

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 99- 9112

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## OPINION AND ORDER IMPLEMENTING RECOMMENDATIONS OF THE SUPREME COURT JUDICIAL CAMPAIGN FINANCE STUDY COMMITTEE

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In Misc. Docket No. 98-9179, dated October 19, 1998, this Court, pursuant to its constitutional and statutory duties and powers relating to the administration of justice,<sup>1</sup> appointed a group of distinguished lawyers and jurists — the Judicial Campaign Finance Study Committee (the “Committee”) — and requested them to propose both rule and statutory changes to improve the way in which campaigns for the Texas judiciary are financed.<sup>2</sup> This action was prompted by continuing public concern that practices relating to judicial campaign finance in Texas were undermining the

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<sup>1</sup> Article 5, Section 31 of the Texas Constitution makes the Supreme Court “responsible for the efficient administration of the judicial branch” and mandates that it promulgate rules of administration and procedure “as may be necessary for the efficient and uniform administration of justice in the various courts.” Tex. Const. art. 5, § 31(a) & (b); *see also* Tex. Govt. Code §§ 22.003, 22.004, 74.024. Additionally, the Supreme Court is constitutionally and statutorily empowered to, among other things, promulgate rules governing the professional conduct of lawyers, judges and other participants in the legal system. Tex. Const. art. V, § 31(a) & (c); Tex. Govt. Code §§ 52.002 (court reporters), 81.024 (state bar); *see also* Tex. Govt. Code § 81.011(b) (State Bar Act “is in aid of the judicial department’s powers under the constitution to regulate the practice of law, and not to the exclusion of those powers.”).

<sup>2</sup> Order in Misc. Docket No. 98-9179, ¶ 1. Members of the Committee were Wayne Fisher, Chair; Lisa Blue; James E. Coleman, Jr.; Hon. Rex Davis; Hon. David C. Godbey; Michael A. Hatchell; Hon. Katie Kennedy; Jorge C. Rangel; and Harry M. Reasoner.

public's confidence in the impartiality of the Texas judiciary.

The Committee was directed to consider prior Texas judicial campaign finance reform efforts, as well as those implemented or proposed in other states.<sup>3</sup> These included, most notably, the 1998 American Bar Association Report on Lawyers' Political Contributions, which had proposed several amendments to the ABA Model Code of Judicial Conduct<sup>4</sup> limiting judicial campaign contributions, enhancing disclosure, and restricting the aggregation of campaign "war chests."<sup>5</sup>

The Committee issued its Report and Recommendations to the Court in February 1999.<sup>6</sup> The Court immediately released the Report and Recommendations to the Legislature and the public. It

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<sup>3</sup> Order in Misc. Docket No. 98-9179, ¶ 3.

<sup>4</sup> Virtually every state supreme court has promulgated a code of judicial conduct patterned after the ABA Model Code of Judicial Conduct or its predecessors. These codes address, among other things, the political conduct of judges. *See, e.g.*, ABA Model Code of Judicial Conduct ("CJC") Canon 5; Texas CJC Canon 5; Alabama Code of Judicial Ethics Canon 7; Alaska CJC Canon 5; Arizona CJC Canon 5; Arkansas CJC Canon 5; California CJC Canon 5; Colorado CJC Canon 7; Connecticut CJC Canon 7; Delaware CJC Canon 7; Florida CJC Canon 7; Georgia CJC Canon 7; Hawaii CJC Canon 5; Idaho CJC Canon 7; Illinois CJC Canon 7; Indiana CJC Canon 5; Iowa CJC Canon 7; Kansas CJC Canon 5; Kentucky CJC Canon 7; Louisiana CJC Canon 7; Maine CJC Canon 5; Maryland Rule of Court 16-813, Canon 5; Massachusetts CJC Canon 7; Michigan CJC Canon 7; Minnesota CJC Canon 5; Mississippi CJC Canon 7; Missouri CJC Canon 5; Nebraska CJC Canon 5; Nevada CJC Canon 5; New Hampshire CJC Canon 7; New Jersey CJC Canon 7; New Mexico CJC Rule 21-700; New York CJC Canon 7; North Carolina CJC Canon 7; North Dakota CJC Canon 5; Ohio CJC Canon 7; Oklahoma CJC Canon 5; Oregon CJC Canon JR 4-101; Pennsylvania CJC Canon 7; Rhode Island CJC Canon 5; South Carolina CJC Canon 5; South Dakota CJC Canon 5; Tennessee CJC Canon 5; Utah CJC Canon 5; Vermont CJC Canon 5; Virginia CJC Canon 7; Washington CJC Canon 7; West Virginia CJC Canon 5; Wisconsin CJC 60.06; Wyoming CJC Canon 5.

<sup>5</sup> American Bar Association Task Force on Lawyers' Political Contributions, Report and Recommendations, Part II (July 1998) ["ABA Report"], at 19-59.

<sup>6</sup> Supreme Court of Texas Judicial Campaign Finance Study Committee, Report and Recommendations (Feb. 23, 1999).

then received testimony at two public hearings and invited public comment for two months.

The Committee's recommendations, and the Court's disposition of each, are discussed below.

1. ***Recommendation A: Enhance public access to judicial campaign finance-related information.*** The Committee recommended that Canon 5 of the Texas Code of Judicial Conduct be amended to require all judicial campaign disclosure reports to be filed in one central and accessible location<sup>7</sup> and that the Legislature allocate resources necessary to enable such reports to be posted on the Internet.<sup>8</sup>

The Seventy-Sixth Legislature has passed two bills that would largely fulfill the goals of this recommendation. S.B. 1726 would require candidates for "a judicial district office filled by voters of only one county" to file their campaign disclosure information with the Texas Ethics Commission, as judicial candidates from multi-county districts presently are required to do. H.B. 2611 would require many candidates, including many judicial candidates, to file their campaign disclosure information electronically and require the Ethics Commission to post the information on the Internet. If these bills are signed into law, the recommended amendments to the Code of Judicial Conduct will not be necessary.

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<sup>7</sup> Under current Texas law, judicial candidates are required to file certain campaign-related information either with the Texas Ethics Commission or county election officials, depending on whether the candidate is seeking an office serving more than one county or the candidate is seeking an office serving one county or less. Tex. Elec. Code §§ 252.005, 254.097.

<sup>8</sup> Report and Recommendations at 15-18. These recommendations were derived in part from Recommendation I of the ABA Report. ABA Report at 19-23.

2. ***Recommendation B: Promulgate rules extending and strengthening the contribution limits of the Judicial Campaign Fairness Act.*** The Committee proposed new procedural rules requiring judges to recuse themselves from any case in which a party, attorney, or certain relations or affiliates have made contributions or direct expenditures exceeding the contribution limits of the Judicial Campaign Fairness Act.<sup>9</sup> The Committee also recommended amending the Code of Judicial Conduct to make failure to recuse in accordance with the rule or violations of the Act subject to judicial discipline.<sup>10</sup>

The Court accepts the Committee's recommendation, and refers the recusal proposal to the Supreme Court Advisory Committee on the Rules of Procedure for assistance in drafting appropriate amendments to Rule 18a or 18b, Texas Rules of Civil Procedure, and Rule 16, Texas Rules of Appellate Procedure. The Court at this time adopts the Committee's proposal to amend the Code of Judicial Conduct to make violation of the Judicial Campaign Fairness Act subject to judicial discipline. Thus, under the Supreme Court's powers specified in Article V of the Texas Constitution and Section 74.024 of the Government Code, the Code of Judicial Conduct is amended as follows, effective July 1, 1999:

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<sup>9</sup> *Id.* at 19-25. This recommendation was derived in part from Recommendation III of the ABA Report. ABA Report at 34-44.

<sup>10</sup> Report and Recommendations at 25-26.

**CANON 5**  
**REFRAINING FROM INAPPROPRIATE**  
**POLITICAL ACTIVITY**

\* \* \*

(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.

As adopted, the provision applies only to those judges covered by the Act, not all judges in Texas.

3. ***Recommendations C & D: Promulgate rules to limit the aggregation of campaign “war chests”; Limit judicial donations to political organizations.*** To reduce the pressures on candidates to solicit and contributors to donate campaign funds, the Committee proposed limits on the amount of campaign funds that judges could retain between elections.<sup>11</sup> The Committee also proposed amending the Code of Judicial Conduct to limit judges’ use of political contributions to make donations to political organizations.<sup>12</sup> This proposal was based in part on similar provisions in the ABA Model Code of Judicial Conduct that other states have adopted.<sup>13</sup>

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<sup>11</sup> *Id.* at 29-32. This recommendation was derived in part from ABA Report Recommendation V(B). ABA Report at 49-52..

<sup>12</sup> Report and Recommendations at 32-35.

<sup>13</sup> ABA Model CJC Canon 5(A)(1)(e); Colorado CJC Canon 7(A)(1)(c); Connecticut CJC Canon 7(A)(3); Delaware CJC Canon 7(a)(3); Georgia CJC Canon 7(A)(1)(c); Hawaii CJC Canon 5(A)(1)(e);

While these recommendations are within the Court's province to address through amendments to the Code of Judicial Conduct, they involve decisions that the Court believes could better be resolved, at least for now, through the legislative process. The Court therefore requests the Texas Judicial Council to review whether legislation is appropriate to address these recommendations.

4. ***Recommendation E: Limit judicial appointments of excessive campaign contributors and repetitious appointments.*** The Committee proposed limits on judicial appointments of campaign contributors to positions from which the contributors could benefit, such as guardians or attorneys ad litem.<sup>14</sup> This recommendation, which paralleled its recusal proposal, was derived in part from Recommendation IV of the ABA Report.<sup>15</sup> Because it tracks the recusal proposal, the Court will defer further consideration of this recommendation until after the Advisory

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Kentucky CJC Canon 7(A)(1)(c); Maine CJC Canon 5(A)(1)(e); Massachusetts CJC Canon 7(A)(1)(c); Minnesota CJC Canon 5(A)(1)(e); New Hampshire CJC Canon 7(A)(1)(c); New Jersey CJC Canon 7(A)(4); North Dakota CJC Canon 5(A)(1)(e) & (f); Oklahoma CJC Canon 5(A)(1)(d); Utah CJC Canon 5(B)(3); Virginia CJC Canon 7(A)(1)(c); Wisconsin CJC 60.06(2); *see also* Arizona CJC Canon 5(A)(1)(c) (judge or judicial candidate can contribute to or solicit contributions for a political party or to a non-judicial candidate of no more than \$250 annually); California CJC Canon 5(A)(3) (judge's contributions and solicitation for political party, political organization, or candidate capped at \$500 annually per party and \$1000 annually for all parties); Washington CJC Canon 7(A)(1)(c) & (d), (2).

Oklahoma, in fact, has a statute that forbids judges of its Court of Civil Appeals from "directly or indirectly" contributing to a political party. 20 Okla. Stat. Ann. § 30.19.

<sup>14</sup> Report and Recommendations at 35-39.

<sup>15</sup> ABA Report at 44-47.

Committee completes its review of the recusal proposal.

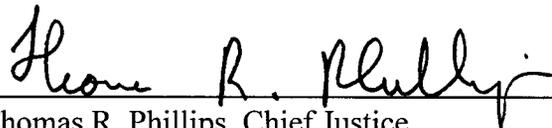
5. ***Recommendation F: Encourage efforts to develop voter guides to judicial elections.***

The Committee urged continued efforts to develop voter guides to judicial elections informing voters about judicial candidates, thereby reducing the need for candidates to raise and spend campaign funds.<sup>16</sup> The Court asks the Texas Judicial Council and the State Bar of Texas to study this recommendation, H.B. 59 as passed by the 76<sup>th</sup> Legislature, and the Governor's veto message thereof, and similar activities in other states.

6. The Clerk is directed forthwith to file a copy of this Order with the Secretary of State, 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*, and to send a copy of this Order to each elected member of the Legislature.

**IT IS SO ORDERED.**

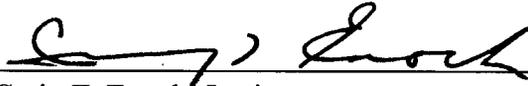
By the Court, en banc, in chambers, this 21st day of June, 1999.

  
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Thomas R. Phillips, Chief Justice

  
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Nathan L. Hecht, Justice

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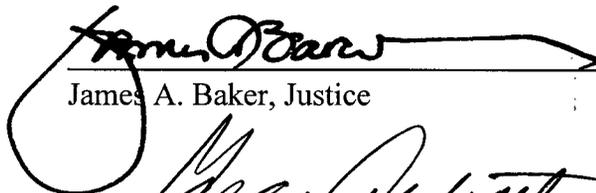
<sup>16</sup> Report and Recommendations at 39. This recommendation was based in part on Recommendation V(C) of the ABA Report. ABA Report at 53-56.



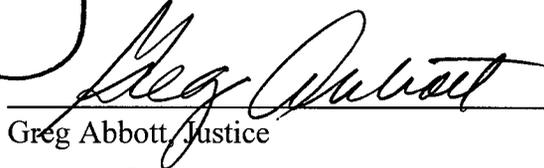
Craig T. Enoch, Justice



Priscilla R. Owen, Justice



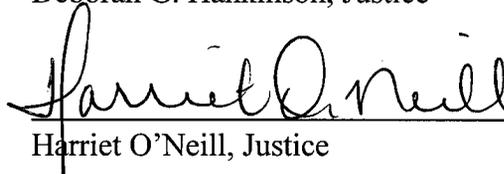
James A. Baker, Justice



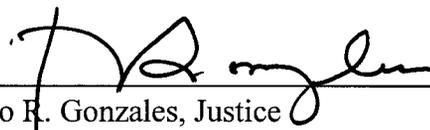
Greg Abbott, Justice



Deborah G. Hankinson, Justice



Harriet O'Neill, Justice



Alberto R. Gonzales, Justice



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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ALBERTO R. GONZALES

June 23, 1999

CLERK  
JOHN T. ADAMS

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T  
JIM HUTCHESON

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

Office of the Secretary  
of State  
Statutory Filings Division  
1019 Brazos Street  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas to be Filed.

Pursuant to the enclosed order of the Court, I am forwarding this copy so that you may file it as appropriate.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.



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NADINE SCHNEIDER

June 23, 1999

Ms. Kelley King, Editor  
The Texas Bar Journal  
State Bar of Texas  
1515 Colorado Street  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas to be Published.

Pursuant to the enclosed order of the Court, I am forwarding this copy so that you may publish it in the Texas Bar Journal as soon as possible.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.



# THE SUPREME COURT OF TEXAS

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ALBERTO R. GONZALES

June 23, 1999

Secretary of the Senate  
Texas State Senate  
Capitol Building  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas to be Distributed.

Pursuant to the enclosed order of the Court, I am forwarding these copies so that you may distribute them to all elected members of the Texas Senate.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.



# THE SUPREME COURT OF TEXAS

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THOMAS R. PHILLIPS

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ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

June 23, 1999

Chief Clerk  
House of Representatives  
Capitol Building  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas to be Distributed.

Pursuant to the enclosed order of the Court, I am forwarding these copies so that you may distribute them to all elected members of the House of Representatives.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.