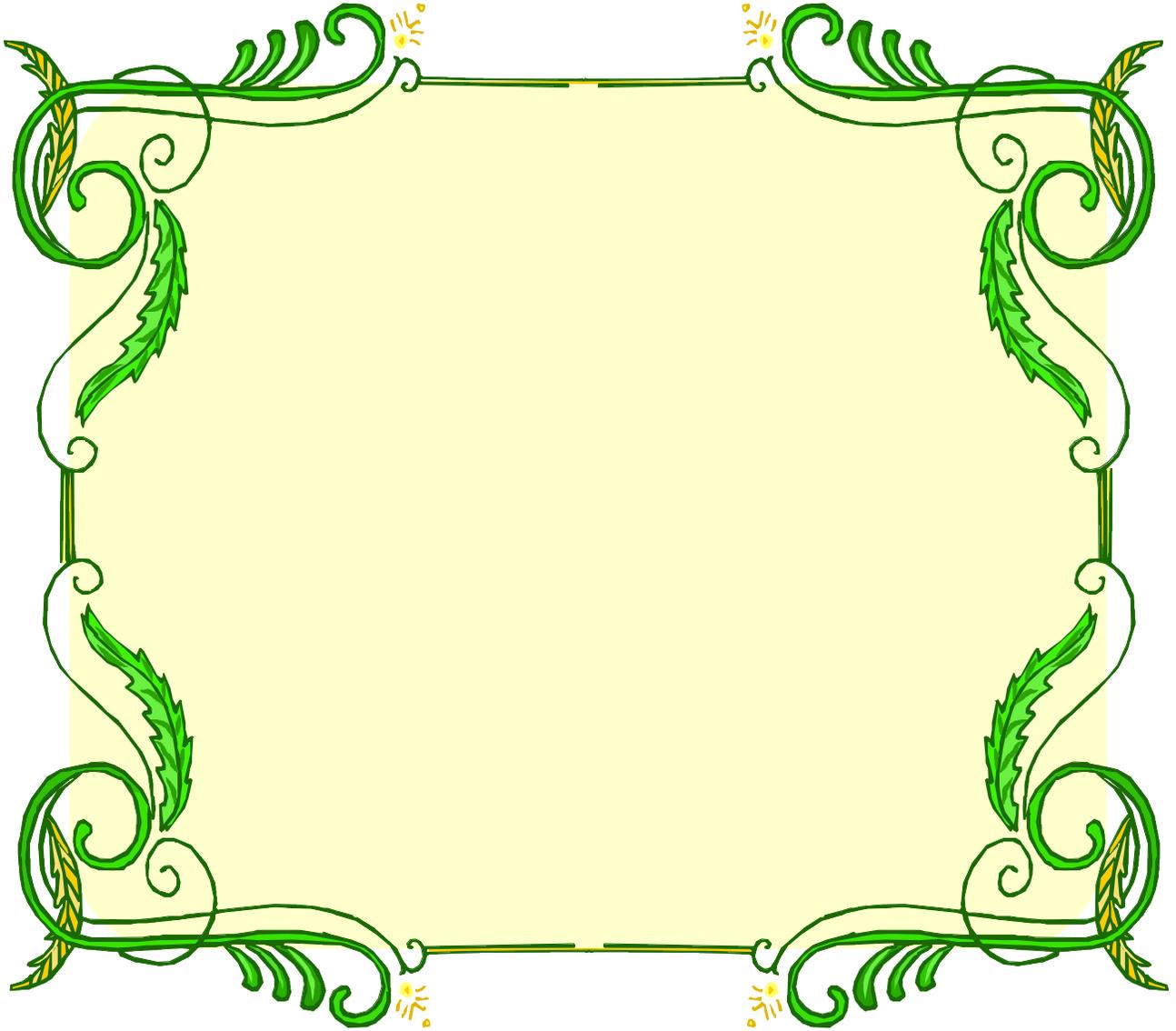
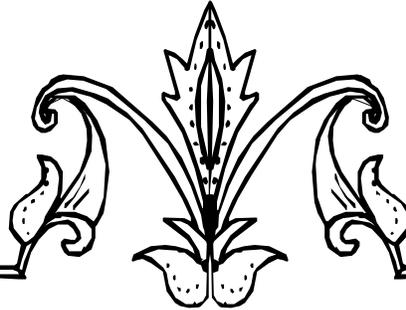


# State Commission on Judicial Conduct



2001 Annual Report

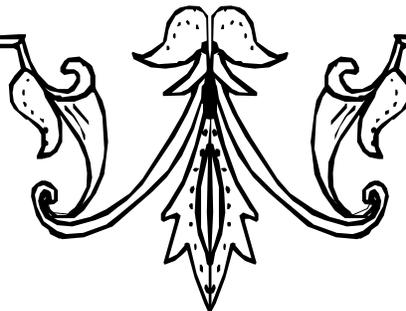


## Eastland County Courthouse

The Eastland County Courthouse, built in 1928, is a 7-story brick and cast concrete structure with Art Deco friezes and panels. It was designed by Lang and Witchell, who incorporated into the top floor the elaborate and symbolic Art Deco "cornice." The architects' design also included an elevator, the first in Eastland.

The Eleventh Court of Appeals sits in the Eastland County Courthouse. The court was established in 1925, prior to the current courthouse being built. Chief Justice William G. "Bud" Arnot has served the court since 1986, becoming its Chief Justice in 1995. Justice Arnot has also served the Commission on Judicial Conduct for six years, including service as vice chair and chair. His perspective, dedication and integrity have been invaluable to the Commission.

**Photo courtesy of Mildred L. Brown**



# State Commission on Judicial Conduct

## Commission Members

L. Scott Mann, Chair

Michael O'Neal, Vice Chair

Kathleen Olivares, Secretary

William G. (Bud) Arnot, III

Blake Tartt

Keith Baker

Martin J. Chiuminatto, Jr.

Gilbert M. Martinez

Elizabeth G. (Dee) Coats

Wallace B. Jefferson

Service: November 1999 – April 2001

M. Wayne Brittingham

James A. Hall

Appointed: April 2001

## Executive Director

Margaret J. Reaves

P.O. Box 12265 ★ Austin, Texas ★ 78711

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# Executive Director's Year in Review

This year has seen the implementation of many changes for the Commission. The legislative concerns and Sunset issues of FY 2000 became reality with the support of the 77<sup>th</sup> Legislature. Statutory structure was given to a previously informal procedure, which allowed a judge to resign during a Commission investigation. Formal Proceedings will now become public upon the filing of the charging document. A new provision for automatic removal of a judge who has been convicted of or granted deferred adjudication for a felony or a misdemeanor involving official misconduct has been added.

The Commission also received funding to support a new program, *Amicus Curiae*. This program is introduced in this report on page 10. The Commission is looking forward to the opportunities provided by the implementation of the *Amicus* program. The past year saw the continued commitment of the Commission to assist in the education of the judiciary. Commission staff and members spoke at 34 seminars around the state on issues of judicial ethics. In FY 2000 the Commission initiated a toll free number. This past fiscal year, over 850 calls were received seeking information and perspective on the Canons of Judicial Conduct. The Commission has further committed to provide written advisory opinions to the judiciary through the implementation of a Supreme Court order, to be effective on January 1, 2002.

The Commission recently issued a public statement regarding its concerns involving fundraising. The statement is available on page 27 of this report. Information for the judiciary is also included on page 29 related to recent changes to the Campaign Fairness Act.

Continuing its responsibilities to enforce the Canons, the Commission issued eighty sanctions during the past year. There was a marked increase in Orders of Education. Twelve cases were voted into formal proceedings. The sanctions issued during FY 2001 are summarized in Appendix A as annotations to the Constitution, and Appendix D as annotations to the Canons. The Commission hopes that the summaries will serve to educate the judiciary about improper judicial conduct. Public sanctions continue to be provided to the media and public as requested.

The Commission was proud to be chaired by the first public member elected by his peers to serve in this capacity. Scott Mann led the Commission with commitment and courage as it faced many challenges during FY 2001. Together with the ten other Commissioners, innumerable hours were devoted to the mission of this agency. Their belief in the appropriate and effective enforcement of the Canons was demonstrated by their work. We gratefully acknowledge their dedication.

We also acknowledge the commitment of the judicial training schools and mentor judges who assisted in the education of their brother and sister judges. We gratefully acknowledge the members of the Bar who have generously donated legal expertise and litigation experience as Special Counsel to the Commission staff for the effective and efficient processing of cases.

The Commission on Judicial Conduct continues its obligation and opportunity to preserve the integrity of the judiciary, protect public confidence in our system of justice, and assist the judiciary in its efforts to embody the principles, values and standards set forth in the Code of Judicial Conduct.

Margaret J. Reaves  
Executive Director



# Commission Members



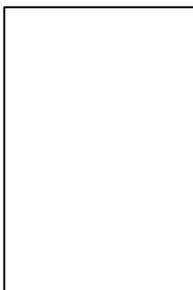
## **Mr. L. Scott Mann Chair**

L. Scott Mann is a fifth generation Lubbock County resident. He graduated from Roosevelt High School in Lubbock before attending Florida College in Tampa, Florida. He served as a minister in Churches of Christ in Tennessee, Kentucky and Indiana from 1980 until 1986.

Mr. Mann later joined a commercial finance company, Diversified Lenders, Inc., as a marketing director. In 1991, he became the vice-president and a co-owner of the company. Since 1996, he has been president of Caprock Capital Corporation, a local government finance and investment corporation.

He participates in a variety of community and civic activities. He is a regional director of the Texas County Chairman's Association. Mr. Mann serves as a board member of the Hospice of Lubbock, and is executive vice-president of the board of directors for "Broadway Festivals, Inc." He is a member of American Mensa, Ltd., the Greater Lubbock Rotary Club, and the Lubbock Hispanic Chamber of Commerce. He was a member of the faculty for the 15<sup>th</sup> National College on Judicial Conduct and Ethics in 1996, and also was a member of the Lubbock County Youth Center Expansion Task Force in 1996. Mr. Mann and his wife, Karla, are parents of two children, Jenay and Jason.

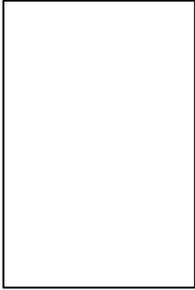
Mr. Mann was appointed to the State Commission on Judicial Conduct by Governor George W. Bush in 1995.



## **Judge Michael O'Neal Vice Chair**

Judge Michael O'Neal is serving his 13<sup>th</sup> term as a municipal judge and his 9<sup>th</sup> term as Chief Judge of the City of Dallas Municipal Courts of Record. He is a past president of the Texas Municipal Courts Association, having served as a director of the association since 1993. Judge O'Neal is a member of the Municipal Judges Section of the State Bar of Texas and a member of the Judicial Committee on Information Technology. He received his bachelor's, master's, and law degrees from Southern Methodist University, and is a member of the William "Mac" Taylor, Jr. Chapter, American Inns of Court.

Judge O'Neal was appointed to the State Commission on Judicial Conduct by the Supreme Court of Texas in 1996 to fill an unexpired term, and reappointed to a full term in 1998.



**Judge Kathleen Olivares  
Secretary**

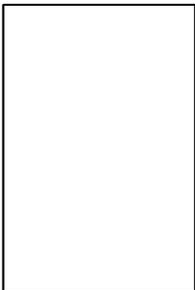
Judge Kathleen Olivares is serving her second elected term as judge in the 205<sup>th</sup> Judicial District Court in El Paso. She earned her Bachelor of Arts and Law degrees from the University of Minnesota. In 1982, she was the third Hispanic woman to graduate from the law school in its 94-year history. Judge Olivares also served as a municipal court judge for the City of El Paso from 1991 to 1993. She has worked in private law practice, and

as an Assistant County Attorney in El Paso.

Judge Olivares is a member of the College of the State Bar of Texas, the Judicial Section-State Bar of Texas, the National Association of Women Judges, the American Bar Association, and the El Paso Bar Association. She has been active at her alma mater, the University of Minnesota Law School, serving as Chair of the Law School's Alumni Board of Visitors and President of the Law School's Board of Directors. Judge Olivares volunteers as a mentor in various community projects in El Paso.

Judge Olivares and her husband, Dr. Robert A. Olivares, have three children, Robert, Jr., Kristina, and Christopher.

Judge Olivares was appointed to the State Commission on Judicial Conduct by the Supreme Court of Texas in 2000.



**Chief Justice William G. (Bud) Arnot, III  
Immediate Past Chair**

Chief Justice Arnot resides in Abilene. After graduation from Breckenridge High School, he attended Washington and Lee University in Lexington, Virginia, and then graduated from the University of Texas with a B.B.A. degree in 1972. He graduated from Baylor School of Law with a J.D. degree in 1975 and from the University of Virginia with an L.L.M. degree in 1992.

He serves as the Chief Justice of the 11<sup>th</sup> Court of Appeals situated in Eastland, Texas, and is completing his sixteenth year as a justice.

Justice Arnot has served as the Chair of the Texas Commission on Judicial Conduct, as a member of the Texas Judicial Council, as President of the Appellate Section of the Judicial Section of the State Bar of Texas, as a member of the Executive Board for the Texas Center for the Judiciary, as the presiding judge for the Appellate Judges Council, and as chair of the Council of Chief Justices for the State of Texas.

In the Appellate Judges Conference of the American Bar Association, Justice Arnot serves as a member of the executive board of the Conference, as the liaison to the University of Virginia for its LL.M. program, as a member of the Spencer- Grimes Committee on Continuing Appellate Education, and as past chair of the Council of Chief Judges. Justice Arnot also serves as an adjunct professor of law at Texas Tech Law School teaching jurisprudence.

He and his wife, Emily, are members of the First Baptist Church in Abilene where they both teach Sunday school and she serves as a Deacon. They have three children, Will, a senior at the University of Texas and a graduate of the Berklee School of Music in Boston, Mackey, a second year at the University of Virginia, and Corrine, a freshman at Abilene High School. Justice Arnot is currently serving on the Board of Trustees of Hardin-Simmons University and the Board of Friends at Scott and White Clinic.

Justice Arnot was appointed to the State Commission on Judicial Conduct by the Supreme Court of Texas in 1995.

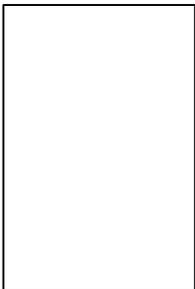


### **Mr. Blake Tartt**

Mr. Tartt, a director of the American Judicature Society from 1984 to 1987, is a graduate of Southern Methodist University and a *cum laude* graduate of the Southern Methodist University School of Law. He was named a distinguished alumnus of the SMU Law School in 1997. He is a partner in Beirne, Maynard & Parsons, L.L.P. in Houston. He served as president of the State Bar of Texas and as Chair of the Board of Trustees of the Houston Bar Foundation, the Texas Bar Foundation, and of the Fellows of the American Bar Foundation. He is a Fellow of the American College of Trial Lawyers and is a member of the American Board of Trial Advocates, the International Association of Defense Counsel and the American Law Institute. He has also served on the Texas Judicial Council.

He is a former chair of the American Bar Association Standing Committee on the Federal Judiciary, which is the ABA committee having responsibility for reporting to the White House and the U.S. Department of Justice on the professional qualifications of all potential nominees to federal judgeships. He has served as the Texas State Delegate to the American Bar Association's House of Delegates from 1993 through 1999, and has been a member of the House of Delegates for 20 years. Mr. Tartt is currently serving on the American Bar Association Board of Governors representing District 8, Texas and Florida.

Mr. Tartt was appointed to the State Commission on Judicial Conduct by the State Bar of Texas in 1996.



### **Judge Keith Baker**

Judge Baker was born and reared in San Antonio. He earned both his B.A. and law degrees from the University of Texas at Austin. He was licensed as an attorney in May 1969. After graduating from law school, he received a direct commission in the United States Army. He served as Adjutant, 27<sup>th</sup> Surgical Hospital in Chu Lai, Vietnam, and as Adjutant, 34<sup>th</sup> Medical Battalion, Fort Benning, Georgia. He completed his military service as a Captain in 1973.

Judge Baker has practiced law in San Antonio since 1973. Since 1986, he has been a partner in the law firm of Soules & Wallace. He specializes in business litigation in state and federal courts. Judge Baker was first elected as a part-time justice of the peace in 1982, and has been re-elected to that office for four consecutive terms. He is the Dean of Bexar County Justices of the Peace. He is the author of many bills concerning school safety and attendance and justice court jurisdiction that are now law. In 1995, the Texas Supreme Court named Judge Baker to the Task Force on Justice Court Rules. In 1999, Bexar County Commissioners' Court cited Judge Baker and his staff for their outstanding work in implementing new technology and new procedures for Justice Courts in Bexar County.

Judge Baker is a member of the Board of Trustees of Texas Military Institute, and is a long time member of the San Antonio Rotary Club. He is active in many civic activities. He is a longstanding member of the First Presbyterian Church in San Antonio. Judge Baker has a daughter, Courtney.

Judge Baker was appointed to the State Commission on Judicial Conduct by the Supreme Court of Texas in 1998.



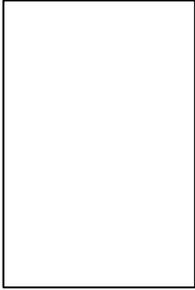
### **Judge Martin J. Chiuminatto, Jr.**

Judge Chiuminatto has served as judge of the county court at law in Kingsville, Kleberg County, since January 1987. He received his Bachelor of Science degree in 1970 from Texas A & I University. He earned his law degree from St. Mary's University, where he was a member of the Law Review and Phi Delta Phi Honor Fraternity. He was admitted to the Texas Bar in 1975.

Judge Chiuminatto is Board Certified in Family Law and is a member of the College of the State Bar of Texas. He is a former Director of the Texas Center for the Judiciary, Inc., and former chair of the Juvenile Justice Committee of the Judicial Section of the State Bar of Texas. Judge Chiuminatto has served on the faculty of the Texas College for New Judges and was previously on the faculty for the Regional Judicial Conferences in 1991 and 1992. He is a past president of the Kleberg-Kenedy Counties Bar Association and served on the Information Technology Task Force of the Texas Commission on Judicial Efficiency during 1995 and 1996.

Judge Chiuminatto is a Life Fellow of the Texas Bar Foundation and presently serves on the Texas Judicial Council. He served his country on active duty in the U.S. Navy, and has retired from the Naval Reserve at the grade of Commander. Judge Chiuminatto is a Paul Harris Fellow of Rotary International and has previously served as a club president for which he was awarded Rotary International's Presidential Citation. He is also active in his church as well as numerous other charitable and civic organizations.

Judge Chiuminatto was appointed to the State Commission on Judicial Conduct by the Supreme Court of Texas in 1995 to fill an unexpired term, and reappointed to a full term in 1998.



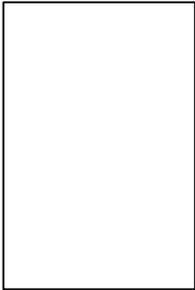
**Mrs. Elizabeth G. (Dee) Coats**

Mrs. Coats received her Bachelor of Science degree from Miami University in Oxford, Ohio in 1960, where she was a member of Phi Beta Kappa.

Wife of Alfred C. Coats, M.D., has been active in a variety of civic organizations. She has served as president of the Delta Gamma Foundation and has been a member of the board of trustees for the Lighthouse of Houston, the board of the Museum of Natural Science Guild, the Outreach Committee and the Altar Guild of St. Martin's Episcopal Church. As part of her duties for St. Martin's Outreach Committee, she serves on the board of the Christian Community Service Center. She also served as a Harris County grand juror.

Dr. and Mrs. Coats are parents of a son, David, who lives in San Diego, California, and a daughter, Beth Reilly, a first grade teacher who lives in Los Angeles, California.

Mrs. Coats was appointed to the State Commission on Judicial Conduct by Governor George W. Bush in 1998.



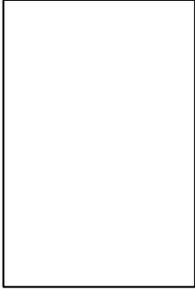
**Mr. Gilbert M. Martinez**

Mr. Martinez is a fifth-generation Texan, and a graduate of St. Edwards University in Austin. Since retiring as a banker, he has owned and operated several businesses. Additionally, he has served as a board member of the First State Bank of Austin.

Mr. Martinez is active in civic and community affairs, serving as a member of the West Austin Rotary Club, as the executive board vice-president of special programs for the Capital Area Council Boy Scouts of America, and as a board member of the Austin Symphony. He was a founder and still serves on the Hispanic Committee on Scouting. He has also served as a board member of the Austin Rehabilitation Center, CEDEN Family Resource Center, the National Council of the Boy Scouts of America, vice-chairman of the Board of Trustees of Austin Community College, and as a member and chairman of the Austin Planning Commission. Mr. Martinez has also served as a board member of the Austin Alcoholic Council and was a charter member and board chairman of the Mexican American Chamber of Commerce.

He has been married for more than 41 years, and he and his wife, Louise, are parents of two sons, Clifford and Michael, and a daughter, Annette.

Mr. Martinez was appointed to the State Commission on Judicial Conduct by Governor George W. Bush in 1998.



### **Mr. Wallace B. Jefferson**

Service: November 1999 – April 2001

Mr. Jefferson is Past President of the San Antonio Bar Association and the William S. Sessions American Inn of Court. He received his Bachelor of Arts Degree in 1985 from James Madison College at Michigan State University, and graduated from the University of Texas School of Law in 1988. Mr. Jefferson is board certified in civil appellate law by the Texas Board of Legal Specialization. He is a founding shareholder of Crofts, Callaway & Jefferson, P.C., which specializes in appellate litigation.

Mr. Jefferson has successfully argued two cases before the United States Supreme Court. He is a member of the Bar Association of the Fifth Federal Circuit, and served as chair of the local host committee for the 2000 Fifth Circuit Judicial Conference. He is a Fellow of the Texas Bar Foundation, a Trustee of the San Antonio Bar Foundation, and a Director of the San Antonio Public Library Foundation. Mr. Jefferson served six years on the District 10-B Grievance Committee of the State Bar of Texas, and is a member of the State Bar College. He also serves on the Texas Supreme Court Advisory Committee. He is a frequent lecturer for continuing legal education seminars, and was named Outstanding Young Lawyer in 1977 by the San Antonio Young Lawyers Association.

Mr. Jefferson and his wife Rhonda, have three sons, William Douglas, Samuel Lewis and Michael Andrew.

Mr. Jefferson was appointed to the Commission on Judicial Conduct by the State Bar of Texas in 1999. He left the Commission in April 2001 on approval of his nomination to the Supreme Court of Texas



### **Mr. M. Wayne Brittingham**

Mr. Brittingham is a graduate of the New York Military Academy, Johnson and Wales University, and is currently attending and in the final compilation of his MBA with the University of Dallas in the Executive Program.

Mr. Brittingham, who lives in Mansfield, is the Director of Sourcing and Retention/Workforce Development in Nokia's Human Resources department. He is a member of the company's senior human resources management team for the Americas, therefore leading the business group for the Americas region for Resourcing and Workforce planning which represents \$5.4 billion in revenue. He is responsible for and is the chief thought leader for Workforce Planning, Employee Relations, Diversity, University Relations, Corporate Relocation, Workforce Planning and other duties that significantly impact Nokia's business.

He formerly served on the Tarrant County Workforce Development Board and past member of the Southern Methodist University Business School Advisory Board.

Mr. Brittingham was appointed to the State Commission on Judicial Conduct by Governor George W. Bush in 2000.



**Mr. James A. Hall**

Appointed: April 2000

Mr. Hall is a partner with Branton & Hall, P.C. in San Antonio. He was admitted to the bar in 1975, Texas; 1976, US District Court, Southern District of Texas; 1981, US District Court, Western District of Texas, US Court of Appeals, Fifth Circuit and US Supreme Court; 1985, US District Court, Northern District of Texas; and in 1989, US District Court, Eastern District of Texas. He received his B.B.A. at the University of Texas in 1971 and his J.D. from Baylor University in 1975.

Mr. Hall is a member of Phi Delta Alpha (legal fraternity), the San Antonio Bar Association (Board of Directors, 1996-1998; Secretary, 1998-1999; Vice President, 1999-2001; President, 2001-Present); State Bar of Texas (District 10C Grievance Committee, Chair of Panel 1, 1992-1996; 1999-Present); San Antonio Trial Lawyers Association (Director 1984-1988; President-Elect 1989; President 1990-1991), Texas Trial Lawyers Association (Director 1990-1998; Director Emeritus 1998-Present); The Association of Trial Lawyers of America; William S. Sessions Inn, American Inns of Court (Master of the Bench, 1992-Present; President 1998-1999). He is also a Fellow, Texas Bar Foundation; American Board of Trial Advocates; Board Certified, Personal Injury Trial Law, Texas Board of Legal Specialization. Mr. Hall is also certified as a Civil Trial Advocate by the National Board of Trial Advocacy.

Mr. Hall was appointed to the Commission in April 2001 to fulfill the unexpired term of Wallace Jefferson, upon his appointment to the Supreme Court of Texas.

# Amicus Curiae

The *Amicus Curiae* program is designed to identify members of the judiciary who have impairments and to provide a confidential resource for those judges to seek help. The program operates within the disciplinary role of the State Commission on Judicial Conduct.

On June 6, 2001 the Commission named three distinguished professionals to serve as charter members of the *Amicus Curiae* Board, and to oversee the development and operation of the program. Retired Justice Robert Seerden of Corpus Christi, and Dr. Lawrence Schoenfeld and Mr. Lon P. Carpenter of San Antonio were named to the *Amicus Curiae* board.

Justice Seerden is the former Chief Justice of the 13th Court of Appeals. He is of counsel at Barger, Hermansen, McKibben & Villarreal, L.L.P. in Corpus Christi. Dr. Lawrence Schoenfeld is Director of Clinical Psychology Residency and Fellow Programs, at the University of Texas at San Antonio Health Sciences Center. Mr. Lon P. Carpenter is an Executive Vice President with Frost Bank in San Antonio. Mr. Carpenter has been elected as the Board's first Chair.

A grant from the Texas Center for the Judiciary, Inc. through the Court of Criminal Appeals, provided the initial funding to initiate the program. Developing program guidelines, acquiring educational reference materials, developing a network of mentor judges, and reviewing similar programs for other professions are the initial goals of the board.

The Texas Legislature funded *Amicus Curiae*, beginning September 1, 2001. The funds will enable the Commission to hire a program manager to operate the program with the Board's oversight.

*Amicus Curiae* translates as "friend of the court". It is unique in that it is not a direct service program such as most employee assistance programs. The program is the first of its kind in the United States. *Amicus Curiae* will serve to assist Judges in locating resources that can help identify and treat impairments that may be affecting their personal lives and their performance on the bench. The program will operate under the disciplinary authority given to the Commission on Judicial Conduct, created in 1965 by amendment to the Texas Constitution.

The Commission on Judicial Conduct is responsible for investigating allegations of judicial misconduct, judicial disability and for disciplining of judges. Identification of a judge as impaired will not remove the judge's actions from the scrutiny of the Commission's investigative authority. The Commission's major consideration is whether or not the public can be assured that Texas judges maintain the standards of conduct required of them by the laws and Constitution of Texas.

# Overview

## Authority of the Commission

The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. It is the independent state agency responsible for investigating allegations of judicial misconduct or judicial disability, and for disciplining judges.

Its jurisdiction includes all sitting Texas judges: municipal judges, magistrates, justices of the peace, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, retired and former judges, and associate judges and masters, including Title IV-D masters. It does not include administrative hearing officers for state agencies or the State Office of Administrative Hearings, private mediators or arbitrators, or federal magistrates and judges.

## Make up of the Commission

The Texas Constitution established the Commission on Judicial Conduct (formerly the Judicial Qualifications Commission) as an eleven-member body. Its members, who serve six-year staggered terms, include:

- Five judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, justice of the peace, and municipal;
- Two attorneys appointed by the State Bar of Texas, who are not judges; and
- Four citizen members appointed by the Governor, neither attorneys nor judges.

All appointments must be from varying appellate districts of the state, except that the justice of the peace and judges of the municipal court or a county court at law shall be selected at large. The Texas Senate confirms appointees.

Commissioners are required to meet at least six times each year, and receive no pay for their service.

## Laws Governing the Commission

The Commission is governed by Article 5, Sec. 1-a, of the Texas Constitution (Appendix A), Chapter 33 of the Texas Government Code (Appendix B), and the Procedural Rules for the Removal or Retirement of Judges (Appendix C). These governing codes are included in the *Appendices* section of the report. As part of the judiciary and as an entity having its own constitutional and statutory provisions regarding confidentiality of papers, records, and proceedings, the Commission is not governed by the Texas Public Information Act, the Open Meetings Act, or the Texas Administrative Procedures Act.

## Public Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution and the Texas Government Code.

Generally, Commission records are confidential, with the following exceptions:

- Article 5, Section 1-A(10) of the Texas Constitution provides that "All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by the law..."
  - The Constitution authorizes the Commission to issue private or public sanctions, or the Commission may file formal proceedings against a judge. In the event the Commission issues a public sanction, Section 33.032 of the Texas Government Code provides for the release of information previously confidential. Also, under this Section, suspension orders and proceedings related thereto, and voluntary agreements to resign in lieu of disciplinary proceedings upon their acceptance by the Commission are available to the public.
- Section 33.032 also authorizes the release of papers filed in a formal proceeding to the public upon the filing of formal charges.
- Rule 12 of the Texas Rules of Judicial Administration provides for public access to certain records made or maintained by a judicial agency in its regular course of business but not pertaining to its adjudicative function.

Additionally, the Constitution provides that in instances where issues concerning either a judge or the Commission have been made public by sources other than the Commission, the Commission may make a public statement. In such a situation, the Commission determines whether the best interests of a judge or the public will be served by issuing the statement. In fiscal year 2001, there were no public statements issued by the Commission. However, one public statement has been issued by the Commission thus far in fiscal year 2002, and it is included in this Annual Report as PS-2002-01.

When the Commission takes action on a complaint, whether dismissing it, issuing a private or public sanction, accepting a voluntary agreement to resign in lieu of disciplinary action, or voting formal proceedings, the complainant is notified in writing. However, the Texas Government Code provides that the judge's name may not be stated in the notice to the complainant, unless a public sanction has been issued. Likewise, in some instances, the name of the complainant may be kept confidential. In each case, the complainant shall be informed of the Commission's final action regarding the complaint.

## Commission Limitations

The Commission cannot exercise appellate review of a case or change the decision or ruling of any court. The Commission cannot intervene in a pending case or proceeding. For example, if the Commission finds a judge's actions to be misconduct, the Commission can issue sanctions against the judge, or seek the judge's removal from the bench. However, even removal would not change the judge's ruling in a case. Only the appellate process can change the decision of a court.

Likewise, the Commission cannot provide individual legal assistance or advice. The Commission cannot remove a judge from a case. The Commission cannot award damages or provide monetary relief to complainants.

## Defining Judicial Misconduct

Article 5, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the "...willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."

Misconduct could be a violation of the Texas Constitution, the Texas Penal Code, and the Texas Code of Judicial Conduct, or other rules promulgated by the Supreme Court of Texas, failure to cooperate with the Commission, or failure to abide by any provision of a voluntary agreement to resign in lieu of disciplinary action. Examples might include inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias, or racial slurs. It could be improper communication with only one of the parties or attorneys in a case, a public comment regarding a pending case, or a failure to disqualify in a case where the judge has an interest in the outcome. It could involve ruling in a case in which the parties or attorneys are within a prohibited degree of kinship to the judge. A judge's failure to cooperate with respect to his or her obligations arising from an inquiry by the Commission may also constitute judicial misconduct.

Judicial misconduct may also include out-of-court conduct. This type of misconduct can include theft, driving while intoxicated, sexual harassment, or official oppression, and is subject to the same review by the Commission.

## Matters Considered by the Commission

The Commission may consider allegations from any source. These sources can include an individual, a news article, or information that is received in the course of an investigation. Complaints may be anonymous or the complainant may request confidentiality. However, in those instances, the Commission may be restricted in its ability to fully investigate the allegations.

## Commission Investigations

Cases are reviewed, analyzed and investigated by the legal and investigative staff of the Commission. An investigation may include a letter of inquiry to the judge, and interviews with the complainant and witnesses. The Commission then considers the results of the investigation in their decision.

## Possible Commission Actions

The Commission has several options available when taking action on a case. The types of actions include dismissal, sanctions, suspension, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, and formal proceedings. The number and types of action taken by the Commission in fiscal year 2001 are presented in *Statistical Analysis*. In addition, the Texas Code of Judicial Conduct, in Appendix D, contains summaries of all sanctions issued in fiscal year 2001.

## Administrative Dismissal Report

The Commission administratively dismisses a case when a complainant reports allegations that fail to state an allegation of judicial misconduct. All administratively dismissed cases can be reconsidered by the Commission. The Commission describes the Reconsideration Policy in all letters of dismissal along with an explanation for dismissing a case.

### Dismissal

The Commission may dismiss a case based on an investigation and review of the allegations. Dismissals are voted where there is insufficient evidence of misconduct, the Commission has no jurisdiction over the judge, or the allegation is an appellate matter. All dismissed cases can be reconsidered by the Commission. The Commission describes the Reconsideration Policy in all letters of dismissal along with an explanation for dismissing a case.

### Sanction

Sanctions are issued by the Commission when sufficient evidence is provided that supports a finding of judicial misconduct. The Commission's sanction authority includes private admonition, warning, or reprimand; or public admonition, warning, or reprimand. It may issue an order of education, requiring a judge to obtain education along with a sanction. A reprimand is the most severe sanction, unless formal proceedings, voted by the Commission, result in public censure or removal.

## **Suspension**

If a judge is indicted for a felony or charged with a misdemeanor involving the judge's official position, the Commission itself may vote to suspend the judge from office, with or without pay, pending the disposition of the charge under the provisions of 15(A) of the Procedural Rules for the Removal or Retirement of Judges (Appendix C). The judge may request a hearing before the Commission in the event of a suspension under these circumstances.

Additionally, the Commission may request that the Supreme Court of Texas suspend a judge under the provisions of Rule 15(b) of the Procedural Rules for Removal or Retirement of Judges. Rule 15(b) states "Upon filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or cases public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (Rule 6), may recommend to the Supreme Court the suspension of such person from office."

## **Voluntary Agreement to Resign**

In some cases, a judge against whom a complaint has been made, may decide to resign in lieu of disciplinary action. In such cases, a voluntary agreement to resign from judicial office may be offered by the judge which may be accepted by the Commission. Upon the Commission's acceptance of such an agreement, it shall become public, and the agreement, and any agreed statement of facts relating to it, are admissible in subsequent proceedings before the Commission. An agreed statement of facts relating to such resignation may be released to the public only if a judge violates a term of the agreement.

## **Formal Proceeding**

In certain circumstances, the Commission may vote "formal proceeding." The Commission may conduct a formal proceeding under the Texas Rules of Civil Procedure, or request the Supreme Court of Texas appoint a Special Master. A Special Master is a sitting or retired district or appellate judge. When the Special Master conducts the formal proceeding, findings of fact are reported to the Commission. The Commission then holds a public hearing to consider the report of the Special Master, and may adopt the Special Master's findings in whole or in part, or totally reject them and enter its own findings. After adopting findings of fact, the Commission will issue conclusions of law. The Commission may request additional evidence, dismiss the case, issue a public censure, or recommend removal to a seven-member Review Tribunal appointed by the Supreme Court of Texas. The Commission can also recommend to the Review Tribunal that an order be entered prohibiting the judge from ever holding a judicial office again. The Commission itself cannot remove a judge. Only the Review Tribunal may order a judge removed from the bench. The Supreme Court retains appellate authority over the decision of the Review Tribunal.

## Appellate Review of Commission Action

Within 30 days of the date the Commission issues a public or private sanction or order of education, the judge may appeal the sanction by filing a written request with the Chief Justice of the Supreme Court of Texas requesting the appointment of three appellate justices to act as a Special Court of Review.

Within 15 days after the Special Court of Review is appointed, the Commission must furnish the sanctioned judge and each justice on the Special Court of Review with a "charging document," which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding. All other papers, documents, and evidence that were considered by the Commission are included. Once the appeal has been filed these materials become public.

Within 30 days of filing the charging document, a *de novo* trial is held; that is, a trial in which the Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury. All documents filed and evidence received in the appeals process are public.

The Special Court of Review may dismiss, affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings. The decision of the Special Court of Review is final.

## Amicus Curiae

*Amicus Curiae* (*Amicus*) is a judicial disciplinary and education program that was funded by the Texas Legislature in 2001.

In the past, complaints of misconduct relating to impairment such as drug abuse, alcohol abuse or mental illness were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* now affords a third option under the Commission's authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. The confidential referral to *Amicus* by the Commission does not shield the judge from any sanction that the Commission deems appropriate.

Grant funding provided by the Texas Court of Criminal Appeals during the summer of 2001 has afforded the Commission the opportunity to hire a consultant and enter its planning and organization phase. The *Amicus* Board was appointed by the Commission, and it began establishing program policies and performance measures.

## Advisory Opinions

The Supreme Court of Texas will enter an order granting authority for the Commission to issue written advisory opinions of precedential value concerning questions of judicial ethics. The structure for this program is being developed and is scheduled for implementation on January 1, 2001. The program will offer all judges who are subject to review by the Commission an opportunity to seek an opinion from the Commission regarding the Commission's interpretation of the Canons as applied to specific hypothetical facts.

# The Complaint Process

The Commission on Judicial Conduct has authority over Texas judges, including appellate, district, county, justice and municipal level judges, visiting judges, and associate judges. The Commission has no jurisdiction over federal officials, mediators, arbitrators, or administrative judicial officers. Initial contact can be made by telephoning the Commission's office at 512-463-5533 or by utilizing the toll-free number, 1-877-228-5750, established in fiscal year 2000. Complaints or allegations of misconduct must be filed in writing. The complaint form, located in Appendix E of this report, is provided in English and Spanish. The Commission may also initiate the complaint process, reviewing information from sources such as the media, court documents, or the Internet. The complainant may request the Commission to keep his or her identity confidential. The Commission also accepts anonymous complaints. The complaint process is further outlined in Figure 1.

Upon the filing of a complaint, the complainant is sent an acknowledgment letter by the Commission and, as necessary, an investigation of the allegations begins. The complainant may be requested to provide additional information or documents or, under certain circumstances, to appear before the Commission. The investigator reviews the case with the assigned staff person. In some cases, legal research is a critical part of the development of the case. Each case is carefully and thoroughly reviewed and investigated.

Once the investigation is complete, the case is presented to the Commission for its consideration. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter on a case-by-case basis. If the Commission votes to issue a public sanction, the appropriate order is prepared, the offending judge and the complainant are provided a copy of the order, and the order is publicly disseminated to ensure public awareness. If however, the Commission votes to issue a private sanction, the appropriate order is prepared and the offending judge is served with the order and the complainant is notified of the Commission's action. However, because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other information regarding the case will be released to the public, except that in cases where a judge has voluntarily agreed to resign in lieu of disciplinary action, such an agreement becomes public upon the Commission's acceptance of it and the complainant shall be so notified. Likewise, whenever the Commission suspends a judge upon his or her indictment for a criminal offense, or upon a charge for a misdemeanor involving official misconduct, the order of suspension and all records and proceedings relating to it shall be public.

## Commission Decisions

The Commission members review, deliberate and vote on each complaint. The case may result in a dismissal, public or private order of additional education in combination with a public or private sanction, public or private admonition, warning or reprimand, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, or formal proceeding. If appropriate, the Commission may defer its action and refer the case to the *Amicus Curiae* Program. The judge may appeal a decision of the Commission to a special court of review, with the final decision being dismissal, affirmation of the Commission decision, greater or lesser sanction, or formal proceeding.

### Dismissal

Cases can be dismissed by the Commission for a variety of reasons. The results of the investigation can reveal that there was no misconduct on the part of the judge, that the Commission has no jurisdiction over the judge, that the judge was acting within his discretion, that the allegation involves appellate matters of a ruling in a case, or that insufficient evidence exists to support the allegation. With a dismissal, the complainant is notified of the reason for the dismissal and the procedure to have the case reconsidered.

### Order of Additional Education

Legal and procedural issues may often be complex, so it is not surprising that some judges take judicial action, which may exceed their authority or is contrary to procedural rules. In these situations, the Commission may find that the judge, although misguided, has not acted in bad faith. Such cases are appropriate for orders of education. The Commission contacts the appropriate judicial training center and a mentor judge is designated for one-on-one additional instruction to be completed within a specified time on particular subjects. The mentor judge then reports to the Commission on the progress of the judge. The Commission may also order education to assist the judge with anger management, gender sensitivity or to avoid sexual harassment.

### Private or Public Sanction

Sanctions include Public Censure, the most severe, followed by public or private reprimand, warning or admonition. In public sanctions, all information including the judge's name is made public. When a private sanction is voted, the judge's name is kept confidential. Public censure is a result of a formal proceeding and is a public denunciation of the judge's conduct. A reprimand is the most severe sanction available to the Commission unless formal proceedings are voted. A warning puts the judge on notice that the actions identified in the sanction are improper. An admonition is the lowest level sanction. Sanctions may be combined with orders of education. The judge may appeal any sanction to the Special Court of Review. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also insures that the public is aware of violations of the Code of Judicial Conduct.

## **Suspension**

The Commission has the power to suspend a judge, with or without pay, upon the judge's indictment by a grand jury for a felony or upon being charged with a misdemeanor involving official misconduct (Rule 15(a) of the Procedural Rules for the Removal or Retirement of Judges). The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair.

In cases other than an indictment, the Commission, after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas the suspension of the judge from office. The notification process is pursuant to Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges.

## **Voluntary Agreement to Resign**

In some cases, a judge against whom a complaint has been made, may decide to resign in lieu of disciplinary action. In such cases, a voluntary agreement to resign from judicial office may be offered by the judge which may be accepted by the Commission. Upon the Commission's acceptance of such an agreement, it shall become public and may be used in subsequent proceedings before the Commission.

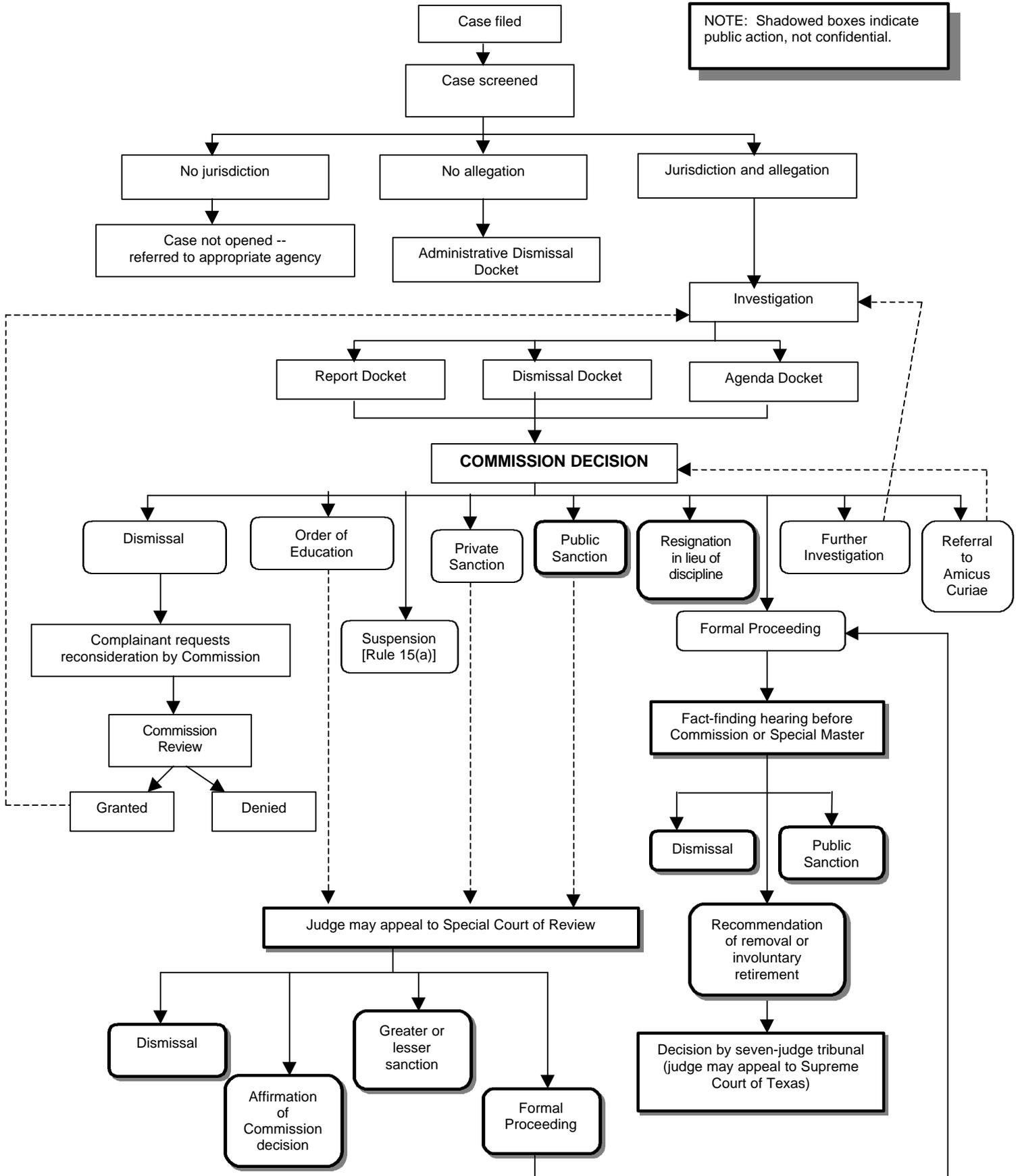
## **Formal Proceeding**

There is no right to a trial by jury in a formal proceeding. The Commission or a Special Master (appointed by the Supreme Court of Texas) may conduct a fact-finding hearing. The findings reported to the Commission may result in the Commission's decision to issue a dismissal, public censure, or recommendation of removal or involuntary retirement. A seven-judge Review Tribunal appointed by the Supreme Court of Texas makes the decision for removal. The Procedural Rules for the Removal or Retirement of Judges provide for procedural rights for judges in formal proceedings, including the right:

- to be confronted by the judge's accusers;
- to introduce evidence;
- to be represented by counsel;
- to examine and cross-examine witnesses;
- to subpoena witnesses; and
- to obtain a copy of the reporter's record of testimony.

Only the tribunal may remove a judge from the bench or prevent a judge from ever holding judicial office. The judge may make a final appeal to the Texas Supreme Court on the outcome of the formal proceeding.

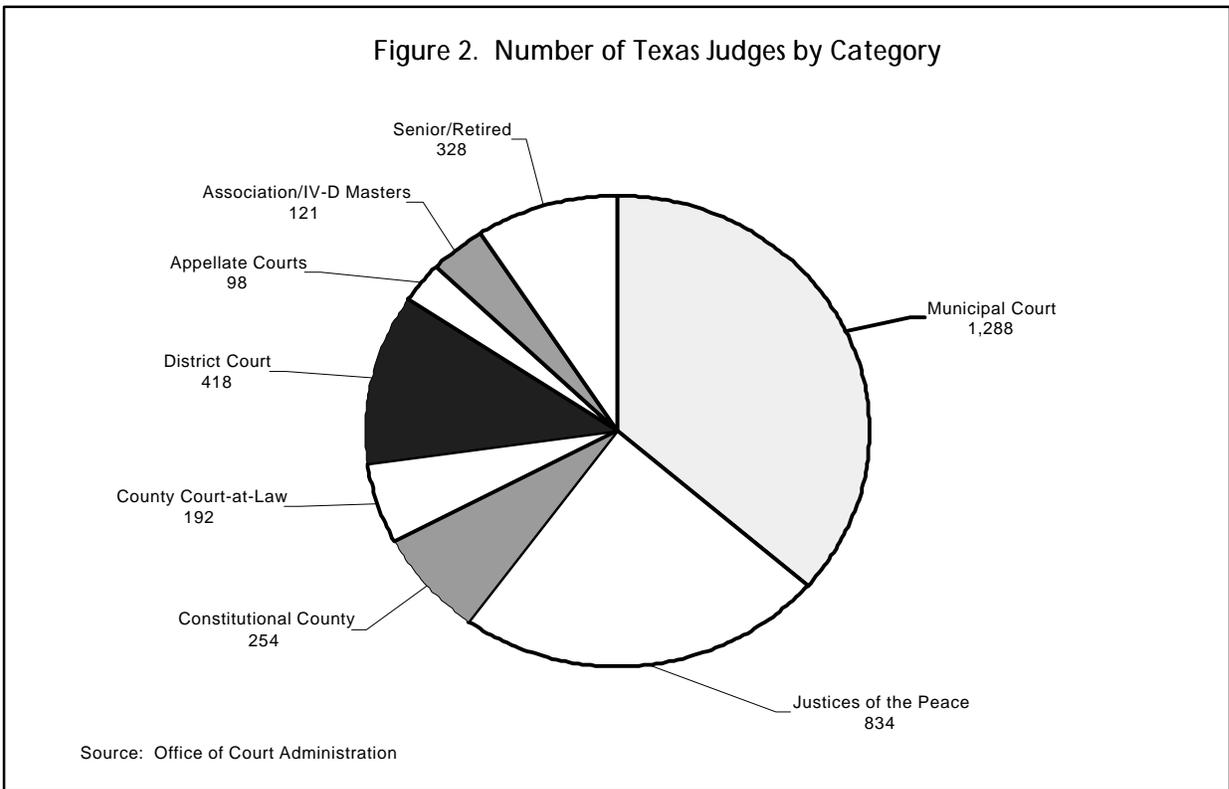
Figure 1. Complaint Process



# Statistical Analysis

An outline of the statistical activity of the Commission is shown in Table 1. Graphic representations of the data are presented to further illustrate the historical activities of the Commission.

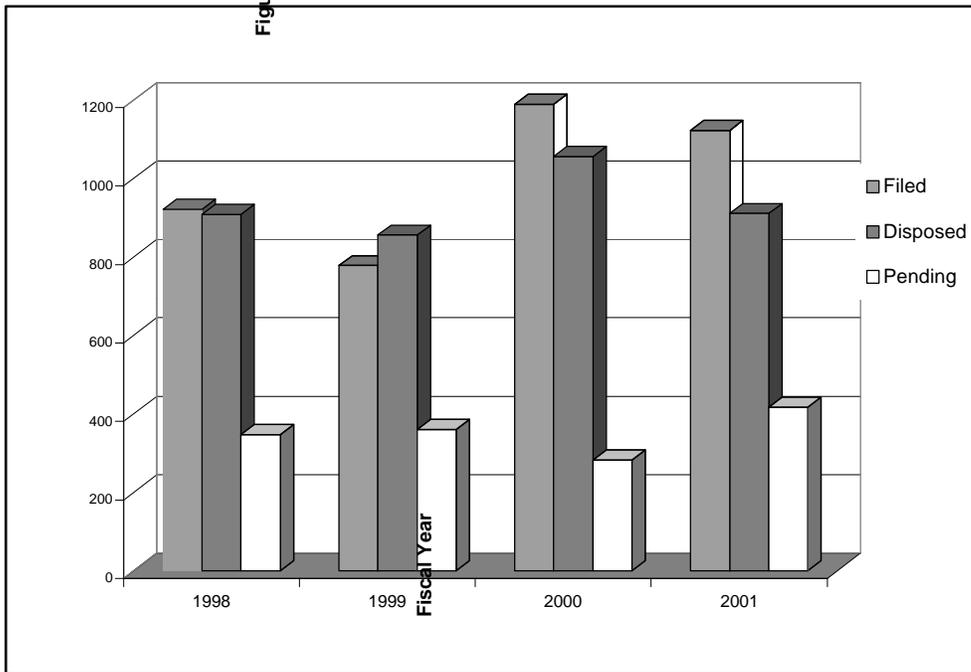
A total of 3,533 judges are under the jurisdiction of the State Commission on Judicial Conduct. The Commission's authority includes appellate justices, district judges, county courts-at-law judges, constitutional county judges, justices of the peace, and municipal judges. In addition, associate judges, Title IV-D masters, and magistrates, as well as retired and former judges who are available to sit as visiting judges, are subject to judicial discipline from the Commission. Figure 2 illustrates the judiciary by the number of judges in each category.



The 1,123 cases filed in fiscal year 2001 were not significantly less than the 1,190 filed in fiscal year 2000. The average time period from filing to disposition was 4.4 months. The number of cases disposed in fiscal year 2001 was 911, with an additional 133 cases reviewed for reconsideration.

In fiscal year 2001, the Commission conducted 54 informal hearings and issued 80 sanctions, including a significant increase in Orders of Additional Education and the number of cases that were voted as Formal Proceedings. While fewer Public Reprimands were issued in fiscal year 2001, as compared to fiscal year 2000, Public Admonition sanctions increased during the same reporting period.

Figure 3 offers a historical perspective of the volume of case activity before the Commission. The legal staff, including Commission Counsels, Legal Assistants, and Investigator, continues to diligently investigate each case filed with the Commission.



The 865 telephone calls concerning complaints, ethics, and general information about the complaint process further impacted the workload of Commission Counsels and Investigator. Staff and Commission members also made 34 ethics presentations across the state at judicial training schools and conferences.

Figure 4 illustrates the overall disposition of cases from fiscal year 1998 through fiscal year 2001.

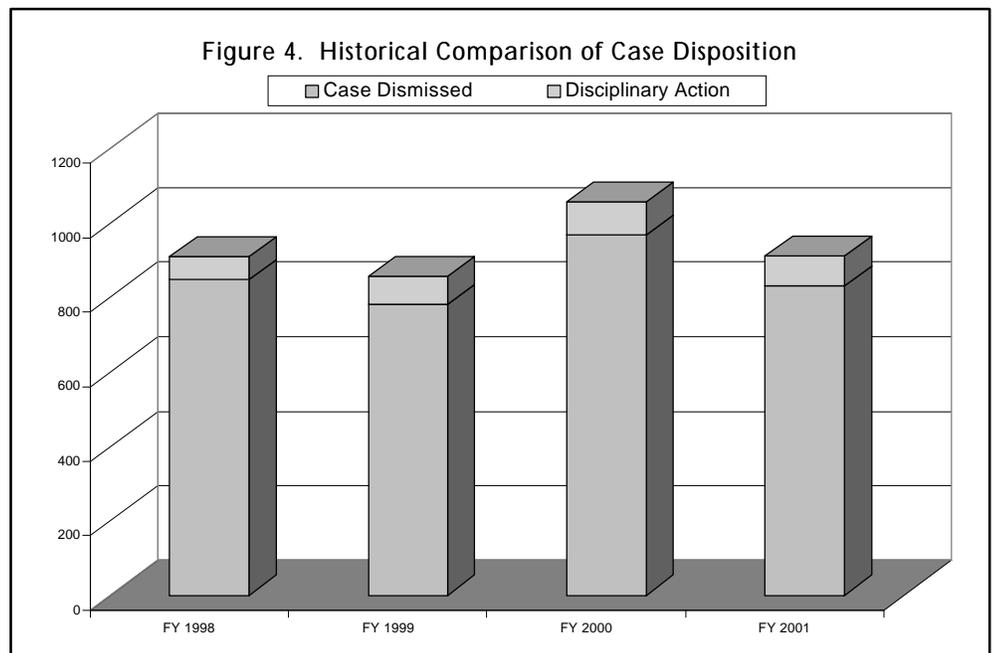


Table 1. Commission Activity

	FISCAL YEAR 1998 (09/01/97)	FISCAL YEAR 1999 (09/01/98)	FISCAL YEAR 2000 (09/01/99)	FISCAL YEAR 2001 (09/01/00)
Cases Pending	348	361	283	417
Cases Filed	922	778	1190	1123
Total Number Of Cases Disposed	909	856	1056	911
% of Cases Disposed	99%	110%	89%	81%
Average Age of Cases Disposed	5.5 months	5.2 months	4.3 months	4.4 months
<b>Disciplinary Action (total)</b>	<b>61</b>	<b>75</b>	<b>90</b>	<b>80</b>
Judge removed because of criminal conviction	0	0	0	0
Judge removed by Order of the Review Tribunal	4	11	0	0
Order of Suspension	1	1	2	4
Formal Proceedings Voted	5	1	4	12
Judge resigned (with investigation pending)	17	6	11	3
<b>Sanction</b>				
Public Censure	0	0	3	0
Public Censure and Order of Additional Education	0	0	1	0
Public Reprimand	1	7	11	5
Public Warning	1	2	2	3
Public Admonition	1	11	5	12
Public sanction and Order of Additional Education	0	0	4	3
Private Reprimand	2	6	4	3
Private Warning	9	7	9	7
Private Admonition	4	6	9	6
Private sanction and Order of Additional Education	1	6	10	1
Public Order of Additional Education	0	0	1	0
Order of Additional Education	15	11	14	21
<b>Dismissed</b>	<b>848</b>	<b>781</b>	<b>966</b>	<b>831</b>
Requests for a Reconsideration of Disposition	---	28	117	133
Reconsideration Granted	---	0	12	6
Reconsideration Denied	---	28	90	100
Pending	0	0	15	27
Appeal of Disciplinary Action	0	0	2	0
Informal Appearances	36	25	53	54
Public Statements Issued	1	0	3	0



# Improper Judicial Conduct

All sanctions issued by the State Commission on Judicial Conduct for improper judicial conduct during fiscal year 2001 are summarized as annotations to the Texas Constitution in Appendix A and the Texas Code of Judicial Conduct in Appendix D. These summaries are provided with the intent to educate and inform the judiciary and the public regarding conduct that the Commission has found to be in violation of the Texas Code of Judicial Conduct. The reader must note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed.\* Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will further assist the judiciary in maintaining the high standards of conduct the public expects and deserves.

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\* The complete text of public sanctions are available on written request.

# Public Statement



## STATE COMMISSION ON JUDICIAL CONDUCT

### PUBLIC STATEMENT

#### No. PS-2002-1

As a result of recent complaints concerning judges soliciting funds from attorneys and attending public fund raisers for the express purpose of hiring lobbyists to represent their respective interest before the legislature, the State Commission on Judicial Conduct believes that the interests of the judiciary and the public would be best served by issuing this public statement clarifying the scope of Canon 2B of the Texas Code of Judicial Conduct.

The Commission wishes to communicate to all members of the Texas judiciary its view that participation in fund raisers given to solicit monies to hire lobbyists to represent the interest of the judiciary reflects adversely on the integrity and impartiality of the judiciary and, therefore, is expressly prohibited by the following standards of judicial conduct:

Canon 2B of the Texas Code of Judicial Conduct, which states in pertinent part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."

The Commission, also a Constitutionally created body, recognizes the judiciary's difficulty.<sup>1</sup> However, the Commission feels compelled to address two specific instances that have resulted in State-wide publicity.

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<sup>1</sup> Justice Spears, who spoke on the issue of the legislature's responsibility for adequately funding the judiciary, said in *Mays v. Fifth Court of Appeals*, 755 S.W.2d 78, 82 (Tex. 1988): "The process of allocating public resources is complex. Both state and local legislative bodies make difficult decisions when faced with competing priorities. Political and economic considerations often result in the relatively unassertive requests of the judiciary being neglected. However, unlike state agencies, courts cannot reduce services. The judiciary can only delay or postpone the disposition of justice."

In the first, the Texas Association of State Judges recruited the assistance of lawyers to contribute to its efforts to employ lobbyists to assist the judiciary before the legislature on several issues.<sup>2</sup> The solicitation letter contained the names of actively sitting judges as members and officers. The solicitation letter was sent over the signature of well known participating lawyers to other lawyers practicing in their area.<sup>3</sup> The letter invited the lawyers to attend a fund raising reception to be attended by members of the judiciary encouraging lawyers that the function would be a great time to visit personally with the judges. Several judges attended these functions.

In the second, actively sitting judges encouraged the formulation of the Friends of the Metropolitan Courts, another group designed to raise money to hire a lobbyist. Although no judges directly solicited contributions from lawyers on behalf of this group by mail, judges did attend a fund raising reception to make personal pleas to lawyers for contributions.

In both instances, the negative publicity resulting from the fund raisers has cast discredit upon the judiciary. The Commission wishes to communicate that it is not the hiring of the lobbyist that is seen as unfavorable by the public. Rather, it is the solicitation by judges of lawyers who frequently appear before the court or may have cases currently pending before the court to directly assist the judges in their legislative issues. It is the public appearance that those lawyers may stand in a special position to influence the judges. Accordingly, the Commission finds such activities are in violation of Canon 2B of the Texas Code of Judicial Conduct.

The Commission issues this public statement pursuant to the authority granted to it by Article V, Section 1-a(10) of the Texas Constitution.

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

Signed this 5<sup>th</sup> day of November, 2001.

ORIGINAL SIGNED BY

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L. Scott Mann, Chair  
State Commission on Judicial Conduct

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<sup>2</sup> In Ethics Opinion No. 201 (1996), the Ethics Committee of the Judicial Section of The State Bar of Texas addressed this very issue.

The question was asked whether a committee of the Texas Association of District Judges could send a letter to the members of the association or those eligible for membership in the association soliciting monies to hire a lobbyist to assist the efforts of the association before the Legislature. In its answer, the Committee opined that while Canon 4C(2) prohibited judges from soliciting funds for any "educational, religious, charitable, fraternal or civic organization," such Canon would not prohibit such activity so long as the letter was restricted to members of the Texas Association of District Judges or those eligible for membership in the association. The Committee expressly stated that it would not be proper for the association to solicit monies by sending a letter accompanying correspondence from another group formed to raise money.

By making membership honorary for all judges, thus involuntary, and by enlarging the membership to members of the bar, the Texas Association of State Judges violated the intent and spirit, if not the letter, of Ethic Opinion No. 201 to the discredit of the judiciary.

<sup>3</sup> The Commission does not criticize any lawyer who in good faith attempted to assist the judiciary in its quest for adequate funding.



# Campaign Fairness Act

The 77<sup>th</sup> Legislative Session resulted in the passage of S.B. No. 720, an important amendment of the Judicial Campaign Fairness Act, §253.151 *et seq.* of the Texas Election Code (the "Act"). Specifically, S.B. No. 720 permits a judicial officeholder, or a specific-purpose committee for assisting a judicial officeholder, to use a political contribution to make a political contribution to a political committee during a calendar year in which the office held is not on the ballot as long as the contribution, when combined with other political contributions to a political committee in that calendar year, does not exceed \$250.00 (emphasis added). See §253.1611(d) of the Election Code.

Another important change reflected in S.B. No. 720 is that political contributions made to the principal political committee of the state executive committee or a county executive committee of a political party are not subject to the various restrictions of §253.1611 if the political contribution (1) is made in return for goods or services the value of which equals or exceeds the amount of the political contribution; or (2) does not exceed the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs. See §253.1611(e)–(f) of the Election Code.

It is important to note that a judge who has a campaign treasurer appointment on file is a "candidate" for purposes of the Election Code and the Act and is subject to all the regulations applicable to candidates, as well as those applicable to officeholders. A judge who is not a candidate, as defined in §251.001(1) of the Election Code, is subject to the regulations applicable to officeholders.

The Texas Ethics Commission is authorized to enforce the Act. A person who violates §253.1611 of the Act is liable for a civil penalty not to exceed three times the amount of the political contribution used in violation of this section. Only those political contributions made on or after September 1, 2001 are affected by these changes in law.

Additionally, while judges are required to abide by all of the election laws of Texas, Canon 5(5) of the Texas Code of Judicial Conduct (the "Code") specifically mandates compliance with the Act. Pursuant to Canon 6G of the Code, if found to have violated the Act, a judge will be subject to disciplinary action by the State Commission on Judicial Conduct. Any lawyer who is a candidate seeking judicial office who violates the Act or other relevant provisions of the Code will be subject to disciplinary action by the State Bar of Texas. All other candidates for judicial office who violate the Act or other relevant provisions of the Code are subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

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

While an in-depth analysis of the Act or the balance of the Election Code is beyond the scope of this letter, specific inquiries about compliance with the Act and other provisions of the Election Code should be directed to the Texas Ethics Commission at 1-800-325-8506.

# Legislative Concerns

During the 77<sup>th</sup> Legislative Session, the Legislature amended Chapter 33 of the Texas Government Code to address the concerns of and include the recommendations made by the Sunset Advisory Commission in its review during fiscal years 2000 and 2001. A summary of the Sunset Commission's final report is included in a separate section. Additionally, the revised Chapter 33 of the Texas Government Code is included as Appendix B.

The Commission is carefully addressing the procedures for implementation of statutory changes adopted as part of the Sunset Advisory Commission's recommendations and will review any further legislative concerns during fiscal year 2002 as these changes are incorporated into the Commission's procedures.

The Commission will consider statutory clarification of issues presented as it implements the *Amicus Curiae* program.

# Sunset Review

The Sunset Advisory Commission (Sunset) conducted its review of the State Commission on Judicial Conduct (the Commission) during fiscal years 2000 and 2001. In its final report Sunset identified five issues of concern, which are summarized in the following pages.

In order to address Sunset's issues, changes were recommended and made during the 77<sup>th</sup> Legislative Session to the Commission's governing chapter and relevant provisions of the Texas Government Code. A copy of the Code with its changes is provided under Appendix D.

# Sunset Advisory Commission

**State Commission on Judicial Conduct**

**Staff Report**

**2000**

# Summary

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## Overview

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The Sunset staff review of the State Commission on Judicial Conduct concluded that the agency has recently made significant improvements, but additional changes would help the agency better serve the public and judges. Recent changes include reducing case backlog and the amount of time to dispose of complaints, increasing communication with people who file complaints and judges, and better publicizing Commission actions. The recommendations in this report would:

- require the Commission to better inform the public about its activities and the process, without fear of retaliation
- enable complainants to more meaningfully participate in the complaint process, without fear of retaliation;
- create greater awareness of sanctions, to better prevent and deter judicial misconduct; and
- codify some of the commission's recent improvements to ensure the agency continues in a positive direction.

A summary of the key recommendations and finding for each of the issues identified in this report is outlined below. This report does not address continuation of the agency because the Commission is subject to review, not abolishment, under the Texas Sunset Act.

## Issues / Recommendations

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Issue 1            The Commission's Effectiveness is Limited by Failing to More Broadly Inform the Public of the Commission's Role in Overseeing and Sanctioning Judicial Conduct.

### Key Recommendations

- Require the Commission to Provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.
- Require the Commission to provide complainants with an explanation of complain dismissals.
- Requires a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

### Key Findings

- The Absence of clear, understandable information contributes to a lack of awareness and confusion about the process for filing a complaint about a judge.
- Insufficient explanation of complaint dismissals causes the public to feel ignored or disregarded.
- Inadequate publication of sanctions can also contribute to public mistrust in the system.
- Lack of Publicity on standards of conduct and sanctions imposed for violations reduces the potential for deterring other judges from similar behavior.

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Issue 2            People Who File a Complaint Against a Judge are Not Guaranteed Confidentiality, Cannot Appear Before the Commission, and Lack a Formal Right to Have Complaint Reconsidered.

## Key Recommendations

- Ensure that people who bring complaints against judges have the right to remain confidential.
- Allow the Commission to invite complainants to appear at informal proceedings.
- Codify a complainant's right to request reconsideration of a dismissed complaint.

## Key Findings

- While the law protects the confidentiality of judges, it does not ensure the confidentiality of a person who files a complaint against a judge
- The Commission may ask a judge to appear before it in an informal hearing, but may not ask the person who filed the complaint to attend.
- Unlike judges, people who file complaints do not have a formal right to have their complaints reconsidered.

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Issue 3                      Certain Confidentiality Restrictions Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

## Key Recommendations

- Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.
- Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued
- Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, and schools that provide Commission-ordered education, as necessary to protect the public interest.
- Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

## Key Findings

- By law, most of the information involved in the investigation and sanctioning of judicial conduct is strictly confidential.
- While the statute says formal hearing to remove or discipline a judge are open to the public, the proceedings are essentially closed because they do not become public until the hearing actually begins.
- While the Commission has the authority to suspend a judge indicted for a crime, information on suspensions is not made available to the public.
- The statute prohibits the Commission from sharing vital information about judges with certain law enforcement, public officials, the courts, and certain schools, as needed to protect the public.
- Unlike the State Bar, the Commission cannot obtain criminal histories of complainants, judges, or other witnesses material to an investigation of judicial misconduct.

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Issue 4                      By Not Routinely Providing Feedback to Judicial Schools, the Commission is Missing an Opportunity to Help Prevent Common Types of Misconduct.

Key Recommendation

- The commission should routinely provide the judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

Key Findings

- Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.
- Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial feedback on those common areas.

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Issue 5            The Inability of Staff to Dismiss Certain Cases Without Commission Approval Wastes Valuable and Limited Resources.

Key Recommendation

- The Commission should routinely provide the judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

Key Findings

- Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.
- Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial schools feedback on those common areas.

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Issue 5            The inability of Staff to Dismiss Certain Cases Without Commission Approval Wastes Valuable and Limited Resources.

Key Recommendation

- The Commission should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval.

Key Findings

- The lengthy process of taking even clearly baseless complaints to the full Commission burdens staff, Commission members, and complainants.
- Other state agencies have procedures that allow staff to dismiss complaints.

Fiscal Implication Summary

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The recommendations in this report will not result in a fiscal impact to the State.

# Philosophy

The members and staff of the Commission on Judicial Conduct take their duties to the citizens and judiciary of the State very seriously. Each case is duly reviewed, and all decisions are made after careful consideration. Political affiliation, gender, ethnic background, geographical location, position of the complainant or judge are not considerations in reviewing cases.

Although the majority of complaints filed with the Commission result in a determination that no misconduct has occurred, the Commission investigates every allegation. Every complaint that is filed with the Commission is thoroughly reviewed and analyzed by the staff as well as the eleven Commissioners. This procedure is an essential safeguard to the integrity of and public confidence in the judicial process. Judges are held to a high standard of ethical conduct as prescribed by the laws of Texas, including the Canons of Judicial Conduct.

# Appendix A

## Texas Constitution Article 5, Section 1-a. Retirement, Censure, Removal, and Compensation of Justices and Judges; State Commission on Judicial Conduct; Procedure.

(1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant when the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe; but, in the case of an incumbent whose term of office includes the effective date of this Amendment, this provision shall not prevent him from serving the remainder of said term nor be applicable to him before his period or periods of judicial service shall have reached a total of ten (10) years.

(2) The name of the State Judicial Qualifications Commission is changed to the State Commission on Judicial Conduct. The Commission consists of eleven (11) members, to wit: (i) one (1) Justice of a Court of Appeals; (ii) one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; and, (vii) one

Judge of a County Court at Law; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace and the Judges of a Municipal Court and or a County Court at Law shall be selected at large without regard to whether they reside or hold a judgeship in the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i), (ii), and (vii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iiii) by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate.

(3) The regular term of office of Commissioners shall be six (6) years; but the initial members of each of classes (i), (ii) and (iii) shall respectively be chosen for terms of four (4) and six (6) years, and the initial members of class (iiii) for respective

terms of two (2), four (4) and six (6) years. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if having served less than three (3) consecutive years.

(4) Commissioners shall receive no compensation for their services as such. The Legislature shall provide for the payment of the necessary expense for the operation of the Commission.

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of six (6) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least six (6) members.

(6) A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

Any person holding an office specified in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

**TEX. CONST. ART. 5, SEC. 1-a(6)A**

The Judge, with the exception of two reports, failed to timely file semiannual campaign finance reports with the Dallas County Clerk every year since 1990. The Judge also failed to timely file a "thirty-day-before election" report and an "eight-day-before election" report. The Judge entered into an Agreed Resolution and Order accepting the Texas Ethics Commission's findings and conclusions that he had violated Sections 254.063 of the Texas Election Code. [Violation of Article 5, Section 1-a(6) of the Texas Constitution, and Canons 2A and 4I(2) of the Texas Code of Judicial Conduct] *Public Reprimand of Thomas G. Jones, Justice of the Peace (08/20/01)*

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While

the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

While responding to a reported automobile accident, a police officer found the Judge and his automobile at the accident location, and the Judge exhibited all of the signs of an intoxicated

person. After the Judge repeatedly refused to submit to field sobriety tests and to a breath sample test, the Judge was arrested and charged with driving while intoxicated. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Reprimand and Order of Additional Education of Jaime Garza, County Court at Law Judge (05/31/01)*

The Judge improperly held dual employment as a Justice of the Peace and a law enforcement officer in neighboring counties. Such positions created an appearance of impropriety, bias, prejudice, and partiality in the handling of criminal cases. Furthermore, it would appear to the public that the Judge's fellow law enforcement officers are in a special position to influence the Judge in his decisions. A public statement was issued by the Commission on Judicial Conduct (PS-2000-1), but the Judge continued to hold both positions until ordered by the Texas Supreme Court that he be suspended from judicial office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 4A(1), and 4D(1) of the Texas Code of Judicial Conduct] *Public Reprimand of Randy Ellisor, Justice of the Peace (04/24/01)*

The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than thirty days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law; issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year old, non-party witness; failed to rule on a timely-filed motion to quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to

conduct proceedings involving that attorney and/or his clients with the patience, courtesy and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

In responding to a reported disturbance at the Judge's apartment complex, police officers found the Judge outside and witnessed that he appeared highly intoxicated, noting an odor of alcohol, unsteadiness and slurred speech. The Judge was arrested and charged with Disorderly Conduct. In his appearance before the Commission, the Judge testified that he mixed alcohol and prescription pain medication that evening, which caused him to be impaired. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Warning of Roberto Vargas, Former Municipal Court Judge (08/20/01)*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2000. Additionally, the Judge provided false and misleading information to the Commission concerning the date she assumed the bench and the reasons why she could not obtain the required judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(2) Texas Code of Judicial Conduct] *Public Warning of Gina M. Benavides, Former Municipal Court Judge (06/01/01)*

The Judge failed to comply with the law when he operated his vehicle under the influence of alcohol and then failed to stop and give information after an accident in which he was involved. The Judge knew, or should have known, that as a public official and member of the judiciary, his arrest for Driving While Intoxicated and Failure To Stop and Give Information would severely compromise the public's confidence in the integrity of

the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Warning and Order of Additional Education of Robert Burdette, Senior District Judge (05/31/01)* While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(I), and 5(2)(ii) of the Texas Code of Judicial Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

The Judge engaged in a scheme whereby the Judge resigned as a municipal judge every year and was later reappointed to the same position in an effort to avoid the requirement that the Judge obtain judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, Canons 2A, 3B(2) of the Texas Code of Judicial Conduct, and Rule 4 of the Texas Rules of Judicial Education] *Public Warning and Order of Additional Education of Joe Chandler, Municipal Court Judge and Justice of the Peace (10/24/00)*

The Judge improperly exercised his contempt authority against several high school students by failing to provide proper notice to all interested parties, including the parents of the minor students, of the accurate time and location, the high school's auditorium, of the contempt hearings. The Judge also failed to afford the adult students the opportunity to obtain counsel prior to the contempt hearings. [Violation of Canon 2A of the Texas Code of Judicial Conduct] *Public Admonition of Joel C. Clouser, Sr., Justice of the Peace (08/20/01)*

The Judge abused her judicial position by calling two other judges on behalf of a relative and an acquaintance in an effort

to influence those judges' decisions and obtain favorable treatment in their traffic cases pending in the judges' courts. The Judge's contact with the two judges constituted an improper *ex parte* communication. The judge also left phone messages for a county attorney to further discuss one of the two cases. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2B, 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Linda Ray, Justice of the Peace (05/25/01)*

The Judge, at the request of a defendant's father, wrote a letter of support on behalf of a defendant in a criminal case pending in the District Court of Cameron County. The Judge wrote the letter on his official court letterhead and signed it in his official capacity as Judge of the Municipal Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public Admonition of Eliseo B. Vega, Municipal Court Judge (06/20/01)*

During a truancy hearing, because the Judge was not satisfied with a mother's explanation for her child not attending school, the Judge ordered a Hispanic mother and her seven-year-old child to be escorted to a holding cell outside the courtroom to be detained until the Judge could decide "what to do" with them. Additionally, the Judge made a biased comment to the mother, stating that if the mother did not like the laws in Texas, she could choose one of three bridges back to Mexico. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(6) of the Texas Code of Judicial Conduct] *Public Admonition of Oscar Tullos, Justice of the Peace (05/31/01)*

On December 19, 1999, the Judge officially filed as a Republican candidate for United States Representative for District 17, in what was to be a contested election. He did not, however, resign from his position as a magistrate until March 8, 2000, a day after a member of the media questioned him about this conflict. The Judge's failure to resign upon becoming a candidate in a contested election for a non-judicial

office was in violation of the canons and cast public discredit upon the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 5(4) of the Texas Code of Judicial Conduct] *Public Admonition of Darrell Clements, Former Magistrate (05/25/01)*

When stopped on suspicion of driving while intoxicated, the Judge repeatedly tried to dissuade a Department of Public Safety (DPS) Officer and the officer's supervisor from arresting him because of the negative effect it would have on him due to his position as a district judge. The Judge attempted to use the prestige of his office to escape the consequences of being stopped and detained for suspicion of driving while intoxicated. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public Admonition of Frederick Edwards, District Court Judge (04/12/01)*

The Judge participated in an improper *ex parte* communication with the defendant's attorney, during which a discussion of the pending charges against the defendant was held. Additionally, the Judge adjudicated a criminal matter in the absence of the defendant's attorney, and when no formal case had been opened against the defendant and no charging instrument had issued. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Public Admonition of Rodolfo Delgado, Former County Court at Law Judge (04/12/01)*

The Judge repeatedly engaged in improper *ex parte* communications about the merits of a case involving a traffic citation. In the communications, the Judge represented that she would dismiss the case but failed to do so. Three years later, the defendant was detained by a law enforcement officer on a warrant issued by the Judge's court in the pending traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Joyce Weems, Former Justice of the Peace (12/19/00)*

*The Judge failed to credit a fine payment to the proper defendant and to close the defendant's case. Two years after the fine had been paid, the defendant was detained on a warrant issued by the Judge's court in the same traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] Public Admonition of Joyce Weems, Former Justice of the Peace (12/19/00)*

The Judge set fire to and destroyed five (5) Central Power & Light Company (CP&L) utility poles in order to clear an area on his property to build a stock pond. As a result, the pole burning incident received extensive media attention. The Judge's failure to observe the highest standard of conduct in his dealings with CP&L, and the resultant media attention surrounding the pole burning incident, severely compromised and undermined the public's confidence in the integrity of the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Public Admonition of Terry Canales, District Court Judge (12/19/00)*

The Judge commanded, without notice or explanation, an attorney's presence in his court for the sole purpose of interrogating and lecturing the lawyer about her out-of-court remarks concerning the Judge's ability to be fair and impartial toward her client; interrogated the lawyer in a manner that was neither patient, dignified, nor courteous; and was motivated in summoning the lawyer to his court out of a fear of public criticism and the need to exert his power as a Judge through intimidation and fear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers

outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge took actions that created the impression that the Judge was improperly engaging in law enforcement activities when the Judge pursued a relative in her car at a high rate of speed after the relative took the Judge's grandchildren from the Judge's home. The Judge initiated a police chase that increased the danger to which the Judge's grandchildren were exposed. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Reprimand*

The Judge's rude, undignified and discourteous conduct towards court staff was inconsistent with the proper performance of the Judge's duties. The Judge rudely admonished and directed profanity, in Spanish, towards a court clerk in open court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge failed to be dignified and courteous to courthouse security personnel when the Judge engaged in a confrontation with them as a result of their refusal to allow a court reporter's recorder to pass through security. The

reporter had neglected to have required identification available and became upset when the reporter's equipment was detained. The reporter reported the incident to the Judge, several floors away, and the Judge appeared at the security site in an agitated demeanor, threatening the guards with contempt, demanding to see supervisors, detaining a passing attorney as a witness, and advising the guards that Judges were "gods" in the courthouse. Although the Judge denied being upset, the perception of his poor demeanor was reported consistently by several independent witnesses. It was undisputed the Judge could have obtained the recording device on behalf of the court reporter without engaging in the verbal attack. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge, in an attempt to get counsel to talk slower, used the phrase "oral sex" once before the jury and once outside the presence of the jury. The Judge also admonished a witness to not "snort." This conduct was inappropriate and lacked the dignity and courtesy due litigants, jurors, witnesses, lawyers and others with whom the Judge deals in an official capacity. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge lent the prestige of the judicial office to advance the private interests of a criminal defendant, when the Judge wrote a letter of support on official judicial letterhead on behalf of a criminal defendant whose case was pending in another court. The Judge's actions in the matter were inconsistent with the proper performance of the Judge's duties. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*

The Judge lent the prestige of the Judge's judicial office to advance the private interest of others by voluntarily appearing in the Judge's judicial robe in an advertisement for a community college. The Judge's appearance in the

advertisement was inconsistent with the proper performance of his duties and cast public discredit on the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*

The Judge, while at the county sheriff's department, threatened a litigant, whose case was pending in the Judge's court, with physical combat. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge's actions cast public discredit upon the judiciary by when he participated in an altercation and consumed alcoholic beverages at a public event creating an appearance to law enforcement officers and others that the Judge was publicly intoxicated, which caused the Judge to be arrested. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Warning*

The Judge had improper *ex parte* communications with a plaintiff's attorney and the plaintiff's expert witness in a civil case the Judge was hearing. The Judge had a conversation with the plaintiff's attorney, at recess, regarding an exhibit and made suggestions for closing argument. The Judge also had a private phone conversation with an expert witness, who had been excused from the same civil trial, and asked questions on an exhibit the witness had presented. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(8) of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge's actions were not consistent with the proper performance of the Judge's duties when the Judge confiscated a defendant's jewelry and retained possession of it until the defendant returned to court with an attorney. The Judge's authority only extended to having interlock devices placed on any cars accessible to the defendant to ensure the defendant returned to court with an attorney. [Violation of Article 5, Section 1-a(6)A of

the Texas Constitution] *Private Admonition*

The Judge signed an abstract of judgment indicating that a "citation for personal service was served upon the defendant" and subsequently rendered a default judgment against a defendant who had never been served with citation. The court's file contained no evidence that the defendant had ever been served with citation. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge acted without legal authority when the Judge granted deferred adjudication without requiring a traffic defendant to enter a plea, then ordered the defendant to pay a fine. When the defendant did not pay the fine, the Judge issued a warrant and failed to allow a trial for the charge of failure to appear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge lacked adequate administrative and record-keeping procedures for keeping track of correspondence, motions and other court records received from litigants and/or their attorneys. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution] *Private Order of Additional Education*

B. Any person holding an office named in Paragraph A of this subsection who is eligible for retirement benefits under the laws of this state providing for judicial retirement may be involuntarily retired, and any person holding an office named in that paragraph who is not eligible for retirement benefits under such laws may be removed from office, for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature.

C. The law relating to the removal, discipline, suspension, or censure of a Justice or Judge of the courts established

by this Constitution or created by the Legislature as provided in this Constitution applies to a master or magistrate appointed as provided by law to serve a trial court of this State and to a retired or former Judge who continues as a judicial officer subject to an assignment to sit on a court of this State. Under the law relating to the removal of an active Justice or Judge, the Commission and the review tribunal may prohibit a retired or former Judge from holding judicial office in the future or from sitting on a court of this State by assignment.

(7) The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office or position specified in Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the

Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to a review tribunal the removal or retirement, as the case may be, of the person in question holding an office or position specified in Subsection (6) of this Section and shall thereupon file with the tribunal the entire record before the Commission.

(9) A tribunal to review the Commission's recommendation for the removal or retirement of a person holding an office or position specified in Subsection (6) of this Section is composed of seven (7) Justices or Judges of the Courts of Appeals who are selected by lot by the Chief Justice of the Supreme Court. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made. Service on the tribunal shall be considered part of the official duties of a judge, and no additional compensation may be paid for such service. The review tribunal shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence. Within 90 days after the date on which the record is filed with the review tribunal, it shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. A Justice, Judge, Master, or Magistrate may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. Upon an order for involuntary retirement for disability or an order for removal, the office in

question shall become vacant. The review tribunal, in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law, and the filing of papers with, and the giving of testimony before the Commission or a Master shall be privileged, unless otherwise provided by law. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission determines that the best interests of a Judge or of the public will be served by issuing the statement.

(11) The Supreme Court shall by rule provide for the procedure before the Commission, Masters, review tribunal, and the Supreme Court. Such rule shall provide the right of discovery of evidence to a Justice, Judge, Master, or Magistrate after formal proceedings are instituted and shall afford to any person holding an office or position specified in Subsection (6) of this Section, against whom a proceeding is instituted to cause his retirement or removal, due process of law for the procedure before the Commission, Masters, review tribunal, and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the person holding an office or position

specified in Subsection (6) of this Section in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed.

(12) No person holding an office specified in Subsection (6) of this Section shall sit as a member of the Commission in any proceeding involving his own suspension, discipline, censure, retirement or removal.

(13) This Section 1-a is alternative to and cumulative of, the methods of removal of persons holding an office named in Paragraph A of Subsection (6) of this Section provided elsewhere in this Constitution.

(14) The Legislature may promulgate laws in furtherance of this Section that are not inconsistent with its provisions. (Added Nov. 2, 1948; Subsecs. (1)-(13) amended Nov. 2, 1965; Subsecs. (5)-(9) and (11)-(13) amended Nov. 3, 1970; Subsecs. (2), (5)-(10), and (12) amended Nov. 8, 1977; Subsecs. (2), (6), and (8)-(12) amended and (14) added Nov. 6, 1984.)

# Appendix B

## Chapter 33. Texas Government Code As amended September 2001

### Subchapter A. General Provisions Sec. 33.001. Definitions

(a) In this chapter:

(1) "Censure" means an order of denunciation issued by the commission under Section 1-a(8), Article V, Texas Constitution, or an order issued by a review tribunal under Section 1-a(9), Article V, Texas Constitution.

(2) "Chairperson" means the member of the commission selected by the members of the commission to serve as its presiding officer.

(3) "Clerk" means the individual designated by the commission to assist in:

(A) formal proceedings before the commission or a special master; or

(B) proceedings before a special court of review.

(4) "Commission" means the State Commission on Judicial Conduct.

(5) "Examiner" means an individual, including an employee or special counsel of the commission, appointed by the commission to gather and present evidence before a special master, the commission, a special court of review, or a review tribunal.

(6) "Formal hearing" means the public evidentiary phase of formal proceedings conducted before the commission or a special master.

(7) "Formal proceedings" means the proceedings ordered by the commission concerning the public censure, removal, or retirement of a judge.

(8) "Judge" means a justice, judge, master, magistrate, or retired or former judge as described by Section 1-a, Article V, Texas Constitution, or other person who performs the functions of the justice, judge, master, magistrate, or retired or former judge.

(9) "Review tribunal" means a panel of seven justices of the courts of appeal selected by lot by the chief justice of the supreme court to review a recommendation of the commission for the removal or retirement of a judge under Section 1-a(9), Article V, Texas Constitution.

(10) "Sanction" means an order issued by the commission under Section 1-a(8), Article V, Texas Constitution, providing for a private or public admonition, warning, or reprimand or requiring that a person obtain additional training or education.

(11) "Special court of review" means a panel of three justices of the courts of appeal selected by lot by the chief justice of the supreme court on petition to review a sanction issued by the commission.

(12) "Special master" means a master appointed by the supreme court under Section 1-a, Article 5, Texas Constitution.

(b) For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes:

(1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business;

(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;

(3) persistent or wilful violation of the rules promulgated by the supreme court;

(4) incompetence in the performance of the duties of the office

(5) failure to cooperate with the commission; or

(6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission.

(c) The definitions provided by Subsections (b) and (d) are not exclusive.

(d) For purposes of Subdivision (6), Section 1-a, Article V, Texas Constitution, a misdemeanor involving official misconduct includes a misdemeanor involving an act relating to a judicial

office or misdemeanor involving an act involving moral turpitude.

### Sec. 33.002. Commission

(a) The State Commission on Judicial Conduct is established under Section 1-a, Article V, Texas Constitution, and has the powers provided by that section.

(b) A constitutional or statutory reference to the State Judicial Qualifications Commission means the State Commission on Judicial Conduct.

(c) Appointments to the commission shall be made without regard to race, color, disability, sex, religion, age or national origin of the appointees.

### Sec. 33.003. Sunset Provision

The State Commission on Judicial Conduct is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the period in which state agencies abolished in 2001 and every 12th year after 2001 are reviewed.

### Sec. 33.0032. Conflict of Interest

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of

1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission.

(c) A person may not act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

#### **Sec. 33.004. Compensation and Expenses of Commission Members and Special Masters**

(a) A member of the commission serves without compensation for services, but is entitled to reimbursement for expenses as provided by this section.

(b) A special master who is an active district judge or justice of the court of appeals is entitled to a per diem of \$25 for each day or part of a day that the person spends in the performance of the duties of special master. The per diem is in addition to other compensation and expenses authorized by law.

(c) A special master who is a retired judge of a district court or the court of criminal appeals or a retired justice of a court of appeals or the supreme court is entitled to compensation in the same manner as provided by Section 74.061 for the purposes of this subsection the term court in 74.061(c)

means the district court in the county in which formal proceedings are heard by the special master.

(d) A member or employee of the commission or a special master is entitled to necessary expenses for travel, board, and lodging incurred in the performance of official duties.

(e) Payment shall be made under this section on certificates of approval by the commission.

#### **Sec. 33.0041. Removal of Commission Member; Notification Procedures**

If the executive director has knowledge that a potential ground for removal of a commission member exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists.

#### **Sec. 33.0042. Requirements for Office or Employment: Information**

The executive director or the executive director's designee shall provide to members of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter and Section 1-a, Article V, Texas Constitution, including information regarding a person's

responsibilities under applicable laws relating to standards of conduct for state officers or employees.

### **Sec. 33.0043. Commission Member Training**

(a) A person who is appointed to and qualifies for office as a member of the commission shall complete a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) The legislation that created the commission;
- (2) The programs operated by the commission;
- (3) The role and functions of the commission;
- (4) The rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) The current budget for the commission;
- (6) The results of the most recent formal audit of the commission;
- (7) The requirements of laws relating to public officials, including conflict-of-interest laws; and
- (8) Any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

### **Sec. 33.0044. Division of Responsibility**

The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

### **Sec. 33.0045. Equal Employment Opportunity Policy Statement**

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

- (1) Personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
- (2) An analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

- (1) Be updated annually;
- (2) Be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

- (3) Be filed with the governor's office.

### **Sec. 33.0046. State Employee Incentive Program: Information and Training**

The executive director or the executive director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

### **Sec. 33.005. Annual Report**

(a) Not later than December 1 of each year, the commission shall submit to the legislature a report for the preceding fiscal year ending August 31.

(b) The report must include:

- (1) an explanation of the role of the commission;
- (2) annual statistical information and examples of improper judicial conduct;
- (3) an explanation of the commission's processes; and
- (4) changes the commission considers necessary in its rules or the applicable statutes or constitutional provisions.

(c) The commission shall distribute the report to the governor, lieutenant governor, speaker of the house of representatives, and editor of the Texas Bar Journal.

(d) The legislature shall appropriate funds for the preparation and distribution of the report.

(e) The Texas Bar Journal shall periodically publish public statements, sanctions, and orders of additional education issued by the commission.

### **Sec. 33.006. Immunity from Liability**

(a) This section applies to:

- (1) the commission;
- (2) a member of the commission;
- (3) the executive director of the commission;
- (4) an employee of the commission;
- (5) a special master appointed under Section 1-a(8), Article V, Texas Constitution;
- (6) special counsel for the commission and any person employed by the special counsel; and
- (7) any other person appointed by the commission to assist the commission in performing duties.

(b) A person to which this section applies is not liable for an act or omission committed by the person within the scope of the person's official duties.

(c) The immunity from liability provided by this section is absolute and unqualified and extends to any action at law or in equity.

### **Sec. 33.007. Distribution of Materials to Judges and the Public**

(a) The commission shall develop and distribute plain-language materials as described by this section to judges and the public.

(b) The materials must include a description of:

- (1) the commission's responsibilities;
- (2) the types of conduct that constitute judicial misconduct;

(3) the types of sanctions issued by the commission, including orders of additional education; and

(4) the commission's policies and procedures relating to complaint investigation and resolution.

(c) The materials shall be provided in English and Spanish.

(d) The commission shall provide to each person filing a complaint with the commission the materials described by this section.

(e) The commission shall adopt a policy to effectively distribute materials as required by this section.

### **Sec. 33.008. Judicial Misconduct Information**

The commission shall routinely provide to entities that provide education to judges, information relating to judicial misconduct resulting in sanctions or orders of additional education issued by the commission. The commission shall categorize the information by level of judge and type of misconduct.

### **Subchapter B. Powers and Duties**

[Sections 33.009 to 33.020 reserved for expansion]

### **Sec. 33.021. General Powers of Commission**

The commission may:

- (1) design and use a seal;
- (2) employ persons that it considers necessary to carry out the duties and powers of the commission;
- (3) employ special counsel as it considers necessary;
- (4) arrange for attendance of witnesses;

(5) arrange for and compensate expert witnesses and reporters; and

(6) pay from its available funds the reasonably necessary expenses of carrying out its duties under the constitution, including providing compensation to special masters.

### **Sec. 33.021. Complaints**

(a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

### **Sec. 33.022. Investigations and Formal Proceedings**

(a) The commission may conduct a preliminary investigation of the circumstances surrounding an allegation or appearance of misconduct or disability

of a judge to determine if the allegation or appearance is unfounded or frivolous.

(b) If, after conducting a preliminary investigation under this section, the commission determines that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission shall terminate the investigation.

(c) If, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission:

(1) shall:

(A) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(B) notify the judge in writing of:

(i) the commencement of the investigation; and

(ii) the nature of the allegation or appearance of misconduct or disability being investigated; and

(2) may:

(A) order the judge to:

(i) submit a written response to the allegation or appearance of misconduct or disability; or

(ii) appear informally before the commission;

(B) order the deposition of any person; or

(C) request the complainant to appear informally before the commission.

(d) The commission shall serve an order issued by the commission under Subsection (c)(2)(B) on the person who is the subject of the deposition and the judge who is the subject of the investigation. The order must be served within a reasonable time before the date of the deposition.

(e) The commission may file an application in a district court to enforce an order issued by the commission under Subsection (c)(2)(B).

(f) The commission shall notify the judge in writing of the disposition of a full investigation conducted by the commission under this section.

(g) If after the investigation has been completed the commission concludes that formal proceedings will be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be served on the judge without delay. The proceedings shall be entitled:

"Before the State Commission on Judicial Conduct Inquiry

Concerning a Judge, No. \_\_\_\_"

(h) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts on which the charges are based and the specific standards contended to have been violated. The judge is entitled to file a written answer to the charges against the judge not later than the 15th day after the notice is served on the judge, and the notice shall so advise the judge.

(i) The notice shall be served on the judge or the judge's attorney of record

by personal service of a copy of the notice by a person designated by the chairperson. The person serving the notice shall promptly notify the clerk in writing of the date on which the notice was served. If it appears to the chairperson on affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing by registered or certified mail copies of the notice addressed to the judge at the judge's chambers or at the judge's last known residence in an envelope marked "personal and confidential." The date of mailing shall be entered in the docket.

(j) A judge at the judge's request may elect to have any hearing open to the public or to persons designated by the judge. The right of a judge to an open hearing does not preclude placing witnesses under the rule as provided by the Texas Rules of Civil Procedure.

(k) A judge is not entitled to a jury trial in formal proceedings before a special master or the commission.

(l) The commission shall adopt procedures for hearing from judges and complainants appearing before the commission. The procedures shall ensure the confidentiality of a complainant's identity as provided under Section 33.0321.

### Sec. 33.023. Physical or Mental Incapacity of Judge

(a) In any investigation or proceeding that involves the physical or mental incapacity of a judge, the commission may order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission.

(b) The commission shall give the judge written notice of the examination not later than 10 days before the date of the examination. The notice must include the physician's name and the date, time, and place of the examination.

(c) Each examining physician shall file a written report of the examination with the commission and the report shall be received as evidence without further formality. On request of the judge or the judge's attorney, the commission shall give the judge a copy of the report. The physician's oral or deposition testimony concerning the report may be required by the commission or by written demand of the judge.

(d) If a judge refuses to submit to a physical or mental examination ordered by the commission under this section, the commission may petition a district court for an order compelling the judge to submit to the physical or mental examination.

### Sec. 33.024. Oaths and Subpoenas

In conducting an investigation, formal proceedings, or proceedings before a special court of review, a commission member, special master, or member of a special court of review may:

- (1) administer oaths;
- (2) order and provide for inspection of books and records; and
- (3) issue a subpoena for attendance of a witness or production of papers, books, accounts, documents, and testimony relevant to the investigation or proceeding.

### **Sec. 33.025. Enforcement of Subpoena**

- (a) The commission may file an application in a district court or, if appropriate, with a special master or special court of review, to enforce a subpoena issued by the commission under this chapter.
- (b) A special master or special court of review may enforce by contempt a subpoena issued by the commission, the special master, or the special court of review.

### **Sec. 33.026. Witness Immunity**

- (a) In a proceeding or deposition related to a proceeding before the commission, a special master, or a special court of review, the commission, special master, or special court of review may compel a person other than the judge to testify or produce evidence over the person's claim of privilege against self-incrimination.
- (b) A person compelled to testify over a proper claim of privilege against self-incrimination is not subject to indictment or prosecution for a matter or transaction about which the person truthfully testifies or produces evidence.
- (c) A special master has the same powers as a district judge in matters of contempt and granting immunity.

### **Sec. 33.027. Discovery**

- (a) In formal proceedings or in a proceeding before a special court of review, discovery shall be conducted, to the extent practicable, in the manner provided by the rules applicable to civil cases generally.
- (b) On request, a special master, the commission, or a special court of

review shall expedite the discovery in formal proceedings or in a proceeding before a special court of review.

- (c) The following may not be the subject of a discovery request in formal proceedings or in a proceeding before a special court of review:
  - (1) the discussions, thought processes, or individual votes of members of the commission;
  - (2) the discussions or thought processes of employees of the commission, including special counsel for the commission; or
  - (3) the identity of a complainant or informant if the person requests that the person's identity be kept confidential.

### **Sec. 33.028. Process and Orders**

- (a) Process issued under this chapter is valid anywhere in the state.
- (b) A peace officer, an employee of the commission, or any other person whom the commission, a special master, or a special court of review designates may serve process or execute a lawful order of the commission, the special master, or the special court of review.

### **Sec. 33.029. Witnesses' Expenses**

A witness called to testify by the commission other than an officer or employee of the state or a political subdivision or court of the state is entitled to the same mileage expenses and per diem as a witness before a state grand jury. The commission shall pay these amounts from its appropriated funds.

**Sec. 33.030. Assistance to Commission, Special Master, or Special Court of Review**

- (a) On request of the commission, the attorney general shall act as its counsel generally or in a particular investigation or proceeding.
- (b) A state or local government body or department, an officer or employee of a state or local government body, or an official or agent of a state court shall cooperate with and give reasonable assistance and information to the commission, an authorized representative of the commission, a special master, or a special court of review concerning an investigation or proceeding before the commission, special master, or special court of review.

**Sec. 33.031. No Award of Costs**

Court costs or attorney's fees may not be awarded in a proceeding under this chapter.

**Sec. 33.032. Confidentiality of Papers, Records, and Proceedings**

- (a) Except as provided by Section 33.034, the papers filed with and proceedings before the commission are confidential prior to the filing of formal charges.
- (b) The formal hearing and any evidence introduced during the formal hearing, including papers, records, documents, and pleadings filed with the clerk, shall be public.
- (c) On issuance of a public admonition, warning, reprimand, or a public requirement that a person obtain additional training or education by the commission, the record of the

informal appearance and the documents presented to the commission during the informal appearance that are not protected by attorney-client or work product privilege shall be public.

- (d) The disciplinary record of a judge, including any private sanctions, is admissible in a subsequent proceeding before the commission, a special master, a special court of review, or a review tribunal.
- (e) On the filing of a written request by a judge, the commission may release to the person designated in the request, including the judge, the number, nature, and disposition of a complaint filed against the judge with the commission, except that the commission may refuse to release the identity of a complainant.
- (f) The commission may release to the Office of the Chief Disciplinary Counsel of the State Bar of Texas information indicating that an attorney, including a judge who is acting in the judge's capacity as an attorney, has violated the Texas Disciplinary Rules of Professional Conduct.
- (g) If the commission issues an order suspending a judge who has been indicted for a criminal offense, the order, any withdrawal of the order, and all records and proceedings related to the suspension shall be public.
- (h) A voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission shall be public on the commission's acceptance of the agreement. The agreement and any agreed statement of facts relating to the agreement are admissible in a subsequent proceeding before the commission. An agreed statement of facts may be released to the public only

if the judge violates a term of the agreement.

### **Sec. 33.0321. Confidentiality of Complainant's Identity**

On the request of a complainant, the commission may keep the complainant's identity confidential.

### **Sec. 33.033. Notification to Complainant**

- (a) The commission shall promptly notify a complainant of the disposition of the case.
- (b) The communication shall inform the complainant that:
  - (1) the case has been dismissed;
  - (2) a private sanction or order of additional education has been issued by the commission;
  - (3) a public sanction has been issued by the commission;
  - (4) formal proceedings have been instituted; or
  - (5) a judge has resigned from judicial office in lieu of disciplinary action by the commission.
- (c) The communication may not contain the name of a judge unless a public sanction has been issued by the commission or formal proceedings have been instituted.
- (d) If a public sanction has been issued by the commission, the communication must include a copy of the public sanction.
- (e) If the complaint is dismissed by the commission, the commission shall include in the notification under Subsection (a):
  - (1) an explanation of each reason for the dismissal; and

- (2) information relating to requesting reconsideration of the dismissed complaint as provided by Sections 33.035(a) and (f).

### **Sec. 33.034. Review of Commission Decision**

- (a) A judge who receives from the commission any type of sanction is entitled to a review of the commission's decision as provided by this section. This section does not apply to a decision by the commission to institute formal proceedings.
- (b) Not later than the 30th day after the date on which the commission issues its decision, the judge must file with the chief justice of the supreme court a written request for appointment of a special court of review.
- (c) Not later than the 10th day after the chief justice receives the written request, the chief justice shall select by lot the court of review. The court of review is composed of three court of appeals justices, other than a justice serving in a court of appeals district in which the judge petitioning for review of the commission's order serves and other than a justice serving on the commission. The chief justice shall notify the petitioner and the commission of the identities of the justices appointed to the court and of the date of their appointment. Service on the court shall be considered a part of the official duties of a justice, and no additional compensation may be paid for the service.
- (d) Within 15 days after the appointment of the court of review, the commission shall file with the clerk a charging document that includes a copy of the sanction issued and any additional charges to be considered in the de novo proceeding. The charging

document is public on its filing with the clerk. On receipt of the filing of the charging document, the clerk shall send the charging document to the judge who is the subject of the document and to each justice on the court of review.

- (e) The review by the court under this section is by trial de novo as that term is used in the appeal of cases from justice to county court. Any hearings of the court shall be public and shall be held at the location determined by the court. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed with the clerk in the proceedings, is public.
- (f) Except as otherwise provided by this section, the procedure for the review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.
- (g) A judge is not entitled to a trial by jury in a review under this section.
- (h) Within 30 days after the date on which the charging document is filed with the clerk, the court shall conduct a hearing on the charging document. The court may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. Within 60 days after the hearing, the court shall issue a decision as to the proper disposition of the appeal.
- (i) The court's decision under this section is not appealable.

### Sec. 33.035. Reconsideration of Complaint

(a) A complainant may request reconsideration of a dismissed complaint if, not later than the 30th day after the date of the communication informing the

complainant of the dismissal, the complainant provides additional evidence of misconduct committed by the judge.

(b) The commission shall deny a request for reconsideration if the complainant does not meet the requirements under Subsection (a). The commission shall notify the complainant of the denial in writing.

(c) The commission shall grant a request for reconsideration if the complainant meets the requirements under Subsection (a). After granting a request, the commission shall vote to:

- (1) affirm the original decision to dismiss the complaint;
- or
- (2) reopen the complaint.

(d) The commission shall notify the complainant of the results of the commission's vote under Subsection (c) in writing.

(e) The commission shall conduct an appropriate investigation of a complaint reopened under Subsection (c)(2). The investigation shall be conducted by commission staff who were not involved in the original investigation.

(f) A complainant may request reconsideration of a dismissed complaint under this section only once.

### Sec. 33.036. Certain Disclosure of Information

(a) To protect the public interest, the commission may disclose information relating to an investigation or proceeding under this chapter to:

(1) a law enforcement agency;

(2) a public official who is authorized or required by law to appoint a person to serve as a judge;

(3) the supreme court; or

(4) an entity that provides commission-ordered education to judges.

(b) Information may be disclosed under this section only to the extent necessary for the recipient of the information to perform an additional duty or function.

### **Sec. 33.037. Suspension Pending Appeal**

If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the commission shall suspend the judge from office without pay pending final disposition of the appeal.

### **Sec. 33.038. Automatic Removal**

A judge is automatically removed from the judge's office if the judge is convicted of or is granted deferred adjudication for:

(1) a felony; or

(2) a misdemeanor involving official misconduct.

# Appendix C

## Procedural Rules for the Removal or Retirement of Judges

(Adopted and Promulgated Pursuant to Section 1-a(11), Article 5, Constitution of Texas)

### Rule 1. Definitions

In these rules, unless the context or subject matter otherwise requires:

(a) "Commission" means the State Commission on Judicial Conduct.

(b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts; any County Judge; any Judge of a County Court-at-Law, a Probate Court, or a Municipal Court; any Justice of the Peace; any Judge or presiding officer of any special court created by the Legislature; any retired judge or former judge who continues as a judicial officer subject to assignment to sit on any court of the state; and, any Master or Magistrate appointed to serve a trial court of this state.

(c) "Chairman" includes the acting Chairman of the Commission.

(d) "Special Master" means an individual appointed by the Supreme Court upon request of the Commission pursuant to Article V, Section 1-a, Paragraph (8) of the Texas Constitution.

(e) "Sanction" means any admonition, warning, reprimand, or requirement that the person obtain additional training or education, issued publicly or privately, by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution. A sanction is remedial in nature. It is issued prior to the institution of formal proceedings to deter similar misconduct by a judge or judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this

state neither permits nor condones misconduct.

(f) "Censure" means an order issued by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution or an order issued by a Review Tribunal pursuant to the provisions of Article V, Section 1-a, Paragraph (9) of the Texas Constitution. An order of censure is tantamount to denunciation of the offending conduct, and is more severe than the remedial sanctions issued prior to a formal hearing.

(g) "Special Court of Review" means a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court upon petition, to review a sanction issued by the Commission.

(h) "Review Tribunal" means a panel of seven court of appeals justices selected by lot by the Chief Justice of the Supreme Court to review the Commission's recommendation for the removal or retirement of a judge as provided in Article V, Section 1-a, Paragraph (8) of the Texas Constitution.

(i) "Formal Proceeding" means the proceedings ordered by the Commission concerning the possibility of public censure, removal, or retirement of a judge.

(j) "Examiner" means the person, including appropriate Commission staff or Special Counsel, appointed by the Commission to gather and present evidence before a special master, or the Commission, a Special Court of Review or a Review Tribunal.

(k) "Shall" is mandatory and "may" is permissive.

(l) "Mail" means First Class United States Mail.

(m) The masculine gender includes the feminine gender.

## **Rule 2. Mailing of Notices and of Other Matter**

Whenever these rules provide for giving notice or sending any matter to a judge, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge, be sent to him by mail at his office or last known place of residence; provided, that when the judge has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at his office or last known place of residence.

## **Rule 3. Preliminary Investigation**

(a) The Commission may, upon receipt of a verified statement, upon its own motion, or otherwise, make such preliminary investigation as is appropriate to the circumstances relating to an allegation or appearance of misconduct or disability of any judge to determine that such allegation or appearance is neither unfounded nor frivolous.

(b) If the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings.

## **Rule 4. Full Investigation**

(a) If the preliminary investigation discloses that the allegations or appearances are neither unfounded nor frivolous, or if sufficient cause exists to warrant full inquiry into the facts and circumstances indicating that a judge

may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, the Commission shall conduct a full investigation into the matter.

(b) The Commission shall inform the judge in writing that an investigation has commenced and of the nature of the matters being investigated.

(c) The Commission may request the judge's response in writing to the matters being investigated.

## **Rule 5. Issuance, Service, and Return of Subpoenas**

(a) In conducting an investigation, hearing, or other proceeding, the Chairman or any member of the Commission, or a special master when a hearing is being conducted before a special master, may, on his own motion, or on request of appropriate Commission staff, the examiner, or the judge, issue a subpoena for attendance of any witness or witnesses who may be represented to reside within the State of Texas.

(b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the Chairman or some other member of the Commission, or by the special master when a hearing is before the special master, and the date of its issuance shall be noted thereon. It shall be addressed to any peace officer of the State of Texas or to a person designated by the Chairman to make service thereof.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.

(d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness; the person serving the subpoena shall make due return thereof, showing the time and manner of service, or service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

### **Rule 6. Informal Appearance**

(a) Before terminating an investigation, the Commission may offer a judge an opportunity to appear informally before the Commission.

(b) An informal appearance is confidential except that the judge may elect to have the appearance open to the public or to any person or persons designated by the judge. The right to an open appearance does not preclude placing of witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.

(c) No oral testimony other than the judge's shall be received during an informal appearance, although documentary evidence may be received. Testimony of the judge shall be under oath, and a recording of such testimony taken. A copy of such recording shall be furnished to the judge upon request.

(d) The judge may be represented by counsel at the informal appearance.

(e) Notice of the opportunity to appear informally before the Commission shall be given by mail at least ten (10) days prior to the date of the scheduled appearance.

### **Rule 7. Reserved for Future Promulgation**

### **Rule 8. Reserved for Future Promulgation**

### **Rule 9. Review of Commission Decision**

(a) A judge who has received from the Commission a sanction in connection with a complaint filed subsequent to September 1, 1987, may file with the Chief Justice of the Supreme Court a written request for appointment of a Special Court of Review, not later than the 30th day after the date on which the Commission issued its sanction.

(b) Within 15 days after appointment of the Special Court of Review, the Commission shall furnish the petitioner and each justice on the Special Court of Review a charging document which shall include a copy of the sanction issued as well as any additional charges to be considered in the de novo proceeding and the papers, documents, records, and evidence upon which the Commission based its decision. The sanction and other records filed with the Special Court of Review are public information upon filing with the Court.

(c) Within 30 days after the date upon which the Commission files the charging document and related materials with the Special Court of Review, the Special Court of Review shall conduct a hearing. The procedure for the hearing shall be governed by the rules of law, evidence, and procedure that apply to civil actions, except the judge is not entitled to trial by jury, and the Special Court of Review's decision shall not be appealable. The hearing shall be held at a location determined by the Special Court of Review, and shall be public.

(d) Decision by the Special Court of Review may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings.

(e) The opinion by the Special Court of Review shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

## Rule 10. Formal Proceedings

### (A) NOTICE

(1) If after the investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge without delay. Such proceedings shall be entitled:

"Before the State Commission on Judicial Conduct Inquiry Concerning a Judge, No. \_\_\_\_\_"

(2) The notice shall specify in ordinary and concise language the charges against the judge, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(3) The notice shall be served by personal service of a copy thereof upon the judge by a member of the Commission or by some person designated by the Chairman, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the Chairman upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing, by registered or certified mail, copies of the notice addressed to the judge at his chambers and at his last known residence, and the date of mailing shall be entered in the docket.

### (B) ANSWER

Within 15 days after service of the notice of formal proceedings, the judge may file with the Commission an original answer, which shall be verified, and twelve legible copies thereof.

### (C) SETTING DATE FOR HEARING AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER

(1) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a special master and shall give notice of such hearing by mail to the judge at least 20 days prior to the date set.

(2) If the Commission directs that the hearing be before a special master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a special master for such hearing, and the Supreme Court shall, within 10 days from receipt of such request, appoint an active or retired District Judge, a Judge of a Court of Civil Appeals, either active or retired, or a retired Justice of the Court of Criminal Appeals or Supreme Court to hear and take evidence in such matters.

#### **(D) HEARING**

(1) At the time and place set for hearing, the Commission, or the special master when the hearing is before a special master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 5, whether or not the judge has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.

(2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge to testify in his own behalf or his failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

(3) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an official court reporter.

(4) When the hearing is before the Commission, not less than six members shall be present while the hearing is in active progress. The Chairman, when present, the Vice-Chairman in the absence of the Chairman, or the member designated by the Chairman in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

#### **(E) EVIDENCE**

At a hearing before the Commission or a special master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

#### **(F) AMENDMENTS TO NOTICE OR ANSWER**

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

#### **(G) PROCEDURAL RIGHTS OF JUDGES**

(1) In the proceedings for his removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of

the testimony in the proceedings transcribed at his expense.

(3) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent.

#### **(H) REPORT OF SPECIAL MASTER**

(1) After the conclusion of the hearing before a special master, he shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and his findings of fact based on a preponderance of the evidence with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the notice of formal proceedings. The report shall be accompanied by an original and two copies of a transcript of the proceedings before the special master.

(2) Upon receiving the report of the special master, the Commission shall promptly send a copy to the judge, and one copy of the transcript shall be retained for the judge's use.

#### **(I) OBJECTIONS TO REPORT OF SPECIAL MASTER**

Within 15 days after mailing of the copy of the special master's report to the judge, the examiner or the judge may file with

the Commission an original and twelve legible copies of a statement of objections to the report of the special master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge.

#### **(J) APPEARANCE BEFORE COMMISSION**

If no statement of objections to the report of the special master is filed within the time provided, the findings of the special master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the special master, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten days prior thereto.

#### **(K) EXTENSION OF TIME**

The Chairman of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a special master, and a special master may similarly extend the time for the commencement of a hearing before him.

#### **(L) HEARING ADDITIONAL EVIDENCE**

(1) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten days prior to the date of the hearing.

(2) The hearing of additional evidence may be before the Commission itself or before the special master, as the Commission shall direct; and if before a special master, the proceedings shall be in conformance with the provisions of Rule 10(d) to 10(g) inclusive.

#### **(M) COMMISSION VOTE**

If, after hearing, upon considering the record and report of the special master, the Commission finds good cause therefore, by affirmative vote of six of its members, it shall recommend to the Review Tribunal the removal, or retirement, as the case may be; or in the alternative, the Commission may dismiss the case or publicly order a censure, reprimand, warning, or admonition. Six votes are required for a recommendation of removal or retirement.

#### **Rule 11. Request by Commission for Appointment of Review Tribunal**

Upon making a determination to recommend the removal or retirement of a judge, the Commission shall promptly file a copy of a request for appointment of a Review Tribunal with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing.

#### **Rule 12. Review of Formal Proceedings**

(a) A recommendation of the Commission for the removal or retirement, of a judge shall be determined by a Review Tribunal of seven Justices selected from the Courts of Appeals. Members of the Review Tribunal shall be selected by lot by the Chief Justice of the Supreme Court from all Appeals Justices sitting at the time of selection. Each Court of Appeals shall designate one of its members for inclusion

in the list from which the selection is made, except that no Justice who is a member of the Commission shall serve on the Review Tribunal. The Justice whose name is drawn first shall be chairman of the Review Tribunal. The clerk of the Supreme Court will serve as the Review Tribunal's staff, and will notify the Commission when selection of the Review Tribunal is complete.

(b) After receipt of notice that the Review Tribunal has been constituted, the Commission shall promptly file a copy of its recommendation certified by the Chairman or Secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court. The Commission shall immediately send the judge notice of such filing and a copy of the recommendation, findings and conclusions.

(c) A petition to reject the recommendation of the Commission for removal or retirement of a judge or justice may be filed with the clerk of the Supreme Court within thirty days after the filing with the clerk of the Supreme Court of a certified copy of the Commission's recommendation. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by seven copies of petitioner's brief and proof of service of one copy of the petition and of the brief on the Chairman of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file seven copies of the Commission's brief, and shall serve a copy thereof on the judge.

(d) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(e) Rules 4 and 74, Texas Rules of Appellate Procedure, shall govern the form and contents of briefs except where

express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

(f) The Review Tribunal, may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the special master or the Commission and be filed as a part of the record in the Court.

(g) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than thirty days nor more than forty days from the date of receipt thereof. The order and length of time of argument shall, if not otherwise ordered or permitted by the Review Tribunal, be governed by Rule 172, Texas Rules of Appellate Procedure.

(h) Within 90 days after the date on which the record is filed with the Review Tribunal, it shall order public censure, retirement, or removal, as it finds just and proper, or wholly reject the recommendation. The Review Tribunal, in an order for involuntary retirement for disability or an order for removal, may also prohibit such person from holding judicial office in the future.

(i) The opinion by the Review Tribunal shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such

event the majority opinion shall be published as well.

### **Rule 13. Appeal to Supreme Court**

A judge may appeal a decision of the Review Tribunal to the Supreme Court under the substantial evidence rule.

### **Rule 14. Motion for Rehearing**

A motion for rehearing may not be filed as a matter of right. In entering its judgment the Supreme Court or Review Tribunal may direct that no motion for rehearing will be entertained, in which event the judgment will be final on the day and date of its entry. If the Supreme Court or Review Tribunal does not so direct and the judge wishes to file a motion for rehearing, he shall present the motion together with a motion for leave to file the same to the clerk of the Supreme Court or Review Tribunal within fifteen days of the date of the judgment, and the clerk shall transmit it to the Court or Review Tribunal for such action as the appropriate body deems proper.

### **Rule 15. Suspension of a Judge**

(a) Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. However, the suspended judge has the right to a post-suspension hearing to demonstrate that continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside nor impair public confidence in the judiciary. A written request for a post-suspension hearing must be filed with the Commission within 30 days from receipt of the Order of Suspension. Within 30 days from the receipt of a request, a

hearing will be scheduled before one or more members or the executive director of the Commission as designated by the Chairman of the Commission. The person or persons designated will report findings and make recommendations, and within 60 days from the close of the hearing, the Commission shall notify the judge whether the suspension will be continued, terminated, or modified.

(b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

### **Rule 16. Record of Commission Proceedings**

The Commission shall keep a record of all informal appearances and formal proceedings concerning a judge. In all proceedings resulting in a recommendation to the Review Tribunal for removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to

the issues of fact and law in the proceeding.

### **Rule 17. Confidentiality and Privilege of Proceedings**

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

a. The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.

b. If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.

c. The judge may elect to open the informal appearance hearing pursuant to Rule 6(b).

### **Rule 18. *Ex Parte* Contacts by Members of the Commission**

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* contacts with any judge who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission.

# Appendix D

## Texas Code of Judicial Conduct As Amended September 2001

### Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

### Canon 1 Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should

personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

### Canon 2 AVOIDING IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

#### CANON 2A

The Judge, with the exception of two reports, failed to timely file semiannual campaign finance reports with the Dallas County Clerk every year since 1990. The Judge also failed to timely file a "thirty-day-before election" report and an "eight-day-before election" report. The Judge entered into an Agreed Resolution and Order accepting the Texas Ethics Commission's findings and conclusions that he had violated Sections 254.063 of the Texas Election Code. [Violation of Article 5, Section 1-a(6) of the Texas Constitution, and Canons 2A and 4(2) of the Texas Code of Judicial Conduct] *Public Reprimand of Thomas G. Jones, Justice of the Peace (08/20/01)*

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months

as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

The Judge improperly held dual employment as a Justice of the Peace and a law enforcement officer in neighboring counties. Such positions created an appearance of impropriety, bias, prejudice, and partiality in the handling of criminal cases. Furthermore, it would appear to the public that the Judge's fellow law enforcement officers are in a special position to influence the Judge in his decisions. A public statement

was issued by the Commission on Judicial Conduct (PS-2000-1), but the Judge continued to hold both positions until ordered by the Texas Supreme Court that he be suspended from judicial office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 4A(1), and 4D(1) of the Texas Code of Judicial Conduct] *Public Reprimand of Randy Ellisor, Justice of the Peace (04/24/01)*

The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than thirty days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law; issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year old, non-party witness; failed to rule on a timely-filed motion to quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to conduct proceedings involving that attorney and/or his clients with the patience, courtesy and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

While responding to a reported automobile accident, a police officer found the Judge and his automobile at the accident location, and the Judge exhibited all of the signs of an intoxicated person. After the Judge repeatedly refused to submit to field sobriety tests and to a breath sample test, the Judge

was arrested and charged with driving while intoxicated. [Violation of and Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Reprimand and Order of Additional Education of Jaime Garza, County Court at Law Judge (05/31/01)*

In responding to a reported disturbance at the Judge's apartment complex, police officers found the Judge outside and witnessed that he appeared highly intoxicated, noting an odor of alcohol, unsteadiness and slurred speech. The Judge was arrested and charged with Disorderly Conduct. In his appearance before the Commission, the Judge testified that he mixed alcohol and prescription pain medication that evening, which caused him to be impaired. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Warning of Roberto Vargas, Former Municipal Court Judge (08/20/01)*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2000. Additionally, the Judge provided false and misleading information to the Commission concerning the date she assumed the bench and the reasons why she could not obtain the required judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(2) Texas Code of Judicial Conduct] *Public Warning of Gina M. Benavides, Former Municipal Court Judge (06/01/01)*

While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(i), and 5(2)(ii) of the Texas Code of Judicial

Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

The Judge failed to comply with the law when he operated his vehicle under the influence of alcohol and then failed to stop and give information after an accident in which he was involved. The Judge knew, or should have known, that as a public official and member of the judiciary, his arrest for Driving While Intoxicated and Failure To Stop and Give Information would severely compromise the public's confidence in the integrity of the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Public Warning and Order of Additional Education of Robert Burdette, Senior District Judge (05/31/01)*

The Judge engaged in a scheme whereby the Judge resigned as a municipal judge every year and was later reappointed to the same position in an effort to avoid the requirement that the Judge obtain judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Rule 4 of the Texas Rules of Judicial Education] *Public Warning and Order of Additional Education of Joe Chandler, Municipal Court Judge and Justice of the Peace (10/24/00)*

The Judge improperly exercised his contempt authority against several high school students by failing to provide proper notice to all interested parties, including the parents of the minor students, of the accurate time and location, the high school's auditorium, of the contempt hearings. The Judge also failed to afford the adult students the opportunity to obtain counsel prior to the contempt hearings. [Violation of Canon 2A of the Texas Code of Judicial Conduct] *Public Admonition of Joel C. Clouser, Sr., Justice of the Peace (08/20/01)*

During a truancy hearing, because the Judge was not satisfied with a mother's explanation for her child not attending school, the Judge ordered a Hispanic mother and her seven-year-old child to be escorted to a holding cell outside the

courtroom to be detained until the Judge could decide "what to do" with them. Additionally, the Judge made a biased comment to the mother, stating that if the mother did not like the laws in Texas, she could choose one of three bridges back to Mexico. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(6) of the Texas Code of Judicial Conduct] *Public Admonition of Oscar Tullos, Justice of the Peace (05/31/01)*

The Judge participated in an improper *ex parte* communication with the defendant's attorney, during which a discussion of the pending charges against the defendant was held. Additionally, the Judge adjudicated a criminal matter in the absence of the defendant's attorney, and when no formal case had been opened against the defendant and no charging instrument had issued. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Public Admonition of Rodolfo Delgado, Former County Court at Law Judge (04/12/01)*

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge commanded, without notice or explanation, an attorney's presence in his court for the sole purpose of interrogating and lecturing the lawyer about her out-of-court remarks concerning the Judge's ability to be fair and impartial toward her client; interrogated the lawyer in a manner

that was neither patient, dignified, nor courteous; and was motivated in summoning the lawyer to his court out of a fear of public criticism and the need to exert his power as a Judge through intimidation and fear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge failed to obtain the required hours of mandatory judicial education for Fiscal Year 2000. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Rule 2a(2) of the Rules of Judicial Education] *Private Warning*

The Judge, while at the county sheriff's department, threatened a litigant, whose case was pending in the Judge's court, with physical combat. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge improperly used the Judge's position to influence another Judge's decision by writing a letter to recommend prospective adoptive parents in a case then pending before the receiving Judge. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge exceeded the Judge's legal authority by becoming involved in a private legal matter not pending in the Judge's court. The Judge also lent the prestige of the Judge's office to advance

the interest of others by writing a letter to tenants to advise them that the Judge was holding a deposit check for a landlord who had requested the tenants move. When the landlord filed a forcible entry and detainer case in the Judge's court regarding the same tenants, the Judge voluntarily recused because of the Judge's involvement. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge acted without legal authority when the Judge granted deferred adjudication without requiring a traffic defendant to enter a plea, then ordered the defendant to pay a fine. When the defendant did not pay the fine, the Judge issued a warrant and failed to allow a trial for the charge of failure to appear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge relied on legal authority regarding unpaid rent that was no longer in effect. As a result, the Judge refused to grant the litigant a default judgment and deprived the litigant of a legal remedy made available by the Texas Legislature to effectively pursue claims for unpaid rent in conjunction with possession of the premises. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Texas Property Code Section 24.0051] *Private Order of Additional Education*

The Judge improperly deprived a citizen of the right to seek legal redress for a claim of damages through the courts by dismissing the citizen's case for not providing documentary proof to support an affidavit of indigency. The Judge's request for support documentation violated Texas Rules of Civil Procedure Rule 145, which indicates a certified affidavit is presumed to represent the truth of indigency. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge charged and collected a filing fee for a peace bond application in

violation of the Texas Code of Criminal Procedure, which states that a justice court is not authorized to charge or collect a filing or service fee for a peace bond application. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge did not comply with the relevant provisions of the Texas Code of Criminal Procedure and the Texas Transportation Code in the handling of a criminal case. The Judge also refused to provide a copy of a criminal complaint, a public record, to a citizen. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge erred in holding a defendant in direct contempt and ordering the defendant to spend 24 hours in jail. The Judge allowed a continuance for the defendant to hire an attorney. When the defendant returned to court without counsel, the Judge held the defendant in direct contempt. However, the defendant should have been held in constructive contempt. The well-established rule is that failure to comply with a court order constitutes constructive contempt. The procedure for constructive contempt is to allow the defendant an opportunity to appear with counsel to defend the contempt charge at a show cause hearing. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge did not comply with the Texas Code of Criminal Procedure (Article 17.292) in issuing a *Magistrate's Emergency Protective Order*. The Code of Criminal Procedure requires that a subject of the protective order be under arrest and be appearing before a magistrate at the time the order is issued. The subject of the protective order the Judge issued was neither under arrest or appearing before the Judge. The order was ultimately used against the subject in a post-divorce child custody matter. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge failed to comply with the law and thereafter, demonstrated a lack of knowledge of the Texas Code of Criminal Procedure, the Texas Penal Code, and the Texas Rules of Civil Procedure. Specifically, the Judge failed to comply with the law by the following: issuing an evidentiary search warrant without proper authority; setting a civil action for trial prior to the defendant's answer date; conducting an independent investigation into the merits of a civil action pending in the Judge's court based on information obtained through a third party source; failing to advise a criminal defendant of the constitutional right to be represented by an attorney and to have a trial by jury; failing to obtain a written waiver of the defendant's right to a trial by jury; and charging a defendant with the wrong offense. [Violation of Canon 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge allowed relationships with defendants' family members to influence the Judge's judgment. Because of the relationships, the Judge did not follow proper bail procedures instead, authorized the local sheriff to release defendants on personal bond. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge signed an abstract of judgment indicating that a "citation for personal service was served upon the defendant" and subsequently rendered a default judgment against a defendant who had never been served with citation. The court's file contained no evidence that the defendant had ever been served with citation. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

- B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge

convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

#### CANON 2B

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court

records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

The Judge, at the request of a defendant's father, wrote a letter of support on behalf of a defendant in a criminal case pending in the District Court of Cameron County. The Judge wrote the letter on his official court letterhead and signed it in his official capacity as Judge of the Municipal Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public Admonition of Eliseo B. Vega, Municipal Court Judge (06/20/01)*

The Judge abused her judicial position by calling two other judges on behalf of a relative and an acquaintance in an effort to influence those judges' decisions and obtain favorable treatment in their traffic cases pending in the judges' courts. The Judge's contact with the two judges constituted an improper *ex parte* communication. The judge also left phone messages for a county attorney to further discuss one of the two cases. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2B, 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Linda Ray, Justice of the Peace (05/25/01)*

When stopped on suspicion of driving while intoxicated, the Judge repeatedly tried to dissuade a Department of Public Safety (DPS) Officer and the officer's supervisor from arresting him because of the negative effect it would have on him due to his position as a district judge. The Judge attempted to use the prestige of his office to escape the consequences of being stopped and detained for suspicion of driving while intoxicated. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Public*

*Admonition of Frederick Edwards, District Court Judge (04/12/01)*

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge lent the prestige of the Judge's office to advance a private interest by showing support for law enforcement officers when the Judge sponsored a barbecue for them. The Judge used a sub-courthouse as the site for the event, which further gave the impression that law enforcement officers were in a special position to influence the Judge. [Violation of Canon 2B of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge allowed a difficult relationship with a former employee to improperly influence the Judge's judgment and conduct. The Judge's

lack of judgment manifested itself in the unreasonable refusal to permit the former employee any access to information necessary for the preparation of a record for an appeal. [Violation of Canon 2B of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge lent the prestige of the Judge's judicial office to advance the private interest of others by voluntarily appearing in the Judge's judicial robe in an advertisement for a community college. The Judge's appearance in the advertisement was inconsistent with the proper performance of his duties and cast public discredit on the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*

The Judge lent the prestige of the judicial office to advance the private interests of a criminal defendant, when the Judge wrote a letter of support on official judicial letterhead on behalf of a criminal defendant whose case was pending in another court. The Judge's actions in the matter were inconsistent with the proper performance of the Judge's duties. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 2B of the Texas Code of Judicial Conduct] *Private Warning*

The Judge allowed a business to use the prestige of the Judge's judicial office to advance its own commercial interest. The Judge allowed a photograph to be taken of the Judge for an advertisement for a business without taking adequate precautions to ensure that the Judge's name and title would not be associated with the business. [Violation of Canon 2B of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge exceeded the Judge's legal authority by becoming involved in a private legal matter not pending in the Judge's court. The Judge also lent the prestige of the Judge's office to advance the interest of others by writing a letter to tenants to advise

them that the Judge was holding a deposit check for a landlord who had requested the tenants move. When the landlord filed a forcible entry and detainer case in the Judge's court regarding the same tenants, the Judge voluntarily recused because of the Judge's involvement. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge allowed relationships with defendants' family members to influence the Judge's judgment. Because of the relationships, the Judge did not follow proper bail procedures instead, authorized the local sheriff to release defendants on personal bond. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge lent the prestige of the Judge's office to advance the private interests of others by magistrating family members, despite warnings from public officials that the Judge should not do so. The commission found that of the thirteen (13) individuals the Judge magistrated, since the Judge assumed the bench, nine (9) were either related to or were known to the Judge. [Violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

- C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

### **Canon 3 Performing the Duties of Judicial Office Impartially and Diligently**

- A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties

include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

**CANON 3B(2)**

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2000. Additionally, the Judge provided false and misleading information to the Commission concerning the date she assumed the bench and the reasons why she could not obtain the required judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(2) Texas Code of Judicial Conduct] *Public Warning of Gina M. Benavides, Former Municipal Court Judge (06/01/01)*

The Judge engaged in a scheme whereby the Judge resigned as a municipal judge every year and was later reappointed to the same position in an effort to avoid the requirement that the Judge obtain judicial education. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Rule 4 of the Texas Rules of Judicial Education] *Public Warning and Order of Additional Education of Joe Chandler, Municipal Court Judge and Justice of the Peace (10/24/00)*

The Judge commanded, without notice or explanation, an attorney's presence in his court for the sole purpose of interrogating and lecturing the lawyer about her out-of-court remarks concerning the Judge's ability to be fair and impartial toward her client; interrogated the lawyer in a manner that was neither patient, dignified, nor courteous; and was motivated in summoning the lawyer to his court out of a fear of public criticism and the need to exert his power as a Judge through intimidation and fear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

The Judge failed to obtain the required hours of mandatory judicial education for Fiscal Year 2000. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Rule 2a(2) of the Rules of Judicial Education] *Private Warning*

The Judge improperly used the Judge's position to influence another Judge's decision by writing a letter to recommend prospective adoptive parents in a case then pending before the receiving Judge. [Violation of Canons 2A

and 3B(2) of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge relied on legal authority regarding unpaid rent that was no longer in effect. As a result, the Judge refused to grant the litigant a default judgment and deprived the litigant of a legal remedy made available by the Texas Legislature to effectively pursue claims for unpaid rent in conjunction with possession of the premises. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Texas Property Code Section 24.0051] *Private Order of Additional Education*

The Judge improperly deprived a citizen of the right to seek legal redress for a claim of damages through the courts by dismissing the citizen's case for not providing documentary proof to support an affidavit of indigency. The Judge's request for support documentation violated Texas Rules of Civil Procedure Rule 145, which indicates a certified affidavit is presumed to represent the truth of indigency. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge charged and collected a filing fee for a peace bond application in violation of the Texas Code of Criminal Procedure, which states that a justice court is not authorized to charge or collect a filing or service fee for a peace bond application. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge did not comply with the relevant provisions of the Texas Code of Criminal Procedure and the Texas Transportation Code in the handling of a criminal case. The Judge also refused to provide a copy of a criminal complaint, a

public record, to a citizen. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge erred in holding a defendant in direct contempt and ordering the defendant to spend 24 hours in jail. The Judge allowed a continuance for the defendant to hire an attorney. When the defendant returned to court without counsel, the Judge held the defendant in direct contempt. However, the defendant should have been held in constructive contempt. The well-established rule is that failure to comply with a court order constitutes constructive contempt. The procedure for constructive contempt is to allow the defendant an opportunity to appear with counsel to defend the contempt charge at a show cause hearing. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge did not comply with the Texas Code of Criminal Procedure (Article 17.292) in issuing a *Magistrate's Emergency Protective Order*. The Code of Criminal Procedure requires that a subject of the protective order be under arrest and be appearing before a magistrate at the time the order is issued. The subject of the protective order the Judge issued was neither under arrest or appearing before the Judge. The order was ultimately used against the subject in a post-divorce child custody matter. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge failed to comply with the law and thereafter, demonstrated a lack of knowledge of the Texas Code of Criminal Procedure, the Texas Penal Code, and the Texas Rules of Civil Procedure. Specifically, the

Judge failed to comply with the law by the following: issuing an evidentiary search warrant without proper authority; setting a civil action for trial prior to the defendant's answer date; conducting an independent investigation into the merits of a civil action pending in the Judge's court based on information obtained through a third party source; failing to advise a criminal defendant of the constitutional right to be represented by an attorney and to have a trial by jury; failing to obtain a written waiver of the defendant's right to a trial by jury; and charging a defendant with the wrong offense. [Violation of Canon 2A and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge allowed relationships with defendants' family members to influence the Judge's judgment. Because of the relationships, the Judge did not follow proper bail procedures instead, authorized the local sheriff to release defendants on personal bond. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

The Judge, in failing to conduct jury trials in criminal matters, admitted to lack of training and a basic understanding of how to conduct jury trials in criminal cases. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require

similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

#### CANON 3B(4)

The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than thirty days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law; issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year old, non-party witness; failed to rule on a timely-filed motion to quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to conduct proceedings involving that attorney and/or his clients with the patience, courtesy and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

The Judge commanded, without notice or explanation, an attorney's presence in his court for the sole purpose of interrogating and lecturing the lawyer about her out-of-court remarks concerning the Judge's ability to be fair and impartial toward her

client; interrogated the lawyer in a manner that was neither patient, dignified, nor courteous; and was motivated in summoning the lawyer to his court out of a fear of public criticism and the need to exert his power as a Judge through intimidation and fear. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge, while at the county sheriff's department, threatened a litigant, whose case was pending in the Judge's court, with physical combat. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge, in an attempt to get counsel to talk slower, used the phrase "oral sex" once before the jury and once outside the presence of the jury. The Judge also admonished a witness to not "snort." This conduct was inappropriate and lacked the dignity and courtesy due litigants, jurors, witnesses, lawyers and others with whom the Judge deals in an official capacity. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge failed to be dignified and courteous to courthouse security personnel when the Judge engaged in a confrontation with them as a result of their refusal to allow a court reporter's recorder to pass through security. The reporter had neglected to have required identification available and became upset when the reporter's equipment was detained. The reporter reported the incident to the Judge, several floors away, and the Judge appeared at the security site in an agitated demeanor, threatening

the guards with contempt, demanding to see supervisors, detaining a passing attorney as a witness, and advising the guards that Judges were "gods" in the courthouse. Although the Judge denied being upset, the perception of his poor demeanor was reported consistently by several independent witnesses. It was undisputed the Judge could have obtained the recording device on behalf of the court reporter without engaging in the verbal attack. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge's rude, undignified and discourteous conduct towards court staff was inconsistent with the proper performance of the Judge's duties. The Judge rudely admonished and directed profanity, in Spanish, towards a court clerk in open court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Warning*

The Judge acted without patience, dignity, or courtesy when the Judge verbally attacked and humiliated a defendant by commenting that the defendant was stupid. While the Judge denied the attack, witnesses to the Judge's courtroom demeanor related that the Judge made similar rude, demeaning, and humiliating comments to defendants appearing in the Judge's court. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

(5) A judge shall perform judicial duties without bias or prejudice.

## CANON 3B(5)

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case

revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than thirty days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law; issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year old, non-party witness; failed to rule on a timely-filed motion to quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to conduct proceedings involving that attorney and/or his clients with the patience, courtesy and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush

for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge demonstrated bias for an attorney by allowing attorney's praises on an earlier decision in the case to improperly influence the Judge's judgment to find favorably for the complimenting attorney. [Violation of Canon 3B(5) of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge lent the prestige of the Judge's office to advance the private interests of others by magistrating family members, despite warnings from public officials that the Judge should not do so. The commission found that of the thirteen (13) individuals the Judge magistrated, since the Judge assumed the bench, nine (9) were either related to or were known to the Judge. [Violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the

judge's direction and control to do so.

#### CANON 3B(6)

During a truancy hearing, because the Judge was not satisfied with a mother's explanation for her child not attending school, the Judge ordered a Hispanic mother and her seven-year-old child to be escorted to a holding cell outside the courtroom to be detained until the Judge could decide "what to do" with them. Additionally, the Judge made a biased comment to the mother, stating that if the mother did not like the laws in Texas, she could choose one of three bridges back to Mexico. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(6) of the Texas Code of Judicial Conduct] *Public Admonition of Oscar Tullos, Justice of the Peace (05/31/01)*

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the

merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:

- (a) communications concerning uncontested administrative or uncontested procedural matters;
- (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;
- (c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;
- (d) consulting with other judges or with court personnel;
- (e) considering an *ex parte* communication expressly authorized by law.

**CANON 3B(8)**

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and

attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge

and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

The Judge participated in an improper *ex parte* communication with the defendant's attorney, during which a discussion of the pending charges against the defendant was held. Additionally, the Judge adjudicated a criminal matter in the absence of the defendant's attorney, and when no formal case had been opened against the defendant and no charging instrument had issued. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Public Admonition of Rodolfo Delgado, Former County Court at Law Judge (04/12/01)*

The Judge, while presiding over a complicated family law case involving the custody of an infant, improperly entered an order reinstating the case more than thirty days after the case had been dismissed with prejudice; conducted hearings and entered orders without according interested parties and their attorneys the right to be heard according to law;

issued a *capias* with no provision for a bond that resulted in the arrest and overnight detention of a 76-year old, non-party witness; failed to rule on a timely-filed motion to quash that challenged the legal sufficiency of the subpoena previously issued to the same non-party witness; allowed the non-party witness to be interrogated and harassed outside the presence of her counsel and without the constitutional protections normally afforded an arrestee; acted with prejudice against one of the attorneys in the case; failed to conduct proceedings involving that attorney and/or his clients with the patience, courtesy and dignity expected of a judicial officer; and dismissed the lawsuit for want of prosecution with the knowledge that interested parties and their attorneys were pursuing emergency mandamus or appellate relief in the Texas Supreme Court. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canons 2A, 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct] *Public Reprimand of Annette Galik, District Court Judge (09/18/00)*

The Judge, by responding orally to a jury's question concerning the court's charge without the attorneys' knowledge or presence, denied the attorneys the right to be heard regarding the question to the charge in a civil matter. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct, and Rule 286 of the Texas Rules of Civil Procedure] *Private Admonition*

The Judge had improper *ex parte* communications with a plaintiff's attorney and the plaintiff's expert witness in a civil case the Judge was hearing. The Judge had a conversation with the plaintiff's attorney, at recess, regarding an exhibit and made suggestions for closing argument. The Judge also had a private phone conversation with an expert witness, who had been excused from the same civil trial, and asked questions on an exhibit the witness had presented. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 3B(8) of the Texas Code of Judicial Conduct] *Private Admonition*

The Judge signed an abstract of judgment indicating that a "citation for personal service was served upon the defendant" and subsequently rendered a default judgment against a defendant who had never been served with citation. The court's file contained no evidence that the defendant had ever been served with citation. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A and 3B(8) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's

probable decision on any particular case. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

### C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

#### CANON 3C(4)

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem* appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid

to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig Fowler, District Court Judge (06/29/01)*

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

#### D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

- (2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

#### Canon 4 Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

- A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

##### CANON 4A(1)

The Judge improperly held dual employment as a Justice of the Peace and a law enforcement officer in neighboring counties. Such positions created an appearance of impropriety, bias, prejudice, and partiality in the handling of criminal cases. Furthermore, it would appear to the public that the Judge's fellow law enforcement officers are in a special position to influence the Judge in his decisions. A public statement was issued by the Commission on Judicial Conduct (PS-2000-1), but the Judge continued to hold both positions until ordered by the Texas Supreme Court that he be

suspended from judicial office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 4A(1), and 4D(1) of the Texas Code of Judicial Conduct] *Public Reprimand of Randy Ellisor, Justice of the Peace (04/24/01)*

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge acted imprudently, after observing an individual commit multiple traffic violations, by following the individual to a parking lot to comment that the Judge would remember how the individual drove that morning in the event the individual appeared in the Judge's court. Such a statement indicates the Judge would be unable or unwilling to remain impartial and unbiased in a case in the Judge's court involving the individual. [Violation of Canon 4A(1) of the Texas Code of Judicial Conduct] *Private Order of Additional Education*

- (2) interfere with the proper performance of judicial duties.

##### CANON 4A(2)

The Judge used his county computer to forward an E-mail message asking people to support

the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

B. Activities to Improve the Law. A judge may:

- (1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,
- (2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's

impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.
- (2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.
- (3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

- (1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

#### CANON 4D(1)

The Judge improperly held dual employment as a Justice of the Peace and a law enforcement officer in neighboring counties. Such positions created an appearance of impropriety, bias, prejudice, and partiality in the handling of criminal cases. Furthermore, it would appear to the public that the Judge's fellow law enforcement officers are in a special position to influence the Judge in his decisions. A public statement was issued by the Commission on Judicial Conduct (PS-2000-1), but the Judge continued to hold both positions until ordered by the Texas Supreme Court that he be suspended from judicial office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 4A(1), and 4D(1) of the Texas Code of Judicial Conduct] *Public Reprimand of Randy Ellisor, Justice of the Peace (04/24/01)*

- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.
- (3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A

judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

- (a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
- (b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

- (c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;
- (d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

**CANON 4D(4)**

The Judge retained a close friend to represent him, at a nominal fee, in a contested probate matter involving the estate of the Judge's late mother. While the probate dispute was still pending, the Judge failed to act impartially when he appointed his friend and attorney to act as *attorney ad litem* in a lucrative, private-pay custody dispute pending in the Judge's court. After only two months as *ad litem*, the attorney had charged the litigants in the custody dispute more than \$72,000.00 in fees and costs. Those fees were approved by the Judge as reasonable and necessary despite compelling evidence to the contrary. At the time of the *ad litem*

appointment, the Judge failed to disclose to at least one of the litigants in the custody dispute that he had an attorney-client relationship with the *ad litem*. The Commission found that the fees charged by and paid to the attorney by the Judge's late mother's estate in connection with the probate action were significantly less than the fair market value of the work actually performed by the attorney in the case. The Commission also found that the fees charged by and paid to the attorney as *ad litem* in the child custody action significantly exceeded the fair market value of the work actually performed by the *ad litem*. The Commission discovered that the actual time and resources expended by the attorney in both the probate action and the custody case were not accurately reflected in records produced to the Commission in connection with its inquiry. The Commission found that, during the course of his involvement in the custody case, the attorney represented to the parties and their counsel that he had a great deal of influence with the Judge and would receive favorable rulings from the Judge because of their close relationship. A review of court records in the custody case revealed that the attorney did receive favorable treatment and rulings from the Judge. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A, 2B, 3B(5), 3B(8), 3C(4) and 4D(4) of the Texas Code of Judicial Conduct] *Public Reprimand of Craig*

E. Fiduciary Activities.

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(3) Public Reports. A judge shall file financial and other reports as required by law.

## CANON 4I(2)

The Judge, with the exception of two reports, failed to timely file semiannual campaign finance reports with the Dallas County Clerk every year since 1990. The Judge also failed to timely file a "thirty-day-before election" report and an "eight-day-before election" report. The Judge entered into an Agreed Resolution and Order accepting the Texas Ethics Commission's findings and conclusions that he had violated Sections 254.063 of the Texas Election Code. [Violation of Article 5, Section 1-a(6) of the Texas Constitution, and Canons 2A and 4I(2) of the Texas Code of Judicial Conduct] *Public Reprimand of Thomas G. Jones, Justice of the Peace (08/20/01)*

## Canon 5

### Refraining from Inappropriate Political Activity

- (1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case.

#### CANON 5(1)

While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(i), and 5(2)(ii) of the Texas Code of Judicial

Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

- (2) A judge or judicial candidate shall not:

- (i) make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office, but may state a position regarding the conduct of administrative duties;

#### CANON 5(2)(i)

While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(i), and 5(2)(ii) of the Texas Code of Judicial Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

- (ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

#### CANON 5(2)(ii)

While running for another judicial office, the Judge distributed campaign literature which contained false or misleading information, including pledges or promises that, if elected, he would advocate the rights of victims of violent crimes and would treat the criminals in those cases more harshly. Additionally, the campaign literature contained photographs of the Judge that would indicate to

voters that then Texas Governor George W. Bush, and former President Ronald Reagan had endorsed his candidacy when they had not. [Violation of Canons 2A, 5(1), 5(2)(i), and 5(2)(ii) of the Texas Code of Judicial Conduct] *Public Warning of Tom Price, Court of Criminal Appeals Judge (01/25/01)*

- (3) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

#### CANON 5(3)

The Judge used his county computer to forward an E-mail message asking people to support the candidacy of George W. Bush for President; actively assisted law enforcement officers attempting to serve an arrest warrant on a probationer by acting as a "backup," with weapon drawn, and wearing a bulletproof vest; and met privately with a female probationer in his chambers outside the presence of counsel, a probation officer, or a representative from the District Attorney's office. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(5), 4A(1), 4A(2), and 5(3) of the Texas Code of Judicial Conduct] *Public Admonition of Sam Katz, District Court Judge (12/19/00)*

The Judge lent the prestige of the Judge's judicial office when the Judge's name appeared as a supporter on various candidates' campaign literature. Additionally, the Judge stated to a newspaper reporter the Judge's support for a specific candidate. Numerous media then reported the Judge's endorsement of the specific candidate. The Judge was also unfamiliar with the law relating to contempt procedures. [Violation of

Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(2) and 5(3) of the Texas Code of Judicial Conduct] *Private Reprimand*

- (4) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

#### CANON 5(4)

On December 19, 1999, the Judge officially filed as a Republican candidate for United States Representative for District 17, in what was to be a contested election. He did not, however, resign from his position as a magistrate until March 8, 2000, a day after a member of the media questioned him about this conflict. The Judge's failure to resign upon becoming a candidate in a contested election for a non-judicial office was in violation of the canons and cast public discredit upon the judiciary. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 5(4) of the Texas Code of Judicial Conduct] *Public Admonition of Darrell Clements, Former Magistrate (05/25/01)*

- (5) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

## Canon 6 Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

- (1) An active, full-time justice or judge of one of the following courts:
  - (a) the Supreme Court,
  - (b) the Court of Criminal Appeals,
  - (c) courts of appeals,
  - (d) district courts,
  - (e) criminal district courts, and
  - (f) statutory county courts.
- (2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

- (1) when engaged in duties which relate to the judge's role in the administration of the county;
- (2) with Canons 4D(2), 4D(3), or 4H;
- (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.
- (4) with Canon 5(4).

C. Justices of the Peace and Municipal Court Judges.

- (1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

- (a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

- (b) with Canons 4D(2), 4D(3), 4E, or 4H;

- (c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

- (d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

- (e) with Canons 5(4).

- (2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

- (a) uncontested administrative matters,

- (b) uncontested procedural matters,

- (c) magistrate duties and functions,

- (d) determining where jurisdiction of an impending claim or dispute may lie,

- (e) determining whether a claim or dispute might more

appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or

(g) any other matters where *ex parte* communications are contemplated or authorized by law.

#### CANON 6C(2)

The Judge abused her judicial position by calling two other judges on behalf of a relative and an acquaintance in an effort to influence those judges' decisions and obtain favorable treatment in their traffic cases pending in the judges' courts. The Judge's contact with the two judges constituted an improper *ex parte* communication. The judge also left phone messages for a county attorney to further discuss one of the two cases. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution, and Canons 2B, 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Linda Ray, Justice of the Peace (05/25/01)*

*The Judge failed to credit a fine payment to the proper defendant and to close the defendant's case. Two years after the fine had been paid, the defendant was detained on a warrant issued by the Judge's court in the same traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] Public Admonition of Joyce*

Weems, Former Justice of the Peace (12/19/00)

The Judge repeatedly engaged in improper *ex parte* communications about the merits of a case involving a traffic citation. In the communications, the Judge represented that she would dismiss the case but failed to do so. Three years later, the defendant was detained by a law enforcement officer on a warrant issued by the Judge's court in the pending traffic case. [Violation of Article 5, Section 1-a(6)A of the Texas Constitution and Canon 6C(2) of the Texas Code of Judicial Conduct] *Public Admonition of Joyce Weems, Former Justice of the Peace (12/19/00)*

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

- (1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and
- (2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

- (1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and

- (2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.
- F. Any Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:
- (1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but
  - (2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.
- G. Candidates for Judicial Office.
- (1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.
  - (2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.
  - (3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.
  - (4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

## Canon 7 Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

## Canon 8 Construction and Terminology of the Code

### A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

#### B. Terminology.

- (1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.
- (2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.
- (3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.
- (4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.
- (5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
  - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge

could substantially affect the value of the interest;

- (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
  - (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and
  - (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
  - (7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

- (8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.
- (9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.
- (10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.
- (11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.
- (12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.
- (13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])
- (14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]
- (15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])
- (16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])
- (17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.
- (18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

# Appendix E

## Complaint Form

The State Commission on Judicial Conduct's complaint form is provided for your convenience in both English and Spanish. All complaints must be submitted with original signatures. To obtain additional copies of a complaint form contact the Commission at 512-463-5533 or toll-free at 1-877-228-5750.



# State Commission on Judicial Conduct

PO Box 12265  
Austin, TX 78711-2265

512/463-5533  
877/228-5750 Toll-free  
512/463-0511 Fax

For SCJC use only.

*If you are filing a complaint about more than one judge,  
please use a separate form for each judge.*

**Please type or print the details of your complaint on the reverse side**

Your name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_

Judge: \_\_\_\_\_  
Court Number: \_\_\_\_\_  
City and County: \_\_\_\_\_

Your Phones: Day (\_\_\_\_) \_\_\_\_\_ Evening (\_\_\_\_) \_\_\_\_\_  
Cell/Other (\_\_\_\_) \_\_\_\_\_ Best time to call you: \_\_\_\_\_ A.M./ P.M.

**If your complaint involves a court case, please provide the following information:**

Cause Number: \_\_\_\_\_ Status of your case:  Pending  Concluded  On appeal  
Your attorney: \_\_\_\_\_ Opposing Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
City/Zip: \_\_\_\_\_ City/Zip: \_\_\_\_\_  
Phone Number(s): \_\_\_\_\_ Phone Number(s): \_\_\_\_\_

PLEASE FILL IN ALL INFORMATION AVAILABLE FOR ANY WITNESSES (attach additional pages as needed)

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone Number(s): \_\_\_\_\_ Phone Number(s): \_\_\_\_\_  
What did this person witness? \_\_\_\_\_ What did this person witness? \_\_\_\_\_

**If you are submitting documents, please provide copies, not originals.**

~~~~~  
*I understand that as part of the Commission's investigation the judge may be provided a copy of this complaint. Please note – the Commission will do its best to maintain your confidentiality, **if you so request.** However, it may not be possible for us to pursue our investigation without revealing your identity at some point. If it is necessary to reveal your identity directly to the judge, we will advise you before proceeding.*

**I request that my identity be kept confidential. Yes \_\_\_\_\_ No \_\_\_\_\_**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**How did you hear about the State Commission on Judicial Conduct? (please select one)**  State Bar of Texas  
 Another State agency  News media  Attorney  Friend  Other: \_\_\_\_\_



# State Commission on Judicial Conduct

PO Box 12265

Austin, TX 78711-2265

512/463-5533  
877/228-5750 Toll-free  
512/463-0511 Fax

For SCJC use only.

*Si su queja es sobre mas de un juez, por favor utilice una forma separada para cada juez.*

**Imprima o pulse los detalles de su queja en el dorso**

Sú Nombre: \_\_\_\_\_

Sú Domicilio: \_\_\_\_\_

Ciudad, Estado, Código Postal: \_\_\_\_\_

Juez: \_\_\_\_\_

Número de Corte: \_\_\_\_\_

Ciudad y Condado: \_\_\_\_\_

Su Teléfono: Dia (\_\_\_\_) \_\_\_\_\_

Noche (\_\_\_\_) \_\_\_\_\_

Cellular/Otro (\_\_\_\_) \_\_\_\_\_

Mejor tiempo para llamar: \_\_\_\_\_ A.M./ P.M.

**Si su queja implica un proceso legal, favor de proporcionar la siguiente informacion:**

Numero de Causa: \_\_\_\_\_ Estado de su Caso:  Pendiente  Concluido  En Apelacion

Su Abogado: \_\_\_\_\_ Abogado de lado Opuesto: \_\_\_\_\_

Direccion: \_\_\_\_\_ Direccion: \_\_\_\_\_

Ciudad, Codigo Postal: \_\_\_\_\_ Ciudad, Codigo Postal: \_\_\_\_\_

Número de Teléfono: \_\_\_\_\_ Número de Teléfono: \_\_\_\_\_

**FAVOR DE PROPORCIONAR TODA LA INFORMACION DISPONIBLE PARA SUS TESTIGOS**

(Si es necesario, incluya paginas adicionales)

Nombre: \_\_\_\_\_ Nombre: \_\_\_\_\_

Domicilio: \_\_\_\_\_ Domicilio: \_\_\_\_\_

Numero de Telefono: \_\_\_\_\_ Numero de Telefono: \_\_\_\_\_

Que Atestiguo esta Persona? \_\_\_\_\_ Que Atestiguo esta Persona? \_\_\_\_\_

**Si esta sometiendo documentos por favor proporcione copias y no documentos originales**

*Entiendo que como parte de la investigacion de la Comision, el juez puede ser proporcionado una copia de esta queja. Tenga por seguro que la Comision hara todo lo posible por mantener en confianza su queja, **si usted asi lo desea**. Pero pueda que no sea posible seguir nuestra investigacion sin revelar su identidad. Si es necesario de revelar su identidad directamente al juez, se le avisara antes de proceder.*

**Pido que mi identidad permanezca confidencial. Si \_\_\_\_\_ No \_\_\_\_\_**

Firma: \_\_\_\_\_ Fecha: \_\_\_\_\_

Como se informo de la Comision Estatal de Conducto Judicial? (Anote uno)  State Bar of Texas

Otra Agencia Estatal  Por Medio de Noticias  Abogado  Amigo  Otro:





## Old Rip

The Eastland County Courthouse has a provocative history due to a horned toad known as "Old Rip." It was rumored that in 1897, pranksters imprisoned the horned toad in the wet cement of the cornerstone as the courthouse was being constructed. In 1928, when the courthouse was demolished in preparation for a new one, the county judge removed Old Rip from the cornerstone. In front of thousands of spectators, the judge held Old Rip by one leg, presuming he was dead. As he held the famous frog for all to see, the other leg began to kick. He was alive! Old Rip had stayed in the stone for 31 years without food or water. The crowd roared, and the horned toad became an instant celebrity. Old Rip toured the country. He even met President Calvin Coolidge in Washington. It seems, however, that the life of a public figure was too much even for Old Rip. After a year, he caught pneumonia and died. You can see Old Rip today, embalmed and reposing in a plush casket, in the lobby of the Eastland courthouse.