

TEXAS CENTER FOR FAMILY RIGHTS

“Promoting, Protecting and Preserving the Texas Family”

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July 22, 2004

State Commission on Judicial Conduct
PO Box 12265
Austin, Texas 78711-2265

Dear Sirs:

Acknowledging that the primary purpose of the Code of Judicial Conduct is to protect the citizens of Texas, on behalf of the children and parents of Texas we request an investigation into violations of judicial ethics by Judge John Specia, Presiding Judge of the 225th District Court in Bexar County, a court designated to handle child abuse cases. Judge Specia also serves as the local Administrative Judge for Bexar County District Courts (Appendix A).

Judge Specia’s conduct and activities in the following areas call into question the *integrity* and *independence* of the judiciary and his ability to conduct himself in the court room in an *impartial and unbiased manner*:

- 1. Chairman of the Texas Supreme Court Task Force on Foster Care that receives funding from the Children’s Justice Act (CJA) and acts as supervising entity of the Court Improvement Project (CIP) which both have financial, organizational and administrative roots in the Texas Department of Family and Protective Service, a party which regularly appears before Judge Specia in court or other judges he oversees.**
- 2. Chairman of the Court Improvement Project**
- 3. Member of the Board of Directors, Vice-President and Chairman of the Program Policy Committee of Texas CASA, a group that trains advocates who regularly appear before Judge Specia in court or other judges who he oversees.**
- 4. Member of Advisory Committee of Texas Lawyers for Children representing attorneys who may appear before Judge Specia in court or other judges he oversees.**

We acknowledge “[t]he Code of Judicial Conduct does not exist for the benefit of the judiciary exclusively, but rather for the community and the state as well.” *In re K.E.M.*, 2002 WL 31402185 (Tex.App.Corporus Christi, 2002). As citizens of the state of Texas we need the judiciary to uphold the strict standards of the canons to maintain confidence in this vital part of the government. As the court in *Sears v. Olivarez*, 28 S.W. 3d 611 aptly stated:

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. TEX.CODE JUD. CONDUCT, preamble, *reprinted in* TEX. GOV'T CODE ANN., title 2, subt. G, app. B (Vernon 1998 & Supp.2000). In this regard, the Texas Code of Judicial Conduct requires that judges observe high standards of conduct so that the integrity and independence of the judiciary is preserved; conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; refrain from conveying or permitting others to convey the impression that they are in a special position to influence them; and refrain from financial dealings that tend to reflect adversely on their impartiality or exploit their judicial position.

Moreover the Commission on Judicial Ethics has held, “Willful conduct in violation of Code of Judicial Conduct does not require judge to form the specific intent to violate the Code; as long as he intends to engage in the conduct for which he is disciplined, he is guilty of a willful violation of the Code.” *In re Davis*, 2002 WL 1425251, (Tex.App.Austin, 2002).

This commission has jurisdiction over issues related to judicial ethics according to The Texas Constitution, Article V, §1-a.

AN INDEPENDENT JUDICIARY

The American judicial system rests upon the premise of an independent judiciary. Confidence in the judicial system rises and falls based upon this foundation. Consequently, Canon #1 of the Texas Code of Judicial Conduct emphasizes this principle twice, once as the basic tenet underlying the Code and once in light of the specific conduct expected of judges to preserve judicial independence. It unequivocally asserts:

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.

Each of Judge Specia’s positions and actions outlined above compromise the independence of the judiciary. While a superficial glance may give the appearance that they are benign, a look below the surface reveals an intricate web of relationships that seriously calls into question the integrity and independence of the judiciary in the courtrooms of Judge Specia and other judges under his administrative oversight while handling cases involving Children’s Protective Services.

1. Chairman of the Supreme Court Task Force on Foster Care

Judge Specia is the Chairman of the Supreme Court Task Force on Foster Care (SCTF) (Appendix B). His participation as a member, let alone chairman, raises questions regarding the independence of the judiciary and his impartiality.

The following facts raise serious concerns:

- Judges are to regulate their activities to minimize the risk of conflict with the proper performance of their duties and judicial duties take precedence over all other duties
- The SCTF is inextricably tied to the Texas Department of Protective and Regulatory Services through two of its offshoots: the Children's Justice Act and the Court Improvement Project
- By design and in practice the Court Improvement Project and Children's Justice Act are Partial toward TDFPS
- TDFPS regularly and frequently appears before Judge Specia or other judges he oversees in court

A. Judges are to regulate their activities to minimize the risk of conflict with the proper performance of their duties and judicial duties take precedence over all other duties

In 1986 the Judicial Ethics Commission issued Advisory Opinion 86 in response to the following question:

QUESTION: May judges serve in an advisory capacity to a public board or task force, where in all probability they will later preside over cases arising out of the crisis or problem for which the board or task force was created to solve?

ANSWER: Judges should regulate their activities to minimize the risk of conflict with the proper performance of their judicial duties. Canon 4 applies this admonition to judges' activities to improve the law, the legal system, and the administration of justice. Canons 5A, 5B, and 5D apply this same admonition to judges' extra-judicial activities. Canon 3 states, "The judicial duties of a judge take precedence over all his other activities."

A majority of the Committee is of the opinion that it would be a violation of the Code of Judicial Conduct for judges knowingly to agree to serve on or to continue to serve on such a board or task force, if in serving, a conflict with the proper performance of their judicial duties probably would arise or does arise. One judge dissented. (Appendix C includes Ethics Opinions cited in this complaint).

Based on this opinion alone, Judge Specia's actions are called into question.

B. The SCTF is inextricably tied to the Texas Department of Family and Protective Services through its offshoots: the Children's Justice Act and the Court Improvement Project

By design and in practice both the Children's Justice Act and the Court Improvement Project function under the Department of Family and Protective Services (DFPS) (Appendix D flowcharts).

The SCTF receives funding from DFPS through the Children's Justice Act and/or the Court Improvement Project (Appendix E)

Judge Specia, as a member of SCTF, has renewed an annual contract since March 14, 1997 with the Department of Family and Protective Services to receive reimbursements for travel related to his position on the SCTF. According to his initial contract TDFPS agreed to reimburse him up to \$5,000 for a one year period.

His initial contract states “Agreement Between Texas Department of Protective and Regulatory Services and John Specia, Judge”. The signature below Texas Department of Protective and Regulatory Services is Jim Hine, Executive Director. It appears with the signature of John Specia, Judge.

Amendments One through Five reveal the direct ties of CJA, CIP and the Department of Protective and Regulatory Services. Each amendment clearly identifies the parties as did the original contract: TDPRS and John Specia, Judge. And each amendment includes a signature for Texas Department of Protective and Regulatory Services and the Contractor, John Specia. The signatures for TDPRS are as follows:

Amendment One:	C. Ed Davis, Deputy Director for Legal Services
Amendment Two	C. Ed Davis, Deputy Director for Legal Services
Amendment Three:	Carole Hurley, Director, Children’s Justice Act
Amendment Four:	Carole Hurley, Director
Amendment Five:	Carole Hurley, Director

Correspondence to Judge Specia about two of these amendments further illustrates the inextricable ties of CJA, CIP and Texas Department of Protective and Regulatory Services. Both memos are headed, “CIP Court Improvement Project, Carole Hurley, J.D., Director.” Both have all the contact information for Texas Department of Protective & Regulatory Services at the bottom. Both memos are from Virginia Ruiz, CJA Program Administrator (Appendix F)

Apparently Judge Specia did not have any problem repeatedly signing these financial agreements with a party that frequently and regularly appeared before him in court.

The SCTF acts as supervising entity for the Court Improvement Project

The SCTF acts as the supervising entity for the Court Improvement Project which is administered by the Department of Family and Protective Services (Appendix D). Grants are administered by the CJA under the Department of Family and Protective Services. According to the DFPS website:

The Court Improvement Project (CIP) is a federal grant to the Supreme Court of Texas to improve the judicial handling of child abuse and neglect cases. In August 1993, as part of the Family Preservation and Support Act, Congress set aside \$35 million to fund improvements on behalf of children in protective or foster care. The funds are to be distributed to State court systems as entitlement grants over a four year period starting in fiscal year 1995. The grant is administered by the Children’s Justice Act Grant Project, Texas Department of Family and Protective Services, pursuant to an interagency agreement with the Texas Supreme Court. The Supreme Court Task Force on Foster Care serves as the advisory body to the CIP project (Appendix G).

As Appendix D shows Federal dollars flow through the Supreme Court Task Force on Foster Care through the Governor's office to the Department of Family and Protective Services. Both the Court Improvement Project and Children's Justice Act are recipients of those funds.

The Court Improvement Project, under DFPS, acts as the custodian of records for the Supreme Court Task Force on Foster Care

On June 29, 2004 Gary Gates requested information from Judge John Specia regarding the Supreme Court Task Force on Foster Care. Judge Specia apparently turned the request over to the Criminal District Attorney for Bexar County, Susan D. Reed. Two letters from Ms. Reed are instructive regarding the role of the SCTF and its relationship to the CIP. The combined information of the letters raises a serious red flag about the independence of the judiciary (Appendix H).

In response to the Open Records requests of Mr. Gates, Ms. Reed's wrote to Attorney General Abbott. In it she claims the information requested is not subject to open records requests because the judiciary is excluded from the Public Information Act. She goes on the state "we believe the 'SCTF' operates as a branch of the judiciary."

On the other hand, in her response to Mr. Gates she states, "Judge John J. Specia, Jr. as chairman of the Supreme Court Task Force on Foster care is not the custodian of records for the information you have requested in items #1,2,3,4,5,7,8,9,10,11, and 12 of your request. I suggest you contact Ms. Carole Hurley, Director of the Children's Justice Act Project directly at the Texas Department of Protective and Regulatory Services concerning this request for information. Ms. Hurley can be reached at Agency Mail Code Y-967, P.O. Box 149030, Austin, TX 78714-9030."

Apparently in the eyes of Ms. Reed and Judge Specia who use the judiciary as a shield for the SCTF, there is no compromise to the independence of the judiciary in having the custodian of its records as a child of the Department of Family and Protective Services.

C. By Design and in Practice the Court Improvement Project and Children's Justice Act are Partial toward DFPS.

The design of CIP and CJA reflect control by and a bias toward DFPS.

It has already been established that funding flows to CIP and CJA through DFPS. Staffing is also an issue. Carol Hurley shares responsibilities as the Project Director of CIP and CJA. As explained above she has signed amendments to a contract between DFPS and Judge Specia for DFPS. She is listed on a DFPS website as the Director for the Children's Justice Act with the e-mail hurleyc@dfps.state.tx.us, a Department of Family and Protective Services e-mail (Appendix I)! When an open records inquiry was directed to Ms. Hurley of CIP, the response even came back on TDFPS letterhead from a TDFPS attorney (Appendix J)!

The Texas Court Improvement Project is also found at the DFPS website. The CIP page gives a link to the FFY 1999 1st Annual Program Report for the Texas CIP as submitted by Carole Hurley,

JD of the Texas Court Improvement Project and CJA Project Director (Appendix K). The introduction to that report explains:

The Texas Court Improvement Act Project (CIP) is a federal grant to the Supreme Court of Texas to improve judicial proceedings in foster care and adoption cases. The Supreme Court Task Force on Foster Care serves as an advisory body to the project, which is administered by the Texas Department of Protective and Regulatory Services (TDPRS) pursuant to an interagency agreement with the Supreme Court of Texas. CIP is jointly administered with the Texas Children's Justice Act Project (CJA). By coordinating the funding activities of both these federally funded projects, the State of Texas has been able to address a broader range of issues and systemic obstacles to the judicial handling of child abuse cases.

The Minutes of the CIP Task Force Meeting on August 10, 2001 at the Marriott River Center Hotel in San Antonio reveal further control of staff. They state "an additional staff person assigned to CIP *has been approved by TDPRS* to handle the Cluster courts. This position will use a FTE from TDPRS" (emphasis added) (Appendix L, p.2, 3).

The practices of CIP and CJA reflect control by and a bias toward DFPS.

The practices of CIP, CJA their Project Director and staff follow their design. The tentacles of DFPS reach beyond the executive branch into both the legislature and the judiciary. For example, Rep. Suzanna Hupp introduced HB 1752 in the 2003 legislative session that would give parents the right to designate a caregiver of their child during a CPS investigation. On March 14, 2003 Cathy Morris, Chief Attorney, Field Operations of DFPS sent the following e-mail to Carol F. Hurley, Director of both the CIP and CJA. Cathy Morris wrote:

This bill filed by Rep. Hupp basically guts PRS as we know it. It's a 'parents' rights' bill. This bill will be introduced in the Juvenile Justice committee this Thursday, Mar. 20. We REALLY need to have lots of people there who will testify against this bill. I was thinking that you could get some judges there – McGown, Specia – who do think would be good [sic] (emphasis added) (Appendix M).

That same day Carole Hurley then forwarded that e-mail to Judge Specia and at least seven other judges among others. She added, "If you can come to testify, or even just sit in the audience, please let me know so that I can coordinate. In the past, the mere presence of some of you has spoken volumes."

The Court Improvement Project Strategic Plan for 2000-2003 reflects an expansive effort to dominate both the judiciary and legislature (Appendix N). The Introduction states, "**Strategic planning** focuses the basic purpose (mission) and directions (strategy) of the task force. The strategic plan is an articulation of task force intentions which leaders have determined will ensure the achievement of consistent and planned results."

While considering their planning it is important to remember that TDFPS, a party in numerous lawsuits before Judge Specia and/or other judges he oversees, is in the background of every

decision. Were CIP and CJA totally independent of TDFPS these same goals may be very noble and praiseworthy. However, all of the strategy, all of the planning must be viewed through the eyes of a party regularly and frequently appearing in Judge Specia's courtroom and/or other judges he oversees.

Consider the strategic directions of CIP (p. 5):

1. ENSURE JUDICIAL RESOURCES
 - Provide judges with tools to be more efficient and effective
 - Engage judges and provide them with leadership opportunities
 - Provide proactive leadership
2. MAXIMIZE JUDICIAL EFFECTIVENESS
 - Use data to improve effectiveness
 - Raise public awareness and support
 - Develop innovative programs
 - Maximize cluster courts
3. FORM STRATEGIC RELATIONSHIPS
 - Engage key judges
 - Secure ownership by the Supreme Court
 - Develop additional alliances as appropriate
4. SERVE AS A RESOURCE ON CHILDREN'S ISSUES TO THE LEGISLATIVE AND EXECUTIVE BRANCHES

Interestingly TDFPS is prohibited from taking a position on legislative issues but it has apparently fashioned an alternative mouthpiece.

Appendix 2 of the Strategic Plan highlights four significant questions with answers (p.9). Selected answers offer insight into their functions:

1. What do we have at the Court Improvement Project that we want to KEEP in our future?
 - Cluster Courts
 - Relationships (Supreme Court, PRS, Tx. Center, OCA, CASA, etc)
 - Positive, dedicated, proactive T/Force members (including judges)
 - Judicial training
2. What do we have now that we do NOT want to keep?
 - Perception that CIP is owned by PRS
 - Recalcitrant judges
3. What do we NOT HAVE that we really do NOT want?
 - Organized judicial opposition
 - Legislative Scrutiny

- 4, What do we NOT HAVE that we want for our future?
Legislature in our pocket

The design and practices of CIP and CJA irreparably taint their goal of training judges

Minutes from the CIP Task Force Meeting of March 1-2, 2001 in Marble Falls enumerate project ideas discussed (Appendix O, p.3). One of those ideas included judicial training for CPS judges during which “[w]e would need to teach what judges need to do from the bench.” Based on an understanding of the design and practices of CIP and CJA, a neutral party immediately identifies two flagrant problems in this system: violation of separation of powers and violation of judicial canons of ethics.

Violation of separation of powers

The principle of separation of powers is fundamental to American government to prevent domination of one branch by another. Organizationally as a state agency, TDFPS falls under the governor’s authority within the executive branch of the government. Judges are the judiciary.

As an independent effort to improve the courts the goals of CIP are commendable. As a child of DFPS they taint the system, unduly influence the training of judges and cause the judges who undertake that training to compromise their ethics. Since when does a party to lawsuits train the judges before whom they will appear?

Violation of Judicial Ethics

Since every judge is required to uphold the Judicial Canons each judge who sits through this training jeopardizes the neutrality of the courtroom and seriously compromises the image of the judiciary. If Enron trained the judge who was to hear its case in court would not the honest judge be forced to recuse himself?

D. TDFPS Regularly and Frequently Appears before Judge Specia in Court and/or Judges He Oversees

Other well-intentioned citizens may capably sit on a task force to oversee CJA and CIP, but a judge who hears cases with TDFPS as a party violates the Judicial Canons. As the Judicial Ethics Commission wrote in Opinion 86, “Judges should regulate their activities to minimize the risk of conflict with the proper performance of their judicial duties,” and therefore “it would be a violation of the Code of Judicial Conduct for judges knowingly to agree to serve on or to continue to serve on such a board or task force, if in serving, a conflict with the proper performance of their judicial duties probably would arise or does arise.”

Since the Department of Family and Protective Services is the agency of the state that initiates suits against parents it exclusively represents the state in cases related to child abuse in Judge Specia’s court! Does this relationship avoid the appearance of impropriety? Would a parent coming to court knowing of these relationships expect to be heard without bias and impartially? Do not the

activities and relationships associated with this responsibility cast a reasonable doubt on Judge Specia's capacity to act impartially?

The close relationship between the Department of Family and Protective Services and the Judge is frightening. For a judge to be so closely aligned with the Department so often seeking to separate children from their parents is an inherent conflict.

We believe that Judge Specia's relationship with TDFPS and the CIP and the CJA which it administers violates the following Canons:

1. Upholding the Integrity and Independence of the Judiciary
2. Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities
3. Performing the Duties of Judicial office Impartially and Diligently
4. Conducting the Judges' Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

We believe his ability to judicially discern impartially has been severely hampered based upon his responsibility as Chairman of the Supreme Court Task Force on Foster Care overseeing CIP and CJA. In effect CIP and CJA function as children of the Texas Department of Family and Protective Services which appears regularly and frequently as a party before him in court and judges whom he oversees.

2. Chairman of the Court Improvement Project (CIP)

Judge Specia has been publicized as the Chairman of CIP (Appendix P).

As highlighted previously Advisory Opinion 86 leaves no question how the Commission views the type of conflict of interest engendered when a judge acts in an advisory role to an organization "where in all probability they will later preside over cases arising out of the crisis or problem for which the board or task force was created to solve."

The indisputable integral relationships of CIP and TDFPS have been established. Could there be any doubt about the impropriety of serving not just on a Task Force overseeing CIP but as the Chairman CIP?

Example of Cluster Courts

As Chairman of the CIP Judge Specia has overseen the expansive growth of the Texas Cluster Court system. Today it covers a significant part of rural Texas. The system has gained attention nationally. However, we believe it is an example of how close ties to parties within a courtroom result in a bias that taints the independent decision making process. Presumably as Chairman of the CIP which developed the cluster court process, Judge Specia has been an integral part of their design, implementation and growth.

Were those courts completely independent they might offer answers to some of the chronic difficulties of CPS caseloads in rural areas. But, Cluster courts, the brainchild of CIP carry the markings of their grandparent, TDFPS. While some of the oversight of the Cluster Courts has wisely been transferred to the Office of Court Administration, the markings of TDFPS remain.

For instance, presiding judges *select* an associate judge to handle CPS cases exclusively. Thus there is no opportunity for the citizens to remove the associate judge through elections. He will be insulated from the people he serves.

Upon selection, CIP will oversee training of the associate judge and staff including instruction that regular reports are to be submitted by the cluster courts to CIP. How could a disinterested observer view a court system designed by the state including an unelected judge trained by CIP (the state) consider that the opposing party (parent) could receive a fair and impartial hearing?

This is exactly the system that has been implemented under the watchful eye of Judge Specia.

Belief in an independent judiciary within Judge Specia's court has been undermined. His actions convey a willingness to expand the reach of government rather than to protect the citizen from said infringement. Borrowing the language from a 1999 review tribunal, a 2003 decision reiterated the necessity for an independent judiciary:

“The standard for judicial conduct in the State of Texas must be more than effortless obedience to the law, but rather, must be conduct which constantly reaffirms one's fitness for the high responsibilities of judicial office and which continuously maintains, if not furthers, the belief that an independent judiciary exists to protect the citizen from both government overreaching and individual self-help.” *In re Canales*, 113 S.W.3d 56,73 referring to *In re Barr*, 13 S.W. 3d, 525, 532.

We believe Judge Specia's ability to judicially discern impartially has been severely hampered based upon his responsibility as Chairman of the Court Improvement Project with its integral ties to the Texas Department of Family and Protective Services which appears regularly and frequently as a party before him in court.

3. Board Member, Vice-President, Member of Executive Committee and Chairman of the Program Policy Committee for Texas CASA

Judge Specia currently serves on the Board of Texas CASA (Appendix Q).

As a Board member of Texas CASA Judge Specia has violated Canons 1, 2, 3, 4 and 5 of the Texas Code of Judicial Conduct.

Judge Specia is knowledgeable of Judicial Ethics Commissions Opinions concerning such violations.

Judge Specia has willfully and persistently violated those Canons.

In *In Re Barr*, 13 S.W.3d at 532 the Review Tribunal asserted:

In a civilized society, members of the judiciary are significant public figures whose authority necessarily reaches all points within their respective jurisdiction, if not beyond. Members of the judiciary of the State of Texas, whether a municipal judge in Fort Stockton, a justice of the peace in Cameron County, the county court at law judge in Liberty County, a state district judge in Ozona, a justice on the Sixth Court of Appeals, Texarkana, or the Chief Justice of the Texas Supreme Court, all serve as the collective guidon of the banner representing fairness and impartiality in our state. It is for that reason, plus others, that the judiciary must nurture and maintain respect for their decisions, as well as the judiciary of the State of Texas as a whole. **The Texas jurist must be held to the highest standards of integrity and ethical conduct, much more so than the standards to which members of the executive and legislative branches are held accountable.** Consequently, the ultimate standard for judicial conduct in the State of Texas must be more than effortless obedience to the law, but rather, must be conduct which constantly reaffirms one's fitness for the high responsibilities of judicial office and which continuously maintains, if not furthers, the belief that an independent judiciary exists to protect the citizen from both government overreaching and individual self-help.

Judge Specia has acted willfully and persistently in disregard to the Canons and the Commission's Ethics Opinions. Citing a previous opinion, the Review Tribunal in *In Re Barr* at 534,535 explained:

The term "willful", in the context of removal of members of the Texas judiciary for misconduct, has been defined as follows:

[T]he term "willful," as applied in tex. Const. art. V, § 1-a(6)A, is the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross indifference to his conduct.

Thoma, 873 S.W.2d at 489-90.

As noted in *Thoma*, willfulness involves more than an error of judgment or a mere lack of diligence. By way of further exposition, the *Thoma* Review Tribunal additionally noted that "willfulness" necessarily encompasses conduct involving moral turpitude, dishonesty, corruption, misuse of office, or bad faith generally, whatever the motive. **A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority may in and of itself constitute bad faith.** *Id.* A judge acts intentionally, or with intent, when the act is done with the conscious objective of causing the result or of acting in the manner defined in the pertinent rule of conduct. See [In re Conduct of Schenck, 318 Or. 402, 870 P.2d 185, 189 \(1994\)](#).... A judge is subject to discipline for "willful" violation of any canon of judicial conduct as long as she or he intends to engage in conduct for which she or he is disciplined, whether or not she or he has specific intent to violate the canon. See *In re Flanagan*, 240 Conn. 157, 690 A.2d 865 (1997) (emphasis added).

Persistent conduct does not necessarily have to be long-lasting. The Review Tribunal in *In Re Barr* at 558,559 again clarified:

"Persistent" conduct, with respect to judicial disciplinary proceedings, is constant conduct which demonstrates a series of associated efforts and determination and which is insistently repetitive or continuous. It is conduct which is very general in scope in that the conduct need not manifest itself in identical fashion. Persistent conduct need not necessarily be of a long duration, but rather connotes conduct which remains unbroken throughout its entire length, no matter how great.

Judge Specia's actions have been both willful and persistent. *Dating back to 1983 the Judicial Ethics Commission has cited at least six opinions dealing with the issue of the participation of judges in organizations like CASA.* In 2001 the commission was asked, "Is it a violation of the Judicial Canons of Ethics for a judge to serve on the Judicial Council of the Children's Assessment Center?" The committee responded, "Yes, it is a violation of the Judicial Canons of Ethics for a judge to serve on such a council. It is a judge's function to act impartially and to be seen as neutral." It highlighted the following reasons:

- Canon 2 provides, "A judge...should act at all times in a manner that promotes public Confidence in the integrity and impartiality of the judiciary."
- Canon 2B provides, "A judge shall not allow any relationship to influence judicial conduct or judgement. A judge shall not lend the prestige of judicial office to advance the private interest of...others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."
- Cannon [*sic*] 4 which requires a judge to conduct extrajudicial activities so as not to interfere with judicial duties would be violated. Membership on this council would require frequent recusal in cases in which the members of the organization were testifying (Appendix C, Opinion 270).

CASA members *frequently* appear before the judge in CPS cases to determine placement and make other decisions related to the best interests of the child. Opinion 270 specifically asserted, "For a judge to give advice to an organization whose mission is to advocate for witnesses/parties in law suits is a violation of this Canon [2B]."

Opinion 270 concluded, "***The committee has issued several opinions regarding similar organizations and has consistently found membership in such groups to be a violation of the Canons.***" It then cited Opinions 66 (1983) , 86 (1986), 133 (1990), 225 (1998) and 240 (1999) (Appendix C).

For over twenty years the commission has been warning against such an association. Judge Specia has intended to engage in this prohibited conduct and is guilty of a willful violation of the Code.

The Commission's 1981 Opinion 57 answered a question regarding judicial membership on an advisory board of a non-profit corporation. Specifically it asked, "May a judge serve as an advisory board member to a private non-profit corporation whose purpose is to operate a home to house and offer counseling to battered wives?"

In response the Commission stated that a judge may participate in civic and charitable activities subject to certain limitations including:

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him [or her] or will be regularly [or frequently] engaged in adversary proceedings in any court.
2. A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his [or her] office for that purpose;
3. [a judge] should not be a speaker or the guest of honor at an organization's fund-raising events, but he may attend such events (Appendix C).

Judge Specia may participate in civic and charitable activities. However, Judge Specia, as a board member, vice-president, executive committee member and chairman of the Program Policy Committee for Texas CASA, violates both the first and second limitations listed above. For years he has violated the first limitation because the very purpose of CASA is to train volunteers to advocate for children in court regarding child abuse cases. Moreover, e-mail correspondence from Megan Ferland indicates that CASA requested judges including Judge Specia to solicit funds for the organization (Appendix R). Assuming that he complied he violated the second limitation above.

Judge Specia not only should know of the ethics opinions but does know of them and willfully and persistently has chosen to violate them.

Is Judge Specia serving two masters?

As a board member and vice-chairman of Texas CASA Judge Specia owes a fiduciary duty to act in the best interests of the organization. As a member of the Texas judiciary, his judicial responsibilities are to take precedence over *all* other responsibilities. These two duties have been in conflict. Judge Specia has willingly yielded to the best interests of Texas CASA.

Board members and officers of Texas CASA deliberated over the Judicial Ethics Commission Opinion 240 issued in 1999 (Appendix C). Specifically, the question was:

May a judge serve as a member of a Board of Directors of a non-profit corporation which trains volunteers and employs professional staff to be appointed by the judge to serve as guardians of incapacitated or minor persons?

Unequivocally, the commission responded, "No."

Specifically the complete opinion states:

No. Canon 4 states that a judge "...shall conduct all of the judge's extra-judicial activities so that they (1) do not cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial

duties." The difficulty with the scenario presented is that the qualifications and competence of a guardian must be determined and approved by the judge. A judge cannot pass on the qualifications and competence of an individual trained by a corporation if the judge is a member of the board of that corporation without creating an appearance of impropriety regarding the judge's capacity to act impartially. A casual observer could well conclude that the judge would consider anyone trained by "his/her" corporation to be qualified and competent regardless of evidence to the contrary. It is the appearance of impropriety that must be avoided. It would make no difference if the judge were a voting or non-voting member of the board.

CASA communications surrounding this issue are instructive both in the nature of CASA and its board. An initial e-mail specifically referenced Ethics Opinion 240. Later correspondence seemed to mix references to both Opinion 240 and 270.

On July 20, 1990 Mary Kay Bickett, currently on the Texas Board of Directors and Secretary of the organization sent an e-mail to Margot McMurry regarding Ethics Opinion 240. She wrote, "Below is the opinion I think you all had asked me to find. *Hopefully it is open to some interpretation*" (emphasis added)(Appendix S).

On October 20, 1999 Jane Q. Piper, of Texas CASA wrote to Judge Specia regarding Ethics Opinion 240. Stating that "we obviously want judges on our boards," she asked Judge Specia, "Can you think of how to word a question to the committee so that we can get the answer we want?" (see Appendix S)

According to the March 1-2, 2001 Minutes for the Court Improvement Project Task Force Meeting which Judge Specia convened and included Mary Kay Bickett, "The Advisory Ethics Opinion by Justice Suzanne Stovall was extensively discussed. It has had an impact on judicial willingness to serve on CASA and CAC boards" (see Appendix O).

The minutes of the Court Improvement Project Task Force do not elaborate on that extensive discussion nor do they identify the specific opinion by number. The context however, seems to indicate it would be Opinion 240.

By June 8, 2001 Texas CASA seems to have taken a position directly in conflict with the Opinion 240 and all other similar opinions. In a board meeting attended by Judge Specia and Mary Kay Bickett the minutes state "Tom [Krampitz] told the board that the Ethics Opinion stated that a judge can sit on the CASA Board of Directors" (Appendix T). No specific opinion is cited to support that assertion.

In the next two years understanding of the CASA position clouded.

On September 22, 2003 Maribel Bowles, Executive Assistant of Texas CASA sent e-mails to Judge Eva Guzman and Mari Kay Bickett on this issue. The subject of Judge Guzman's e-mail was "help...ethics opinion!" She wrote:

“I need your help please...back when you first came on the Texas CASA Board I think it was you who had a concern with having a conflict of interest in serving on the board because you are a judge. Would you happen to have that Ethics Opinion in writing or tell me where I can find a copy of it? The same concern has come up again with one of our new board members and we want to be able to show hi something in writing stating that it is okay for him to sit on our board. All we have is a statement from our June 2001 board minutes” (Appendix U).

She wrote to Mari Kay Bickett (with a copy sent to Judge Specia):

“We are trying to figure out how it was that we came to the conclusion that it is okay for judges to serve on our board regardless of what the Judicial Canon of Ethics Opinion 270 states. Megan and Chris vaguely remember consulting you about it when it came up in February of 2001 when Judge Eva Guzman cam on board. The same concern has come up again with a new board member. We would appreciate any help we can get” (emphasis added) (Appendix U).

The next day, September 23, 2001, Mari Kay Bickett responded, “I will track it down this week” (Appendix U).

Also on September 23, 2001 Judge Guzman wrote back to Maribel Bowles, “I will look for it today and send link by e-mail. I actually called the commission and discussed this at length. I am very comfortable” (Appendix V).

That same morning Maribel Bowles responded to Judge Guzman, “Great, I actually found the ethics opinion stating it would be a violation to serve but we are still trying to track down something in writing to stating it’s okay to serve on our board” (Appendix V)

Judge Specia was privy to correspondence and communication on this vital issue. The Ethics Opinions are not clouded. A reading of ethics opinions since that time reveals no reversal.

Where was the voice of Judge Specia in this debate? Where was his voice advocating to abide by this commission’s opinions while Texas CASA scrambled to find “the answer we want”? According to Judicial Canon 3 a judge’s judicial duties take precedence over all his other duties.

As board member of Texas CASA he owes a fiduciary duty to speak out and act in the best interests of Texas CASA. Did he succumb to the perception that CASA benefits from the prestige of judges sitting on their board? Where was his voice in this debate?

Financial Ties to TDFPS

Texas CASA receives funding from TDFPS, a party that repeatedly appears before him in court. Consider a sampling of financial data related to funds received from TDFPS (Appendix W).

- June 7, 1999 Agreement between Texas Department of Protective and Regulatory Services and Texas CASA, Inc. to reimburse Texas CASA up to \$59,000 toward Texas CASA’s Rural Expansion Project

- June 2002 Texas CASA Program Administration Update for Board Meeting citing a grant from “The Children’s Justice Act (TDPRS) in the amount of \$97,341 for the first phase of the Outreach and Recruitment Team.”
- November 1, 2002 letter from Megan Ferland, CEO of Texas CASA and Susan Stahl, President of the Board of Texas CASA to Mr. Henry Darrington of TDPRS thanking him for sponsoring their 13th Annual Statewide Conference with a \$10,000 contribution.
- February 2003 Texas CASA Program Administration Update for Board Meeting citing a grant from “The Court Improvement Project (TDPRS) in the amount of \$175,000 for trainings, pass-through funds, grant writing and technical assistance to the programs.”

Judge Specia’s organization directly benefits financially from its relationship with TDFPS. His actions in this regard violate both Canon 1 and Canon 2.

Canon 1 addresses the integrity and independence of the judiciary. It affirms that “[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.”

Canon 2A states, “[a] judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 2B asserts, “[a] judge shall not allow any relationship to influence judicial conduct of judgment.”

Perception of CASA among families who appear in CPS courts is already tainted. In many courts CASA workers and CPS workers socialize before, during and after hearings. CASA workers tend to mimic decisions of CPS. For parties to appear before a judge who sits on a CASA board that receives funding from TDFPS reeks of undue influence and partiality. Discipline of that judge should be enforced for compromising the integrity and independence of the judiciary.

4. Member of Advisory Committee of Texas Lawyers for Children

Judge Specia is a member of the Advisory Committee of Texas Lawyers for Children.

Advisory Opinion #281 responded to two questions First, whether a judge may serve on the Board of the Houston Volunteer Lawyers Program, an organization whose staff and volunteer attorneys appear as advocates in the judge’s court? Second, may a judge serve on the Advisory Board in an ex officio advisory capacity, not involved in decision or policy making (Appendix C)?

The response, in no uncertain terms, stated:

“No, as to both questions. See Opinion 270. Service in any capacity in an organization whose staff appears in the judges [sic] court violates Canon 2. Canon 2 requires a judge to act at all times in a way that promotes the public confidence in the judge’s impartiality. Canon 2 further prohibits lending the prestige of office to advance the private interest of others or to convey that others are in a special position to influence the judge.”

While there are times that a child may need to be placed in an adversarial position to his parent(s) within the court system, by design the current system pits them against one another more frequently than necessary. The mission of Texas Lawyers for Children is “to improve case outcomes for abused and neglected children by enhancing the quality of legal services they receive. The most important decisions about an abused or neglected child’s future are made in court. TLC exists to help insure that those decisions are the right ones for the child.”

Texas Lawyers for Children is funded at least in part by the Children’s Justice Act a part of TDFPS (Appendix X, p.6).

Judge Specia must act impartially toward parties in his courtroom or be disciplined. Children and parents are sometimes pitted in an adversarial position. The Department of Family and Protective Services has unjustly removed children from their parents and pitted them in an adversarial relationship against parents in the courtroom.

Again, as noble and praiseworthy as the goal is to “help insure that those [legal decisions] are the right ones for the child” the judge who may hear those attorneys representing those children in his courtroom has no place serving on the Advisory Committee for that group, especially as a recipient of funding directed through TDFPS..

CONCLUSION

The intricate web of the pervasive influence of CPS, a regular party in Judge Specia’s court and those he oversees, is perhaps best revealed through the DFPS website itself. The document “Child Protective Services” describes the interaction of the subjects of our complaint against Judge Specia in the following manner under the heading “Texas Court Improvement Project”:

“The Texas Court Improvement Project (CIP) is a federal grant to the Texas Supreme Court administered by PRS to improve judicial proceeding in foster care and adoption cases. Texas Court Appointed Special Advocates (CASA) continues to expand with financial help from CIP. This funding also pilots projects known as ‘Cluster Courts,’ where a traveling judge hears only CPS cases for a cluster of counties. The Texas Legislature appropriated \$4 million for the coming biennium for 16 such courts throughout the state. CIP also helps fund several judicial trainings and training tools on child abuse and neglect. CIP monies maintain the Judicial Web Page, a tool for judges and PRS attorneys to check on the status of any child abuse or neglect case filed in Texas. CIP funds the development of online training software and video conferencing pilot projects, allowing a child to testify from the security and comfort of a Children’s Crisis Care Center” (Appendix X, p.6).

The bottom line is under Judge Specia’s watch the independence of the judiciary in child abuse cases has been severely compromised in his courtroom and those which he oversees as the Local Administrative Judge. Even more so as Chairman of the Supreme Court Task Force on Foster Care and Chairman of the Court Improvement Project the effect has been to compromise the independence of the judiciary in every cluster court throughout the state.

Respectfully submitted in the name of justice,

Gary W. Gates
Founder and Board Member

Peter H. Johnston
President