

In Chambers

The Official Publication of the Texas Center for the Judiciary

Volume 29, Number 3
Winter 2002

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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.

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In Chambers

Volume 29, Number 3
Winter 2002

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One Year Later: Task Force on Indigent Defense

By Hon. Sharon Keller
Chair, Task Force on Indigent Defense
Presiding Judge, Court of Criminal Appeals

Mr. James Bethke
Director, Task Force on Indigent Defense

In 1963, U.S. Supreme Court Justice Hugo Black stated in *Gideon v. Wainwright* that “[i]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”¹ In this decision, the Court made the states responsible for how public defense would be provided to people charged with a crime who were too poor to hire private counsel. In 2001, the Texas legislature passed Senate Bill 7, also referred to as the “Fair Defense Act.” For background on the debate over indigent defense legislation, the House Research Organization Committee has available some excellent materials.²

S.B. 7 provided the first broad statewide mandate for new local rules

and standards to improve indigent defense and the first state funding dedicated to assisting counties comprehensively in improving indigent defense. To administer the state funding and to oversee statewide indigent defense policies, the legislature also created the Task Force on Indigent Defense as a standing committee of the Texas Judicial Council with administrative support from the Office of Court Administration.

The remainder of this article will focus on the purpose of the Task Force and its accomplishments during the past year, as well as identify what is in store for the next biennium as new standards are promulgated and data necessary for evaluation begins to be generated.

The mission of the Task Force is to

provide technical, fiscal, and professional support to counties to improve the delivery of indigent defense services to promote justice and fairness to all indigent persons including indigent juvenile respondents charged with crimes, as mandated by the laws and constitution of the United States and Texas.

The Task Force will provide technical, fiscal, and professional support to counties and improve the delivery of indigent defense services by:

The Task Force is committed to responsive, quality service and to professional practices that exemplify the highest standards of moral and ethical behavior. The Task Force seeks to ensure that justice and fairness is promoted within the criminal justice system, regardless of a person’s financial circumstances, by striving for competent, highly trained, and effective counsel for defendants in criminal cases or juvenile respondents throughout all levels of their case. The Task Force’s mission is being advanced through state funding to counties and development of uniform indigent defense policies and standards. In addition, the Task Force is monitoring county compliance through the collection of state mandated indigent defense reports concerning county procedures and expenditures.

After S.B. 7 became law on January 1, 2002, the Task Force came into being when the Governor made appointments to it on January 23rd. The Task Force met for the first time in February and

CALL FOR PAPERS

Anyone who is interested in presenting a topic or an innovative program at one of the Texas Center’s upcoming conferences should submit an abstract to Hon. Barbara L. Walther by January 15, 2003.

Judge Barbara L. Walther
51st District Court
115 West Beauregard
San Angelo, TX 76903
Fax: 915-658-8046

Indigent Defense continued on page 10

From the 2002 Annual Conference

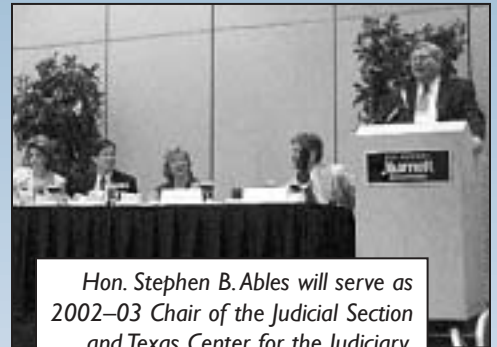
On program evaluations, attendees give the overall conference good marks



More than 50 judges attended a reception for the Texas Chapter of NAWJ at Biga on the Banks during the Annual Conference. Dr. Amy Freeman Lee, San Antonio artist and philanthropist, was the featured speaker.



Chief Justice Tom Phillips reported on business of the Supreme Court of Texas.

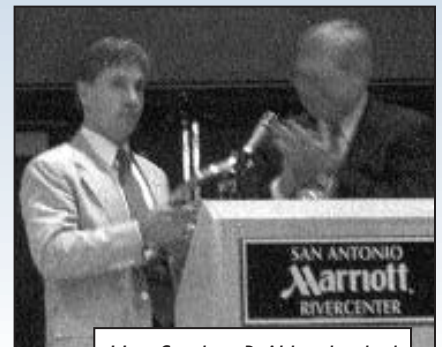


Hon. Stephen B. Ables will serve as 2002–03 Chair of the Judicial Section and Texas Center for the Judiciary.

At the Sunrise Breakfast, Max Lucado, Senior Pastor at Oak Hills Church of Christ, spoke about gaining perspective on one's problems.



The Color Guard—John Jay High School, AFJ ROTC, TX-782, stood at attention during the memorial service honoring judges who passed away in 2001–02.



Hon. Stephen B. Ables thanked Hon. Mark Atkinson for his outstanding service and leadership as 2001–02 Chair of the Judicial Section and Texas Center for the Judiciary.

Part of the Problem, a Kerrville-based county western band, entertained the crowd during the Chair's Luncheon.



Hon. Carroll Wilborn, Jr. presented Hon. Belinda Hill, Judge of the 230th District Court in Houston, with the Criminal Justice Section's 2002 Outstanding Jurist Award.

More than 615 judges attended the 2002 Judicial Section Annual Conference.



New Judiciary Leaders Elected

Judges attending the Judicial Section—State Bar of Texas’ 75th annual conference, held August 25–28 in San Antonio, elected new leaders for the 2002–03 term. Kerr County District Court Judge Stephen B. Ables will serve as Judicial Section Chair, and 5th Court of Appeals Justice Molly M. Francis will serve as Chair-Elect.

Formed in 1928, the Judicial Section promotes the objectives of the State Bar of Texas within the judiciary. Approximately 1,500 active and retired Texas judges compose the Judicial Section.

As Judicial Section Chair, Judge Ables will preside at all Section and Board of Directors meetings; formulate and present a report of the Section’s work at the State Bar of Texas’ annual meeting; and perform other duties as pertain to the office.

Judge Ables, 216th District Court Judge, Kerr County, also serves as Presiding Judge of the 6th Administrative Judicial Region of Texas. Baylor University named Judge Ables as Baylor Outstanding Young Alumnus (1989) and, together with his wife, Lynda, as Baylor Parents of the Year (1999–2000). The Judicial Section also honored Judge Ables in 1999–2000 as Criminal Judge of the Year. Recently, the Kerrville Area Chamber of Commerce named Judge and Mrs. Ables as Outstanding Citizens of the Year (2002).

Currently, Judge Ables serves on the Supreme Court Task Force on Foster Care and coaches the back-to-back State Champion Kerrville Tivy mock trial team.

Justice Molly M. Francis served as Judge of the Dallas County Criminal Court #9 for six years and the 283rd District Court for five years. In September

2001, Governor Perry appointed Justice Francis to the 5th Court of Appeals. She is a 1978 graduate of Baylor University and received her J.D. from Baylor in 1981. She is Board Certified in Criminal Law by the Texas Board of Legal Specialization (1987) and Board Certified in Criminal Law by the National Board of Trial Advocacy (1989). Justice Francis is Past Chair of the Criminal Justice Section Council of the State Bar of Texas. She serves on the Volunteer Center of Dallas’s Board of Directors.

In addition to leading the Judicial Section, Judge Ables and Justice Francis were also elected to head the Texas Center for the Judiciary. Prior to their

election, Judge Ables and Justice Francis were active on various Texas Center committees. Currently,

both serve on the Curriculum Committee, which develops the specialized judicial education and training opportunities for Texas appellate, district, and county court at law judges.

Justice Francis will succeed Judge Ables as Chair of the Judicial Section and Texas Center during the 2003–04 term. ♦



Judge Stephen B. Ables

Thank You, Texas Court Reporters Association



Sponsored by the Texas Court Reporters Association, the 2002 Judicial Section Annual Conference’s Silent Auction raised \$9,000 for the Texas Center for the Judiciary. Vice President of the Texas Court Reporters Association, Ms. Dana Smelley presented the auction proceeds check to Hon. Stephen B. Ables and Ms. Mari Kay Bickett.

The Texas Center for the Judiciary thanks the Texas Court Reporters Association and silent auction volunteers: Whitney Alden, Mary Berry, Melissa Carson, Twila Coshal, Laura Davis, Barbara Durand-Hollis, Glenda Fuller, Melinda Garriga, Victoria Gwynn, Irene Maldonado, Judy Miller, Roxanne Pena, Gloria Recio, Susan Simmons, Dana Smelley, and Susan Turner. Thanks also go to Judge George Gallagher, 396th District Court, and Judge Scott Wisch, 372nd District Court, who helped the court reporters set up the auction items. Thank you, Texas Court Reporters Association. ♦

Texas' Newest Administrators of Justice

As of November 15, 2002

Hon. Luis Aguilar

120th District Court, El Paso
Succeeding Hon. Robert Dinsmoor

Hon. Leonel Alejandro

357th District Court, Brownsville
Succeeding Hon. J. Rolando Olvera

Hon. Jose Baca

County Court at Law #7, El Paso
Succeeding Hon. Peter Peca

Hon. Elizabeth A. Berry

Crim. District Ct. #3, Fort Worth
Succeeding Hon. Don Leonard

Hon. Suzanne Brooks

County Ct. at Law #1, Georgetown
Succeeding Hon. Kevin Henderson

Hon. Barry R. Bryan

County Court at Law #2, Lufkin
Succeeding Hon. H. Perkins-Meyers

Hon. Alva "Gene" Calvert, Jr.

Cnty. Court at Law #2, Waxahachie
New Court

Hon. Arnaldo Cantu, Jr.

County Court at Law #5, Edinburg
New Court

Hon. Jack Carter

6th Court of Appeals, Texarkana
Succeeding Hon. Ben Grant

Hon. F. Alfonso Charles

County Court at Law #2, Longview
New Court

Hon. Linda Chew

327th District Court, El Paso
Succeeding Hon. Richard Roman

Hon. Daniel B. Childs

County Court at Law, Rusk
Succeeding Hon. LeRue Dixon

Hon. Jefferson Davis Collier, III

158th District Court, Denton
Succeeding Hon. Phillip Oran Vick

Hon. Weldon Copeland

Probate Court, McKinney
New Court

Hon. Joseph M. Cox

160th District Court, Dallas
Succeeding Hon. David Godbey

Hon. Brendan J. Doran

County Court at Law, Palestine
Succeeding Hon. Christopher Kolstad

Hon. Teresa Ann Drum

294th District Court, Canton
Succeeding Hon. Tommy Wallace

Hon. Elisabeth A. Earle

County Court at Law #7, Austin
Succeeding Hon. Brenda Kennedy

Hon. John A. Ellisor, Jr.

122nd District Court, Galveston
Succeeding Hon. Frank T. Carmona

Hon. Deborah Oakes Evans

87th District Court, Fairfield
Succeeding Hon. Sam Bournias

Hon. Guadalupe R. Flores

County Court at Law #2, Beaumont
Succeeding Hon. Harold Plessala

Hon. William F. Follis, Jr.

County Court at Law #2, Seguin
New Court

Hon. Gonzalo Garcia

210th District Court, El Paso
Succeeding Hon. Sam M. Paxson

Hon. Dori Contreras Garza

13th Court of Appeals, Edinburg
Succeeding Hon. Bonner Dorsey

Hon. Anna Elisabet Gonzales

Cnty. Ct. at Law #2, Corpus Christi
Succeeding Hon. Hector De Pena

Hon. Mark Greenberg

County Court at Law #5, Dallas
Succeeding Hon. Charles Stokes

Hon. Thomas F. Greenwell

319th District Ct., Corpus Christi
Succeeding Hon. Martha Huerta

Hon. Frank E. Griffin

County Court at Law, Brownwood
New Court

Hon. Monica E. Guerrero

County Ct. at Law #7, San Antonio
Succeeding Hon. Bill C. White

Hon. Brooks Hill Hagler

259th District Court, Anson
Succeeding Hon. Quay Parker

Hon. Kathleen A. Hamilton

359th District Court, Conroe
Succeeding Hon. James H. Keeshan

Hon. John Robert Harper

County Court at Law #1, Abilene
Succeeding Hon. Jack R. Grant

Hon. Deborah Nekhom Harris

Cnty. Crim. Ct. at Law #4, Fort Worth
Succeeding Hon. Wallace Bowman

Hon. Margaret Stewart Harris

Cnty. Crim. Ct. at Law #5, Houston
Succeeding Hon. Janice Law

Hon. Richard David Hatch, III

County Court at Law, Sinton
Succeeding Hon. Mike Welborn

Hon. Susan Hawk

291st District Court, Dallas
Succeeding Hon. Gerry Meier

Hon. James Corley Henderson

County Court at Law #1, Sherman
Succeeding Hon. Don Jarvis

Hon. Maria Teresa Herr

186th District Court, San Antonio
Succeeding Hon. Sam Katz

Hon. C.T. Hight

75th District Court, Liberty
Succeeding Hon. J.C. Zbranek

Hon. Laura Carter Higley
1st Court of Appeals, Houston
Succeeding Hon. Margaret Mirabal

Hon. Marc Wayne Holder
Cnty. Ct. at Law #2 & Probate, Angleton
Succeeding Hon. Patrick Sebesta

Hon. Phil Johnson
7th Court of Appeals, Amarillo
Succeeding Hon. John T. Boyd

Hon. Jay Ted Karahan
Cnty. Crim. Ct. at Law #8, Houston
Succeeding Hon. Neel Richardson

Hon. Oscar J. Kazen
County Ct. at Law #9, San Antonio
Succeeding Hon. Wayne Christian

Hon. Brenda Kennedy
403rd District Court, Austin
Succeeding Hon. Frank Bryan

Hon. Robert W. Kinkaid, Jr.
64th District Court, Plainview
Succeeding Hon. Jack R. Miller

Hon. Juergen Koetter
267th District Court, Victoria
Succeeding Hon. Whayland Kilgore

Hon. Douglas S. Lang
5th Court of Appeals, Dallas
Succeeding Hon. Sue Lagarde

Hon. W. Kenneth Law
3rd Court of Appeals, Austin
Succeeding Hon. Marilyn Aboussie

Hon. Marilea Whatley Lewis
330th District Court, Dallas
Succeeding Hon. Theo Bedard

Hon. Alma Lopez
4th Court of Appeals, San Antonio
Succeeding Hon. Phil Hardberger

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9th Court of Appeals, Beaumont
Succeeding Hon. Ronald L. Walker

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County Court at Law #1, Granbury
Succeeding Hon. Richard Hattox

Hon. Jim Meyer
170th District Court, Waco
Succeeding Hon. Joe N. Johnson

Hon. Philip A. Meyer
County Ct. at Law #6, San Antonio
Succeeding Hon. M'Liss Christian

Hon. Mary E. Miller
194th District Court, Dallas
Succeeding Hon. Harold Entz

Hon. Bruce Hal Miner
47th District Court, Amarillo
Succeeding Hon. David Gleason

Hon. Sally Montgomery
County Court at Law #3, Dallas
Succeeding Hon. Robert Jenevein

Hon. John Hardy Morris
County Court at Law, Gainesville
Succeeding Hon. Belvin Harris

Hon. Barbara Hanson Nellerhoe
45th District Court, San Antonio
Succeeding Hon. C. Haberman Knight-Sheen

Hon. Jaime Joel Palacios
County Court at Law #2, Edinburg
Succeeding Hon. Jaime Garza

Hon. Neil Edward Pask
County Crim. Ct. at Law #2, Dallas
Succeeding Hon. James Pruitt

Hon. Harold Phelan
286th District Court, Levelland
Succeeding Hon. Andrew J. Kupper

Hon. John F. Phillips
314th District Court, Houston
Succeeding Hon. Mary M. Craft

Hon. Ronald R. Pope
328th District Court, Richmond
Succeeding Hon. Thomas Stansbury

Hon. Tom L. Ragland
County Court at Law #1, Waco
Succeeding Hon. David L. Hodges

Hon. Donna S. Rayes
81st District Court, Jourdanton
Succeeding Hon. Olin B. Strauss

Newest Administrators of Justice continued on page 9

ethics | opinions

Questions & Answers

The Judicial Section's 2002-03 Committee on Judicial Ethics is meeting regularly. To submit a question for consideration, contact:

Justice Mack Kidd, Chair

3rd Court of Appeals

P.O. Box 12547

Austin, TX 78711

Phone: 512-463-1733

Fax: 512-463-1685

Committee on Judicial Ethics

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Hon. Larry Gist

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Hon. Belinda Hill

Hon. Emil Karl Prohl

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Hon. Kathleen Olivares, *Liaison*

Hon. Mario Ramirez, *Liaison*

Professor Amon Burton, *Ex-Officio*

Hon. Jay Robinson, *Ex-Officio*

Hon. Steve Seider, *Ex-Officio*

Judicial Campaign Conduct Gone Wrong

Real Life Examples of Campaign Mudslinging

By Julie Schuetz
Northern Illinois University College of Law

James Alfini, Professor of Law
Northern Illinois University

Until recently, relatively few judges had been disciplined for violating the election campaign restrictions imposed by the Code of Judicial Conduct. Even then, the sanctions imposed had been relatively light. Sanctions available to judicial disciplinary bodies range from *private admonition* to *removal from office*. Other sanctions include reprimand (public or private), censure, and suspension (with or without pay). Judges usually have been either admonished or reprimanded for violations of various campaign restrictions.

More recently, however, the increasing contentiousness of judicial election campaigns has resulted in more flagrant violations that have received heavier sanctions. Florida is an example of a particularly tough state. In 1996, Nancy Alley ran for a position on the Circuit Court of the Eighteenth Judicial Circuit of Florida. *In re Alley*, 699 So. 2d 1369 (1997). Alley won the election, but was issued a public reprimand for violating several rules regulating the Florida bar and several canons in the Code of Judicial Conduct. During the campaign, Alley, a lawyer and general master, falsely claimed that she had circuit judicial experience and that her opponent, Judge Alva, had none. Candidate Alley further misrepresented her and her opponent's qualifications and tried to inject party politics into the election by noting that a "Democratic governor" appointed her opponent. Alley also stated that Judge Alva "defend[ed] convicted mass

murdered, cop killer, William Cruse" and included a picture of Alva and Cruse in campaign literature, but failed to mention that Alva was an assistant public defender and that Cruse had not been convicted at the time of the photograph. Finally, Alley quoted only a portion of an editorial giving the false impression that the newspaper endorsed Alley, not her opponent. Although the court, constrained at the time by the judicial qualification commission recommendation, issued only a public reprimand, that stated that they "[found] it difficult to allow one guilty of such egregious conduct to retain the benefits of those violations and remain in office."

A few years after the decision in *In re Alley*, the Florida Supreme Court removed a judge for, among other things, promising to favor the state and the police and side against the defense and for making unfounded attacks on an incumbent county judge. *In re McMillan*, 797 So. 2d 560 (2001). Referring to their comments in *In re Alley*, the court stated, "to allow someone who has committed such misconduct during a campaign to attain office to then serve the term of the judgeship obtained by such means

clearly sends the wrong message to future candidates—that is, the end justifies the means, and thus, all is fair so long as the candidate wins."

Ohio has also recently been forced to deal with the problem of campaign speech violations. In 1997, a commission of five judges appointed by the Ohio Supreme Court issued a six-month stayed suspension to Lee Hildebrandt, a candidate for the First District Court of Appeals. Hildebrandt, without bothering to verify the veracity of the statements,

"To allow someone who has committed such misconduct during a campaign to attain office to then serve the term of the judgeship obtained by such means clearly sends the wrong message to future candidates..."

ran television and radio advertisements that misled the public with respect to his opponent's voting record in Congress and with respect to his opponent's initial successful bid for Congress. *In re Judicial Campaign Complaint Against Hildebrandt*, 675 N.E. 2d 889 (1997). A few years later, the Ohio Supreme Court imposed another six-month stayed suspension on David Evans. During Evans's campaign for a seat on the Fourth District Court of Appeals, he, among other things, exaggerated his endorsements in campaign literature, print, radio, and television advertisements. *Office of Disciplinary Counsel v. Evans*, 733 N.E. 2d 609 (2000).

Florida and Ohio are not the only states forced to address the escalating

pugnacity of judicial campaigns by doling out harsher penalties for increasingly egregious violations. Many states with an elected judiciary face similar difficulties.

It is unclear how the recent U.S. Supreme Court ruling in *Republican Party of Minnesota v. White* will affect election campaign restriction cases. In *White*, the Court ruled in a 5–4 decision that, “The Minnesota Supreme Court’s canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed

legal and political issues violates the First Amendment.” The Minnesota prohibition was based on the 1972 version of the ABA Model Code of Judicial Conduct. Writing for the majority, Justice Scalia made it clear that the Court was expressing no view on the campaign speech restrictions contained in the 1990 version of the American Bar Association Model Code of Judicial Conduct. Some scholars believe, however, that the Court’s ruling could have a more widespread effect on the constitutionality of judicial

campaign speech restrictions and thus would bring the rulings of all the cases discussed here into question. ♦

Julie Schuetz is a second year law student at Northern Illinois University College of Law. James Alfini is a professor of law at Northern Illinois University. He is coauthor of Judicial Conduct and Ethics, Lexis Publishing, 3d Edition.

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Newest Administrators of Justice continued from page 7

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7th District Court, Tyler
Succeeding Hon. Louis Gohmert

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New Court

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36th District Court, Sinton
Succeeding Hon. Ronald M. Yeager

Hon. Jim Worthen

12th Court of Appeals, Tyler
Succeeding Hon. Leonard Davis

Hon. Timothy Lane Wright

County Ct. at Law #2, Georgetown
Succeeding Hon. Suzanne Brooks

Hon. Janis L. Yarbrough

306th District Court, Galveston
Succeeding Hon. Susan P. Baker

Hon. James M. York

246th District Court, Houston
Succeeding Hon. Don Ritter

Honors & Achievements for Texas Judges

The American Academy of Matrimonial Lawyers—Texas Chapter selected **CHIEF JUSTICE MARILYN ABOUSSIE**, Third Court of Appeals, as the first recipient of its Outstanding Jurist Award. The Academy honored Chief Justice Aboussie at its annual dinner meeting in Dallas on August 5, 2002.

JUSTICE BEA ANN SMITH of the Third Court of Appeals in Austin was recently sworn in as president of the National Association of Women Judges. She is the first Texas judge elected to lead that prestigious organization of some 1,200 state and federal judges.

When Justice Smith attended her first NAWJ national conference, she was the only Texas judge present. She returned to Texas with a mission to change those numbers. Today, 55 Texas judges are NAWJ members.

In 2005, Texas will host its first national NAWJ conference

in Houston, with **JUSTICE WANDA FOWLER** of the 14th Court of Appeals, Houston, serving as chair.

JUDGE M. SUE KURITA, County Court at Law #6, El Paso, was elected District Director for District 11 (Texas, Oklahoma, and Arkansas) at the National Association of Women Judges annual conference, held October 16–20 in Minneapolis/St. Paul, Minnesota.

HON. SUSAN CRISS, 212th District Court, Galveston, will serve as Deputy Director. ♦



Texas judges, including Hon. Lora Livingston, Hon. Bea Ann Smith, Hon. M. Sue Kurita, Hon. Susan Criss, and Hon. Elizabeth Ray (not pictured), attended the National Association of Women Judges 24th Annual Conference, held October 16–20 in Minneapolis/St. Paul.

Indigent Defense continued from page 3

Chief Justice Tom Phillips appointed Sharon Keller, Presiding Judge of the Court of Criminal Appeals, to serve as Chairman. Chairman Keller appointed as Vice Chairman Olen Underwood, Judge of the 284th Judicial District and Presiding Judge of the 2nd Administrative Judicial Region of Texas. To focus the efforts of the Task Force, the Chairman appointed two committees: the Grants and Reporting Committee and the Policy and Standards Committee. The director of the Task Force, Jim Bethke, was hired in March of 2002, and four other staff members were hired by the end of May.

In March the Task Force began the process of awarding approximately \$7

million to qualify counties by adopting emergency grant administration rules. Grant application kits were mailed in April. The Task Force decided that Fiscal Year 2002 grant funding would be based on a population formula with a \$5,000 minimum funding level to qualifying counties. Eligibility for grants was conditioned upon meeting fiscal and plan requirements. Fiscally, counties qualified for funding if their FY 2002 annualized expenses were greater than their baseline expenses in FY 2001. Counties could alternatively qualify by committing to use funds to improve their indigent defense systems. To qualify, counties were also required to provide in their indigent defense plans for the three S.B. 7 requirements related to prompt access to counsel.

Grant applications were due by May 31st and the newly hired staff began work immediately to determine the eligibility of the counties to receive grant funds. Originally, only 68 counties qualified after the original application submission on both fiscal and plan requirements. Task Force staff contacted each of the counties that did not initially qualify for the grants, as well as those counties that did not apply, to assist them in meeting the requirements of the grant. These phone calls resulted in numerous grant application addenda and plan supplements being sent in to qualify for grant funding. After this process, the Task Force approved grant awards on July 22, 2002, totaling \$7,298,124 to

Indigent Defense continued on page 13

Justice Hankinson Lauded for Contributions to Legal Services to the Poor

The Texas Equal Access to Justice Foundation, the largest Texas-based funding source for legal aid organizations in the state, has awarded Justice Deborah Hankinson the prestigious Harold F. Kleinman award for outstanding contributions to the delivery of civil legal services to the poor.

Hankinson, the Supreme Court of Texas liaison to the Foundation, has worked tirelessly to ensure that poor and low-income Texans are afforded access to justice. She led the charge in the creation of the Texas Access to Justice Commission, an umbrella organization designed to enhance the quality of legal services to the poor. She was a strong supporter of the recent change to the State Bar of Texas dues statement that requires attorneys to “opt-out” of making a contribution to legal services. Through the opt-out approach, Texas attorneys contributed \$1 million this year, doubling 2001 contributions. Additionally, Hankinson was instrumental in securing \$5 million in Crime Victim Compensation funds, dedicated to the provision of civil legal services for low-income crime victims.

“In this time in which access to justice for underprivileged Texans has suffered from Congressional retreat, litigation assault and a decline in statewide funds, Justice Hankinson has been a source of innovative ideas and inspirational leadership,” TEAJF Board Chairman Dick Tate said. “Her dedicated efforts have improved the lives of countless poor Texans by opening for them the doors of our justice

system. She is the Harold Kleinman Award personified.”

The Kleinman Award is named after former Texas Equal Access to Justice Foundation Chairman Harold F. Kleinman. The Foundation, wishing to recognize Kleinman’s outstanding character, commitment and public service to the people of Texas, created the award to confer prestige and honor upon leaders in the field of access to civil justice.

“Deborah Hankinson has brought to the issue of civil legal services to the poor the same passion she brings to her role as judge,” Texas Supreme Court Chief Justice Thomas R. Phillips said. “She works from a formidable personal and intellectual commitment that we can and should do better to make the justice system accessible to all.”

The Texas Equal Access to Justice Foundation presented the Kleinman Award to Hankinson at its annual Court Luncheon. Upon acceptance of the award, Hankinson said, “This award means so much to me. Harold Kleinman was the managing partner at [the law firm of] Thompson & Knight when I began working there. All the associates admired him tremendously. He was the example of professionalism, community service and compassion.”

Hankinson, a native of Dallas,



Justice Deborah Hankinson received the Harold F. Kleinman award for outstanding contributions to the delivery of civil legal services to the poor. From left to right: Dick Tate, Chairman, Texas Equal Access to Justice Foundation; Betty Balli Torres, Executive Director, Texas Equal Access to Justice Foundation; Justice Deborah Hankinson, Supreme Court of Texas; Chief Justice Thomas R. Phillips, Supreme Court of Texas; John Jones, Chairman, Texas Access to Justice Commission.

graduated *cum laude* with her doctorate in jurisprudence from Southern Methodist University School of Law. She was appointed to the Supreme Court of Texas in 1997 and was elected to the court in 1998. She will step down from the court in December 2002.

The Texas Equal Access to Justice Foundation (www.txiolta.org) administers funds to create community capacity to provide civil legal services for low-income Texans. The organization is committed to the vision that all Texans will have equal access to justice, regardless of their income. The Foundation administers the Interest on Lawyers’ Trust Accounts (IOLTA) fund, the Basic Civil Legal Services (BCLS) fund and the Crime Victims Civil Legal Services (CVCLS) fund. The funds from each of these sources are earmarked to assist nonprofit organizations in providing free civil legal services to low-income Texans. ♦

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ABA Honors the Country's Judiciary

The American Bar Association's Judicial Division celebrated the achievements of federal, state, and local judges and lawyers in the improvement of the administration of justice at the Annual Dinner in Honor of the Judiciary, held August 11, 2002, at the United States Supreme Court.

The ABA Justice Center presented the 2nd Annual John Marshall Award to U.S. Supreme Court Justice Anthony M. Kennedy. The award recognizes individuals responsible for extraordinary

improvement in the administration of justice.

Texas judges, including Hon. Lamar McCorkle, Hon. Mark D. Atkinson, and Hon. Steve Smith, as well as the Texas Center for the Judiciary's Executive Director, Ms. Mari Kay Bickett, attended the dinner. ♦



Judge Lamar McCorkle, Judge Mark D. Atkinson, Ms. Mari Kay Bickett, and Judge Steve Smith attended the ABA's Annual Dinner in Honor of the Judiciary held at the U.S. Supreme Court.

Indigent Defense continued from page 10

238 counties and direct disbursements to two counties. Ten counties did not apply for grant funding and four counties did not qualify fiscally for funding. Distributions of grant awards were completed by September 3, 2002.

Simultaneous with the grant process, the Task Force began a preliminary analysis of the county plans for compliance with S.B. 7. It worked with Professor Robert Dawson, University of Texas School of Law, who graciously provided four law students to assist the Task Force. Their review indicated 135 counties addressed each of the main requirements of the law. Another source of information on how counties have responded to S.B. 7 is a March 2002 report, *Quality of Initial County Plans Governing Indigent Defense in Adult Criminal Cases*, prepared by two advocacy groups, the Equal Justice Center and Texas Appleseed.³

This initial review of the plans was followed by a more in-depth review of

county processes related to determining indigence and to minimum annual continuing legal education (CLE) and experience levels required for attorneys handling appointments. This was completed at the direction of the Policies and Standards Committee following their first meeting in May 2002. Most counties determine indigence through an analysis of the statutory factors detailing the financial condition of the defendant. Other counties base the determination on the income level of the defendant related to federal poverty guidelines. The standard in these counties ranges from an income level below 100% to an income level of 175% of the poverty guidelines. At its last meeting in October 2002, the Task Force formed an advisory workgroup on indigency to study this issue in more detail.

As to CLE and experience requirements for attorneys, most Texas counties have enacted some kind of standard requiring attorneys who wish to represent indigent defendants to

obtain CLE training. The largest group of counties (115) requires somewhere in the range of six to twelve hours of training to be in criminal law. The Task Force has published for public comment a rule concerning minimum CLE requirements to be eligible to be on a public appointment list.⁴

In October 2002, the Task Force also promulgated a model attorney fee voucher and model magistrates warning.⁵ These model forms are not mandatory but advisory in nature. A court is welcome to adopt these forms as part of its countywide indigent defense plan and procedures.

Looking forward, the Task Force will focus on gathering information to determine whether the requirements of S.B. 7 and Task Force standards are being met. Evaluation of reporting on the indigent defense plans submitted to OCA will continue to be a key strategy for determining compliance with the law. The Task Force will also review

Indigent Defense continued on page 14

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For recognition in In Memoriam, please forward the names of recently deceased judges to Morgan Morrison, Publications Coordinator (telephone: 512-463-1530 or e-mail: morganm@yourhonor.com).

Indigent Defense continued from page 13

county expenditures for indigent defense services with the systems in those counties to identify cost drivers in the system and provide policy makers with the information on how to improve the efficiency of their system. From this analysis, the Task Force will also develop model practices for specific areas of indigent defense services. The Task Force will also work with the Criminal Justice Policy Council in developing its evaluation strategy and begin conducting more in-depth studies on key areas where meeting performance measures is critical to determining the early success of S.B. 7.

The Task Force has its next meeting scheduled on January 16, 2002, in Austin. At this meeting, the Task Force will award approximately \$13 million in

grants to counties in its second round of funding. Grant applications for this funding were due to the Task Force no later than 5 p.m. on December 2, 2002.

In sum, the first year's administrative implementation of S.B. 7 has been successful and all counties have submitted plans to meet the new requirements. A copy of each county's plan is available at the Task Force website.⁶ Each county's expenditure report concerning indigent defense expenses will be available online soon. Effective communication and collaboration among the Task Force, the courts, the counties, and other criminal justice stakeholders is necessary for the continued improvement of the indigent defense system in Texas. This information being reported by the counties and courts will continue to be analyzed and evaluated by the Task

Force. Through effective data collection, analysis, and the collaborative process, Texas will continue to improve the delivery of indigent defense services. ♦

Endnotes

1. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
2. See, The Best Defense: Representing Indigent Criminal Defendants, House Research Organization Focus Report Number 76-18. November 22, 1999; and Issues of the 77th Legislature, House Research Organization Focus Report Number 77-11, July 2, 2001. These materials may be obtained electronically at: <http://www.capitol.state.tx.us/hrofr/hrofr.htm>.
3. Full report on line at www.equaljusticecenter.org.
4. The proposed rules are available at: <http://www.courts.state.tx.us/tfid/TFID%20policies%20and%20standards.htm>.
5. These forms are available online at: <http://www.courts.state.tx.us/tfid/TFID%20policies%20and%20standards.htm>.
6. See, www.courts.state.tx.us/tfid for more information regarding the committees, activities, and staff of the Task Force.

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March 19–20, 2003
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April 7–9, 2003
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May 4–9, 2003
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