

Judicial Spat Erupts at Meeting
by Mary Alice Robbins, Texas Lawyers Magazine
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Fireworks expected at the Sept. 15 business session of the State Bar of Texas Judicial Section's annual conference failed to materialize. But sparks flew at the Council of Chief Justices' meeting on the same day.

By the end of the day, the council's new chairman -- who happens to be the Judicial Section's immediate past chairman -- had resigned. Brian Quinn, chief justice of Amarillo's 7th Court of Appeals, confirms that he became the chairman -- and then the former chairman -- of the chief justices' council hours after he ended his term as chairman of the Judicial Section and of the Texas Center for the Judiciary, a nonprofit organization that provides continuing legal education for judges and is closely tied to the Judicial Section.

The reason for the quick exit? Quinn says that John Cayce, chief justice of Fort Worth's 2nd Court of Appeals, and Linda Thomas, chief justice of Dallas' 5th Court of Appeals, told others on the chief justices' council during an executive session that they did not want Quinn to represent their courts before the Texas Legislature during the 2009 session.

Quinn also says Cayce referred to him as a maverick.

"I decided I would step back, since I was perceived as the problem," Quinn says.

Cayce denies calling Quinn a maverick but adds, "I did suggest that he acted like a lone ranger"

With regard to what happened during the chief justices' executive session, Cayce says, "We did discuss the role of the chairman of the council and the type of leadership philosophy that would best fit that role." He declines further comment.

Thomas says Quinn's actions as chairman of the Judicial Section and the Center for the Judiciary prompted her to question his leadership style when the chief justices met.

For the past several months, Quinn has been embroiled in a controversy over whether the Texas Court of Criminal Appeals should continue to administer a grant program that funds continuing legal education for judges and lawyers. The grant program, the Judicial and Court Personnel Training Fund, is called Fund 540.

Some CCA judges don't want to administer the grant any more, and the Texas Center for the Judiciary has been at odds with the CCA over some of the CCA's restrictions.

Before stepping down as chairman of the Judicial Section, Quinn had proposed and subsequently withdrew two resolutions urging Gov. Rick Perry and the Texas Legislature

to conduct financial and management audits of Fund 540 and to transfer administration of the fund away from the CCA.

Understanding the controversy requires a little history of Fund 540. Bill Hill, the CCA's judicial education auditor, says the Legislature created Fund 540 in 1985 to provide judicial training funded by court fees. In 1992, the Legislature added training programs for prosecutors and criminal-defense attorneys to the list of eligible grant recipients, Hill says. The Legislature appropriated about \$8.9 million to the CCA for the 2009 grants program, he says.

The CCA awards grants to seven training programs, according to CCA Presiding Judge Sharon Keller: the Center for the Judiciary, the Texas Municipal Courts Education Center, the Texas Justice Courts Training Center, the Center for American and International Law, the Texas Association of Counties, the Texas District and County Attorneys Association, and the Texas Criminal Defense Lawyers Association.

Three judges on the CCA have indicated they would like the Legislature to put another entity in charge of administering Fund 540.

In a July 16 letter to the chairmen of the Senate Jurisprudence and House Judiciary Committees, CCA Judge Cheryl Johnson requested that the Legislature move responsibility for that fund outside the judicial system.

"We may know a lot about law and administration of courts, but we are woefully lacking in knowledge of grant administration," Johnson wrote.

In an interview, Johnson declines further comment. "I've said what I'm going to say on the issue," she says. "The Legislature gets to sort that one out."

CCA Judges Tom Price and Cathy Cochran jointly wrote in a July 18 letter to the chairmen of House and Senate committees to request that the Legislature consider transferring authority for Fund 540. Price and Cochran wrote in their letter that the CCA's administration of the fund "is a situation rife with potential problems and always subject to suspicion about our motives in directing funds to favored grantees."

Price did not return a telephone call to his office seeking comment by presstime Sept. 18.

Cochran says in an interview that she has had concerns about the CCA's responsibility for Fund 540 since 2002.

"I have never felt institutionally that the Court of Criminal Appeals was the right institution to do this," she says.

Having served on the boards for the Texas Youth Commission and other public entities, Cochran says, she knows "a great deal of time and talents go into that decision-making."

Quinn also doesn't think the CCA should administer Fund 540, but Thomas says he didn't follow proper procedures to address the issue, alerting neither section nor State Bar leadership.

Thomas says Quinn's placement of the Fund 540 resolutions on the agenda for the Judicial Section's Sept. 15 meeting was contrary to a decision the section's board of directors made last year. She says the Judicial Section board voted at a Feb. 13, 2007, meeting in Dallas to authorize officers of the section to take all appropriate measures to protect and preserve Fund 540, with the exception of urging a change in the body that administers that fund.

Quinn says that at the same 2007 meeting, the Texas Center for the Judiciary board passed a resolution authorizing its leadership to take all steps necessary to protect Fund 540. Although the resolution does not spell it out, those steps included asking the Legislature to move the administration for Fund 540 from the CCA, he says.

In proposing the resolution urging the Legislature to transfer authority over that fund, Quinn says, "I was voicing the voice of the Texas Center."

Thomas also says Quinn violated 8.01 of the State Bar of Texas' legislative policy by placing the two resolutions on the agenda for the Judicial Section's business meeting without first submitting them to the Bar board.

State Bar president-elect Roland Johnson, managing shareholder in Harris, Finley & Bogle in Fort Worth, says the April 2008 issue of the Texas Bar Journal set out the Bar's process for approving legislative proposals, but he declines to say whether Quinn violated the policy. As noted in the Texas Bar Journal issue Johnson cites, 8.01.06(C)(1-6) set a July 1 deadline for submission of proposed legislation for inclusion in the Bar's legislative program. Under that provision, all proposals must have been mailed to all other State Bar sections and committees for comment before the proposals are submitted to the Bar board.

Quinn says he did not violate the policy, because he was not proposing legislation. "It was more of a resolution that we need to get this fixed," Quinn says. "I was looking for a statement from the judges and to begin educating them on the subject."

One of his concerns, Quinn says, is a lack of transparency in the CCA's administration of Fund 540. In July, Quinn submitted a request to the CCA under Rule 12 of the Texas Rules of Judicial Administration, asking for, among other things, minutes from the administrative conferences at which it makes decisions about grant awards.

Keller says, "The court doesn't keep minutes of any of its deliberations. We just keep records of votes."

Thomas, who serves as mediator of an informal conference committee that has been trying to work out differences between the CCA and the Center for the Judiciary, says the

court and the center have been at odds over Fund 540 since 2005.

"The dispute between the CCA and the center is about money and who is going to administer the education funds," she says.

Hill says the Center for the Judiciary received about \$1.7 million of the state grant funds for 2009 -- \$72,000 less than the center had requested.

Thomas says state Sen. Robert Duncan, R-Lubbock, chairman of the Senate State Affairs Committee, requested the CCA and the center to create the conference committee to work out their differences.

Duncan, a partner in Crenshaw, Dupree & Milam, did not return a telephone call seeking comment by press time.

Bones of Contention

Thomas says the committee, made up of people appointed by the CCA and Quinn, has reached resolution on many of the issues in controversy. One of the chief issues remaining to be resolved, she says, deals with parity in salaries at the seven organizations receiving Fund 540 grants.

Mari Kay Bickett, the Center for the Judiciary's executive director, says there is a lack of parity in salaries her center is allowed to pay, compared to some of the other grantees. Bickett says the CCA sets "artificial salary caps" for her and other staff members at the center, even though the center receives grant funding from a number of other state and federal sources as well as private contributions. The center received more than \$5 million in fiscal year 2008, she says.

Bickett says the salary amounts that the CCA allows for her staff is, for some positions, less than salaries that other organizations receiving Fund 540 grants are able to pay. She says the CCA substitutes its salary decisions for the decisions made by the center's board.

"There's no reward for any kind of longevity," Bickett says. "That's why we put out a lot of private funds for salaries."

However, some judges are unhappy about the center's finances and its CLE offerings.

Judge Cynthia Stevens Kent, of the 114th District Court in Tyler proposed two resolutions for the Judicial Section's Sept. 15 meeting that would have required "a full, complete and independent audit of all financial matters" of the center for the past four years and would have limited the center's spending to expenditures specifically approved by its board.

Some of the concerns focus on the center's use of its rainy day fund. According to a financial report prepared by Denton County Court-at-Law No. 3 Judge David Garcia, the

secretary-treasurer of the Center for the Judiciary's board of directors, the center spent \$30,286 of its rainy day fund account to cover fiscal year 2008 salaries and \$36,058 for expenditures that the CCA disallowed for previous years.

Kent says she withdrew the resolutions, because the Center for the Judiciary board told her they would have audits done.

But Quinn and Bickett say that audits already are conducted annually for all the center's funds.

Garcia, chairman-elect of the Judicial Section and the center's boards, says audits are done on each of the center's boards.

"We're going to do a little more comprehensive audit," he says, declining to be more specific.

While one of the chief functions of the Center of the Judiciary is to provide training for judges, its CLE programs don't satisfy everyone.

"I had myself taken off the mailing list for the Texas Center four years ago," says Judge Mark Davidson of Houston's 11th District Court. "The quality of the [center's] CLE is substantially less than what I can get from almost any other CLE."

Davidson, the state's multidistrict litigation judge for asbestos, says the center's CLE programs often are not relevant for judges who preside over specialty courts in urban areas.

Quinn says Davidson does not attend the center's CLE programs but that the judges who do give the courses high ratings.

Bickett says the center's curriculum committee is looking at offering "boutique courses" that are shorter and more focused.

Thomas says the conference committee will continue to work on the issues raised by the CCA and the Center for the Judiciary.

The new chairman of the Judicial Section and the center also has set a new tone for the coming year. Judge Suzanne Stovall of Conroe's 221st District Court told the judges attending the Sept. 15 meeting, "I'm going to have a theme, and my theme is 'Let There Be Peace.'"

Stovall did not return a telephone call seeking further comment by press time