

# **APPEALS & ETHICS**

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**Chief Justice Carolyn Wright - Dallas Court of Appeals**

**Justice Elizabeth Lang-Miers - Dallas Court of Appeals**

**Justice Sue Walker - Fort Worth Court of Appeals**

**Justice Bob McCoy - Fort Worth Court of Appeals**

**O. Rey Rodriguez - Partner, Fulbright & Jaworski L.L.P.**

**Dallas-Fort Worth Joint Appellate Seminar – October 6, 2011**

# INTRODUCTION

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- ❖ **Objectives**
- ❖ **Our Theme Song – “The Good, The Bad and The Ugly” (Cover Version)**
- ❖ **Fabulous Prizes for Audience Participation**

# **THE SHIFTING GROUND BENEATH OUR STATE APPELLATE COURTS:**

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- **Legislative Curtailment In Funding  
– Justice Bob McCoy**
- **Legislative Expansion Of Workload  
(e.g. Ch. 74; Interlocutory and F.E.D.  
Appeals)  
- Justice Sue Walker**
- **Ethical Implications – Protecting the  
System from Misuse/Waste of Judicial  
Resources**



# **SUGGESTIONS FOR THE ETHICAL APPELLATE PRACTITIONER:**

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- Remind Clients and Trial Counsel that Appellate Lawyers Have a Specialized Role - Contrasts
  - Chief Justice Wright
- Remind Everyone to Respect the Process, the Courts, and the Litigants
  - Justice McCoy
- Remind Clients and Colleagues About the Ethical Rules Surrounding the Court's Work
  - Chief Justice Wright

# **SUGGESTIONS FOR THE ETHICAL APPELLATE PRACTITIONER:**

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- Remember that With Continuing Pressure on Appellate Courts, “Zealous Advocacy” Means “Efficient and Effective Advocacy” (e.g. Better/More Crisp Briefing)
  - Justice Walker
- Assist with the Efficient and Fair Administration of Justice (e.g. pro bono appellate support)
  - Justice Lang-Miers
- Dissuade Clients and Litigants from Needless Consumption of Appellate Resources (Rey Rodriguez)
- Engage the Legislative Process to Address the Disconnect Between Diminished Funding and Increasing Demands on Our Courts (Rey Rodriguez)

## **ANY TRENDS IN APPELLATE ADVOCACY?**

- ❖ Role Reversals – Are Trial Lawyers Handling More Appeals as the Economy Continues to Struggle?
- ❖ Are Lawyers Becoming Overly Aggressive in their Briefs (Facts, Law, Tone)?
- ❖ At Oral Argument?
- ❖ Motion for Rehearing Stage?
- ❖ Multi-Firm/Multi-Lawyer Appeals on the Rise?



# **DO WE NEED MORE RULES?**

- **We All Know What We're Supposed To Do.**
- **What About Adding a Mirror-Image Appellate Rule Addressing “Frivolous” Positions Taken By *the Appellee*?**
- **Should the Appellate Standards of Conduct be Part of Appellate Court Orders or Imported into the Disciplinary Rules?**

# **HOW THE APPELLATE COURTS DEAL WITH PERCEIVED ATTORNEY MISBEHAVIOR :**

- ❖ **Chambers Conferences**
- ❖ **Letters to Counsel**
- ❖ **Admonitions at Oral Argument**
- ❖ **The Disapproving Footnote or Order**
- ❖ **Striking Briefs**
- ❖ **Referring Attorneys to the Disciplinary Authorities**



# **JUDICIAL RESOURCES – CONSERVATION:**

- Appellate Mediation
  - The Second Court's Approach
    - - Justice Walker and Justice McCoy
  - The Fifth Court's Approach
    - Chief Justice Wright and Justice Lang-Miers

## **RECENT BENCH/BAR CONFERENCE TOPICS:**

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- ❖ E-Filing
- ❖ E-Briefing
- ❖ Ethics
  - Justice Lang-Miers

# OPEN FORUM

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- ❑ **Panel Comments**
- ❑ **Question-Answer Session**