

## Position Paper on Compromise of an Independent Judiciary in CPS Cases

### EXECUTIVE SUMMARY

Texas Center for Family Rights addresses this position paper on the independence of the judiciary in CPS cases in Texas for two reasons:

1. *Children and families are being hurt by the system.*
2. *Judicial practices have developed which appear to violate Constitutional provisions for separation of powers and the Code of Judicial Conduct.*

**The separation of powers is rooted in the United States Constitution, the Texas Constitution, U.S. Supreme Court decisions and the writings of our Founding Fathers.**

**The Texas Code of Judicial Conduct is founded upon the premise of an independent judiciary.** All eight Canons rest upon the foundation of Canon #1:

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.

**Judges are to be held to a strict standard.**

TCFR believes with former U.S. Supreme Court Justice Louis Brandeis that, “Sunlight is the best disinfectant.” This position paper sheds light on conduct and activities of judges in Texas that call into question the *integrity and independence* of the judiciary and their ability to conduct themselves in the court room in an *impartial and unbiased manner*. Specifically TCFR is concerned with:

1. Numerous judges in Texas who sit as members of boards and/or in an advisory capacity to organizations that have additional financial, organizational, and/or administrative roots or ties to the Department of Family and Protective Services (DFPS).
2. Judges often sit in leadership positions of these various entities along side of heads of DFPS, district attorneys, CASAs and others with ties to DFPS.
3. Leadership of the various entities is very intertwined.
4. DFPS funds these organizations such as CASA, whose workers appear before the judges regularly in court, as well as the Court Improvement Project (CIP) and the Children’s Justice Act (CJA) which develop and implement judicial reform and training.
5. DFPS is a party that frequently and regularly appears before the judges in court.

Members of the judiciary know or should know **“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”** *In Re Barr*, 13 S.W. 3d, 525, 532 (1999).

Therefore, in the name of justice, we are deeply concerned with willful and persistent violations of the separation of powers and the following Judicial 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

## SPECIFIC FACTS BEHIND ISSUES OF CONCERN

- Judges have close ties to the Court Improvement Project (CIP) and the Children's Justice Act which are inextricably intertwined with the Department of Family and Protective Services (DFPS) (pp3-5).
- Judges receive financial reimbursements from DFPS (pp. 5,6).
- By design and in practice the Court Improvement Project (CIP) and Children's Justice Act (CJA) are partial toward DFPS (pp. 6-9).
- *Although DFPS is forbidden from expressing opinions on specific legislation, Cathy Morris, Chief Attorney, Field Operations of DFPS encouraged judges to lobby for them!*

On March 14, 2003 at state expense Morris wrote to Carole Hurley, Director of CIP and CJA concerning a bill in the 2003 legislature that would give parents the right to designate the caregiver for their children during CPS investigations:

***“This bill filed by Rep. Hupp basically guts PRS as we know it... We REALLY need to have lots of people there who will testify against this bill. I was thinking that you could get some judge there – McGown, Specia —...”***

Carole Hurley forwarded the e-mail to **Judge Specia, Judge McGown and at least fifteen other judges** associated with them through the Supreme Court Task Force as well as other individuals (p.7).

- The Strategic Plan of CIP for 2000-2003 reflects an expansive effort to dominate both the judiciary and legislature (pp.7-9). It would like to have the **“legislature in our pocket”** (p.9).
- Cluster courts which are the brainchild of CIP reflect undue influence of their grandparent, DFPS (pp. 10,11).
- Judges have willfully and persistently violated Judicial Advisory Opinions going back over twenty years by serving on Texas CASA (pp. 11-16).
- Advisory Opinion #57 includes two limitations on judges serving as an officer or director of an organization such as CASA: they may not serve if it is likely the organization will appear regularly before them in court and they may not solicit funds for the organization.

CASA workers appear regularly before judges on CASA boards

Megan Ferland, CEO of Texas CASA, requested “information for potential contributors” from numerous judges on their board (p. 13).

- Advisory Opinion # 240 unequivocally answered “No” to the question: “May a judge serve as a member of a Board of Directors on a non-profit corporation which trains volunteers and employs professional staff to be appointed by the judge to serve as guardian of incapacitated or minor persons.”

Nonetheless, a judge on the Texas CASA board was asked with regard to that opinion: ***“we obviously want judges on our boards...Can you think of how to word a question to the committee so that we can get the answer we want?”*** (pp.14-16).

- Texas CASA has financial ties to DFPS (pp. 16,17).