

In Chambers

The Official Publication of the Texas Center for the Judiciary

Volume 30, Number 2
Summer 2003

Inside this Issue

- **Do Something Worth Doing**
- **In a Nutshell: Recent Legislative Changes**
- **Texas Center Moves to New Offices**
- **2003–04 Leadership Nominations**

Plus Departments

- **Ethics Opinions**
- **In Memoriam**

features

Do Something Worth Doing	3
Texas' Newest Administrators of Justice	3
Collect Child Support, Save Probation Jobs, and Help Solve the Budget Crunch	4
The Disciplinary Rules of Professional Conduct: Standards of Care in Legal Malpractice Cases?	6
In a Nutshell: Recent Legislative Changes	8
NAWJ Meets in Austin	9
Texas Center Moves to New Offices	10
2003–04 Leadership Nominations	13
Resolutions and Bylaw Amendments	13
A Good Idea	15
Training for Mexican State Judges and Judicial Staff	15

departments

Ethics Opinions	5
Making News	7
In Memoriam	12
Contributions and Memorials	14
Looking Ahead	16

Cover photography courtesy of J. Griffis Smith/Texas Department of Transportation.

In Chambers is the official publication of the Texas Center for the Judiciary. The magazine is published three times a year and funded by a grant from the Texas Court of Criminal Appeals.

The staff of *In Chambers* strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

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

The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.

In Chambers

Volume 30, Number 2
Summer 2003

Editorial Board

Chief Justice (Ret.) Marilyn Aboussie
San Angelo

Judge Susan P. Baker
Fredericksburg

Judge Manuel Banales
105th District Court, Corpus Christi

Chief Justice Scott Brister
14th Court of Appeals, Houston

Justice Molly Francis
5th Court of Appeals, Dallas

Texas Center for the Judiciary Staff

Mari Kay Bickett
Executive Director
mkbickett@yourhonor.com

Tana J. Petrich
Associate Director
tpetrich@yourhonor.com

Ann Blankenship
Program Attorney
amb@yourhonor.com

Carrie Gates
Administrative Assistant
carrieg@yourhonor.com

Shirley Irvin
Assistant to the Director
shirleyi@yourhonor.com

Lacy Jemmott
Registrar
lacyj@yourhonor.com

Morgan Morrison
Publications Coordinator
morganm@yourhonor.com

Denise Seal
Financial Officer
denises@yourhonor.com

Andrea Walker
Conference Coordinator
andyw@yourhonor.com

Do Something Worth Doing

*By Hon. Stephen B. Ables
Presiding Judge, 6th Administrative Judicial Region
Judge, 216th District Court*

The budget battles of this legislative session have me remembering the summer of 1987. When Judge Bob Barton decided to retire as Judge of the 216th District Court, several attorneys approached me to see if I was interested in running for the vacant bench. I had, on occasion, daydreamed about being a judge, but not from the perspective of it being a reality! I told the lawyer group I was interested, but first I had to consult my partner.

My wife and life partner, Lynda, and I spent hours debating and discussing the decision. We took the kids to Space Camp and drove to a North Carolina Resort called the High Hampton to ponder a life-changing decision.

The focus of our decision became friends and money. Three of my best friends were my law partners, and I felt a great amount of guilt about leaving them. The other concern was money. A move to the bench would mean a 60 percent cut in salary.

After many Ables' family budget sessions and the assurance of my law partners that I had their blessings, I decided to make the move. My wife and I met with our three children and told them, "We have good news and bad news. The good news is that Daddy won't have to go to the office as early and stay as late. The bad news is Daddy is going to change jobs, and the new job means less money." My eight year old son, Matthew, responded "Well, I got my Fuji bike last Christmas, and we've already been to Space Camp, so I say we go for it."

We did go for it, and it was a wonderful choice. Unfortunately, 15

years have passed, and I still make less money than I did my last year practicing law. When this legislative session is over, I am faced with six years of no pay raise. I am disappointed, and it is an affront to me and my brothers and sisters on the bench that we are not appropriately compensated for the critical public service we perform.

Around the first of June, just about the time the legislature went sine die and all the household bills came in for the month, I was listening to commencement addresses on C-Span. One of the commencement speakers was Rev. Peter Gomes of Harvard University. I have known Peter for about ten years, so I decided to listen to his speech.

With the sting of the appropriation bill fresh on my mind and the pile of the kids' college loans in my lap, I heard Peter say to an eager group of college

graduates that "they should aspire not so much to make a good living, but to have a good life," and the real key to having a good life is to "do something worth doing."

I stopped dead in the middle of writing the next check to Sallie Mae and realized "that's me." I have a good life and I am doing something worth doing, and I know you are too. So as I return to the college loan payments, they are not as bad because I know what I do is priceless, and what the heck, we've already been to Space Camp. ♦



Judge Stephen B. Ables

Texas' Newest Administrators of Justice *As of July 11, 2003*

Hon. Diane DeVasto
12th Court of Appeals, Tyler
Succeeding Hon. Jim Worthen

Hon. Robert Frost
116th District Court, Dallas
Succeeding Hon. Carlos Lopez

Hon. Carmen Rivera-Worley
16th District Court, Denton
Succeeding Hon. John Narsutis

Hon. Rebecca Simmons
408th District Court, San Antonio
Succeeding Hon. Phylis Speedlin

Hon. Kent C. Sullivan
80th District Court, Houston
Succeeding Hon. Scott Link

Hon. Randall W. Wilson
157th District Court, Houston
Succeeding Hon. George Hanks

Collect Child Support, Save Probation Jobs, and Help Solve the Budget Crunch

The Smith County Child Support Accountability Program

*By Hon. Carole W. Clark
Judge, 321* District Court*

*Mr. A.D. Clark
Special Enforcement Attorney, Texas Attorney General*

How would this judicial program sound to you? It collects much needed child support from obligors who ignore Title IV-D child support orders. It saves or creates jobs at your community supervision department. It favorably affects Texas' ability to compete for and obtain Federal child support funds.

Sound too good to be true? All of this is happening in Smith County and other East Texas jurisdictions that have Child Support Accountability Programs. Basically, a Child Support Accountability Program puts child support offenders on supervised probation.

An initial Accountability Program was piloted in Smith County in late 2001. It was a cooperative effort between local Family Law judges, the Smith County Community Supervision and Corrections Department (Smith County CSCD) and the local child support office of the Texas Attorney General (AG).

After a trial run involving three AG cases, the program went into full operation in April 2002. In its first year, the Accountability Program collected \$1,000,000 in child support from obligors who were previously paying nothing. It also resulted in the Smith County CSCD retaining two probation officers whose jobs would have otherwise been lost. In addition, it demonstrated a way for Texas to successfully compete for Federal funding for its child support operations.

As any good judicial program should be, it is simple in concept and execution. If an obligor has the ability to pay child support and fails to do so, there is a legal consequence. Statutory authority is found in Texas Family Code, § 157.211–217. Adjudicated offenders are placed on supervised probation with specific terms and conditions, including the payment of current and past-due support, court costs, and attorneys' fees. Offenders report to an adult probation officer, just as in criminal cases. They also pay a supervision fee which offsets the cost of the program. The supervision officer monitors compliance in the traditional manner.

While this is a judicially created and directed program, the cooperation and participation of your local AG office is critical. In recent years, the AG has excelled in child support enforcement and been nationally recognized for its achievements. Because of this, and because only the AG has the cases such a program requires, the involvement of your local child support office is essential.

In a Child Support Accountability Program, the AG lawyer must undertake many of the tasks of a prosecutor.

In September 2002, Smith County participants hosted a half-day seminar and invited area Family Law judges and their CSCD directors to attend. Since then, nine additional East Texas counties have begun programs of their own. Other jurisdictions have indicated an interest in implementing a program.

David Long is the director of the Smith County CSCD. His office currently supervises approximately 550

*In its first year, the
Accountability Program
collected \$1,000,000 in
child support from obligors
who were previously
paying nothing.*

adjudicated offenders with four probation officers. David will make the point to anyone who will listen that two of those jobs would not exist without the

caseload and the funds from the program. David was keenly aware of the need to keep the program self-supporting from its initiation. He believed that an average monthly supervision fee of \$40 per offender would pay for the program. The last fifteen months have proven that estimate to be correct.

The program's final benefit is to help Texas obtain Federal funds. Under present law, Texas and other states must compete for a fixed dollar amount allocated by Congress. The more efficient a state is in five child support areas, the more that state receives for its operations. These areas are called

Questions & Answers

Ethics Opinion Number 287

Authorized Communication with Surety

Is it considered an ex parte communication for a bail bondsperson to present an affidavit to surrender authorized by Sec. 17.19 of the Code of Criminal Procedure to a judge or magistrate in chambers or open court without the presence of the Principal/Defendant and/or his or her lawyer?

No. Canon 3B(8) generally prohibits ex parte communications concerning the merits of a pending or impending judicial proceeding, but it does not prohibit communications expressly authorized by law. See Canon 3B(8)(e)

and Advisory Opinion No. 183 (1995).

Art. 17.19 C.C.P. specifically authorizes and requires that a surety submit an affidavit to a judge or magistrate in order to relieve the surety of liability on a bond. That article also requires that the affidavit state that the surety gave notice to the defendant's attorney of his intention to surrender.

Because the affidavit procedure is well-defined and specifically authorized by law, the presentment of the affidavit to the judge or magistrate would not violate the Code of Judicial Conduct. ♦

To ask an ethics question, contact Justice Mack Kidd, Chair of the Judicial Section's Committee on Judicial Ethics, (512-463-1686) or the State Commission on Judicial Conduct (877-228-5750).

Committee on Judicial Ethics

Hon. Mack Kidd, *Chair*
Hon. Thomas Bacus
Hon. Cathy Cochran
Hon. Larry Gist
Hon. Mackey K. Hancock
Hon. Belinda Hill
Hon. Emil Karl Prohl
Hon. Michael Schneider
Hon. Juan Velasquez
Hon. Kathleen Olivares, *Liaison*
Hon. Mario Ramirez, *Liaison*
Hon. Jay Robinson, *Ex-Officio*
Hon. Steve Seider, *Ex-Officio*
Professor Amon Burton, *Ex-Officio*

Federal Incentives. Two of the Federal Incentives affected by this program are collection of current child support (CCS) and collection of child support arrears (COA).

To successfully compete with other states, Texas must collect a percentage of the child support and arrears ordered in your Title IV-D child support judgments!

The State has set goals of 67 percent CCS and 67 percent COA for 2003.

At the time this article was written in late June, Texas has a 60 percent CCS and a 71 percent COA rate. The Smith County program has a current CCS and COA collection rate of 85 percent.

To the judges who have had the time and opportunity to begin this effort, the benefits quickly become obvious. It can be put in place with no disruption of regular judicial routine. It can be tailored to local situations and local needs. To other CSCD directors, David Long will state that there is no downside, as far as his people and his operation are concerned.

On September 19, 2003, judges, directors, and AG staff from the participating programs will meet for a round table discussion at the Fredonia Hotel in Nacogdoches. Anyone interested is invited, and we would be delighted to have you attend.

For more information contact any of the following: Judge Carole Clark, 321st District Court, Tyler 75702, 903-535-0590 or at cwclark@cox-internet.com; David Long, Director, Smith County Community Supervision and Corrections Department, Tyler 75702, 903-535-0745 or at dlong@smith-county.com; A. D. Clark, Special Enforcement Attorney, Texas Attorney General, Tyler 75702, 903-533-4012 or at ad.clark@cs.oag.state.tx.us. ♦

The Disciplinary Rules of Professional Conduct: Standards of Care in Legal Malpractice Cases?

By Hon. William Kilgarlin
Justice (Ret.)

Are the Disciplinary Rules of Professional Conduct, currently limited in scope by their own title and language, soon also to constitute standards of care in legal malpractice cases? Contrary to the Rules' proscription this could be what the supreme court pronounces when it renders its decision in *Harry J. Joe and Jenkins & Gilchrist, P.C. v. Two Thirty-Nine Joint Venture*, No. 02-0218, argued on April 9, 2003.

If the court does so, it would be negating a provision it promulgated January 1, 1990: paragraph 15 of the Preamble to the Disciplinary Rules, which reads:

These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self assessment, or for sanctioning a lawyer under the administration of disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-

disciplinary consequences of violating such a duty.

State Bar Rules, Art. 10, §9, Preamble, ¶15. Paragraph 15 could not be more explicit; it does not equivocate, nor seemingly leave room for opposing views. And, the Disciplinary Rules, promulgated by the Supreme Court of Texas, are to be treated as if they are statutory law. *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex.1988).

However, advancing an opposing view to paragraph 15 is exactly what the Dallas Court of Appeals did in *Two Thirty-Nine Joint Venture v. Joe*, 60 S.W.3d 896 (Tex.App.—Dallas 2001, pet. granted). Harry Joe, a partner in Jenkins & Gilchrist, served as a member of the City Council of Irving, a Dallas suburb. Joe was a strong advocate for placing a moratorium on apartment development in Irving. Two Thirty-Nine Joint Venture, a Jenkins & Gilchrist client, was actively opposed to the moratorium, and when the Council passed the measure the Joint Venture lost its contract to sell an eleven acre apartment tract in Irving. The Joint Venture sued Joe and Jenkins & Gilchrist, alleging among other things Rules violations in that Joe failed to disclose a conflict of interest and did not disqualify himself on the moratorium vote. Summary judgment was granted in favor of Joe and his law firm. On appeal, in a two to one decision acknowledging the existence of paragraph 15, the Dallas court nevertheless stated:

However, the preamble does not comment on and is not inconsistent with the use of the rules as evidence

of a violation of an existing duty of care, as provided for by the Restatement (Third) of the Law Governing Lawyers...Section 52(2) provides that a rule or statute regulating lawyers does not give rise to an implied cause of action for professional negligence or breach of fiduciary duty, but it may be considered by a trier of fact in understanding and applying the standard of care for malpractice or determining a breach of fiduciary duty.

Id. at 905. The court goes on to say, "[t]herefore, the trier of fact may consider the construction of a relevant rule of professional conduct that is designed for the protection of persons in the position of the claimant as evidence of the standard of care and breach of the standard." *Id.* This latter statement from the Dallas court is borrowed from a comment to section 52 of the Restatement. The Dallas court's invoking of a provision from a compendium of the majority of 50 states' law to trump a supreme court pronouncement would seem calculated to attract that court's attention, if not a reversal.

However, the supreme court, in *Joe*, could well decline to write on the use of the Disciplinary Rules as a standard of professional conduct in legal malpractice suits. Joe and Jenkins & Gilchrist did not actively urge this holding as an issue in their briefs on the merits in the supreme court. Rather the primary issues are: (1) whether summary judgment was properly granted on a lawyer-city councilman's

Honors & Achievements for Texas Judges

At the 5th Annual Texas Crime Stoppers Conference held May 19–21, Laredo Crime Stoppers awarded JUDGE RAUL VASQUEZ, 111th District Court, the first Alpha award for his role in the creation of the crime-fighting organization in Laredo. More than 21 years ago, Judge Vasquez worked on the paperwork necessary for the chartering process.

JUDGE ALEJANDRO (ALEX) GONZALEZ of County Court at Law #4 in El Paso was recognized by the El Paso Young Lawyers Association as the Outstanding Jurist of El Paso 2002–03. Judge Gonzalez received this award at the Annual Law Day Awards Luncheon on May 9. Judge Gonzalez was honored for his outstanding contribution to the

judiciary and his community and for his dedication to professionalism and justice. ♦



Hon. Alex Gonzalez

immunity defense on a claim that his actions as a councilman conflicted with interests of his firm’s clients; (2) whether the lawyer-councilman and his law firm had a duty to the law firm’s clients to check for and inform the clients of potential conflicts between their interests and the lawyer’s council position on public issues; and (3) whether the lawyer-councilman’s action as a councilman allegedly in conflict with his firm’s clients is entitled to absolute or qualified immunity.

There could be another reason why the court might choose not to write on application of the Disciplinary Rules to legal malpractice cases. Paragraph 15 of the Rules’ Preamble is patterned after a similar provision in the 1983 ABA Model Rules of Professional Conduct. Paragraph 18 of the Scope of those Rules states in part:

Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance for lawyers and to provide a structure for

regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.

In its 2003 Model Rules the ABA entirely altered the meaning of paragraph 18 of the 1983 version. Paragraph 20 of the Preamble and Scope of the 2003 Model Rules commences with language similar to its 1983 equivalent, saying “[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer, nor should it create any presumption in such a case that a legal duty has been breached.” The 2003 paragraph continues in a vein similar to the 1983 Model Rules language. However, the last sentence of Paragraph 20 undoes all the language that preceded it by stating “[n]evertheless, since the Rules do establish standards of conduct by lawyers, a lawyer’s violation of a Rule may be evidence of breach of the applicable standard of conduct” (emphasis added). Obviously, the Dallas court, in its 2001 opinion, didn’t cite

the 2003 ABA Model Rules as authority, but it would seem that the drafters of the 2003 Model Rules utilized the Restatement’s position.

Moreover, the Dallas court does not stand alone in its willingness to circumvent Rules Preamble ¶15. Former Justice Alberto Gonzales, during his brief tenure on the supreme court, dissented in *Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex.2000)(Gonzales, J., concurring and dissenting). While not mentioning paragraph 15 of the Rules Preamble, Justice Gonzales cited four separate Rules provisions in support of his contention that the law firm had breached its ethical and fiduciary duties to its client, *Lopez*. Moreover, the supreme court, itself, seemingly left the door open on the question in *Burrow v. Arce*, 997 S.W.2d 229, 246 (Tex.1999) when it noted that “the parties’ arguments have tended to focus on the assertion that the Attorneys reached an aggregate settlement in violation of Rule 1.08(f) of the Texas Disciplinary Rules of Professional

Disciplinary Rules continued on page 12

In a Nutshell: Recent Legislative Changes

Effective 9/1/03 unless otherwise noted.

By Ms. Elizabeth A. Kilgo, J.D.

Interim Director, Office of Court Administration—Texas Judicial Council

Eligibility Requirements for Trial or Appellate Court Assignments

96 months of active court service; appellate court assignments require at least 48 of those months to be appellate court service; not have been removed from office; no public reprimands or censures; completed active judicial educational requirements; not practice as attorney in any state court for two years. Assigned judge who sits for a half day or less will be compensated for one-half of full day of service; judge assigned to statutory county court not entitled to state compensation. [HB 3306—(eff. 6/18/03) amends Gov't Code §§ 74.003, 74.055, 74.061].

Soliciting or Accepting Gifts or Referral Fees is Class B Misdemeanor

Constitutional county judges, statutory county court judges authorized to practice law, JPs, or Municipal court judges are excluded if legal business involves matter that will not come before the judge. Allows for criminal and Commission on Judicial Conduct proceedings. Judge or attorneys who fail to report judicial misconduct within 30 days subject to disciplinary action. [SB 532—amends Gov't. Code ch. 33]

Judicial Retirement System Plan Two

Judges must be at least 55 with 20 years of service to retire under JRSP2. Plan Two member with at least two full terms of appellate court service can retire if sum of the member's age and years of retirement system service is at least 70. [HB 820—amends Gov't. Code § 839.101]. Plan Two Member with at least

120 months of actual service may purchase up to 60 months of equivalent service credit. [HB 2916—adds Gov't. Code § 838.108]

Supreme Court and Court of Criminal Appeals Candidates

Petition containing at least 50 signatures from each court of appeals district must accompany filing fee and application. [HB 296—amends Elec. Code § 172.021]

General Primary Election Filing Fees Increased for Judicial Candidates

\$2,500 for all candidates in counties > 850,000 pop. Counties < 850,000 pop. \$1,875 for courts of appeal; \$1,500 for district or statutory county court. Counties > 200,000 pop. \$1,250 for constitutional county court; \$1,000 for JP. Counties < 200,000 pop \$750 for constitutional county court; \$375 for JP. [HB 1695—amends Elec. Code § 144.006]. General primary election and general election are a single election for purpose of contribution and reimbursement limits; certain candidates may adjust contribution limits by 25 percent for officeholder expenditure. [HB 2158—adds Elec. Code § 253.1621].

Appellate Court District Changes

Brazos County in 10th Ct. App. Dist. [HB 988—amends § 22.201, Gov't Code]. Ector, Gaines, Glasscock, Martin, and Midland counties in 11th Ct. App. Dist.; 8th Ct. App. Dist. to consist of chief justice and two justices (when vacancy occurs or term expires); 9th Ct. App. Dist. to consist of chief justice and three

justices eff. 1/1/05. [HB 2261—amends Gov't Code §§ 22.201, 22.216]. Appellate court judicial officers assigned permanent place designations: Chief Justice or Presiding Judge holds Place 1; corresponding justices or judges hold consecutively numbered places. [HB 2682—adds Gov't. Code §§ 22.015, 22.112, 22.216].

New Courts Created

413th Judicial District, Johnson County; 416th Judicial District, Collin County; 417th Judicial District, Collin County (eff. 9/15/04); 414th Judicial District, McLennan County; 415th Judicial District, Parker County; 419th Judicial District, Travis County; 420th Judicial District, Nacogdoches County; 421st Judicial District, Caldwell County; 422nd Judicial District, (eff. 9/1/05). [SB 1551—amends Gov't. Code ch. 25]. New county courts at law in Collin County (1/1/05); Comal County; Henderson County (12/1/07 or earlier); Orange County; Rockwall County; Parker County. Unless constitutionally required, six member county court at law juries in Henderson and Orange Counties. [SB 1552—amends Gov't. Code ch. 25].

Associate Judges, Masters, and Magistrates

Designation of “master” changed to “associate judge.” Subject to appeal to referring court, associate judge may hear and render order on suit to modify or clarify existing child support order; motion to enforce child support order or revoke community supervision;

suspension of commitment, or respondent's compliance with conditions. Associate judge's recommendation becomes order of referring court. [HB 823—amends Fam. Code ch. 201]. Associate judge can render and sign final agreed order or final default order. [HB 883—amends Fam. Code 201]. Designation of “master” changed to “associate judge” in statutory probate courts; associate judge can preside over jury trial. [HB 1539—amends Gov't Code ch. 54]. Title IV-D masters and foster care associate judges entitled to receive judicial training from Judicial and Court Personnel Training Fund. Court of Criminal Appeals to grant legal funds to certain statewide professional associations to provide CLE, technical assistance, or other support programs. [HB 2157—amends Gov't Code § 56.003].

Costs and Fees

Identification, consolidation, and simplification of reporting, collection, and remittance of criminal and civil costs and fees. [HB 2424—(eff. 10/1/03) adds Local Gov't Code ch. 133]. Establishment of one complete index of all court costs and fees in civil proceedings, court costs on conviction, and other court-related fees and costs collected in state and county courts. [SB 1180—(eff. 6/20/03) adds Gov't. Code chs. 101, 102]. Comptroller to develop and submit proposal for monitoring program for collection, remittance, and reporting of civil and criminal court costs and fees that are to be remitted to comptroller by clerks of district, county, statutory county, municipal, and justice courts. (SB 791). Comptroller to publish list after each regular session that identifies every new or amended court cost or fee to be collected by district, county, statutory county, municipal, or justice court in a civil or

criminal case. [SB 325—(eff. 6/20/03) adds Gov't. Code § 51.607]. \$250 pro hac vice fee per case for nonresident attorneys to participate in Texas state court proceedings. Funds go to judicial fund basic civil legal services account. [HB 462—amends Gov't Code ch. 82].

Juries

Prospective jurors may appear in response to summons by computer contact; automated telephone; or personal appearance, and may provide certain info re qualifications, exemptions, postponement, excuses, and assignments. [HB 2188—adds Gov't Code 62.0111]. Prospective jurors may not be summoned to appear on day of general election for state or county officers. [HB 146—adds Gov't Code § 62.0125]. Jury service exemption for military deployed on active duty away

from home station and out of county of residence. [SB 737—amends Gov't Code § 62.106]. Commissioners court may set different daily reimbursements for grand and petit jurors or different petit jurors based on court served or other reasonable criteria. [HB 3070—amends Gov't Code § 61.001]. Jury shall consist of six qualified jurors in county court and inferior courts. District court misdemeanor jury shall consist of six qualified jurors. [HB 830—(eff. 1/1/04 upon passage of HJR 44), amends Tex. Code Crim. Proc. art. 33.01]. No audio, visual, or audio-visual broadcast, recording, or photograph of criminal or civil jury deliberations. [SB 164—adds Tex. Code Crim. Proc. art. 36.215; Civ. Prac. & Rem. Code ch. 24].

Legislative Changes continued on page 10

NAWJ Meets in Austin

In March, Chief Justice Tom Phillips hosted a dinner at his home honoring the National Association of Women Judges (NAWJ). Several Texas judges, including NAWJ President, Justice Bea Ann Smith, joined him in welcoming NAWJ members from all over the country who were in Austin for their mid-year meeting. ♦



From left to right: Chief Justice Linda Thomas, 5th Court of Appeals, Dallas; Judge Sue Kurita, County Court at Law #6, El Paso; Justice Bea Ann Smith, 3rd Court of Appeals, Austin; Chief Justice Tom Phillips, Texas Supreme Court; Justice Wanda McKee Fowler, 14th Court of Appeals, Houston; Rose Spector, Former Texas Supreme Court Justice; Judge Lora Livingston, 261st District Court, Austin; Judge Craig Enoch, Texas Supreme Court; Judge Susan Criss, 212th District Court, Galveston.

Texas Center Moves to New Offices

On August 1, 2003, the Texas Center for the Judiciary moved to the top floor of the new Texas Association of Counties (TAC) Headquarters. Located two blocks west of the Capitol, the 8-story, gray and cream-colored limestone building includes many details typical of a Texas courthouse, such as the octagonal turret on top of the corner tower. The new building offers 360-degree views of Austin and abundant covered parking.



The top floor of the 83,000-square-foot office tower will house the Texas Center for the next ten years. Meeting space will allow the Texas Center to hold judicial conferences on-site.

Texas Center to expand its office and meeting space. With the additional 3,800 square feet of meeting space, the Texas Center plans to hold conferences, such as the 2003 College for New Judges, at the new location.

On March 31, the Board of Directors of the Texas Center for the Judiciary and the Judicial Section signed a 10-year lease with TAC. The Texas Center had been in its current

location since the State Bar Building opened in 1976. Mari Kay Bickett,



The Board of Directors of the Texas Center for the Judiciary and the Judicial Section visited the construction site of the Texas Center's new offices. The move-in date was August 1, 2003.

Executive Director of the Texas Center, says, "We hope our relationship with our new landlord will be just as long." ♦

New Contact Information:

1210 San Antonio, Suite 800
Austin, TX 78701
Telephone: 512-482-8986
In Texas: 800-252-9232
Fax: 512-469-7664

Moving to the new building allows the

Legislative Changes continued from page 9

Open Records/Confidentiality

Arrest warrant and any affidavit presented to magistrate in support of issuance of warrant is public information. Clerk required to make a copy immediately available for public inspection in clerk's office. [HB 13—amends Tex. Code Crim. Proc. art. 15.26]. Social security number on marriage license, application, affidavit, or related document is confidential and may not be disclosed by county clerk to the public. [SB 174—adds Gov't Code § 552.141].

Number of Hours of Mandatory CE re Registry Funds

Reduced from three to one for County and District Clerks. [SB 749—(eff. 1/1/04) amends Gov't Code § 51.605].

Comprehensive Tort Reform

Texas Omnibus Civil Justice Reform Act of 2003 addresses many issues affecting civil court system, including class actions, conflicting jurisdictions, interlocutory appeals, settlement offers, multidistrict litigation, products liability actions. Makes significant changes to method of pleading, conduct of discovery, receipt of expert testimony, and limitations on liability in medical liability cases. Provides that exemplary damages may be awarded only if the jury was unanimous in finding liability for and the amount of exemplary damages. [HB 4; HJR 3. N.B. HJR 3 requires voter approval of constitutional amendment authorizing Legislature to establish limits for noneconomic damages in medical liability and other tort cases].

Confinement for Criminal Contempt

Limited to 18 months or less. [HB 346—(eff. 6/20/03) amends Gov't Code § 21.002].

Death or Injury of an Unborn Child

Allows for civil cause of action and criminal sanctions at every stage of gestation from fertilization until birth. [SB 319—amends Civ. Prac. & Rem. Code § 71.001; Penal Code § 1.07].

Automatic Legislative Continuance

Legislative member or member-elect must be hired at least 30 days prior to trial date in order to receive automatic legislative continuance in civil cases; 15 days in criminal cases. [SB 430—eff. 4/24/03, amends Civ. Prac. & Rem. Code § 30.003].

New Standard for Informed Consent for Abortions

Disclosure of certain information required at least 24 hours before the procedure; provisions re publication or distribution of certain information relating to procedure and to other available services and options. [HB 15—adds Health & Safety Code ch. 171].

Family Law

Proceedings to Adjudicate Parentage and Corresponding Papers and Records are Open to Public. Also, technical corrections and clarifications re health insurance coverage and child support enforcement, workers' comp benefits, determination of parentage, certain Title IV-D administrative procedures, suspension or revocation of obligor's license, and child support review process. [HB 1878—amends Fam. Code §§ 160.633, 231.108].

Juvenile proceedings. Changes re parental rights in juvenile proceedings, procedural requirements for enforcement of juvenile court orders, sex offender requirements for enforcement of juvenile court orders, sex offender registration, children in justice and municipal courts, determinate sentence cases, and confidentiality of youth records. [HB 2319—amends Fam. Code, Tex. Code Crim. Proc., Gov't Code, and Penal Code].

Same Sex Civil Union or Marriage is Void. State prohibited from effectuating public act, record, or judicial proceeding that creates, recognizes, or validates such a marriage or civil union, and from recognizing right or claim to any legal protection, benefit or responsibility asserted as a result of such marriage or civil union. [SB 7—adds Fam. Code 6.204].

Criminal Law & Procedure

Protective Orders under Fam. Code ch. 85 Prevail over Tex. Code Crim. Proc. Also sets requirements for emergency protection modification and transfer under Tex. Code Crim. Proc. [HB 297—amends Tex. Code Crim. Proc. art. 17.292].

Forensic DNA Testing. Provisions for court-appointed counsel for indigent convicted persons; allows order for forensic DNA testing orders on “preponderance of the evidence” rather than “reasonable probability” that DNA testing would have obtained exculpatory results. [HB 1011—amends Tex. Code Crim. Proc. art. 64].

Third Degree Felony for Possession of Weapons on Court Premises. Unless otherwise authorized in writing by court, third degree felony to intentionally, knowingly, or recklessly possess or go with a firearm, illegal knife, club, or prohibited weapon under § 46.05(a) on the premises of, rather than in, any government court or offices utilized by the court. [SB 501—amends Penal Code § 46.03].

New Criminal Competency Statute for Criminal and Juvenile Defendants. Streamlines and standardizes criminal competency process; explains standards for incompetency; requires court-ordered evaluation and stay for incompetent defendants; provides for appointment of counsel for indigent defendant; addresses commitment procedures, expert qualifications and considerations, jury verdicts, and court-ordered medications. [SB 1057—(eff. 1/1/04) adds Tex. Code Crim. Proc. ch. 46B, repeals art. 46.02]. ♦

FLAMINGO FLING

Dinner & Silent Auction

Silent Auction sponsored by
Texas Court Reporters Association

Tuesday, September 16
Omni Corpus Christi Hotel
6:00 p.m. to 9:00 p.m.

Prizes! Prizes! Prizes!

Fantastic & fascinating
prizes will be awarded to
1st, 2nd, & 3rd place winners!

Bring your singing voices & join in the fun!



2003 Judicial Section
Annual Conference

Conduct.” Saving that argument for another day, the court stated “we believe it to be imprudent for us to decide the matter in the first instance without a full airing below.” *Id.*

The supreme court has utilized the Disciplinary Rules when disqualifying lawyers but paragraph 15 has not been violated because no assertion of civil liability against lawyers was involved in such proceedings. *See, e.g., Henderson v. Floyd*, 891 S.W.2d 252 (Tex.1995); *Spears v. Fourth Court of Appeals*, 797 S.W.2d 654 (Tex.1990); *Ayres v. Canales*, 790 S.W.2d 554 (Tex.1990); and, *NCNB Nat’l Bank v. Coker*, 765 S.W.2d 398 (Tex.1989). But, Chief Justice Phillips, writing in a mandamus proceeding involving attorney disqualification, *In re Meador*, 968 S.W.2d 346 (Tex.1998), stated that even as to attorney disqualification the Disciplinary Rules were only guidelines and not necessarily controlling standards. *Id.* at 350. He

specifically noted the preclusive effect of paragraph 15 of the Rules Preamble.

Moreover, by implication, it can be said that the supreme court has approved the use of paragraph 15 to prohibit the use of the Disciplinary Rules in legal malpractice cases. In *Judwin Properties, Inc. v. Griggs & Harrison, P.C.*, 981 S.W.2d 868 (Tex.App.—Houston [1st Dist.]1998) *pet. denied per curiam*, 11 S.W.3d 188 (Tex.2000), the client, Judwin, pleaded Disciplinary Rules violations as part of its cause of action, but Griggs & Harrison was granted a summary judgment. The court of appeals ultimately affirmed as to all grounds, specifically citing paragraph 15 in rejecting Judwin’s negligence claim. The supreme court, in denying the petition for review, disapproved of language in the court of appeals opinion concerning the Texas Rules of Evidence, but was silent as to the remainder of the opinion. One would presume that had the supreme court also disapproved of the use of

paragraph 15 to prevent using the Disciplinary Rules, it would have said so.

An additional court of appeals opinion, issued after the 1990 Disciplinary Rules promulgation, relied upon paragraph 15 in rejecting the use of the Disciplinary Rules in a legal malpractice case. *Adams v. Reagan*, 791 S.W.2d 284 (Tex.App.—Fort Worth 1990, no writ). Prior to 1990, there was no equivalent provision to paragraph 15 in the 1984 Code of Professional Responsibility. Nevertheless, utilizing case law from other jurisdictions and Scope paragraph 18 of the 1983 ABA Model Rules, some Texas courts of appeals rejected the use of the Code’s Ethical Considerations and Disciplinary Rules in legal malpractice cases. *See, e.g., Dyer v. Shafer, Gilliland, Davis, McCollum & Ashley, Inc.*, 779 S.W.2d 474 (Tex.App.—El Paso 1989, writ denied); *Blanton v. Morgan*, 681 S.W.2d 876 (Tex.App.—El Paso 1985, no writ); and, *Martin v. Trevino*, 578 S.W.2d 763 (Tex.Civ.App.—Corpus Christi 1978, writ ref’d, n.r.e.). There is a line of courts of appeals cases holding to the effect that Disciplinary Rules are admissible to determine whether an attorney’s fee contract is contrary to public policy. *See, e.g., Stern v. Wonzer*, 846 S.W.2d 939 (Tex.App.—Houston [1st Dist.] 1993, no writ)(and cases cited therein); and, *Polland & Cook v. Lehmann*, 832 S.W.2d 729 (Tex.App.—Houston [1st Dist.] 1992, writ denied) (and cases cited therein).

In *Joe* the supreme court may reaffirm its Rules Preamble ¶15, may reject it, or choose not to address the subject. If it does not repudiate the Dallas Court of Appeals holding as to use of the Rules in legal malpractice cases, then the bench and bar will be left as they were before—uncertain as to whether rules violations are evidentiary of breaches of standards of care in those cases. ♦

in|memoriam

For Those Who Served Our State Courts

As of July 11, 2003

Honorable Sam Bass, Jr.
Justice (Ret.)
1st Court of Appeals, Houston

Honorable Frank Coffey
Former Judge
Cty. Crim. Ct. at Law #1, Fort Worth

Honorable Charles J. Hearn
Senior District Judge
263rd District Court, Houston

Honorable Charles Howell
Justice (Ret.)
5th Court of Appeals, Dallas

Honorable Jim Noble Thompson
Senior District Judge
62nd District Court, Paris

Honorable James Allen Wood
District Judge
94th District Court, Corpus Christi

2003–04 Leadership Nominations

On June 30, the 2002–03 Nominations Committee, chaired by Judge Mark D. Atkinson, slated the following judges for nomination for the 2003–04 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors:

Judicial Section Board of Directors

Chair: Hon. Molly M. Francis
Justice, 5th Court of Appeals, Dallas

Chair Elect: Hon. Dean Rucker
Presiding Judge, 7th Administrative Judicial Region
Judge, 318th District Court, Midland

Secretary-Treasurer: Appointed by the Chair

Place 1: Hon. Sherry Radack
Chief Justice, 1st Court of Appeals, Houston

Place 5: Hon. Roger Towery
Judge, 97th District Court, Henrietta

Place 8: Hon. M. Sue Kurita
Judge, County Court at Law #6, El Paso

Place 10: Hon. Thomas Stansbury
Senior District Judge, Stafford

Texas Center for the Judiciary Board of Directors

Chair: Hon. Molly M. Francis
Justice, 5th Court of Appeals, Dallas

Chair Elect: Hon. Dean Rucker
Presiding Judge, 7th Administrative Judicial Region
Judge, 318th District Court, Midland

Secretary-Treasurer: Hon. Ken Curry
Judge, 153rd District Court, Fort Worth

Place 4: Hon. John J. Specia, Jr.
Judge, 225th District Court, San Antonio

Place 5: Hon. Barbara L. Walther
Judge, 51st District Court, San Angelo

Place 7: Hon. Amado Abascal, III
Judge, 365th District Court, Eagle Pass

If you are interested in serving on any committees during the 2003–04 term, please contact Hon. Molly M. Francis at 214-712-3400 or Mari Kay Bickett at mkbickett@yourhonor.com. ♦

<u>Judicial Section Committees</u>	<u>Texas Center Committees</u>
Legislative (Appellate, Trial)	Bylaws
Bylaws	Curriculum
Ethics	Fundraising
Juvenile Justice	Long Range Planning
Nominations	Nominations
Resolutions	PEER (Bench Book)
Site Selection	

Resolutions and Bylaw Amendments

The Judicial Section Resolutions Committee will meet on September 13, 2003, in conjunction with the Judicial Section Annual Conference.

As stipulated in the Judicial Section bylaws, resolutions must be submitted to the chair of the Resolutions Committee no later than 20 days prior to the date set for the annual meeting. Therefore, the deadline for submitting resolutions is August 25, 2003. Submit resolutions to: Judge Emil Karl Prohl, Resolutions Committee Chair, 198th District Court, 700 Main Street, Kerrville, TX 78028 or fax 830-792-2294.

Proposed bylaw amendments should be submitted in writing by Friday, August 15, to Hon. Stephen B. Ables, Judicial Section Chair/Conference Leader, 216th District Court, Kerr County Courthouse, Kerrville, TX 78028 or fax 830-792-2294. ♦

Thank You for Your Contributions

Includes contributions received as of July 11, 2003

Contributions to the Texas Center

Luis Aguilar	Ben Hardin	Don Leonard	Charles Sherrill
Jose Baca	David L. Hodges	Lora J. Livingston	Carol M. Siebman
J. Manuel Banales	Jack Holland	Susan Lowery	John J. Specia, Jr.
Cathy Cochran	Jean Spradling Hughes	Tom Neely	Ralph Strother
Daryl Coffey	William L. Hughes	Brian Quinn	Tommy Brock Thomas, Jr.
Thomas Culver	Faith Johnson	Jerry J. Ray	Carlos Villa
Wilford Flowers	Philip W. Johnson	Dean Rucker	Ralph Walton
Johnny Gabriel	Donald R. Jones	Carter T. Schildknecht	Mike Westergren

Memorial Contributions

Justice Sam Bass, Jr. Memorial
Ogden Bass

Judge J.E. Blackburn Memorial
Naomi Harney
Bill Sheehan

Judge Sam Callan Memorial
Jose Baca
Sam Paxson
Robert Pfeuffer

Judge Tom Cave Memorial
Joe B. Brown

Judge Peter M. Curry Memorial
Patrick J. Boone

Judge J. Neil Daniel Memorial
Bob Dickenson

Judge Charles J. Hearn Memorial
Jean Spradling Hughes
Jon N. Hughes

Justice Bun L. Hutchinson Memorial
Lauren Parish

Judge Joe E. Kelly Memorial
Martha Trudo

Chief Justice Frank McDonald Memorial
Derwood Johnson
John MacLean
F.B. McGregor

Judge C.V. Milburn Memorial
Joseph Connally

Judge Robert "Skip" Morse Memorial
Philip Barker
Charles Ramsay

Judge Jack Prescott Memorial
Joe Carroll

Judge Paul Reagan Memorial
Joe Carroll

Judge Thomas Stovall Memorial
Joe B. Brown

Judge Jim Noble Thompson Memorial
Thomas Thorpe

Mr. Royce Whitten Memorial
Darlene Whitten

"In Honor" Contributions

In Honor of Ms. Mari Kay Bickett
James Farris

In Honor of Judge John T. Boyd
Brian Quinn

In Honor of Judge Jim Farris
Stephen B. Ables

A Good Idea

*By Hon. Stephen B. Ables
Presiding Judge, 6th Administrative Judicial Region
Judge, 216th District Court*

My friend, Judge Jim Farris, is a wonderful source of humorous stories and is always full of ideas. His latest idea is one of his best.

Jim sent a letter to our Executive Director, Mari Kay Bickett, telling her he wanted to make a donation to the Texas Center, but he wanted to create a new category. In addition to the meaningful donations “in memory” of our judicial family, Jim suggested we make donations “in honor” of members of our ranks who serve others. With Jim’s permission, I will tell you he donated \$100 to the Texas Center and wrote the following letter:

Dear Mari Kay,

I just hit me that I probably have not given to you this year. And, I want that “Contributor” thing attached to my badge at our next meeting.

And, this is not in Memory of Anybody. So, I want to start a new thing where we can give to honor someone.

So, this is given in HONOR of the long and faithful service of our Executive Director Mari Kay Bickett.

And thanks, Mari Kay. You were a breath of fresh air to the Texas judiciary and still are.

Jim

Keep Smiling!

What a great idea. Think of someone you would like to honor today instead of waiting till tomorrow. I think I will send a donation to the Texas Center in honor of Judge Jim Farris for his dedicated service to the children of Texas and his positive personality that continues to bring a smile to everyone’s face.

I encourage you to support the Texas Center for the Judiciary and honor someone deserving today. ♦

Training for Mexican State Judges and Judicial Staff

The University of Texas at Austin and the Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM) presented a faculty development workshop for judicial educators in Monterrey, Nuevo Leon, on June 13–14. The workshop, which is presented in cooperation with the Consejo de la Judicatura of the State of Nuevo Leon, is designed to help judicial educators in the Mexican states of Nuevo Leon, Coahuila, and Tamaulipas develop effective strategies for designing and teaching judicial education classes for state judges and judicial staff.

The project is funded by a grant from the U.S. Agency for International Development (USAID) and the Association Liaison Office for University Cooperation in Development (ALO). The Texas Center for the Judiciary also provided valuable assistance for the project. ♦

Contribution Card

Your generous support is sincerely appreciated and vital to the success of the Texas Center for the Judiciary’s mission: **Judicial Excellence Through Education.**

Enclosed is a contribution for \$ _____ * in support of the Texas Center for the Judiciary.

To make a contribution by credit card, complete the following:

AMEX MasterCard Visa Discover

Credit Card #:

Expires:

Signature: _____

Date: _____

Name: _____

Court: _____

Address: _____

City, State, & Zip: _____

*If desired, indicate in whose MEMORY / HONOR (circle one) it is made:

The Texas Center is a non-profit organization to which contributions are fully deductible.

Mail your contribution to: Texas Center for the Judiciary, 1210 San Antonio, Suite 800, Austin, TX 78701

Judicial Conference Calendar

2003

Judicial Section Annual Conference

September 14–17, 2003
Corpus Christi

College for New Judges

November 9–13, 2003
Austin

2004

Regional Conference (Regions 1, 6, 7, 8, & 9)

January 26–28, 2004
Corpus Christi

Regional Conference (Regions 2, 3, 4, & 5)

February 22–24, 2004
Dallas

Family Violence Conference

March 29–31, 2004
Galveston

Texas College for Judicial Studies

April 25–30, 2004
Austin

Criminal Justice Conference

May 24–26, 2004
Richardson

Professional Development Program

June 21–25, 2004
Austin

Judicial Section Annual Conference

September 12–15, 2004
Dallas

College for New Judges

December 5–10, 2004
Austin

2005

Regional Conference (Regions 2, 6, 7, & 9)

February 27–March 1, 2005
Galveston

Regional Conference (Regions 1, 3, 4, 5, & 8)

TBA
Richardson

Texas College for Judicial Studies

May 1–6, 2005
Austin



Texas Center for the Judiciary
1210 San Antonio, Suite 800
Austin, TX 78701

First Class Mail
U.S. Postage
PAID
Austin, TX
Permit No. 1390