

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 93- 0233

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## ORDER

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By order of this Court dated March 11, 1992, the Task Force on Judicial Ethics was created. Justice Doggett was designated Chair.

By that order, the Task Force was "charged with the responsibility of examining changes proposed in recent revisions of the Model Code of Judicial Conduct recommended by the American Bar Association and any other changes that may be desirable to the Texas Code of Judicial Conduct."

On June 30, 1993, this Court adopted many of the recommendations of the Task Force regarding changes to the Texas Code of Judicial Conduct. In doing so, this Court advised that the work of the Task Force was not complete in that Canon 5 remained under consideration for substantive changes. The Order of June 30, 1993 was executed with the understanding that the Task Force would report on Canon 5 to the Court by September 1993, in sufficient time to enable the report to be published and have public comment, thus permitting the Court to adopt changes to Canon 5 to coincide with the effective date of the balance of the Code changes.

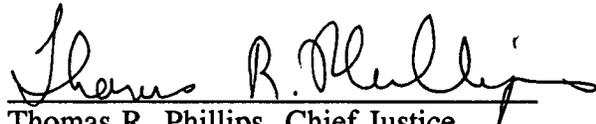
The Court has now been advised by the Task Force that further study of Canon 5 is required. It appears that a report cannot be made in time to assure full public comment before the January effective date.

Consequently, in keeping with the Court's desire to adopt meaningful and appropriate changes to the Texas Code of Judicial Conduct, yet permit full discussion and review of these changes by the judiciary, legal community, and the public, the effective date of the changes to the Texas Code of Judicial Conduct is postponed to March 1, 1994.

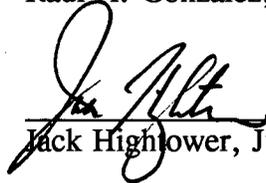
The Task Force is requested to continue its work, seeking comment from the judiciary, the legal community, and the public at large. The Task Force is further requested to hold its next meeting jointly with the members of this Court. Thereafter, any further meetings of the Task Force should be held upon 10 days notice from the Chair to all members of the Task Force and all members of this Court of the date, time, and place of the meeting.

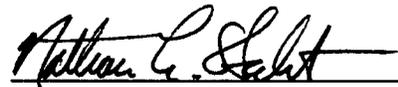
The Task Force is requested to issue its final report to the Court regarding Canon 5 of the Texas Code of Judicial Conduct on or before January 1, 1994.

SIGNED this 4<sup>th</sup> day of November, 1993.

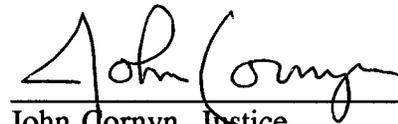
  
Thomas R. Phillips, Chief Justice

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Raul A. Gonzalez, Justice

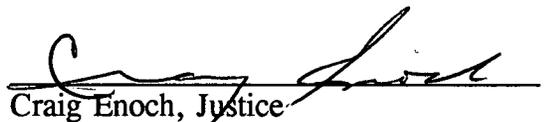
  
Jack Highower, Justice

  
Nathan L. Hecht, Justice

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Lloyd Doggett, Justice

  
John Cornyn, Justice

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Bob Gammage, Justice

  
Craig Enoch, Justice

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Rose Spector, Justice

# IN THE SUPREME COURT OF TEXAS

MISC. NO. 93-0233

## Dissenting Opinion to Supreme Court Order

Strengthening our Code of Judicial Conduct that sets the standards for every judge in Texas has now been suspended until certain demands of five judges on this Court are met.<sup>1</sup> The majority, on the motion of Justice Craig Enoch, has now vacated an order approving a new Conduct Code, which had been unanimously adopted in June, 1993, to become effective January 1, 1994.

As a result of today's action, the objective of providing a more sound legal framework for ongoing enforcement actions by the State Commission on Judicial Conduct is thwarted, and the following represent some new Code provisions which will not become effective on January 1 and may well be delayed indefinitely:

- \* Requiring a judge who learns of a violation of either the Texas Disciplinary Rules of Professional Conduct or the Code of Judicial Conduct to take appropriate action

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<sup>1</sup> For an earlier example of this type of maneuvering, see Misc. Order No. 92-0008 (Doggett, J. dissenting) (majority's appointment of political operative to State Bar Board indicates "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"); *id.* (Gammage, J. concurring) ("object[ing] to the volatile, politically charged environment in which [an] appointment was decided").

- \* Mandating a judge to conduct all extra-judicial activities so as not either to cast reasonable doubt on judicial impartiality or to interfere with the proper performance of judicial duties
- \* Prohibiting a judge from holding membership in an organization that practices invidious discrimination
- \* Obligating a judge in the performance of judicial duties to prevent expressions of bias or prejudice on grounds such as race and sex
- \* Requiring Justices of the Peace to comply with the same existing charitable fundraising and campaign rules as other members of the judiciary.

In addition to these new standards, the revisions would have given the judiciary clarification of some old standards such as the acceptance of gifts. Another of the suspended provisions would have implemented a recommendation of a separate court committee that has been seeking to reduce abuses in ad litem appointments. All interested in effective enforcement would also have benefitted from the construction and terminology sections that would have been added to the new Code.

Today's disappointing development follows a more promising beginning for ethics reform. On March 11, 1992, this Court created a Task Force on Judicial Ethics, composed of eight jurists including a former chair of the State Commission on Judicial Conduct, Professor Barbara Jordan, ethics lecturer Joan Sanger, and freedom of information expert Professor Keith Shelton. *See* Misc. Order No. 920069 (attached as Appendix A). Appropriately reflecting differing types of courts, judicial philosophies, and political parties, this group began work at about the time the Judicial Section of the State Bar of Texas was conducting a series of regional workshops for the judiciary concerning proper ethical standards.

The Task Force met jointly with the State Commission on Judicial Conduct and with representatives of the Texas Ethics Commission. Hearings were conducted to obtain input from the judiciary as well as the public. With the Texas Ethics Commission recommending legislative action to address the political campaign activities of judges, the Task Force focused most of its attention on important Code provisions other than Canon 5, which references such activities. Fortunately, its work was highly successful. On April 6, 1993, the Supreme Court received a unanimous report from the Task Force proposing an extensive revision of the Code. *See* Appendix B. Comments were also sought on this document from every administrative district and county court at law judge in Texas, as well as other types of judges and other interested parties. After almost three months, the Court unanimously approved the Code on June 30. *See* Misc. Order No. 93-0132 (attached as Appendix C).

During these deliberations, no member of the Court advanced any significant substantive change to upgrade ethical standards and only a few words in the original Task Force proposal were altered. Because in June, near the end of this process, Chief Justice Phillips began voicing a personal desire for changes in Canon 5 concerning appropriate political activities for the judiciary,<sup>2</sup> the final order provided:

The Court hereby requests its Task Force on Judicial Ethics to continue its review of Canon 5 regarding political activity and to obtain further input from the Judicial Section of the State Bar of Texas and other appropriate sources concerning this canon.

Misc. Order No. 93-0132.

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<sup>2</sup> He suggested that a judge accepting campaign contributions of more than set dollar amounts be declared automatically recused; he further noted that the Texas Ethics Commission had recommended time limits for certain judicial campaign fundraising.

The bench and bar received a complete copy of the new Code together with an explanation of its major provisions. *See* 56 Tex. Bar J. 832-39 (1993). One purpose of this Order and its January 1, 1994 effect date was

to provide a firm basis for continuing judicial education on newly consolidated Canons 1 - 4 and to allow maximum familiarity of the bench and bar with this comprehensive revision.

Misc. Order No. 93-0132. Accordingly, the new Code, as adopted, has been the subject of continuing judicial education at programs such as that of the Texas College of Probate Judges and at the 1993 Annual Judicial Conference.

As requested, the Task Force has also undertaken further review of Canon 5. Suggestions for change were requested from every member of the Court. Chief Justice Phillips was the only member of the majority to respond.<sup>3</sup> His proposals contained in a draft questionnaire were among those considered by the Task Force during a public hearing conducted on August 27.<sup>4</sup> After all those who testified, including a member of the Ethics Commission and a spokesperson for Texans for Judicial Election Reform, agreed that precipitous changes in Canon 5 would do more harm than good, the Task Force

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<sup>3</sup> Included among his proposals were a:

1. Restriction on judges (such as those three currently campaigning for the Republican nomination for Attorney General) from seeking any nonjudicial office, although those in nonjudicial office (such as a county attorney or state legislator) could continue to seek judicial office.
2. Prohibition on any judicial candidate from personally requesting a campaign contribution from anyone; any contribution would have to be obtained through a committee.

<sup>4</sup> This meeting has been subsequently criticized by the Chief Justice because it was held on Lyndon Johnson's birthday, an optional holiday for some state employees.

unanimously concurred and also decided to obtain input in other ways rather than immediately circulating a questionnaire to the judiciary.<sup>5</sup>

The only specific amendments to Canon 5 now offered by any member of the majority are the two urged by Chief Justice Phillips in October, 1993.<sup>6</sup> One of these, never previously recommended, would restrict the size of interim judicial campaign accounts.<sup>7</sup> The other would impose a limited time period for raising funds in campaigns for all appellate courts including the Texas Supreme Court. After consulting with election experts and conducting public hearings in 1992, a bipartisan Texas Ethics Commission rejected this restriction for appellate courts. These proposals drew an expression of concern from Judge Morris Overstreet:

Fundraising time limits will have a particularly negative effect on other African American and Mexican American candidates, even at the local level, because they must struggle over a long time to raise money in small amounts to have any hope of being competitive.

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<sup>5</sup> When Chief Justice Phillips, nevertheless, circulated his own personal questionnaire, the judges responding at the Annual Judicial Conference on September 23 rejected all of these proposals except for an indefinite query regarding a restriction on the time permitted for fundraising, on which there was essentially a tie vote, and one element of the Ethics Commission package restricting campaign fundraising by unopposed judicial candidates, which was approved. The final version of this personal poll did not include his previous proposals forwarded to the Task Force that were designed to add new restrictions on judicial speech and to prevent lobbying of the legislative or executive on matters affecting the judiciary without the express permission of the Chief Justice.

<sup>6</sup> In their latest form, these proposals bear little resemblance to what had been suggested to either the Task Force or the Annual Judicial Conference.

<sup>7</sup> Under this proposal, the interim campaign fund of a judge seeking statewide office could be no larger than that of a judge serving on the court of appeals in Amarillo, and the fund of a judge in a large urban community could be no larger than that of a justice of the peace in the smallest rural hamlet. This proposal would place no restriction on the size of a political fund used by a nonjudge to run for judicial office, nor would it limit the size of "independent" committee funds. See *infra* note 8 and accompanying text.

While minority judges and judicial candidates everywhere will suffer the most, all members of the Court of Criminal Appeals will be adversely affected. Generally, fundraising for this Court is very difficult, requiring personal contact to obtain contributions of modest size. This may involve campaigns that take years instead of weeks.

Letter to Chief Justice Phillips, October 19, 1993.

Emphasizing "the need for comprehensive rather than piecemeal reform," Senator Rodney Ellis, legislative sponsor of the proposed Judicial Campaign Fairness Act, added:

Time limits of judicial campaign fundraising was one of the most controversial subjects dealt with by S.B. 309. Neither the Ethics Commission nor S.B. 309 favored time limits on appellate judges. The state is too big and the amount of money required too large to handicap those who need the time to raise small contributions from a large area. Applying narrow time limits like those I have seen proposed for inclusion in the Conduct Code would tilt the political playing field in the very way I sought to avoid in S.B. 309. Such limits would favor incumbents, particularly those who have the capacity to be assisted by a few major fundraisers or by law firms or lobby groups that bundle contributions. I fear African-American, Mexican-American and other judicial candidates who rely on small contributions would be greatly harmed.

Letter to Chief Justice Phillips, October 19, 1993. Similar concerns were voiced by the Ethics Task Force in its recent report:

A time limit on fund-raising is a concept worthy of further consideration as one element in a reform package. Imposing unrealistic limits, however, may serve only to protect incumbents and to force all judges to become dependent on a small number of those with known fund-raising skills. Moreover, the shorter the time for fund-raising, the less the judicial work that can be expected during this period because of the urgency of completing fund-raising efforts. . . .

We respectfully suggest to the Court that it defer partial changes to Canon 5 at this time. Such amendments will not be effective in time to alter the upcoming 1994 elections, and any piecemeal changes may well impair our objective of developing a consensus behind a reform package.

See Appendix D.

As these comments make clear, this Task Force is not really seeking more time; it is seeking more consensus for more complete and genuine reform. Of course, with more enthusiastic support and leadership from all members of this Court, such reform could already have been enacted into law. Unfortunately, there was no such commitment. One significant factor in this regard is the majority's overriding fear that a reform will be adopted that restricts the ability of members of the Texas Supreme Court to solicit contributions from litigants and law firms at the same time as their causes are being decided in this Court. Apparently, even the possibility that the frequency of such contributions would be disclosed to the public in an easily understood form was a major factor in the decision of Chief Justice Phillips to oppose S.B. 309, the Judicial Campaign Fairness Act as approved by the House Election Committee. *See* TEX. LAWYER, June 7, 1993 (Phillips "offended" by such a provision and objected to "label[ing such] contributions as suspect"). In no small contradiction, the Chief Justice now relies on the nonpassage of S.B. 309, which he opposed, as justification for approval of his two amendments.

It may well be that some changes to the Code can constitute a worthwhile component of reform, but it is unlikely that truly comprehensive reform can or should be accomplished in this manner. The State Commission on Judicial Conduct is a small agency with limited staff and no auditing capability, and the majority proposes no additional resources for any enforcement capability. Even were more meaningful resources available, converting its mission into a campaign watchdog will necessarily affect the Commission's other important work. As its name indicates, the jurisdiction of the Commission on Judicial Conduct is limited to judges; the Commission has no power of any kind over nonjudges; its purview

does not extend even to judicial candidates who are attorneys, much less non-attorney special interest committees. In contrast, the jurisdiction of the Texas Ethics Commission extends to every officeholder and candidate for state office. The Legislature has vested this constitutionally created Ethics Commission with broad oversight and enforcement jurisdiction. The Ethics Commission has both the staffing and the experience to enforce campaign regulations against any participant in the political process; the Judicial Conduct Commission has neither. Every Texas judge should be fully aware of the one-sided nature of these proposals and that, with exclusive reliance on the Conduct Code, there is no guarantee that any provision the majority of this Court seeks to impose arbitrarily on the judge will be consistently enforced in an evenhanded manner on an opponent who is not a judge.

Surely our national experience with congressional campaign finance indicates that controlling the size of contributions is only part of the equation; another part is campaign spending. Judicial campaign finance reform will be incomplete and skewed as long as some candidates can benefit from unlimited campaign expenditures by special interest groups operating as so called "independent" committees. Increasing reliance on such contributions that "are very difficult, and sometimes impossible, to tract" from special interests that have "abused and misused" the current system has already been well documented. *See David Bragg, Political Contributions to the Supreme Court of Texas, An Appearance of Impropriety, Part II 3 (1993).* The majority proposes no limitation on the time during which such a committee can raise funds, the amount of such funds, or on the ability of justices on this Court to promote such committee activities. A further difficulty with imposing a spending

limitation is the need to avoid constitutional infirmities of the type addressed in *Buckley v. Valeo*, 424 U.S. 1 (1976).<sup>8</sup>

One encouraging recent development is the united, bipartisan effort of the League of Women Voters of Texas, Common Cause, Public Citizen, and the Texas Consumer Rights Action League to seek voluntary implementation of many of the provisions of S.B. 309. *See* Appendix E. If all members of this Court and other appellate courts seeking reelection and their opponents comply fully with this pledge, much of the objective of the proposed Judicial Campaign Fairness Act will have been achieved. The only modifications offered by the majority for change to Canon 5 of the Code of Judicial Conduct fall far short of the genuine reform sought by this citizen effort. The majority seeks Code changes without the benefit of either experience with this important initiative or the input of the many Texas judges who will attend the Regional Judicial Conferences in 1994.<sup>9</sup>

By its order, the majority has offered absolutely no justification for suspending enforcement of the newly revised and unanimously endorsed Code of Judicial Conduct. Five members of this Court have elected unilaterally to postpone any reform at all until Canon 5 relating to judicial campaigns reflects their own narrow perspective. The only reason this Code is being suspended is the complete unwillingness of the majority, meeting here in private, to accept answers offered to judicial campaign issues from the bipartisan Texas Ethics Commission, the Texas Senate, the Texas House Elections Committee, the Supreme

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<sup>8</sup> S.B. 309 sought to avoid such a challenge through a statutory method that is difficult to replicate in a Code of Conduct.

<sup>9</sup> The Task Force report advised the Court of its plan to have its members discuss Canon 5-related issues at these upcoming conferences. *See* Appendix D.

Court Ethics Task Force, and the public interest citizen organizations. Apparently this majority is insistent on continuing to pose the same question already answered repeatedly until it gets the answer it wants, even though the Texas judiciary thereby suffers. Despite this regrettable setback, I am confident that the Task Force will provide more study and make every effort to work with the majority. Until now, the entire process of adopting this new Code of Conduct has been done in a very careful and deliberate manner, emphasizing the use of consensus to achieve change. Today, the majority vacates more than an order; it vacates the very precept that the Texas Code of Judicial Conduct should be a neutral statement of principles designed to ensure public respect for judicial integrity.



Lloyd Doggett, Justice

Justices Gammage and Spector join in this dissent.

Order delivered: November 4, 1993.

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 92-0069

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**CREATION OF SUPREME COURT TASK FORCE  
ON JUDICIAL ETHICS**

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**ORDERED:**

To assist the Supreme Court in reviewing appropriate ethical standards for the judges of Texas, a Task Force on Judicial Ethics is hereby appointed.

This Task Force is charged with the responsibility of examining changes proposed in the recent revisions of the Model Code of Judicial Conduct recommended by the American Bar Association and any other changes that may be desirable to the Texas Code of Judicial Conduct. The study should also encompass enforcement of the Code by the State Commission on Judicial Conduct including, but not necessarily limited to, the adequacy of procedural rules to afford due process to those subject to investigation or prosecution for Code violations and the appropriate stage in the enforcement process at which charges should be made known to the public.

Justice Lloyd Doggett shall serve as chairman of the Task Force and its other members shall include:

Justice John T. Boyd, Amarillo

Judge Gary C. Franks, Richmond

The Honorable Barbara Jordan, Austin

Justice Mack Kidd, Austin

Judge Fernando G. Mancias, Edinburg

Judge Emil Karl Prohl, Kerrville

Ms. Joan Sanger, Austin

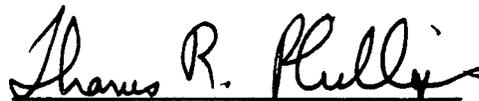
Judge Kitty Schild, El Paso

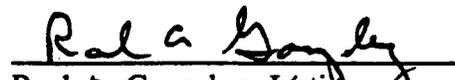
Professor Keith Shelton, Denton

Judge Sharolyn Wood, Houston

The Task Force shall make written recommendations to the Supreme Court of Texas.

IN CHAMBERS, this 11th day of March, 1992.

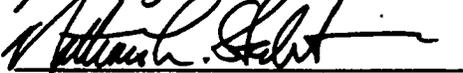
  
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Raul A. Gonzalez, Justice

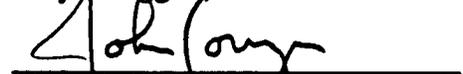
  
Oscar H. Mauzy, Justice

  
Eugene Cook, Justice

  
Jack Hightower, Justice

  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

  
John Cornyn, Justice

  
Bob Gammage, Justice

Supreme Court Task Force on Judicial Ethics  
P. O. Box 12248  
Austin, Texas 78711

April 6, 1993

Chief Justice Thomas R. Phillips  
The Supreme Court of Texas  
P. O. Box 12248  
Austin, TX 78711

Dear Chief Justice Phillips:

As members of the Supreme Court Task Force on Judicial Ethics, we forward this report regarding our endeavors to the members of the Court. Much of our work has focused on comparing the existing Texas Code of Judicial Conduct with the American Bar Association Model Code of Judicial Conduct.

Although unable to provide meaningful technical assistance, the American Bar Association through this Model Code provided a valuable reference point. Our enclosed recommendations:

1. Reorganize and consolidate the current Code generally to parallel with the ABA Model Code;
2. Adopt relevant parts of the ABA Model Code preamble setting forth the purposes of the Texas Code;
3. Incorporate new ABA Model Code language concerning Code Construction and adopt a Terminology subsection that consolidates definitions scattered throughout the current Texas Code with certain useful ABA Model Code definitions;
4. Offer a more solid legal foundation for future enforcement actions by the State Commission on Judicial Conduct by defining more precisely "shall" and "should" with respect to rules in sections of the Canons. We found some confusion at the Commission regarding whether "should" offenses are to be prosecuted. We view the

Texas Code as a set of minimum standards which should provide sufficient clarity to ensure due process to anyone against whom enforcement action is taken. "Should" provisions set forth aspirational goals but do not constitute a binding rule for disciplinary action;

5. Add clarity and remove repetitious language, including achieving gender neutrality by referring to "judge" or "person" rather than "his or her;"
6. Strengthen and broaden anti-discrimination provisions as recommended in the ABA Model Code;
7. Eliminate some current Texas Code exemptions for Justices of the Peace.

When possible and appropriate we have followed the ABA Model Code, but we have also found some existing Texas Code provisions to be superior to those recommended by the ABA Model Code. Generally paralleling somewhat the form of the new Texas Disciplinary Rules of Professional Conduct, we have also changed the Canons to captions or titles rather than copying the ABA approach. This also avoids confusion with respect to "shalls" and "shoulds."

After receiving the March 1, 1993 Report of the Supreme Court Task Force to Examine Appointments by the Judiciary, we have accepted verbatim its recommendation concerning ex parte communications, but believe that the Texas Code is quite adequate to deal with remaining issues and that its other two proposed amendments are unnecessary.

Among the subjects that may receive our further consideration are how Canons 3E and 3F of the ABA Model Code concerning disqualification and remittal of disqualification interface with existing Texas constitutional, statutory, and procedural rule provisions; the Texas Code's applicability to senior and retired judges; further substantive review of Texas Canon 7 in coordination with the continued endeavors of the Texas Ethics Commission; and additional review of existing enforcement of the Code by the State Commission on Judicial Conduct including the appropriate degree of confidentiality for the Commission's work.

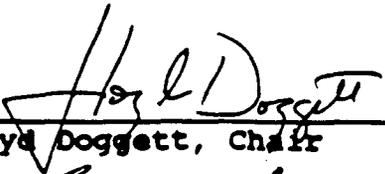
Our task force has sought to maximize input from all those who may be concerned with the important subject of judicial ethics. In addition to the ABA Model Code, we have obtained other suggestions for improvement in the Texas Code. On some, but not all, of our recommendations, we received direct input, summarized in an attachment, from the attendees at the Annual Conference of the Judicial Section of the State Bar of Texas in September, 1992. Justices Doggett and Kidd spoke at Regional Judicial Conferences; Justice Kidd met with the Texas Municipal Court Judges Association; Judge Franks met with a number of Justices of the Peace, and Judge Wood obtained comments from the Harris County judiciary.

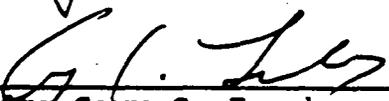
All of our sessions have been conducted in accordance with the Texas Open Meetings Act and have provided an opportunity for comment from the public, attorneys, judges, and the Ethics Commission. We met jointly with the State Commission on Judicial Conduct, and Justice Boyd obtained additional individual comments from Commission members and staff. In any of our future work, we intend to continue this process. We are also transmitting copies of this report to those who have expressed an interest in our work so that the court may have direct comment from them.

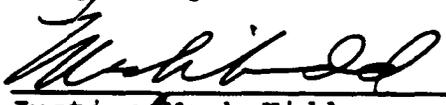
We have benefitted greatly from the assistance of Amon Burton, an adjunct professor at the University of Texas Law School who is serving as our advisor/reporter.

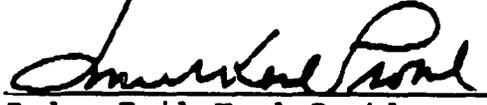
While our diverse task force engaged in considerable debate and discussion of many of these provisions, we are pleased to report that all of our decisions were reached by consensus and that our recommendations have the unanimous support of our members.

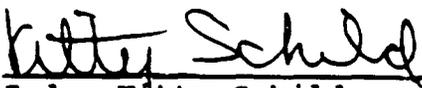
Sincerely,

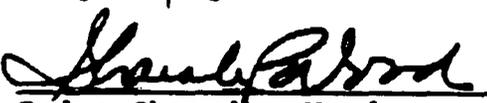
  
Lloyd Doggett, Chair

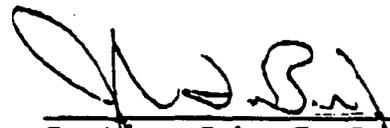
  
Judge Gary C. Franks

  
Justice Mack Kidd

  
Judge Emil Karl Prohl

  
Judge Kitty Schild

  
Judge Sharolyn Wood

  
Justice John T. Boyd

  
The Honorable Barbara C. Jordan

  
Judge Fernando G. Mancias

  
Joan Sanger

  
Keith Shelton

APPENDIX C

Misc. Docket No. 93- 0132

ORDER OF THE SUPREME COURT OF TEXAS  
ADOPTING REVISIONS TO THE  
CODE OF JUDICIAL CONDUCT

The Supreme Court of Texas hereby adopts the attached Code of Judicial Conduct, as revised, to become effective January 1, 1994.

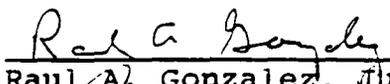
The Court hereby requests its Task Force on Judicial Ethics to continue its review of Canon 5 regarding political activity and to obtain further input from the Judicial Section of the State Bar of Texas and other appropriate sources concerning this canon.

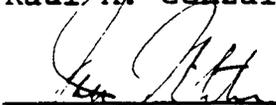
So as to provide a firm basis for continuing judicial education on newly consolidated Canons 1 - 4 and to allow maximum familiarity of the bench and bar with this comprehensive revision, the Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal.

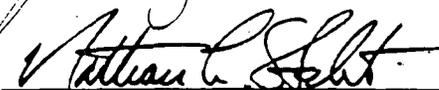
The Clerk shall file an original of this Order in the minutes of the Court to be preserved as a permanent record of the Court.

In Chambers, this 30<sup>th</sup> day of June, 1993.

  
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Thomas R. Phillips, Chief Justice

  
\_\_\_\_\_  
Raul A. Gonzalez, Justice

  
\_\_\_\_\_  
Jack Hightower, Justice

  
\_\_\_\_\_  
Nathan L. Hecht, Justice

  
\_\_\_\_\_  
Lloyd Doggett, Justice

*John Cornyn*

John Cornyn, Justice

*Bob Gammage*

Bob Gammage, Justice

*Craig Enoch*

Craig Enoch, Justice

*Rose Spector*

Rose Spector, Justice

# TEXAS CODE OF JUDICIAL CONDUCT

## 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.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge should 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.

C. A judge shall not knowingly hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

## 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.

(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.

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

(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.

(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 paragraph 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.

(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 shall 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.

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

B. **Avocational Activities.** A judge may 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.

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.

(2) Subject to the requirements of paragraph (1) of this section, 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;

#### **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.

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

**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.

(2) A judge or judicial candidate for judicial office 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;

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

(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 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 Canon 6A(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.

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 Canon 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.

(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.

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. A Senior Judge, or a former 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 sanctions 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 disciplinary 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 sanctions 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. "Invidious discrimination" cannot be determined from a mere examination of an organization's current membership rolls but rather depends upon how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interests to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.

8. "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

9. "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

10. "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.

11. "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.

12. "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.

13. "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.

14. "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)])

15. "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)]

16. "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)])

17. "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)])

18. "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.

19. "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

**Supreme Court Task Force on Judicial Ethics  
P. O. Box 12248  
Austin, Texas 78711**

October 20, 1993

Chief Justice Thomas R. Phillips  
Supreme Court of Texas  
P. O. Box 12248  
Austin, TX 78711

Dear Chief Justice Phillips:

At the August 27, 1993 meeting, the Task Force heard public testimony and held discussion of possible revision to Canon 5 of the Code. Because Texas selects its judges in partisan elections, our state has always had more divergence from this particular ABA canon than any other in the Code. Some Task Force members favor the current form of electing judges, and some oppose it. All of our members, however, agreed that precipitous changes in Canon 5 would do more harm than good. This was the view expressed by all of those who testified at our hearing including a representative of the Texas Ethics Commission and a spokesperson for Texans for Judicial Election Reform. They pointed to the danger of partial campaign reforms that either encourage circumvention or cannot be enforced.

After considering the questionnaire urged by Chief Justice Tom Phillips, the Task Force agreed instead to seek feedback at the Judicial Conference in Houston and to defer a formal questionnaire until the alternatives could be better formulated and additional consideration given to involving the Judicial Conduct Commission in political campaigns versus handling these issues through legislation. Plans were made to have Task Force members participate in further discussions of these issues at the upcoming Annual Judicial Conference and the Regional Judicial Conferences.

We believe that the responses Chief Justice Phillips received when he submitted his own questionnaire justify our approach. Although the form of his questionnaire did not employ the type of explanatory commentary we have relied upon in the past and while some questions were either indefinite or limited alternatives, the responding judges essentially indicated that they do not want piecemeal changes at this time. Response to the indefinite question about time limits, for example, was a tie, and the only change receiving a clear majority was one of the several Ethics Commission recommendations restricting some unopposed candidates from soliciting contributions during the sixteen-month period following the filing deadline.

A time limit on fund-raising is a concept worthy of further consideration as one element in a reform package. Imposing unrealistic limits, however, may serve only to protect incumbents

October 20, 1993  
Page 2

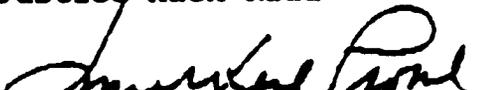
and to force all judges to become dependent on a small number of those with known fund-raising skills. Moreover, the shorter the time for fund-raising, the less the judicial work that can be expected during this period because of the urgency of completing fund-raising efforts. Though not noted in the Chief Justice's questionnaire, the Ethics Commission has, of course, rejected additional time limits for fund-raising by appellate judges.

We respectfully suggest to the Court that it defer partial changes to Canon 5 at this time. Such amendments will not be effective in time to alter the upcoming 1994 elections, and any piecemeal changes may well impair our objective of developing a consensus behind a reform package.

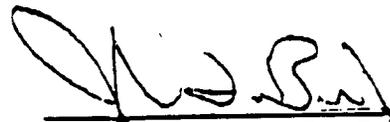
Sincerely,

  
Lloyd Doggett, Chair

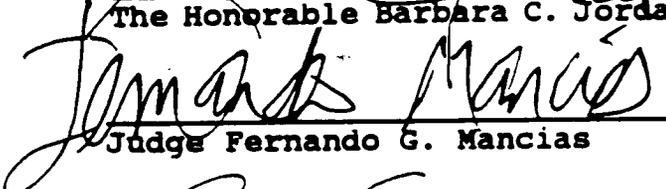
  
Justice Mack Kidd

  
Judge Emil Karl Prohl

  
Judge Kitty Schild

  
Justice John T. Boyd

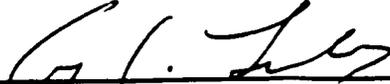
  
The Honorable Barbara C. Jordan

  
Judge Fernando G. Mancias

  
Joan Sanger

  
Keith Shelton

I join in paragraphs 1, 2, and 5 of the above letter.

  
Judge Gary C. Franks

**FAIR CAMPAIGN PRACTICES PLEDGE**

**For each contested election I PLEDGE to the voters of Texas that I will:**

1. Accept no contributions greater than \$50 unless a bona fide effort has been made to identify the contributor by name, principal occupation and place of employment. I also pledge to include this information on all contribution and expenditure reports.

2. Accept no contributions from an individual, an individual's spouse, or dependent members of an individual's family that in the aggregate exceed \$5,000.

3. Accept no contributions above \$50 from employees or members of the same law firm, or from their spouses or dependent family members, that in the aggregate exceed \$25,000.

4. Accept no contributions from a Political Action Committee if that contribution, when aggregated with other contributions received from Political Action Committees, would exceed \$50,000.

5. Transfer no funds raised after July 1, 1993 for another office into my campaign fund for this election unless that money would qualify under the other fundraising restrictions I have herein pledged to accept.

6. Spend no more than \$10,000 of my own personal money in this campaign, nor loan more than \$10,000 of my own personal money to this campaign for subsequent reimbursement.

7. Spend no more than \$2 million.

I make this pledge on the condition that I will be released from these commitments if I am opposed by a candidate who does not make this pledge, or, if independent expenditures by anyone other than political parties in excess of \$5,000 are made against me or on behalf of another candidate in this election. I intend for all of these commitments to apply not only to myself but to any political committees established in coordination with my campaign. This pledge applies to all funds raised by me or on my behalf after July 1, 1993.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
(Signature of Candidate)