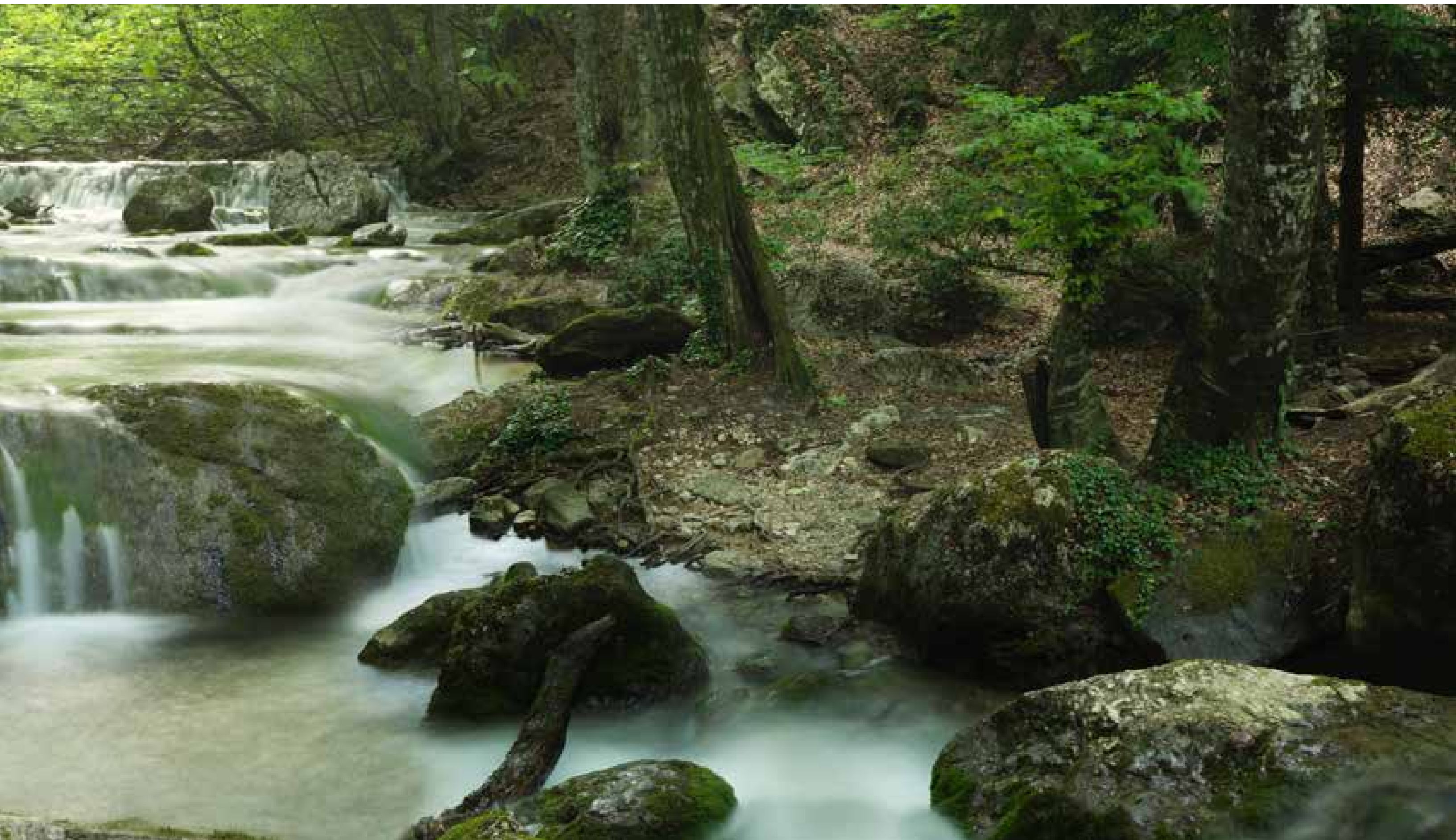
[Editor's Note: This section has been omitted. Please contact courtneyg@yourhonor.com if you would like full article]

Surface Water Use Curtailments in Drought

In 2011, 2012 and 2013, in response to the severe drought in much of Texas, TCEQ began curtailing diversions under surface water rights. For example, between May and August 2011, TCEQ issued a series of "priority calls" on junior water rights that eventually suspended diversions under all water rights with a priority date of 1960 or later in a large portion of the Brazos River, except rights to use water for municipal and power generation purposes until January 27, 2012. On July 5, 2011, TCEQ suspended diversions under all water rights with a priority date of 1950 or later in the Llano River basin upstream of the City of Llano, except rights to use water for municipal and power generation purposes. This curtailment was in response to a priority call from the City of Llano. This suspension ended on October 31, 2011. On August 8, 2011, TCEQ suspended diversions under all water rights in Menard and Schleicher Counties in the San Saba River basin with a priority date of 1900 or later, except rights to divert water for municipal and power generation purposes. The suspension ended on February 7, 2012. On July 2, 2013, TCEQ suspended all water rights with a priority date of February 14, 1942 or later downstream of Possum Kingdom Lake in the Brazos River Basin, including some unused or unneeded rights to divert water for municipal and power generation purposes. This suspension ended on October 8, 2013. There are no outstanding TCEQ curtailments at this time.

New Water Code § 11.053. During 2011, while these TCEQ curtailments were occurring, the Legislature adopted a statute that expressly permitted TCEQ Executive Director to implement curtailments during droughts. Section 11.053 of the Texas Water Code, which became effective on September 1, 2011, provides that, during a period of drought or emergency shortage of water, the TCEQ Executive Director may, "in accordance with the priority of water rights established by Section 11.027," temporarily suspend or adjust diversion under a water rights.[27] Section 11.027 provides that: "As between appropriators, the first in time is the first in right."

Under the statute, the Executive Director must "ensure" that any action taken: "(1) maximizes the beneficial use of water; (2) minimizes the impact on water rights holders; (3) prevents the waste of water; (4) takes into consideration the efforts of the affected water rights holders to develop and implements the water conservation plans and drought contingency plans required by this chapter; (5) to the greatest extent



practicable, conforms to the order of preferences established by Section 11.024; and (6) does not require the release of water that, at the time the order is issued, is lawfully stored in a reservoir under water rights associated with that reservoir."[28]

TCEQ Rules. The statute required TCEQ to adopt rules implementing it, including rules defining a drought or emergency shortage for purposes of statute and rules specifying the conditions under which the Executive Director may issue a curtailment order, the terms of the order, including its maximum term, and providing notice and an opportunity for hearing on the order.[29] TCEQ proposed these rules on November 4, 2011, and received more than thirty written comments on nearly every section of the new rules. TCEQ adopted the new rules effective May 3, 2012.[30]

The new rules allow the Executive Director to issue a curtailment order if: (1) all or part of the river basin is in a drought, or an emergency shortage of water exists; (2) senior water rights are unable to divert the water they need or store inflows that are authorized under a water right; (3) one or more senior water right holders who will benefit from the order can beneficially use the water they will be able to divert or use under the order; and (4) suspending or adjusting junior water rights would result in conditions under which the senior water right holder may divert water or impound inflows under its water right for a beneficial use.[31] The rules also give the Executive Director the power to not suspend a junior water right based on health, safety, and welfare concerns.[32]

Farm Bureau lawsuit.[33] On November 14, 2012, Dow Chemical Co., which owns the most senior and downstream water rights in the Brazos River Basin, made a priority call on junior water rights in the basin. Five days later, the TCEQ Executive Director issued a suspension order under the new TCEQ rules. The order temporarily suspended diversions under 845 water rights issued after February 15, 1942, below Possum Kingdom Lake, but exempted rights to use water for municipal or power generation purposes from the call, as previous curtailment orders had done.

On December 14, 2012, the Texas Farm Bureau, along with two of its members, filed suit against the TCEQ in state district court in Travis County. The Farm Bureau argued that the TCEQ curtailment rules were invalid and exceeded TCEQ's statutory authority because Section 11.053(a) provides that all suspensions or adjustments shall be in accordance with Section 11.027, which provides that as between appropriators, first in time is first in right, and the rules allow the Executive Director to deviate from the priority system, as he did in the Brazos River Basin order.

On June 26, 2013, the district court entered a judgment in favor of the Farm Bureau, holding that the TCEQ curtailment rules "are invalid and exceed TCEQ's statutory authority because they allow deviation from the priority system and the exemption of water rights for preferred uses from a curtailment or suspension order." TCEQ appealed the trial court judgment to the Austin court of appeals, but the Supreme Court transferred the case to the Thirteenth Court of Appeals in Corpus Christi and Edinburg. The Thirteenth Court heard oral argument in this case on April 24, 2014 in Austin.

State Water Plan Implementation Funds – SWIFT/SWIRFT

[Editor's Note: This section has been omitted. Please contact courtneyg@yourhonor.com if you would like full article]

Conclusion

The new developments discussed in this article are mainly beginnings, not endings. Day, Bragg and Coyote Lake Ranch are likely to lead to more litigation to provide guidance on the parameters of groundwater rights ownership and the circumstances in which regulatory limits on groundwater production amount to a talking. Groundwater districts are now applying the final approved DFCs and MAGs in permitting decisions, some of these decisions are already on appeal, and there is likely to be new case law on how these considerations mesh with the law on regulatory takings. The TCEQ currently has no outstanding curtailment orders, but, if the drought continues, more curtailment orders are likely to be issued, and the Farm Bureau case is no appeal. Finally, the proposed TWDB rules on prioritization of the use of the funds set aside to implement the State Water Plan may lead to litigation, but the projects for which loans are approved may lead to more litigation involving permitting, environmental issues, and condemnation issues, to name a few. Everyone should expect many other developments in water law in the next five years. ♦

(Endnotes)

1 *Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 825-26 (Tex. 2012).*
2 *Edwards Aquifer Auth. v. Day, 274 S.W.3d 742, 756 (Tex. App.—San Antonio 2008).*
3 *Elliff v. Texon Drilling Co., 146 Tex. 575, 210 S.W.2d 558, 561 (1948).*
4 *Edwards Aquifer Auth. v. Day, 274 S.W.3d at 832.*
5 *Id. at 838.*
6 *Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978).*
7 *Edwards Aquifer Auth. v. Day, 369 S.W.3d at 839.*
8 *Id.*
9 *Id.*
10 *Id. at 840.*
11 *Id.*
12 *Id. at 840.*
13 *Id. at 843.*
14 *Edwards Aquifer Auth. v. Bragg, No. 04-11-00018-CV, 2013 WL 4535935 (Tex. App.—San Antonio, Aug. 28, 2013, no pet. hist.).*
15 *Edwards Aquifer Auth. v. Bragg, 2013 WL 4535935 at 17 (citation and footnote omitted).*
16 *Id. at *19.*
17 *Id. at *20.*
18 *Id. at 21.*
19 *Id. at 13.*
20 *Id. at 27.*
21 *Id. at 28.*
22 *City of Lubbock v. Coyote Lake Ranch, LLC, No. 07-14-00006-CV, 2014 WL 2810419 (Tex. App. – Amarillo, June 17, 2014, no pet. h.).*
23 *2014 WL 2810419, *6.*
24 *2014 WL 2810419, *7.*
25 *Id.*
26 *See, e.g., City of Del Rio v. Clayton Sam Colt Hamilton Trust, 269 S.W.3d 613 (Tex. App.—San Antonio 2008, pet. denied) (regarding severance of groundwater rights in the Edwards-Trinity Plateau Aquifer in Val Verde County).*
27 *Tex. Water Code § 11.053(a).*
28 *Id. § 11.053(b).*
29 *Id. § 11.027(c).*
30 *See 30 Tex. Admin. Code ch. 36.*
31 *Id. § 36.5(a).*
32 *Id. at § 36.5(c).*
33 *My thanks to Joshua Katz of Bickerstaff Heath Delgado Acosta LLP for providing me with information on this case.*

{photo lineup}

2014 Annual Judicial Education Conference

feature

Justifying the Ruling: How to Draft Clear and Effective Findings

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By Douglas K. Norman[2]

One problem that continues to plague the bench and bar is that of reducing a trial court's ruling to a set of discrete factual findings that can easily be reviewed on appeal. We often struggle with the difference between a "finding of fact" and a "conclusion of law." The distinction is not merely academic, as the degree of appellate deference is near absolute for findings of fact and zero for conclusions of law.

Categorizing Findings

The following is my attempt to categorize findings that could be made in connection with a bench-tried issue in a criminal case, though they could also apply to most civil findings. An example of each is provided after the categorization explanation.

Recitations of the Record

These can be seen from the record and are beyond dispute. They are often included upfront in findings and conclusions to aid the court by placing the issues in context and setting up the true findings of fact and their significance.

"The defendant pled 'guilty' to count one and 'not guilty' to counts two and three."

> "Mixed questions can be tricky and often require subjective and normative judgments by the trial court.

Findings of Fact From Direct Evidence

These are the meat of the findings of fact and generally reflect the trial court's credibility findings concerning witness testimony.

"The court finds credible officer Jones's testimony at the suppression hearing that he saw the defendant carrying a knife in his hand."

Inferential Findings of Fact

While still within the realm of findings of fact, these involve some allowable inference or conclusion drawn from primary facts to a secondary factual conclusion, in the nature of circumstantial evidence. These findings should generally be prefaced by findings concerning the credibility of those testifying to the primary facts.

"Based on officer Gonzalez's testimony that it was his normal practice to read Miranda warnings before taking a statement, the court finds as a reasonable inference that he read Miranda warnings to Smith before taking the statement in question."

Conclusory Findings

These should be avoided and are generally worthless. A conclusory finding is so broad that it begs the question, "What specific facts led you to make this broad assertion?" It is often drafted to answer issues that are falsely assumed to be "mixed questions" in order to avoid the tedious process of breaking the issue down into component facts that add up to such things as reasonable suspicion or probable cause.

"The court finds that officer Smith detained the defendant by the manner in which he spoke to him." [What specifically did officer Smith say, how did he say it, and what were the surrounding circumstances?]

Findings on Mixed Questions

Mixed questions can be tricky and often require subjective and normative judgments by the trial court. They generally involve the application of a legal principle or test that gives the trial court some amount of discretion above merely finding true the underlying historical facts. Whether it is ultimately a mixed question or a pure legal question dependent upon underlying historical facts turns on the amount of discretion the law gives to the trial court and how the courts have interpreted the issue. For instance, whether to apply the excited utterance exception to the hearsay rule is subject not only to the historical facts of the situation but also allows for some discretion by the trial court as to whether the totality of the circumstances justify this exception—giving rise to a mixed question. On the other hand, "reasonable suspicion," though it might at first appear to be a mixed question, has consistently been interpreted as a legal question subject to de novo review based on the historical facts.

"The trial court finds that when the declarant yelled, 'Homer, how could you have done this?' he was still under the stress of excitement caused by his having witnessed the murder and that his declaration amounted to an excited utterance."

Other Considerations

Identifying the Dispositive Issues

Findings should be crafted based on the dispositive legal issues. As stated earlier, some background findings may be helpful to place those issues in context, but you should resist the temptation to turn every bit of testimony into a discreet finding of fact. For example, if time is not an issue, you do not need a finding that the officer responded to the call at 4:59 a.m. However, you should be vigilant to include findings on every truly dispositive issue, even if it appears that the issue is uncontested, as the judge generally has the discretion to disbelieve even uncontroverted testimony.[3]

Sequence of Findings

Whether to organize the findings chronologically or in the order of witness testimony is generally a matter of style and personal preference. While chronological order is more helpful when reviewing findings, findings in the order of witness testimony relieve the reviewer of having to jump around in the record. The complexity of the issues and the evidence may suggest which method is more appropriate. In complex cases, subheadings may be useful to identify the issues and the testifying witnesses.

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Burden of Proof

Determining who has the burden of proof is critical because it controls the default when not enough facts have been developed to make a determination of the question at issue. For example, it is the defendant's burden to show that he or she had a privacy interest in a place that was searched. Accordingly, unless there is some evidence to justify a privacy interest finding, questions regarding the reasonableness of a search are premature and irrelevant. However, after the trial court has found the defendant's proof credible, the burden shifts to the state to show that the search was reasonable.

Generally, the burden of proof on suppression issues and preliminary questions concerning admissibility is merely by a preponderance of the evidence.[4] Accordingly, trial court findings are assumed to be by a preponderance in the absence of some indication to the contrary. However, certain issues, such as the voluntariness of consent to search, must be proven by clear and convincing evidence.[5] Findings on these issues should reflect that higher standard of proof.

Phraseology

Findings may be phrased in several commonly accepted ways, such as "The court finds credible Smith's testimony that Jones coughed," "The court believes Smith's testimony that Jones coughed," and "The court finds that Jones coughed."

Global Credibility Findings and Inconsistent Credibility Findings

Nothing prevents the trial court from making a global finding that a particular witness has given credible testimony and that all factual assertions are true. However, these should probably be followed by more specific findings concerning the dispositive facts testified to by that witness. Moreover, care should be taken to avoid global findings when there are internal inconsistencies in the witness's testimony concerning dispositive issues, such as when the witness changes testimony in some manner on cross-examination. Likewise, care should be taken to avoid global findings on more than one witness where similar inconsistencies are present.

Findings require you to know something about your case—specifically, the legal issues to which they apply, the burden of proof, the facts deemed relevant to the legal issues, and how much discretion the trial court has to weigh those facts in applying the legal standard.

Although proper findings may be difficult to draft, they are critical to appellate review. Making the effort to do it right the first time may help you to avoid either a remand for supplemental findings or an adverse judgment. ♦

(Endnotes)

1 Norman, Douglas, *Justifying the Ruling, How to Draft Clear and Effective Findings*, 77 Tex. B. J. 947, 981 (2014).

2 Douglas K. Norman has been an appellate prosecutor with the Nueces County District Attorney's Office for the past 14 years. Before that he served as chief staff attorney for the 13th Court of Appeals. He is a 1987 graduate of the University of Texas School of Law.

3 *State v. Elias*, 339 S.W.3d 667, 674 (Tex. Crim. App. 2011).

4 *York v. State*, 342 S.W.3d 528, 543 (Tex. Crim. App. 2011); *Vinson v. State*, 252 S.W.3d 336, 340 n.14 (Tex. Crim. App. 2008) (citing Tex. R. Evid. 104(a)).

5 *State v. Ibarra*, 953 S.W.2d 242 (Tex. Crim. App. 1997).

Same-Sex Marriage Issues

By Richard R. Orsinger[1]

feature

Introduction

The United States is in the midst of a rapid and dramatic change of cultural mores and laws governing same-sex marriages. The Texas Constitution and Family Code prohibit same-sex marriage in Texas and deny recognition in our State to same-sex marriages created elsewhere. Those Texas laws have been held unconstitutional by a Federal District Judge in San Antonio, whose decision is stayed pending resolution of the appeal to the U.S. Court of Appeals for the Fifth Circuit. These laws have also been declared unconstitutional by a Bexar County district judge, whose decision is on appeal to the San Antonio Court of Appeals. A Dallas County District Judge previously declared the laws to be unconstitutional, but that decision was reversed by the Dallas Court of Appeals, whose decision in turn is under submission to the Texas Supreme Court. A Travis County district judge granted an agreed same-sex divorce, and the Austin Court of Appeals ruled it could not be appealed. That decision also is under submission to the Texas Supreme Court.

At this moment in time (February, 2015), the preeminent question is whether the validity of a marriage is a question of state law or Federal law. If Federal law, then all states will be required to create same-sex marriages and to recognize the validity of same-sex marriages celebrated elsewhere. If Federal law does not control the question, then the validity of a marriage will continue to be governed by state law, and the question becomes "which state's law?" State laws on same-sex marriage differ, some specifically authorizing same-sex marriage, some disallowing it but allowing civil unions instead, some explicitly banning same-sex marriage, and some making no statement for or against same-sex marriage. Some states which ban same-sex marriage do so by legislation alone, and some (like Texas) by constitutional amendment and legislation.

> "The validity of a marriage in the USA has historically been a question of state law.

Is Recognition of Same-Sex Marriage Required by the 14th Amendment?

Overview

The validity of a marriage in the USA has historically been a question of state law.[2] Recently, however, litigants have successfully argued that the 14th Amendment to the U.S. Constitution requires states to grant same-sex marriages and to recognize as valid same-sex marriages that were created elsewhere. The winning argument couples U.S. Supreme Court precedent recognizing that the

right to marry is a fundamental right with Supreme Court precedent that the 14th Amendment's equal protection and due process of law clauses invalidate state laws that impinge on the fundamental right to marry, and to lead to the conclusion that choosing a spouse, even of the same gender, is a fundamental right.

The Federal Courts of Appeals are falling in line with the view that the 14th Amendment preempts state laws that refuse to recognize the validity of same-sex marriage, with the notable exception of the 6th Circuit which ruled the other way, and not including the 5th Circuit (Texas, Louisiana and Mississippi) which has several such cases under advisement. The U.S. Supreme Court has avoided the question several times, but shortly before this article was written the Supreme Court granted review of the 6th Circuit Court of Appeals' decision to allow Tennessee, Kentucky, Ohio and Michigan to continue to enforce laws that bar recognition of same-sex marriages.

On January 6, 2014, the U.S. Supreme Court denied certiorari in three cases where U.S. courts of appeals had invalidated state constitutions and statutes that denied the validity of same-sex marriages. The result was to leave in place circuit court decisions invalidating such laws in West Virginia, North Carolina, South Carolina, Kansas, Colorado, and Wyoming.

U.S. Supreme Court Decisions

Baker v. Nelson.[3] In *Baker v. Nelson*, the U.S. Supreme Court considered an appeal from the Minnesota Supreme Court, which had rejected a claim that a Minnesota law banning same-sex marriage violated the U.S. Constitution. The U.S. Supreme Court dismissed the appeal "for want of substantial federal question."

Hollingsworth v. Perry.[4] After the California Supreme Court held that limiting marriage to opposite-sex couples violated the California Constitution, California voters passed a ballot initiative known as Proposition 8, amending the California Constitution to define marriage as being a union between

> The Texas law that courts must ignore same-sex marriages is still in force.

a man and a woman. Some same-sex couples brought suit in Federal district court in California to declare the state constitutional provision unenforceable. The Federal district judge declared that the constitutional provision violated the Fourteenth Amendment's Equal Protection and Due Process of Law Clauses. The U.S. Court of Appeals for the Ninth Circuit certified a question to the California Supreme Court asking whether the appellants had standing to appeal. The California Supreme Court said "yes." The Ninth Circuit then considered the merits, and affirmed the district judge's ruling, invalidating the provision in the California constitution. On June 26, 2013, in a 5- to-4 vote, in *Hollingsworth v. Perry*[5], the U. S. Supreme Court held that, because the court order did not grant or deny relief to or against the intervenors, as a matter of Federal law the intervenors had no standing to appeal the case. The U.S. Supreme Court vacated the Ninth Court of Appeals' decision and dismissed the appeal, leaving the Federal District Court's ruling standing unreviewable and the California constitutional provision unenforceable.

U.S. v. Windsor.[6] On June 26, 2013, in *U.S. v. Windsor*, the U.S. Supreme Court declared Section 3 of the Defense of Marriage Act of 1996 ("DOMA") unconstitutional. The Majority Opinion was written by Justice Kennedy, who sided with the Court's four "liberal" judges. The Court held that it was unconstitutional for the Federal government to refuse to recognize a marriage between persons of the same sex when that same-sex marriage was recognized under the law of the state where the parties reside. The Supreme Court did not rule that states are required to permit same-sex marriages or that states are required recognize same-sex marriages originating elsewhere. The Texas law that courts must ignore same-sex marriages is still in force.

Although Justice Kennedy attributed DOMA to an indefensible bias on the part of Congress against gays and lesbians, the legal basis for the decision was not that such discrimination was unlawful but rather that principles of federalism protected the States' right to regulate marriage without interference from Congress. Justice Kennedy's Opinion promulgated the rule that the law of the state of residence controlled the validity of a marriage. This outcome was not very satisfactory to proponents of marriage equality, who would have preferred that the law of the place of celebration be determinitive.

U.S. Court of Appeals

Herbert v. Kitchen (10th Circuit).[7] On June 25, 2014, a panel of the Court of Appeals for the 10th Circuit held a Utah law banning same-sex marriage to be unconstitutional. On July 18, 2014, in Bishop v. Smith, a panel of that same Court of Appeals held that Oklahoma's law banning same-sex marriage was unconstitutional. The U.S. Supreme Court denied certiorari in both cases on October 6, 2014.

Bostic v. Schaefer (4th Circuit).[8] On July 28, 2014, a panel of the U.S. Court of Appeals for the 4th Circuit ruled 2-to-1 that a Virginia law banning same-sex marriage was unconstitutional under the Fourteenth Amendment's due process and equal protection clauses. The court applied strict scrutiny review. The U.S. Supreme Court denied certiorari on October 6, 2014.

Baskin v. Bogan (7th Circuit).[9] On September 4, 2014, the U.S. Court of Appeals for the 7th Circuit held that Indiana and Wisconsin laws that banned same-sex marriage were unconstitutional. The U.S. Supreme Court denied certiorari on October 6, 2014.

Latta v. Otter (9th Circuit).[10] On October 7, 2014, the Ninth Circuit Court of Appeals applied heightened scrutiny

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to Idaho and Nevada's constitutional and statutory provisions banning same-sex marriage, and found that they violated the Fourteenth Amendment. On January 9, 2015, the combined court denied rehearing en banc, with three justice dissenting.

DeBoer v. Schneider (6th Circuit).[11] On October 7, 2014, a three-justice panel of the U.S. Court of Appeals for the Sixth Circuit, by a 2-to-1 vote, upheld Michigan, Ohio, Kentucky and Tennessee constitutional provisions and statutes preventing same-sex marriages and refusing to recognize such marriages from elsewhere. On January 16, 2015, the U. S. Supreme Court consolidated this case with three others and granted certiorari.

De Leon v. Perry,[12] Mississippi's Campaign for Southern Equality v. Bryant,[13] Robicheaux v. Caldwell[14] (5th Circuit). The Court of Appeals for the 5th Circuit held oral argument on January 9, 2015, in three cases where Federal district judges had ruled on the constitutionality of state laws banning same-sex marriage. On February 26, 2014, in the Texas Federal District Court case, De Leon v. Perry, Judge Orlando Garcia declared the Texas law banning same-sex marriages unconstitutional. Judge Garcia stayed the effect of his ruling through appeal to the Fifth Circuit Court of Appeals. The case was orally argued to the Fifth Circuit on January 9, 2015. No ruling has been issued by the time this article was written.

Brenner v. Armstrong (11th Cir.).[15] The Court of Appeals for the 11th Circuit has pending a Florida Federal district court's ruling that the same-sex marriage ban in Florida law is unconstitutional. The U.S. Supreme Court refused to grant a stay of the district court's ruling on December 19, 2014 (Scalia and Thomas, dissenting). The district court's stay expired on January 6, 2015, and same-sex marriages are now being performed in Florida.

If the 14TH Amendment Does Not Control, is Full Faith and Credit Required for Same-Sex Marriages?

If there is no 14th Amendment basis to force states to permit and recognize same-sex marriages, then the question arises whether the Full Faith and Credit Clause of the U.S. Constitution requires each state to acknowledge the validity of same-sex marriages and civil unions that are validly created under the law of any other American state. If the same-sex marriage was created under the law of a

foreign country, full faith and credit does not apply and a court would have to rely on some U.S. treaty to preempt state law on the issue, or rest such recognition on the doctrine of comity. An analysis of how the Full Faith and Credit Clause argument for same-sex marriages may affect future litigation can be found in my article "Same-Sex Marriages and Gender Identity Issues."[16]

Choice of Law Issues

If the Fourteenth Amendment does not require all states to recognize a same-sex marriage validly created in one state, and if full faith and credit for a same-sex marriage lawfully established in another state is not required, there is the question of whether Texas choice-of-law rules import the law of other states or nations into a Texas court proceeding. Generally speaking, there are three places whose law could be applied to the validity of a same-sex marriage: (i) the law of the parties' domicile at the time of marriage; (ii) the law of the place of celebration of the marriage; (iii) the law of the forum where the lawsuit is filed. An analysis of how choice-of-law rules may apply to same-sex marriages can be found in my article "Same-Sex Marriages and Gender Identity Issues."[17]

Texas Law on Same-Sex Marriage

The Texas Family Code

When Title 1 of the Family Code was first enacted in 1969, Section 1.91 provided that "the marriage of a man and woman may be proved "by evidence of an informal marriage. Section 1.01 said that "[p]ersons desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state." The statute was amended in 1973 to say "A man and a woman desiring to enter into a ceremonial marriage . . . ." The statute is carried forward in current Family Code Section 2.001, which also contains a prohibition against issuing a marriage certificate to persons of the same sex. In 2003, the Texas Legislature enacted Section 6.204 of the Family Code, which reads:

§ 6.204. Recognition of Same-Sex Marriage or Civil Union.[18]

(a) In this section, "civil union" means any relationship status other than marriage that:

(1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and

(2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

(b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

(c) The state or an agency or political subdivision of the state may not give effect to a:

(1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or

(2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

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The Texas Constitution

On November 8, 2005, Texas voters passed a constitutional amendment, by a vote of 76% to 24%, forbidding the creation or recognition of same-sex marriage. The provision reads:

Sec. 32. MARRIAGE.
(a) Marriage in this state shall consist only of the union of one man and one woman.
(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

With the amendment, it can no longer be argued that refusing to recognize same-sex marriage or civil unions violates the Texas Constitution. The only recourse to proponents of same-sex marriage in Texas is preemption by Federal law, based either on the fundamental right to marry coupled with the Fourteenth Amendment's Equal Protection or Due Process of Law Clauses, or the Full Faith and Credit.

Texas Court Decisions

In *Ross v. Goldstein*,[19] the appellate court declined to recognize an equitable remedy in probate recognizing a "marriage-like relationship" doctrine. The court cited a Texas Legislative Resolution saying that "[t]his state recognizes that through the designation of guardians, the appointment of agents, and the use of private contracts, persons may adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies without the existence of any legal status identical or similar to marriage."

"The Fifth Circuit may rule before or during the summer on whether Texas law banning same-sex marriage is unconstitutional.

In the case of *Mireles v. Mireles*,[20] the appellate court said that "[a] Texas court has no more power to issue a divorce decree for a same-sex marriage than it does to administer the estate of a living person."

In the case of *In re Marriage of J.B. and H.B.*,[21] the Dallas Court of Appeals held that a Texas court does not have subject-matter jurisdiction over a divorce case arising from a same-sex marriage that occurred in Massachusetts. The opinion held that that the State of Texas, through the Attorney General, had the right to intervene in the lawsuit to raise the trial court's lack of jurisdiction, and that mandamus would lie to overturn the trial court's dismissal of the AG's intervention. The appellate

court also ruled that, because of Family Code Section 6.204, the trial court had no subject matter jurisdiction over the purported divorce proceeding involving a same-sex marriage.[22] The appellate court held that in Texas same-sex marriages are void, meaning that they have no legal effect.[23] This case was consolidated by the Texas Supreme Court with *State v. Naylor*[24] and was argued to the Supreme Court on November 5, 2013.

In *State v. Naylor*, the Austin Court of Appeals ruled that the State of Texas did not have standing to appeal a divorce between two women who were legally married in Massachusetts, that was granted by a Travis County District Judge based on an agreement between the parties. The Court also said that Texas law can be interpreted "in a manner that would allow the trial court to grant a divorce in this case."[25] On March 21, 2011, the State filed a petition for review[26] in the Texas Supreme Court, and on March 25, 2011 the State filed a petition for mandamus as well. Briefs were filed, including numerous amicus curiae briefs. On July 3, 2013, the Clerk of the Supreme Court asked the parties to submit additional briefs on the impact if any of the U.S. Supreme Court's decision in U.S. v. Windsor. On Friday, August 23, 2013, two years and five months after the case was filed, the Supreme Court granted review. This appeal and mandamus were both consolidated with the appeal in *In the Matter of the Marriage of J.B. and H.B.* and they were all argued on November 5, 2013.

Texas Attorney General Opinions

On December 16, 1999, Texas Attorney General John Cornyn (now a U.S. Senator) issued an AG's Opinion that county clerks were not required or permitted to accept for filing a "declaration of domestic partnership."[27] On October 27, 2005, Texas Attorney General Abbott sent a letter to a Texas Senator and a State Representative, on the subject of the then-proposed constitutional amendment relating to same-sex marriage. General Abbott said that the proposed amendment "would in fact safeguard traditional marriage in Texas."

On November 2, 2012, State Senator Dan Patrick sent a letter to Attorney General Abbott asking about the legality of certain government entities offering benefits to "domestic partners" of government employees. Senator Patrick listed El Paso County and Travis County, and the cities of Fort Worth, Austin, San Antonio, and El Paso. Several school districts had also had adopted similar policies. On April 29, 2013, Texas Attorney General Abbott issued Opinion GA-1003, which concluded that Texas cities, counties and school districts could not lawfully offer insurance benefits to domestic partners as part of their employee benefit programs. General Abbott noted that Tex. Const. Art. I § 32(b) was held to be "unambiguous, clear, and controlling" in *Ross v. Goldstein*.[28] He found that the entities in question had essentially created a "legal status" of same-sex domestic partnership in violation of the constitutional provision.[29] In mid-2013, the City of San Antonio adopted a nondiscrimination policy against GLBT. The AG objected but did not sue over the ordinance. On February 4, 2014, Bexar County adopted a policy extending health insurance benefits to unmarried companions of employees, with no specification of gender.

Conclusion

The Fifth Circuit may rule before or during the summer on whether Texas law banning same-sex marriage is unconstitutional. If they find it unconstitutional, then Texas law is unenforceable unless the Supreme Court overturns that decision. If the Fifth Circuit upholds Texas law, then Texas will await further action from the U.S. Supreme Court. The U.S. Supreme Court is expected to rule before September on whether the 14th Amendment requires all states to grant same-sex marriages and recognize same-sex marriages from elsewhere. If the Supreme Court invalidates all state laws against same-sex marriage, then Texas' existing laws cannot be enforced. If it says that the validity of marriage is a question of state law, then states will have a complicated layer of choice-of-law rules, and alternate theories of recovery between same-sex couples, to deal with in Texas. I plan to address the outcome and consequences of both of these cases in a follow-up article for the Winter 2016 Issue of *In Chambers*. ♦

(Endnotes)

1 *Richard Orsinger is a Partner with the firm Orsinger, Nelson, Downing & Anderson in Dallas. He is Board Certified in Family Law & Civil Appellate Law by the Texas Board of Legal Specialization.*

2 *In re Burris, 136 U.S. 586 (1890) ("The whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States"); Ohio ex rel. Popovici v. Agler, 280 U.S. 379 (1930) ("when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States").*

3 *Baker v. Nelson, 409 U.S. 810 (1972).*

4 *Hollingsworth v. Perry, 133 S.Ct. 2652 (2013).*

5 *Id. (Chief Justice Roberts voting in the majority, with Justices Kennedy, Thomas, Alito, and Sotomayor dissenting).*

6 *U.S. v. Windsor, 570 U.S. ___ (2013), 133 S.Ct. 2675 (June 26, 2013).*

7 *Herbert v. Kitchen, 755 F.3d 1193 (10th Cir. 2014).*

8 *Bostic v. Schaefer, No. 14-1167, 4th Cir. (July 28, 2014).*

9 *Baskin v. Bogan, 766 F.3d 648 (7th Cir. 2014).*

10 *Latta v. Otter, 771 F.3d 456 (9th Cir. 2014).*

11 *DeBoer v. Schneider, 772 F.3d 388 (6th Cir. 2014).*

12 *De Leon v. Perry, No. 5:13-CV-00982-OLG (Texas law invalidated).*

13 *Campaign for Southern Equality v. Bryant, 773 F.3d 55 (5th Cir. 2014) (Mississippi law invalidated).*

14 *Robicheaux v. Caldwell, 2 F.Supp.3d 910 (2014) (Louisiana law upheld).*

15 *Brenner v. Armstrong, No. 14-14061, 11th Cir. (Dec. 3, 2014).*

16 *Orsinger, Richard. (2015, Jan. 27). Same-Sex Marriages and Gender Identity Issues. Paper presented at the 2015 Family Justice Conference, San Antonio, available at https://www.yourhonor.com/myprofile/assets/ORSINGER_Same-Sex_Marriages_Gender_Identity_Issues_2015_(1-20-2014_-_2).pdf.*

17 *Id.*

18 *Added by Acts 2003, 78th Leg., ch. 124, § 1, eff. Sept. 1, 2003.*

19 *Ross v. Goldstein, 203 S.W.3d 508, 514 (Tex. App.–Houston [14th Dist.] 2006, no pet.).*

20 *Mireles v. Mireles, 2009 WL 884815, at *2 (Tex. App.–Houston [1st Dist.] Apr. 2, 2009, pet. denied) (mem. op.).*

21 *In re Marriage of J.B. and H.B., 326 S.W.3d 654, 658-59 (Tex. App.–Dallas 2010, pet. granted).*

22 *326 S.W.3d at 667.*

23 *326 S.W.3d at 665.*

24 *State v. Naylor, 330 S.W.3d 434 (Tex. App.—Houston [14th Dist.] 2006, no pet.).*

25 *330 S.W.3d at 441.*

26 *Petition for Review of State of Texas http://wwww.supreme.courts.state.tx.us/ebriefs/11/11011401.pdf.*

27 *Opinion No. JC-0156, Re: Whether a county clerk must accept for filing a "declaration of domestic partnership" <https://www.texasattorneygeneral.gov/opinions/opinions/49cornyn/op/1999/htm/jc0156.htm>*

28 *Ross v. Goldstein, 203 S.W.3d 508, 514 (Tex. App.–Houston [14th Dist.] 2006, no pet.).*

29 *The Texas ACLU submission in support of the trial court's action is at <http://aclutx.org/download/119>.*

Advisory Opinion Summaries

July 25, 2014 – March 2, 2015

Texas Ethics Commission

These summaries have been taken directly from the TEC's website. To see summaries from previous years, please visit: http://www.ethics.state.tx.us/legal/AT-eaosquery.html.

EAO No. 518 (2014) – A group that does not accept or intend to accept political contributions and does not use or intend to use more than 20 percent of its funds and other resources to make political expenditures is not a political committee. In this opinion, the requestor was organized under section 501(c)(4) of the Internal Revenue Code and planned to make direct campaign expenditures from its general treasury funds and use other resources to expressly advocate for the election or defeat of clearly identified candidates for state and local offices in Texas. Not more than exactly 20 percent of the organization's resources (including staff, volunteer time, and equipment) and funds (including the proportional share of administrative expenses) would be used to make direct campaign expenditures.

EAO No. 519 (2014) – Title 15 of the Election Code does not prohibit a candidate from accepting an in-kind political contribution from an out-of-state political committee if the contribution is made from a permissible source and the candidate properly complies with the applicable disclosure requirements.

EAO No. 520 (2014) - An elected board member of an agency in the executive branch of state government may accept tuition, food, transportation, or lodging only if acceptance is not prohibited under the applicable laws, such as lobby law, the penal code, and campaign finance law.

EAO No. 521 (2014) - A specific-purpose committee may use political contributions to purchase tickets to entertainment events for a candidate when the primary purpose for the candidate's attendance is to build relationships with donors or potential donors or is in connection with a specific campaign event. A specific-purpose committee may use political contributions to purchase tickets to entertainment events for an officeholder when the primary purpose for the officeholder's attendance is to appear or participate at the event in his or her official capacity as an officeholder.

EAO No. 522 (2014) - The work time of state employees is a thing of value belonging to the state and may not be misused by state employees or members of the legislature. The use of a legislative employee's work time for purely personal activities would not further a state purpose and would constitute a misuse. The legislature is the appropriate body for determining whether, subject to constitutional limitations, a particular use of legislative resources is permissible.

EAO No. 523 (2014) - Section 572.054(b) of the Government Code does not prohibit a former employee of the Texas Department of Transportation from performing services related to a bridge replacement project as described in this opinion unless the services would include a review or analysis of a matter in which the former employee participated as an employee of the agency.

EAO No. 524 (2015) - Under the facts as they are presented in this opinion, a legislator is not prohibited from receiving proceeds from the sales of a book he co-authored or using the proceeds to pay for his out-of-pocket expenses or donate to a charity.

EAO No. 525 (2015) - It is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay the mandatory monthly assessments adopted by the homeowners association for a residence in Austin that the member owns to the extent that the residence is used for political purposes.

Judicial Section of the State Bar of Texas Committee on Judicial Ethics

None for this time period.

State Commission on Judicial Conduct – Public Statements

None for this time period.

American Bar Association's Ethics Opinion

No opinions relating to judges for this time period.

Disciplinary Actions

(July 25, 2014 – March 2, 2015)

State Commission on Judicial Conduct

Public Sanctions

Public Reprimand: Municipal Court Judge failed to comply with the law, and failed to maintain professional competence in the law, when he routinely dismissed citations without a motion from the prosecutor out of fear and political pressure by other city officials. The Municipal Judge's actions came to light when the local newspaper published an article alleging that the Judge engaged in "ticket fixing" and claimed that he dismissed 839 citations over a 15-month span of time at the request of local politicians and city officials. The Municipal Judge told the Commission that he could not determine whether the information regarding the 839 citations was accurate because of inadequate record keeping and data entry by court staff. The Municipal Judge also claimed that his county had a culture of intimidation and that he feared he would lose his job if he did not consider/dismiss citations that he was asked to review personally. However, the Municipal Judge stated that he did look for a "legally permissible way to 'give consideration' " to the tickets he was given personally. The Commission found that the Municipal Judge violated Canon 2A, 3B(2), and Article V, §1-a(6)A of the Texas Constitution because "a judge who disposes of cases out of fear that those in power will terminate him, or to satisfy the political or financial interests of an entirely separate branch of government, cannot be – nor can he be seen to be – independent."

Public Admonishment: District Judge failed to comply with the law, and demonstrated incompetence in performing the duties of office, when he entered a receivership order in a divorce case that granted the receiver non-delegable judicial powers, including the authority to make payments to himself and his attorneys without any court oversight, approval, or intervention. District Judge ordered the receivership attorney to take "charge and possession" of a couple's community estate in a divorce case, and to "manage, control, and dispose of the property *as he sees fit*." This language allowed the attorney to pay himself $1.2 million in legal fees over a two year period, as well as $1 million to the attorneys representing the parties in the divorce case over the same period of time, without and determination by the Court as to whether the fees were reasonable and necessary. This was in violation to Canons 2A, 3B(2), and Article V, section 1-a(6) of the Texas Constitution. In addition, the District Judge also failed to comply with the county's Indigent Defense Plan. The plan required judges to maintain a list of attorneys eligible to represent indigent defendants, and to appoint those attorneys on a rotating basis. Evidence indicated that in District Judge's court, he made a total of 3,568 appointments to 192 attorneys over a five year period. However, 38% of those appointments went to only three attorneys, which leads to a presumption that District Judge's appointment system is not fair, neutral, and nondiscriminatory. District Judge also admitted that he did not maintain a list of eligible attorneys as required by the plan. His failure to comply with the county's indigent defense plan violated Canon 2A and 3(B)(2).

Public Reprimand: Justice of the Peace repeatedly failed to obtain his judicial education hours demonstrating incompetence in performing the duties of office, failure to comply with the law, and failure to maintain professional competence in the law. Over several years, the Justice of the Peace failed to meet the minimum training hours requirement because "he was busy and had taken on too many responsibilities." The Justice of the Peace further engaged in conduct that was inconsistent with the proper performance of duties and cast public discredit by committing the criminal offenses of public intoxication and driving while intoxicated over a two year period. The Commission found that his arrests undermined the public's confidence, especially because the judge presided over alcohol-related offenses. The Justice of the Peace violated Canon 2A and Article V, §1-a(6)A of the Texas Constitution. He also failed to cooperate with the Commission's investigation, in violation of Article V, §1-a(6)A.

Public Reprimand: The District Judge failed to timely execute the business of the Court by demonstrat-

ing a continued pattern of not showing up to court, not signing orders for months at a time, not disposing of cases in a timely manner, and having the largest backlog of cases within her county. The Commission found several instances where the District Judge back-dated orders so it would look like she had issued them months prior. District Judge claimed that it was not her fault that parties did not receive the orders on the date her clerk stamped them, but the fault of incompetent and untrained clerks. However, the Commission found no evidence to substantiate this claim and witnesses stated that only experienced clerks were hired for her Court due to the backlog. "Prompt disposition of cases is critical to the parties appearing in court, especially when vulnerable children are involved, and necessary to prevent backlogs that interfere with the administration of justice. A judge who fails to show up for court hearings, appears late in court, or delays making decisions and signing orders in cases involving the rights of parents and the best interests of children, causes harm and a great disservice to parties, lawyers, witnesses, jurors, and other judges. A judge's unjustified decisional delays, tardiness, and absenteeism are harmful to the parties, damage the public's respect for and trust in the judiciary, and cannot be condoned." The Commission also found that District Judge violated the Rules of Civil Procedure when issuing 600 DWOPs over a two day period without notices to parties or their attorneys, and without holding DWOP hearings. Some of the cases she dismissed were awaiting trial, had final orders awaiting her signature, and were even cases on which she had been recused. The Commission held that if District Judge's excuses for why she dismissed some of the cases were credible, it would mean she showed a great incompetence for the duties of her office. For the above reasons, District Judge violated Canon 2A, 3B(2), 3B(8) and Article V, §1-a(6)A of the Texas Constitution.

Public Reprimand: County Court at Law Judge (CCL Judge) had an extensive background of disputes and legal conflicts, even prior to taking the bench. At the time he was sworn in, he was the subject of a malpractice lawsuit, had been publicly disciplined by the State Bar, was defending against collection efforts for a separate malpractice suit and a sanction for filing a frivolous lawsuit, and had filed for bankruptcy protection. The Commission received numerous complaints from lawyers and litigants against CCL Judge during his time on the bench. The Commission found that CCL judge refused to recuse himself from cases in which he had personal relationships with an attorneys or parties, as well as acted discourteous and unprofessional towards a local attorneys. The CCL judge "used his position and authority to bully, retaliate against, and punish" the attorneys and an associate judge for filing motions to recuse, grievances, criminal complaints, and removals against him. His actions towards one of the attorneys resulted in several criminal indictments, to which CCL Judge made a plea agreement and issued a voluntary apology to the attorney. The Commission agreed that CCL Judge engaged in criminal behavior towards the attorney.

The Commission also held that he allowed his personal and intimate relationship with people to improperly influence his conduct. He used the county's fax machine to send pleadings and other legal documents on behalf of his girlfriend, although the documents purported to be from the girlfriend, acting *pro* se. These actions also resulted in an indictment against CCL Judge. He again made a plea agreement admitting guilt and issued an apology.

The Commission also reviewed documentation demonstrating that CCL Judge engaged in a pattern of discovery abuse and filed frivolous motions in an effort to delay two malpractices cases against him, eventually being sanctioned $7,500 in one of the cases.

Moreover, the Commission found that CCL Judge committed criminal acts by testifying falsely under oath on numerous issues, including his denial that he bought a silencer for his gun in furtherance of a plot to kill his ex-wife, and his statements that the Commission had dismissed all pending complaints against him when in fact the Commission had notified him and his attorneys of pending complaints. For these reasons, the Commission held that CCL Judge failed to comply with the law and engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his duties. Furthermore, his conduct of lying under oath undermined public confidence in the judiciary, and "it is unlikely that anything could be more prejudicial to the administration of justice than testifying falsely under oath."

CCL Judge exhibited bad faith in many of his rulings, while willfully and persistently violating the law. For the reasons stated above, and many more listed in the Commission's public reprimand, CCL Judge violated Canons 2A, 2B, 3B(1), 3B(4), 3B(5), 3B(8), and 4G, as well as Article V, §1-a(6)A of the Texas Constitution.

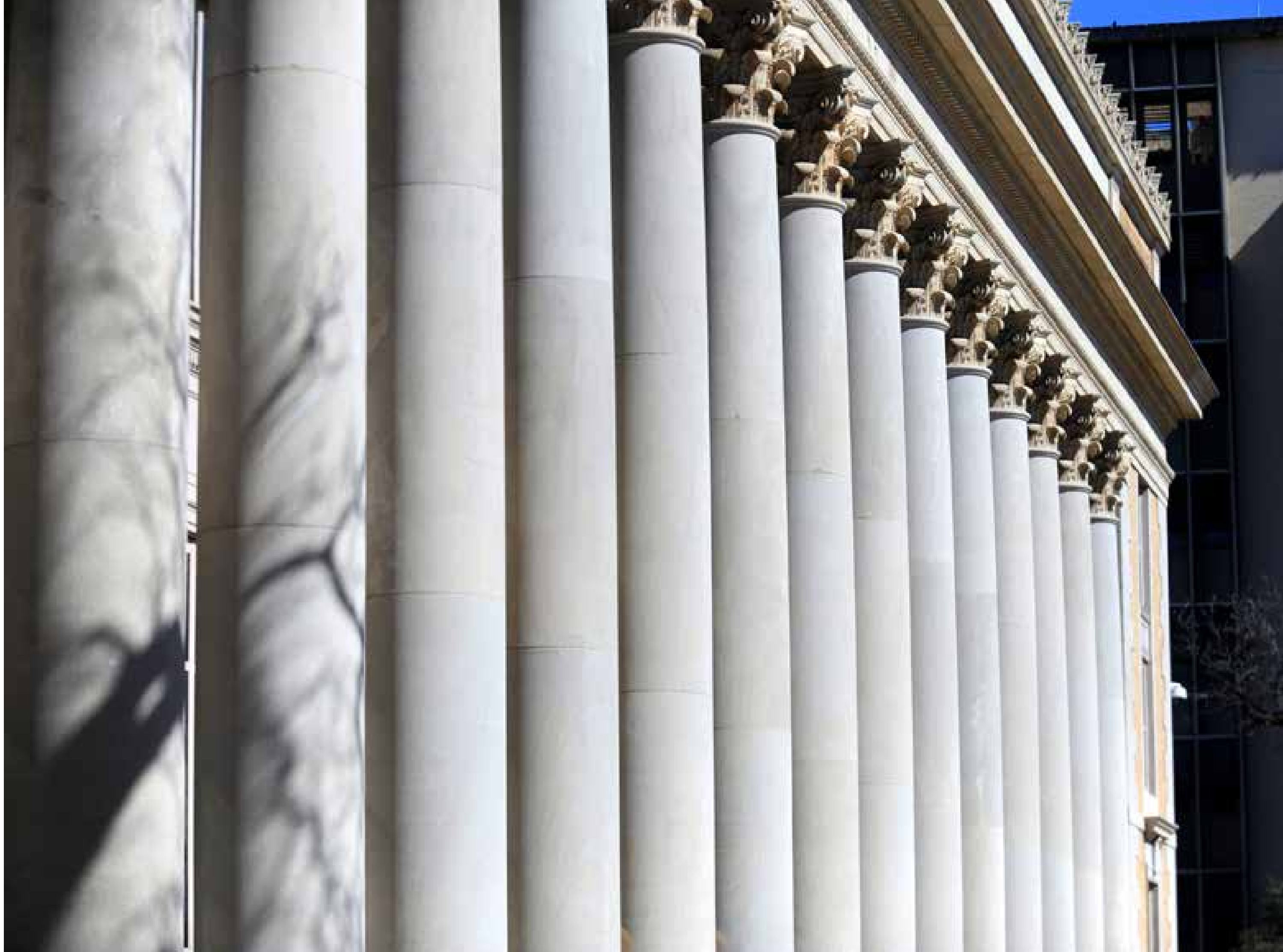
Public Reprimand and Order of Additional Education: The Commission found that Justice of the Peace lent the prestige of his office to further private interests by using his name and judicial title in a flyer promoting his church's toy drive, using the courthouse to collect toys on behalf of the church, and using the court's phone number as the contact number for the toy drive. Furthermore, the Commission found that Justice of the Peace routinely dismissed traffic tickets in exchange for a $20.00 fee, without a motion from the State, which is unauthorized by Texas law. Justice of the Peace violated Canon 2A, 2B, and 3B(2).

Public Reprimand and Order of Additional Education: Justice of the Peace demonstrated a lack of professional competence in the law by intervening in a private dispute between a contractor and electrician. Justice of the Peace held private conversations with an electrician who alleged that a contractor had not paid him for work. The Justice of the Peace then met with the building inspector, before finally calling the contractor and advising him to pay the electrician to avoid going to court. The Commission found that the Justice of the Peace had conducted an independent investigation, and lent the prestige of his office to advance the private interests of the electrician. Justice of the Peace violated Canons 2A, 2B, and 3B(2).

Private Sanctions

The following summaries have been taken directly from the State Commission on Judicial Conduct's website: http://www.scjc.state.tx.us/pdf/actions/SummariesofPrivateSanctions8-31-14.pdf

The judge failed to comply with the law and failed to maintain professional competence in the law by failing to attend the required judicial training for new judges upon assuming the municipal court bench. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Court Judge*. (07/30/14).



The part-time judge allowed other employment to interfere with his duties as a judge and failed to take reasonable steps to ensure that his court was open and accessible to the public; that court business was promptly and appropriately handled in his absence; and that monthly activity reports were timely filed with the appropriate entities as required by law. [Violations of Canon 4A(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Order of Additional Education of a Justice of the Peace*. (08/06/14).

The judge failed to maintain order and decorum in the proceedings before him and failed to be patient, dignified and courteous by using profanity while presiding over a court proceeding. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (08/07/14).

The judge failed to follow the law when he attempted to discipline a lawyer utilizing the threat of contempt of court for the attorney's out-of-court statements posted on Facebook. In his discussion with the attorney about the Facebook comments, the judge failed to act in a patient, dignified and courteous manner as expected of a judicial officer. Additionally, the judge failed to comply with the county's Indigent Defense Plan when he removed the public defender's office from 39 criminal cases without demonstrating "good cause shown on the record." [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Private Warning of a County Court at Law Judge*. (08/07/14).

The judge failed to comply with the law and failed to maintain professional competence in the law when he issued a non-monetary judgment in a small claims case which required the defendant to remove a structure from the plaintiff's property and then deprived the defendant of his right to appeal the judgment within the ten-day period provided by the law in effect at the time. [Violation of Canons 2A and 3B(2) of

the Texas Code of Judicial Conduct.] *Private Reprimand of a Former Justice of the Peace.* (08/15/14).

The judge failed to follow the law and failed to accord a defendant his right to be heard when she entered a default judgment in a criminal case due to the defendant's failure to appear for trial. [Violation of Canons 2A and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge*. (08/15/14).

The judge failed to maintain patience, courtesy and dignity toward a defendant when she raised her voice and argued with the defendant, attempted to extract admissions of guilt from the defendant, and made demeaning comments to the defendant during the magistration process. [Violation of Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge*. (08/15/14).

The judge failed to follow the law and demonstrated a lack of professional competence in the law when he (1) denied a litigant's motion to dismiss the defendant's appeal after the defendant failed to timely correct the deficient appeal bond from the justice court which deprived the judge of jurisdiction; (2) ordered the litigant to immediately comply with the judge's order, under threat of arrest, even though no written judgment had been entered in the case; (3) failed to timely respond to the litigant's request to set a supersedeas bond in the case; (4) failed to timely issue a written judgment from which the litigant could appeal; and (5) set an excessive supersedeas bond based on factors that were not authorized and/or allowable under the law. In addition, the county attorney, who was related to the judge, provided the judge with legal advice and assistance in the civil case while simultaneously handling the prosecution of a criminal case pending before the judge involving the same litigants and dispute. The relationship between the judge and prosecutor and their interactions in the civil and criminal cases created an appearance – if not the reality – that the prosecutor and judge discussed facts or otherwise shared information pertaining to the proceedings and conveyed the impression the prosecutor was in a special position to influence the judge. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a County Judge.* (08/26/14).

The judge failed to comply with the law and failed to maintain professional competence in the law when he failed to timely forward a recusal motion to the Presiding Judge of the Administrative Judicial Region and delayed entry of the order of recusal in a case involving a former law partner/material witness until a petition for writ of mandamus had been filed against the judge to compel him to comply with Rule 18a of the Texas Rules of Civil Procedure. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Warning and Order of Additional Education of a District Court Judge*. (08/27/14).

Suspensions

None since the date of the last publication.

Resignations

None since the date of the last publication.

Texas Ethics Commission

Sworn Complaints

Editor's Note: *Only complaint orders involving judicial campaigns are summarized here. For the full text of the orders, visit: http://www.ethics.state.tx.us/sworncomp/orderlst_issued.html*

Date Issued	Violations	Sanction
11/14/14	Respondent is a District Judge. Respondent listed an individual as the payee for a political expenditure that was meant to reimburse the individual for invitations purchased for a fundraiser. The respondent should have listed the ultimate vendor that the invitations were purchased from as the payee. Respondent also improperly reimbursed himself for political expenditures he made from personal funds. He was required to itemize the expenditures from personal funds as political expenditures, and include clear designations that the expenditures were subject to reimbursements. Respondent also did not sufficiently describe an expenditure for a post office box when he listed the payee as "Post Master" and description as "donation." He also made violations with other expenditures because the purpose descriptions merely repeated the category of the expenditures. Respondent also did not properly report political contributions because he left the principal occupation, job title, and employer fields blank for 88 contributors. Finally, Respondent made a prohibited contribution to a county executive committee for the purpose of political advertising when his office was not on the ballot. The Commission found that there was no evidence that the value of goods or services received exceeded the amount of the contribution, and the contribution was over $250. (SC-31207211)	$1,000 civil penalty
11/19/14	Respondent was a candidate for District Judge. Respondent's judicial district had a population of less than 250,000. Respondent violated the Election Code by accepting political contributions of more than $1,000 from an individual. Respondent accepted political contributions from three married couples, with each person contributing $750-$1,000. However, under the Election Code, a contribution by a spouse or child of an individual is considered to be a contribution from that individual. Therefore, respondent exceeded the contribution limits by accepting $750-$1,000 from both spouses. (SC-31404111)	$400 civil penalty
12/01/14	Respondent is a District Judge. Respondent failed to disclose the full name of payees for political expenditures exceeding $100. He used the abbreviations of "HTLA Golf" and "Victory Fund" instead of the full names of the golf tournament and PAC. Respondent also listed staff members as the payee for five political expenditures that were meant to reimburse them for expenditures they made out of personal funds. The respondent should have listed the actual vendor that the staff purchased items from. Finally, the Commission found that Respondent used political contributions to make a contribution to a political committee exceeding $250, during a period in which he was not on the ballot, and that Respondent failed to earmark the funds for non-political purposes. (SC-3120375)	$300 civil penalty

12/17/14	Respondent was a campaign treasurer for a PAC in support of three district judge candidates. Respondent disclosed a $0 balance maintained on a semi-annual report, but that was in fact the expected bank balance rather than the actual bank balance because a check did not clear until after the date of the report. For five contributions, Respondent either improperly omitted or wrote "none" for employer, and disclosed the wrong employer name for two other contributions. Respondent also listed employees and "AMEX" as the payee of expenditures for the purpose of reimbursement, which is a violation. The respondent should have listed the actual vendors from which the employees made purchases or the actual vendor for which the AMEX was used. Furthermore, Respondent listed the description of the purchases as "general supplies," which is an insufficient description. (SC-3120372)	$500 assessment fee
12/22/14	Respondent is a District Judge. Respondent over-reported political contributions maintained by $110 and failed to properly disclose the principal occupations, job titles, and employer names for 12 contributions. Respondent also failed to report an iPad he purchased for campaign use, valued over $500, on Schedule M which is used for reporting assets. Furthermore, Respondent failed to sufficiently describe political expenditures or the officeholder activity for which the expenditure was made. Finally, Respondent did not disclose the actual vendor payee, address, date and/or amount for five political expenditures. (SC-31206194)	$450 assessment fee
12/23/14	Respondent was a candidate for county court-at-law judge. Respondent failed to timely file reports, often missing the deadline by only one day. In regards to a purchase of a voter database, Respondent agreed to pay $500 up front, with $1,000 to be paid at a later date. Respondent alleged that the database was defective and refused to pay the $1,000. Only the $500 payment was disclosed as a political expenditure, but the Election Code requires that a purchase of goods or services pursuant to a vendor's normal business practices and not with the intent to aid a campaign be reported as a political expenditure. Therefore, Respondent should have reported the full $1,500 as a political expenditure at the time he made the purchase, even if $1,000 was to be paid at a later date. Respondent also failed to report the amount of a filing fee to secure a place on the ballot. Finally, Respondent failed to disclose a $450 in-kind contribution for access to a voter database. (SC-31210310, SC-31210319, SC-31210320, SC-31210321, SC-31211332, SC-31211333, SC-31211334)	$375 civil penalty
01/05/15	Respondent is a District Judge. Respondent's campaign mailed a letter addressed to "Fellow Members of the Business Community," signed by several business people, in which they praised Respondent and urged for re-election, without including a political advertising disclosure statement. The Election Code requires political advertising to indicate that it is political advertising, and the full name of the person who paid for the advertising, the political committee authorizing the advertising, or the candidate or specific-purpose committee supporting the candidate. (SC-31210316)	$500 civil penalty

02/02/15	Respondent is a District Judge. Respondent's judicial district has a population of less than 250,000, so the Election Code limits the aggregate amount of political contributions he can take from a law firm to $1,000. Respondent accepted a total of $4,750 over the limit from five different law firms. Respondent also accepted $1,000 each from spouses, which are deemed the same individual under the Election Code and therefore contributions are limited to $1,000 per married couple. Respondent did not make a violation by accepting $1,000 each from a brother and sister because the Election Code does not treat them as one individual. However, Respondent did violate the Election Code by accepting $500 contribution from a corporation, as well as $1,500 contribution from an entity (which is limited to $1,000). Finally, Respondent also failed to timely respond to the Commission's notice of complaints. (SC-31207213, SC-31207214)	$1,175 civil penalty

Beyond the Cynicism: Judges Can Help Lawyers and the Community Through Pro Bono

By Hon. Bill Henry

feature

A judge steps into the courtroom on Monday morning for a docket call. The civil docket is filled with pro se litigants attempting to handle complex litigation without legal help. They are dividing complex retirement benefits "by agreement." Pro se consumers are lined up against represented parties. Some of the lawyers who do show up have little trial experience.

This scenario repeats itself day in and day out in courts across the nation. What are the long-term implications of this situation for the practice of law and what can be done to help improve these issues?

Pro bono services may provide a way to alleviate some of these problems and move our profession to a place in which benefiting the community is a primary goal. A number of lawyers, bar associations, and law schools are taking the road less traveled to find practical ways to meet needs in the real world and improve the profession by offering pro bono services. What about judges, though? What role should they play in encouraging this process?

The Problem

Trial judges are acutely aware of several mega trends that are taking place in the legal profession.

First, most lawyers cannot get trial experience. Without talented, experienced trial lawyers, the Sixth and Seventh amendments of the Constitution lose their impact and offer less protection to citizens who need it.

Second, young lawyers are finding it challenging to develop a practice in which they represent real people with real problems in court.

Third, even experienced lawyers are getting fewer and fewer opportunities to hone their craft through trial experience. Without this experience, lawyers may find it difficult to represent their clients effectively, obtain board certification or grow their careers through membership in organizations such as American Board of Trial Advocates.

Fourth, some courts are inundated with pro se dockets and have no effective way to insure justice to parties within ethical guidelines.

Fifth, law schools are struggling to find

> "Trial judges are acutely aware of several mega trends that are taking place in the legal profession.

ways to instill the ethic of service in their students, find quality careers for their graduates and provide a viable way to teach effective trial skills.

Sixth, cynicism suggests that the law is only a business and that only the strong survive.

Creative people in the bar are addressing these issues and finding solutions. Judges, too, can play a role in synthesizing the needs of the community with the needs of the profession.

feature

Success Stories

Law Schools and Bar Associations. Law schools and local bar associations have already taken the lead in accepting their dual role as trainers and as community servant-leaders. For example, Baylor Law School provides law students to assist litigants in McLennan County Veterans Court. They also provide students an opportunity to serve through Caritas, a local social service agency. The University of Texas Law School provides a Pro Bono Scholarship program to students who commit to serving in a pro bono capacity. Other Texas law schools are providing additional opportunities for practical training through service. This summer the Litigation Section of the State Bar is funding eight pro bono summer internships for law students.

Local bar leaders are also taking the lead in their communities. The Austin Bar Association provides a local self-help desk for pro se family law litigants. Hays County Bar members provide representation to pro se litigants in family law cases. Many other local bar associations are having a similar impact in their communities.

Those ideas merely scratch the surface of the opportunities that are available. The American Bar Association website "Be the Change" illustrates the myriad of opportunities that exist for those with the desire to help people and a little imagination. For example, Miami University Law School provides a residency program for graduates to spend a full year doing pro bono work after graduation. The Chicago Bar Foundation has started a Justice Entrepreneur Project, a law firm incubator model that matches young attorneys with low to moderate income clients. Arizona State University Law School has actually set up a non-profit law firm for some of its graduates. This firm provides low and

> All of these ideas are good in theory but they cost money.

reduced rate fees for clients in with family law, consumer law and contract drafting needs.

Law firms. Large law firms are involved too. Vinson Elkins, among other initiatives, provide pro bono services in the appellate courts. Skadden Arps provides a two-year fellowship to some of its associates who take pro bono cases. Other law firms and solo practitioners spend countless hours doing pro bono work.

Funding

All of these ideas are good in theory but they cost money. What are some ways to finance these ideas? The Texas Bar Foundation works with many others to provide financial resources for pro bono representation. This past year the foundation has funded the Texas Rio Grande Legal Aid Outreach Initiative. This program advises rural resident s of their rights and legal services. The foundation has also provided pro bono funds for victims of domestic violence to seek help in obtaining protective orders and helped fund a monthly mobile clinic to provide information on immigration law. Additionally, the foundation assists Catholic Charities in offering pro bono representation for low-income individuals and helped fund a contract attorney for Shelter Ministries of Dallas. Finally, the initiative providing funding for Lone Star Legal Aid to hire an attorney for the Military and Veterans Unit.

What About Judges?

Judges can play a role in synthesizing needs in the local community with needs in the legal profession. Sometimes paying attention to small details can make a big difference in the system. Every court is different, but some common ideas can be useful.

1. Use Veterans Court, Mental Health Court, and Drug Courts to help train young lawyers.
2. Develop a list of lawyers who will serve as pro bono attorneys.
3. Consider appointing younger and older attorneys to team together in a mentoring relationship. The American Inns of Court are taking the lead in doing this with positive results.
4. Work with local bar associations to set up a system of pro bono representation.
5. Remind pro bono lawyers to set up limited scope agreements so that they are not stuck with a case forever. The State Bar has an effective Limited Scope Representation Subcommittee with forms that conform to the appropriate ethical requirements.
6. Encourage pro bono systems that leverage technology so that busy attorneys can participate with a minimum investment of time.
7. Work with law students and law schools to encourage pro bono work and the concept of service.
8. Understand that pro bono is not appropriate for every case, but can be especially useful in certain areas, such as housing, employment, civil rights and health care.
9. Provide leadership and encouragement when the programs lose momentum in the face of other responsibilities.
10. As local dispute resolution centers grow in importance, consider appointing attorneys for pro se mediations.
11. Support the Texas Bar Foundation that helps fund these programs.
12. Consider allowing pro bono attorneys to go to the front of the line on big dockets.
13. Become part of the conversation to rethink a final semester or year of law school to provide practical legal experience in the pro bono context.

Pro bono needs in the community are vast, and most pro bono litigants have multiple, interconnected issues to solve, but the problems are not insurmountable. Judges are in a position to help narrow the focus of needs and make some changes in the system to match up the needs of litigants and attorneys. ♦

NEW JUDGES

Hon. Linda Bayless	Burnet County Court at Law	Burnet
Hon. Bob Behrens	Bexar County Court at Law No. 15	San Antonio
Hon. Jennifer Bennett	265th District Court	Dallas
Hon. Richard Bianchi	Aransas County Court at Law	Rockport
Hon. Brandon Birmingham	292nd District Court	Dallas
Hon. Joe Black	Harrison County Court at Law	Marshall
Hon. Casey Blair	86th District Court	Kaufman
Hon. Cindy Bourland	3rd Court of Appeals	Austin
Hon. Celeste Brown	Bexar County Court at Law No. 8	San Antonio
Hon. Tom Brown	Polk County Court at Law	Livingston
Hon. Bobby Burnett	50th District Court	Paducah
Hon. Crystal Chandler	Bexar County Court at Law No. 13	San Antonio
Hon. David Cook	Tarrant County Criminal Court No. 1	Fort Worth
Hon. Kim Cooks	255th District Court	Dallas
Hon. Matt Crain	Hill County Court at Law	Hillsboro
Hon. Kelly M. Cross	Bexar Probate Court No. 1	San Antonio
Hon. Karin Crump	250th District Court	Austin
Hon. Anne B. Darring	306th District Court	Galveston
Hon. Francisco X. Dominguez	205th District Court	El Paso
Hon. Robin V. Dwyer	Guadalupe County Court at Law No. 1	Seguin
Hon. Billy Eichman	364th District Court	Lubbock
Hon. Jason Ellis	Smith County Court at Law	Tyler
Hon. Cindy Ermatinger	443rd District Court	Waxahachie
Hon. Jack Ewing	Galveston County Court at Law No. 3	Galveston
Hon. Michael Garcia	Jim Wells County Court at Law	Alice
Hon. Jason Garrahan	Bexar County Court at Law No. 4	San Antonio
Hon. Eli Garza	377th District Court	Victoria
Hon. Delinda Gibbs-Walker	1A District Court	Jasper
Hon. Amber Givens	282nd District Court	Dallas
Hon. David Glickler	Hays County Court at Law No. 2	San Marcos
Hon. Bonnie Goldstein	44th District Court	Dallas

Hon. Patricia Grady	212th District Court	Galveston
Hon. Lisa Green	Dallas County Criminal Court No. 5	Dallas
Hon. Tiffany Haertling	442nd District Court	Denton
Hon. David Hagerman	297th District Court	Fort Worth
Hon. Kyle Hawthorne	85th District Court	Bryan
Hon. Steve Hilbig	187th District Court	San Antonio
Hon. Steve Hughes	8th Court of Appeals	El Paso
Hon. Kregg Hukill	242nd District Court	Plainview
Hon. Alfred L. Isassi	Kleberg County Court at Law	Kingsville
Hon. Curtis Jenkins	Parker County Court at Law No. 2	Weatherford
Hon. Margaret Jones-Johnson	Dallas Probate Court No. 3	Dallas
Hon. Shequitta Kelly	Dallas County Criminal Court No. 11	Dallas
Hon. Tammy Kemp	204th District Court	Dallas
Hon. Donna King	26th District Court	Georgetown
Hon. M. Scott Layh	Ector County Court at Law No. 2	Odessa
Hon. David Lindemood	318th District Court	Midland
Hon. Timothy S. Linden	Hunt County Court at Law No. 1	Greenville
Hon. Russell Lloyd	1st Court of Appeals	Houston
Hon. Juan Magallanes	357th District Court	Brownsville
Hon. Omar Maldonado	Hidalgo County Court at Law No. 8	Edinburg
Hon. Andrea Martin	304th District Court	Dallas
Hon. Hugo Martinez	Webb County Court at Law No. 1	Laredo
Hon. Steve McClure	Johnson County Court at Law No. 2	Cleburne
Hon. Timothy McCoy	Nueces County Court at Law No. 5	Corpus Christi
Hon. Bill Miller	5th District Court	Texarkana
Hon. Stephanie Mitchell	291st District Court	Dallas
Hon. Jefferson Moore	186th District Court	San Antonio
Hon. Chris Morales	Fort Bend County Court at Law No. 1	Richmond
Hon. James Mosley	316th District Court	Stinnett
Hon. Sam C. Moss	Brown County Court at Law	Brownwood
Hon. Nancy Mulder	Dallas County Criminal Court No. 4	Dallas
Hon. Greg Neeley	12th Court of Appeals	Tyler
Hon. David Newell	Court of Criminal Appeals	Austin
Hon. Kevin O'Connell	227th District Court	San Antonio
Hon. Jeanne Parker	Bell County Court at Law No. 1	Belton
Hon. Maggie Perez-Jaramillo	400th District Court	Richmond
Hon. Mark Pittman	352nd District Court	Fort Worth
Hon. Daphne Previti Austin	289th District Court	San Antonio
Hon. Jack Pulcher	105th District Court	Kingsville
Hon. Joe Lee Register	Angelina County Court at Law No. 1	Lufkin
Hon. Bobby Rich	Kaufman County Court at Law No. 2	Kaufman
Hon. Hal Ridley	278th District Court	Huntsville
Hon. Paul Rotenberry	326th District Court	Abilene
Hon. David Schenck	5th Court of Appeals	Dallas
Hon. John Schmude	247th District Court	Houston
Hon. Brody Shanklin	211th District Court	Denton
Hon. Luis Singleterry	92nd District Court	Edinburg
Hon. Susan Skinner	Bexar County Court at Law No. 14	San Antonio
Hon. Tracy Sorensen	Walker County Court at Law	Huntsville
Hon. Dan Spjut	Harris County Criminal Court at Law No. 10	Houston

Hon. Craig Thomas Stoddart	5th Court of Appeals	Dallas
Hon. Tommy Stolhandske	Bexar County Court at Law No. 11	San Antonio
Hon. Janice Stone	Cherokee County Court at Law	Rusk
Hon. Evan Stubbs	424th District Court	Burnet
Hon. Blake Thompson	Erath County Court at Law	Stephenville
Hon. Stacy Trotter	358th District Court	Odessa
Hon. Chuck Vanover	Tarrant County Criminal Court No. 8	Fort Worth
Hon. Coby Waddill	Denton County Criminal Court No. 5	Denton
Hon. Carey Walker	Tarrant County Criminal Court No. 2	Fort Worth
Hon. Stephani Walsh	45th District Court	San Antonio
Hon. Kent Walston	58th District Court	Beaumont
Hon. Ingrid Warren	Dallas Probate Court No. 2	Dallas
Hon. Elizabeth Welborn	San Patricio County Court at Law	Sinton
Hon. Raquel West	252nd District Court	Beaumont
Hon. Bill Whitehill	5th Court of Appeals	Dallas
Hon. Scott Williams	Henderson County Court at Law No. 1	Athens
Hon. Staci Williams	101st District Court	Dallas
Hon. Russell Wilson	218th District Court	Jourdanton
Hon. Mark Woerner	Nueces County Court at Law No. 4	Corpus Christi
Hon. Todd Wong	Travis County Court at Law No. 1	Austin
Hon. Clint Woods	Jefferson County Court at Law No. 3	Beaumont
Hon. Kevin Patrick Yeary	Court of Criminal Appeals	Austin

IN MEMORIAM

Hon. Charles Benjamin Akers	Parker County Court at Law No. 2	Weatherford
Hon. H.G. Andrews	259th District Court	Rockwall
Hon. William H. Brigham	2nd Court of Appeals	Burleson
Hon. Harley Clark	250th District Court	Dripping Spring
Hon. Kenneth H. Keeling	278th District Court	Huntsville
Hon. Thomas Watson Murrah	Medina County Court at Law	Castroville
Hon. Mark Price	89th District Court	Wichita Falls
Hon. Jim Scanlan	Harris County Probate Court No. 3	Houston

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2014 College for New Judges

In Alphabetical Order: John Bailey, Linda Bayless, Jennifer Bennett, Richard Bianchi, Joe Black, Casey Blair, Ada Brown, Celeste Brown, Mary Brown, Tom Brown, Roel Canales, Crystal Chandler, David Cook, Kim Cooks, Matt Crain, Kelly M. Cross, Karen Crouch, Karin Crump, Anne B. Darring, Melissa DeGerolami, Lindsay DeVos, Francisco X. Dominguez, Robin V. Dwyer, Billy Eichman, Jason Ellis, Cindy Ermatinger, Maya Evans, Jack Ewing, Alicia Franklin, Michael Garcia, Jason Garrahan, Eli Garza, Delinda Gibbs-Walker, Amber Givens, David Glickler, Bonnie Goldstein, Patricia Grady, Lisa Green, David Hagerman, Susan F. Harris, John Hawkins, Kyle Hawthorne, Steve Hilbig, Steve Hughes, Kregg Hukill, Alfred Isassi, Maggie Perez-Jaramillo, Curtis Jenkins, Margaret Jones-Johnson, Shequitta Kelly, Tammy Kemp, Donna King, Ami Larson, M. Scott Layh, David Lindemood, Timothy S. Linden, Omar Maldonado, Andrea Martin, Hugo Martinez, Aurora Martinez Jones, Ernie McClendon, Steve McClure, Timothy McCoy, Tim Menikos, Stephanie Mitchell, Jefferson Moore, Chris Morales, James Mosley, Sam C. Moss, Nancy Mulder, David Newell, Kevin O'Connell, Jeanne Parker, Daphne Previti Austin, Charley Prine, Jack Pulcher, Monica Purdy, Joe Lee Register, Bobby Rich, Bert Richardson, Hal Ridley, Paul Rotenberry, Lorina Rummel, John Schmude, Brody Shanklin, Luis Singleterry, Susan Skinner, Tracy Sorensen, Dan Spjut, Craig Thomas Stoddart, Tommy Stolhandske, Janice Stone, Evan Stubbs, Blake Thompson, Stacy Trotter, Charles Vanover, Coby Waddill, Carey Walker, Stephani Walsh, Kent Walston, Ingrid Warren, Elizabeth Welborn, Raquel West, Bill Whitehill, Staci Williams, Russell Wilson, Mark Woerner, Todd Wong, Clint Woods, Renee McElhaney, Kevin Patrick Yeary

2014 College for New Judges

The Texas Center Honors Outstanding Faculty and Jurists

Texas Center for the Judiciary's 2013-2014 Chair's Awards: Hon. Linda Chew and Judge Mark Atkinson

Hon. Linda Chew

Judge Chew received her bachelor's degree from the University of Houston and her master's degree in educational administration from Stephen F. Austin State University. She worked as a teacher in the El Paso Independent School District and the Alief Independent School District (Houston, Texas). She later served as the associate director of the Technical Assistance Center of the Southwest, located at Stephen F. Austin State University. After graduating from law school in 1986, she became a partner in the law firm of Douglass, Chew & Chew until joining Advocacy, Incorporated in 1999. Much of Judge Chew's legal career has been devoted to the service of children and families and to immigrants. Judge Chew was elected as judge of the 327th Judicial District Court in March 2002, and took her oath of office in January 2003. Judge Chew has received numerous awards: Victory Warriors Academy Partners in Education Award—2008; Mexican American Bar Association of El Paso's President's Award for Outstanding Judge of the Year—September, 2007; Las Americas Asylum & Refugee Project Border Heroes Award—August 2002; Texas State Bar Association Distinguished Service to Children and Families—August 2000; and the El Paso Bar Association Pro Bono Award—1999-2000. Judge Chew is a past chair for the Texas Center for the Judiciary Board of Directors. It was the first time a judge from El Paso held this position.

Hon. Mark Atkinson

Judge Mark D. Atkinson took the bench in 1987 and served 24 years as a judge in a Harris County, Texas, Criminal Court. After six terms of office he retired and was named Judicial Resource Liaison under the Texas Center for the Judiciary's Texas Department of Transportation Traffic Safety Grant Program. He served two years in that capacity before being named Executive Director (and now Chief Executive Officer) of the Texas Center for the Judiciary. He has been active in state and national judicial leadership and education, serving as Chair of the Texas Center as well as the Judicial Section of the State Bar of Texas. Judge Atkinson was first licensed to practice law in 1980, and for seven years developed a practice focused on criminal, family and civil trial law. He earned his BA from the University of Texas at Austin and his law degree from South Texas College of Law, in Houston. Judge

Atkinson is married to Vicki Atkinson. They have raised four sons together.

2013-2014 Exemplary Judicial Faculty Award: Hon. Cynthia Kent

Judge Cynthia Stevens Kent is in the private practice of law in Tyler, Texas. She served as Judge of the 114th Smith County District Court for 20 years and Judge of the County Court at Law No. 2 in Smith County for four years before retiring from the bench in 2009. Prior to taking the bench in 1984, Judge Kent was a practicing attorney. She is a former assistant criminal district attorney for Smith County and a former shareholder with the law firm of Kent, Good, Anderson & Bush, PC. She is past chair of the Texas Center for the Judiciary and Judicial Section of the State Bar of Texas. She is a former board member of the Texas County Court at Law Judge Association, the Texas Center for the Judiciary, the State Bar of Texas and the Texas Bar Foundation. Judge Kent has also served as a faculty member for more than 10 years at the The National Judicial College Advanced Evidence Course and for 20 years with the Texas Center for the Judiciary. Judge Kent has authored more than 200 professional papers, the Texas Benchbook for County Court at Law Judges, co-author of the *Texas Benchbook for District Judges,* co-author of *Presiding Over a Capital Case – A Benchbook for Judges* published in 2009 by the National Judicial College, and co-authored with Judge Sharen Wilson an article "Handling Capital Cases – Dealing with Media" in the *Texas Wesleyan Law Review,* Winter 2010, along with several other published articles. She earned a Master of Judicial Studies from the University of Nevada, Reno, JD from South Texas College of Law and her BA from the University of Houston. Judge Kent has completed her coursework at the University of Nevada Reno PhD of Judicial Studies Program but has not completed her dissertation.

2013-2014 Exemplary Non-Judicial Faculty Award: Mr. Richard Orsinger

Richard Orsinger lives in San Antonio but practices out of both his San Antonio and Dallas offices. He is board certified in family and civil appellate law by the Texas Board of Legal Specialization. In September, 2009, he was listed as one of Texas' Top Ten Lawyers in the Texas Monthly Super Lawyers Survey and as Texas' Top Family Lawyer in Texas Lawyer's Go-To-Guide (2007). Mr. Orsinger is former chair of the State Bar of Texas' Family Law Section and Appellate Law Section, and past president of the Texas Academy of Family Law Specialists and the Texas Family Law Foundation. He was chair of the State Bar's Continuing Legal Education Committee 2002-03. He has served on the Texas Supreme Court's Rules Advisory Committee since 1994, where he is chair of the Subcommittee on Rules 16-165a. He served on the Texas Board of Legal Specialization's Appellate Law Exam Committee 1990-2006

and is a member of the American Board of Trial Advocates. Mr. Orsinger has four certificates of merit from the State Bar of Texas. He has been director of many CLE courses and written over 250 CLE and law review articles. He authored Vol. 5 of McDonald's Texas Civil Practice: Appellate Procedure; served as editor-in-chief for the State Bar of Texas Family Law Section's Expert Witness manual; and the State Bar's Practice in the Texas Supreme Court manual.

2013-2014 Exemplary Article Award: Hon. Paul Davis and Hon. David Peeples

Hon. Paul Davis

Judge Paul Davis was judge of the 200th District Court from 1983 until his retirement December 31, 2004. Presently Judge Davis is a mediator, arbitrator and private judge and sits regularly as a visiting judge by assignment. He has served as a faculty member for the Texas Center for the Judiciary's College for New Judges since 1992 and served on the Judicial Section's Executive Committee from 1993–1996. He is the current chair of the Ethics Committee of the Judicial Section of the State Bar of Texas and serves on the Executive Committee of the ADR Section of the Austin Bar Association. Judge Davis was the first recipient of the Texas Center's Mari Kay Bickett Judicial Excellence Through Education Award. He is a frequent speaker on various topics for the Texas Center for the Judiciary, State Bar of Texas, and Austin Bar Association. Judge Davis attended the University of Tulsa, where he earned his BA in 1967. He earned his JD from the University of Texas in 1970.

Hon. David Peeples

David Peeples has served as judge of Bexar County's 285th District Court (1981-1988), as justice of the Fourth Court of Appeals (1988-1994), and as judge of the 224th District Court (1995-2004). In addition, since 1996 he has been the presiding judge of the Fourth Administrative Judicial Region of Texas. Since his retirement in 2004, he has been sitting by assignment. He received his BA from Austin College, an MA in government from the University of Texas, and his JD from the University of Texas, where he was a note and comment editor on the law review. For 12 years he was a Texas commissioner to the National Conference of Commissioners on Uniform State Laws, and he has served on the Texas Supreme Court's Advisory Committee since 1993. He chairs the Multi-District Litigation Panel of Texas.

2013-2014 Judicial Excellence in Education Award: Hon. Alfonso Charles and Ms. Courtney Gabriele

Hon. Alfonso Charles

Alfonso Charles has served as judge of the 124th District Court in Gregg County since December 4, 2009. Prior to that, he served as judge of the County Court at Law #2 of Gregg County, Texas for almost seven years. Judge Charles graduated from Austin College in Sherman, Texas in 1987 with a double major in business administration and political science. He received his law degree from Baylor University School of Law in Waco in 1990. He served as an assistant district attorney in El Paso County for one year and Gregg County for over 11 years prior to being elected to the bench. He has served on the State Bar Judicial Section Board since 2010. He served as chair of the Judicial Section for 2012-2013. He served on the Texas Center for the Judiciary Board from 2007-2009. He is a member of the Court of Criminal Appeals Judicial Education Committee. He is a former member of the Judicial Council and the Task Force on Indigent Defense. He is board certified in criminal law by the Texas Board of Legal Specialization. He is a member of the Longview Greggton Rotary and serves on the board of directors of See-Saw Children's Place in Longview. He is a past president of the Gregg County Bar Association and past president of the Texas Association of County Court at Law Judges.

Ms. Courtney Gabriele

Courtney Gabriele began working for the Texas Center for the Judiciary in January 2011 and is currently the Curriculum Director. She is licensed to practice law by the State Bar of Texas and previously litigated with a boutique commercial litigation firm located in Houston, Texas. Ms. Gabriele earned her J.D. from the University of Houston Law Center in 2009 and served as an editor on the *Houston Journal of International Law*. Prior to attending law school, she spent two years at Michigan State University before fleeing the cold weather and transferring to Lamar University in Beaumont, Texas. There she graduated *summa cum laude* with a B.S. in Political Science. She was the recipient of the Lamar University Academic Excellence Scholarship and Jack Brooks Scholarship. She is currently a volunteer with CASA of Travis County and the Austin Resource Center for the Homeless. ♦

&HONORS

Judicial Section Awards Judge Larry Gist with Lifetime Achievement Award

Each year, the Judicial Section of the State Bar of Texas presents its Judicial Lifetime Achievement Award to a current or former Texas judge who is recognized as having a reputation for and commitment to judicial excellence, has achieved a significant length of service as a judge in Texas and has demonstrated a long term, consistent and significant contribution to the betterment of the judiciary, access to justice and the system of justice in Texas. Judge Larry Gist of Beaumont received the award during the Texas Bar Foundation Luncheon at the 2014 Annual Judicial Education Conference, with more than 450 Texas judges in attendance. Judge Gist is the first non-Supreme Court of Texas justice to receive the Lifetime Achievement Award.

Judge Gist graduated from the University of Notre Dame and the University of Texas Law School. In addition, he attended the National and Texas Judicial Colleges; the College of Advanced Judicial Studies and is a member of the College of the State Bar of Texas. He served for nine years as an Assistant Criminal District Attorney of Jefferson County, one year as Assistant State's Attorney before the Texas Court of Criminal Appeals, and 20 years as Criminal District Judge of Jefferson County. He has continued to serve as a full time Senior Criminal District Judge for the last 20 years. He is a Certified Specialist in Criminal Law by the State Bar of Texas Board of Legal Specialization.

He has also served for the last 19 years on the Judicial Advisory Council of the Texas Department of Criminal Justice and is currently Chairman of the Council. He recently was appointed by the Texas Governor as a Member of the Texas Board of Criminal Justice and serves as Chairman of the Community Corrections Committee. Judge Gist has served on the faculty of the Texas and National Judicial Colleges, is an Adjunct Professor of Criminal Law at South Texas College of Law, and has been Director of the International Comparative Criminal Law Course for 27 years. He has received numerous awards and recognitions during his 50-year legal career, and the first state jail was named after him by the Texas Board of Criminal Justice. ♦

Judge Israel Ramon Earns Outstanding Alumni

Left to right: Judge Irene Rios, President, Law Alumni Association; Judge Israel Ramon, Jr.; Stephen M. Sheppard, Dean, St. Mary's Law School.

On October 24, 2014, Judge Israel Ramon received the Distinguished Judicial Law Graduate Award from St. Mary's University Law School. Judge Ramon earned his B.A. in urban studies (with honors) and his J.D. from St. Mary's.

Judge Ramon was elected to the bench of the 430th District Court in 2008, which is a court of general jurisdiction and a Veterans Court. Prior to judicial service, he was in private practice for almost 27 years and served as a Hidalgo County Assistant District Attorney and Special Prosecutor for Hidalgo and Nueces counties. Judge Ramon is a Former Director of the Hidalgo County Bar Association (1980-1984); HCBA Representative to TRLA Board of Directors; and served as Chairman of the Board of TRLA. He previously served as Chair of St. Mary's University Law Alumni Association. He was the recipient of the Hidalgo County Bar Foundation Law Day "Ethics Award" (2005) and "Lifetime Achievement Award" (2007).

Judge Ramon is an Adjunct Professor at the University of Texas, Pan America, and a former Adjunct Professor of Law at Judge Reynaldo Garza School of Law. ♦

Judge Pat Kelly Earns Two Prestigious Awards

In November 2014, Judge Joseph Patrick Kelly received the Humanitarian Award from the African American Chamber of Commerce of Victoria, Texas. A banquet ceremony was held to honor four community leaders, including Judge Kelly, for their community service to Victoria. The theme of the annual banquet was "Dream It, Think It, Believe It, Achieve It."

Additionally, on February 17, the Diocese of Victoria gave Judge Kelly (Class of '57) the 2015 Distinguished Alumni Award for St. Joseph High School. Judge Kelly served on the St. Joseph Board of Directors for 23 years and as president for eight years. He continues his service to St. Joseph High School as a Trustee Emeritus.

Judge Kelly has practiced law in Victoria since 1967. He was appointed by Governor Ann Richards to fulfill the term of Judge Clarence N. Stevenson after his death in 1993 and was elected in every subsequent election he participated. He served as the 24th Judicial District of the State of Texas until Jan. 1, 2013. In retirement, he plans on continuing judicial work as a visiting judge. Aside from his work in law, the U.S. Marine Corp Captain has served for 17 years on the Guadalupe-Blanco River Authority board of directors, served as Democratic Chairman for Victoria County and served on boards for St. Joseph High School and Nazareth Academy. He also is Faithful Navigator of Assembly 1126 of the 4th Degree Knights of Columbus. ♦

Texas Center Traffic Safety Grant Program's Spotlight on Success Awards

The Texas Center's Traffic Safety Grant Program presented the third annual Spotlight on Success Awards at the 2015 DWI Court Team Conference. These awards recognized the efforts of two outstanding DWI Court team members and an exemplary DWI Court program. Ms. Shannon Adams, Community Supervision Officer, McLennan County CSCD, and Ms. Bernadette Hernandez-Haby, Harris County Assistant District Attorney, were both honored with Spotlight on Success Outstanding Team Member awards. Ms. Adams and Ms. Hernandez-Haby were nominated by multiple members of their respective teams based on their hard work and dedication to their DWI Court programs. The Comal County Accountability Court, led by Judge Randy Gray, was honored with the Spotlight on Success Outstanding Team award. ♦

Award winners, left to right: Ms. Shannon Adams, Hon. Randy Gray, Ms. Bernadette Hernandez-Haby

Justice Dori Garza Receives Good Samaritan Award

Justice Dori Contreras Garza was awarded the "Good Samaritan Award" from the Rio Grande Valley Good Samaritan Community Services (GSCS-RGV) organization in Pharr, Texas on September 9th, 2014. Justice Garza, a Justice on the Thirteenth Court of Appeals, is a former member of the GSCS-RGV Advisory Board.

"Throughout her life, Justice Garza has served as a role model to so many," GSCS CEO Jill Oettinger said. "She is extremely dedicated to improving her community and passionate about helping others. She is a natural choice for this year's award."[1]

Justice Garza is a graduate of PSJA High School, the University of Texas, and the University of Houston Law Center. She was elected to the Thirteenth Court of Appeals in 2002 and re-elected in 2008. Before joining the court, Justice Garza served as President of the Hidalgo County Bar Association, was a board member of the Texas Trial Lawyers Association, and served on the board of the Association of Trial Lawyers of America. She has three children and three grandchildren.

(Endnotes)

1 http://texasborderbusiness.com/justice-dori-contreras-garza-receive-good-samaritan-award/. ♦

AWARDS&

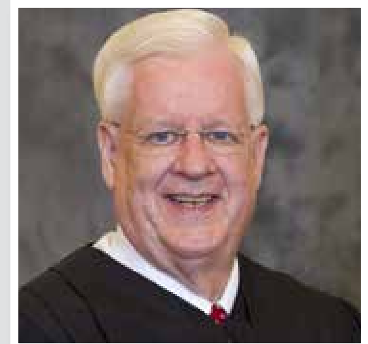
Notable Achievements

Governor Rick Perry Appoints Judge Robb Catalano as Advisory Committee Chair

Governor Rick Perry appointed Judge Robb Catalano of Tarrant County as Chair of the Advisory Committee on Offenders with Medical or Mental Impairments. Judge Catalano presides over Criminal District Court No. 3 in Tarrant County. He has already served on the committee since 2013 as a member, representing the judiciary. The 31-member committee advises the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), a state agency. TCOOMMI identifies and develops services for offenders in the criminal justice system with medical or mental impairments. The office also maintains a community-based program that seeks to divert offenders from the state criminal justice system.

Judge Sue Kurita Re-Elected Vice Chair of Commission on Judicial Conduct

Judge Sue Kurita, Judge of El Paso County Court at Law No. 6, was re-elected Vice Chair of the Texas State Commission on Judicial Conduct for the 2014-2015 term. She was initially appointed for the County Court position by the Texas Supreme Court in 2010.



Judge Steve Smith Appointed to ABA's Standing Committee on the American Judicial System

The American Bar Association has named Judge Steve Smith, Judge of Brazos County's 361st District Court, to its Standing Committee on the American Judicial System. This appointment is for a three-year term. The Standing Committee on the American Judicial System focuses on protecting fair and impartial courts, improving the administration of justice, ensuring adequate court funding, and defending against unfair attacks on the judicial branch. It supports efforts to increase public understanding about the role of the judiciary and the importance of fair courts within the American democracy.

Tarrant County Criminal Defense Lawyers Association Honors Retiring Judges

Six of the 20 Tarrant County criminal judges retired in 2013-2014: Judges Daryl Coffey, Sherry Hill, Billy Mills, Mike Mitchell, Sharen Wilson, and Everett Young, with a total of 162 years of combined service. Judge Mills alone served as judge for 39 years. The judges were honored with portraits and a luncheon by the Tarrant County Criminal Defense Lawyers Association (TCDLA). ♦

2015 Criminal Justice Conference

{photo lineup}

Exoneree Michael Morton was a highlight of the 2015 Criminal Justice Conference held in Austin in March.

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