

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 92 - 0008

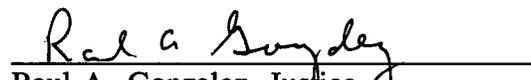
The Supreme Court of Texas hereby appoints to the Board of Directors of the State Bar of Texas:

John R. Coppedge, M.D.
2828 North Fourth Street, Suite 100
Longview, Texas 75601

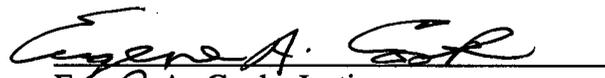
This appointment, made pursuant to Texas Government Code, §81.020, is for a term of three years, to expire in June, 1994.

In Chambers, this 17th day of October, 1991.


Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice

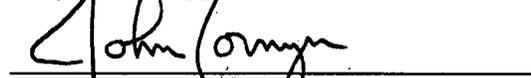
Oscar H. Mauzy, Justice


Eugene A. Cook, Justice


Jack E. Hightower, Justice


Nathan L. Hecht, Justice

Lloyd A. Doggett, Justice


John Cornyn, Justice


Bob A. Gammage, Justice

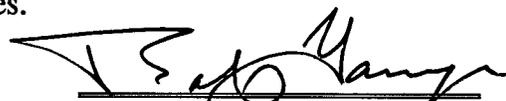
IN THE SUPREME COURT OF TEXAS

MISC. No. 92-0008

Concurring Opinion

I concur in the Court's appointment of John Coppedge to the State Bar of Texas Board of Directors, but I object to the volatile, politically charged environment in which this appointment was decided. While a number of other possible appointees were available for the Court's consideration, John Coppedge's name was suggested by memorandum to the Court's full membership less than 24 hours before the appointment was formally decided. When the State Bar Board appointment was brought up for official decision, only one other person's name was even suggested and none were seriously discussed. In short, the decision appears to have already been made without general consultation in a conference of all the Court's justices.

I concur in the appointment of John Coppedge because I know him to be a good, intelligent, conscientious and well-qualified individual who should well serve the public interest as a member of the State Bar Board of Directors. He is a person of strong, sincere and honestly held opinions, and he believes in acting on them. He will take his responsibilities seriously. He will inform himself. He will ask hard questions. He will demand straight answers. These are certainly not disqualifications for a position of public trust. I regret, however, that this appointment apparently was pre-ordained rather than made as a result of open collegial discussion and thorough consideration of all potential appointees.


Bob Gammage, Justice

Order delivered: October 17, 1991.

DISSENTING OPINION TO SUPREME COURT ORDER
Misc. Docket No. 92-0008

The governing Board of Directors for the State Bar of Texas includes 6 non-lawyers appointed by the Supreme Court of Texas and 40 lawyers. Texas Gov't Code § 81.020. Each year the court initiates one appointment of its own and another from a list of names submitted by the governor. Id. The statutory mandate for public members at state agencies such as the State Bar arises from legislative recognition that

Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the board.

Texas Sunset Advisory Comm'n Report, Sunset Review in Texas, Summary of Process and Procedures 7 (1989).

In making its selection, this court should appoint an individual who has the time and ability to best represent all of the non-lawyers in the State of Texas in regulating and establishing policy regarding lawyers. The appointment process must, moreover, take into consideration the fact that most elected Bar district directors have been Anglo males. Of the current district board members, 83% are Anglo males; 10% are Anglo females; 7% are Hispanic males and none are Hispanic female or African-American. In this regard, the Legislature provided a specific directive in section 81.020(c):

In making the appointments the supreme court and the governor must attempt to ensure full and fair representation of the general public including women, minorities and retired persons who are at least 55 years of age.

We should not only name appointees that individually represent the public interest but should seek those who will provide the board the benefit of the rich diversity of Texas.¹ During my tenure on the court, it has been generally responsive to this mandate by appointing as a public member in 1989, Christine Hernandez, a former San Antonio teacher and now a state legislator; and in 1990, Jan Wilbur, a person long active in representing the concerns of poor neighborhoods through the Houston Metropolitan Organization. Today the court rejects this precedent.

This action is particularly peculiar given the court's willingness to accept my proposal last spring that an effort be made to broaden public awareness of our appointments to various committees and commissions. Following agreement on this procedural issue, both the press and a number of organizations were advised of the qualifications for each of our upcoming appointments. A number of individuals applied directly or were suggested for the non-lawyer vacancies.

¹ To provide some diversity, the Board's membership has recently been expanded to include four minority lawyer directors appointed by the State Bar President. See 1991 Tex. Gen. Laws 2801, ch. 795, § 7 (to be codified at Tex. Gov't Code Ann. § 81.020).

Dr. John Coppedge was not among these, but was nevertheless recruited for this appointment. Undoubtedly, the concept of having a physician on a board supervising the legal profession has some merit. Indeed, I have long believed that the public might benefit from having more physician input in the regulation of lawyers and more lawyer input in the regulation of physicians. However, of the thousands of Texans and hundreds of physicians who could have been nominated, this particular choice is unique.

The only information formally presented to the court in its selection process was a resume of Dr. Coppedge, from which his most notable credential for this appointment was omitted. That credential, which has made Dr. Coppedge personally familiar to every member of this court, is his extensive involvement as the founder of the self-styled "Texas Bi-Partisan Justice Committee", formerly known as "Independents, Democrats and Republicans for the Texas Supreme Court." The purpose of this organization is to influence through contributions and other campaign methods the election of members of this court until the goal of eliminating competitive judicial elections can be accomplished. During the last election cycle, the Coppedge group expended \$88,619. Dr. Coppedge is presently continuing his work with the fundraising help of some of the state's most powerful lobbyists. See Appendix A.

Dr. Coppedge's appointment on the eve of further judicial elections indicates that his efforts to "reform" this court have not

gone unnoticed. Indeed, one can only conclude that some judges who have inveighed against the purported evils of favoritism arising from campaign contributions in Supreme Court races were less interested in eliminating favoritism than in changing who gets the favors. Moreover, this action² places on the State Bar Board an individual whose first concern is not representation of either the public interest or those many segments of our society who are not adequately represented on the board at present, but rather one whose objective is the vigorous pursuit of his personal political agenda.

During the deliberations on this appointment, I nominated an applicant, whose credentials included prior service both as a member of a Bar district grievance committee and as president of the Dallas League of Women Voters. She was the only person nominated who could be genuinely termed "non-partisan". My concern is not the defeat of my particular preference whom I have not personally met, but rather with the unrepresentative nature of Dr. Coppedge.

This nomination is also indicative of a broader problem in the way this court implements its ever-increasing administrative responsibilities. While accepting my recommendations for limited changes in its traditional decisionmaking such as public hearings on the State Bar budget, the advance distribution of an agenda so that

² Dr. Coppedge was apparently notified of the court's vote shortly after our meeting of September 18, 1991. He took the oath of office and began service on the Board on September 23.

its own members will have some notice of what business will be conducted, and the consistent preparation of minutes of its meetings, the court continues to consider in secret administrative matters.

When not involved in adjudicating specific contested legal disputes or discussing subjects that come within the exceptions provided in the Texas Open Meetings Act, Tex. Rev. Civ. Stat. Ann. art. 6252-17 (Vernon Supp. 1991), this court should begin self-application of the same standards that it insists on enforcing for other branches of government. Appointments of public officials such as that involved here and approval of the expenditure of public monies such as the court's approval of another budget deficit for the Board of Law Examiners should be subject to public scrutiny. The process by which this particular appointment was made only highlights the need for this court's administrative decisionmaking regarding such matters to comport with its writing in Acker v. Texas Water Comm'n, 790 S.W.2d 299, 300 (Tex. 1990) (citations omitted):

[I]n the words of Justice Brandeis: "Sunlight is said to be the best disinfectant; electric light the most efficient policeman." The executive and legislative decisions of our governmental officials as well as the underlying reasoning must be discussed openly before the public rather than secretly behind closed doors Our citizens are entitled to more than a result. They are entitled not only to know what government decides but to observe how and why every decision is reached.

While excepting the judiciary from the coverage of the Open Meetings Act, the legislature has never suggested that this court

should ignore the fundamental principle of open governance expressed therein when conducting what is essentially executive and legislative decisionmaking. The agenda for the court's weekly administrative sessions should be posted in the clerk's office, the minutes should be available for public inspection, and the meetings should be accessible to the public except for those personnel and other matters appropriate for private consideration.

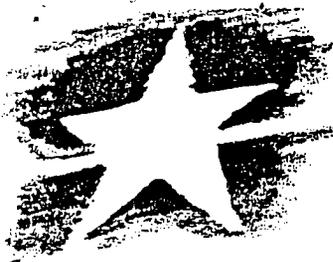
This appointment demonstrates the need for public involvement in and awareness of the court's administrative decisions. Because naming this particular individual in no way serves the public interest but rather brings discredit to the court, I most vigorously dissent.



Lloyd Doggett
Justice

Justice Mauzy joins in this dissent.

Opinion delivered: October 17, 1991



TEXPAC

Texas Medical Political Action Committee

MEMORANDUM

To: All Interested Parties, Political Action Committees

From: Kim Ross
Jack Gullahorn
Alex Short
Ralph Wayne
Olan Brewer

Date: August 7, 1991

Re: Texas Bi-Partisan Justice Committee Fundraiser

On Tuesday, August 20, 1991, we will be hosting a fundraiser for Dr. John Coppedge and the Texas Bi-Partisan Justice Committee at the Austin Club, Third Floor. As you will remember, Dr. Coppedge and his PAC were very active in Supreme Court races. During the last cycle, the Committee sent over 200,000 pieces of mail on the Supreme Court.

John wants to again target all of East Texas for the next cycle and he needs our financial support.

Please join the Host Committee beginning at 4:30 pm for a brief meeting, followed by cocktails at 5:00. You may RSVP to Juli Bierman at 512/370-1363.

AS/jb

Contributions to Texas Medical Association PAC (TEXPAC), TEXPAC Statewide and American Medical Association PAC (AMPAC) are not deductible as charitable contributions for federal income tax purposes.

Voluntary political contributions to TEXPAC and TEXPAC Statewide are shared with AMPAC. Contributions are not limited to the suggested amount. Neither TMA nor AMA will favor or disadvantage anyone based on the amounts or failure to make contributions. Contributions to TEXPAC and AMPAC are subject to Federal Election Commission regulations.