

HEADNOTES

Hartline Dacus Barger Dreyer Gives Back

BY MICHELLE ALDEN

Hartline Dacus Barger Dreyer LLP (HDBD) has been serving clients since 1994, with offices in Dallas, Corpus Christi, and Houston. Beyond their work in product liability litigation and a broad spectrum of practice areas—from personal injury defense, commercial litigation and toxic torts to warranty and deceptive trade practice litigation—the lawyers pride themselves on supporting the communities in which they live and work in. This desire to give back to the Dallas community led the firm to generously contribute \$30,500 to this year’s Equal Access to Justice Campaign. The firm has a long and distinguished history of contributing to the Campaign. Including this gift, the firm has donated more than \$63,000 to legal aid for the poor since 2007. The Equal Access to Justice Campaign is the annual fundraising campaign which supports the activities of the Dallas Volunteer Attorney Program (DVAP). The firm’s gift makes it possible for DVAP to continue to provide and enhance legal aid to the poor in Dallas, keeping the doors to the courthouse and our overall justice system open to many more people in our community. Since 1982, DVAP has provided, recruited, and trained pro bono lawyers to provide free legal aid to the poor in Dallas. Last year, a 15 member staff supported over 3,000 volunteers in their efforts to volunteer at legal clinics and advise and represent clients.

As HDBD became busier in the past several years, the partners created a Charitable Giving Committee to offer resources where it can. The committee spearheads firm initiatives which focus on pro bono, giving to organizations that their attorneys, employees, and families hold close to their hearts, and recently, funneling resources into Hurricane Harvey relief efforts. The committee is comprised of a representative partner from each office, as well as the firm’s managing partner—**Brian Rawson** (Dallas), **Peter Blomquist** (Houston), **Ann Hennis** (Corpus Christi), and **Jeff Patterson** (Dallas).

Brian Rawson sums up the firm’s philosophy regarding pro bono and contributing to the EAJ Campaign, “HDBD primarily represents major corporations. But we know that the heart of our justice system is that it promises access—not just to our clients—but also to

those who do not have the resources we do. Our gift, we hope, helps fulfill that promise.”

The problem of access to justice in Dallas County is one that DVAP works to correct every day. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near the poverty level, and 42 percent have slim hope of being able to afford an attorney. With annual poverty incomes of \$30,750 for a family of four, justice is a luxury for low and moderate income families.



(Front, L to R): Jeff Patterson, Melissa Dorman Matthews, Vernon Hartline, Stephanie Roark. (Middle): Kyle Dreyer, Wendy May, Jeff Cox, Larry Grayson. (Back): Pryce Tucker, Brian Rawson, Tom Jacks, Scott Edwards.

“We believe in the mission of Equal Access to Justice and are proud to support the lawyers who work with DVAP. In the last several years, HDBD lawyers have had little time to give; we can, however, support EAJ by giving money. We appreciate the leadership of Crain Lewis and Payne Mitchell, and encourage other firms to give as well,” added managing partner Jeff Patterson.

The value of pro bono work lies not only in helping low-income people access the courts, but it also provides an unparalleled training opportunity for young lawyers to learn their craft. In addition, the gratitude of the pro bono clients is a welcome benefit.

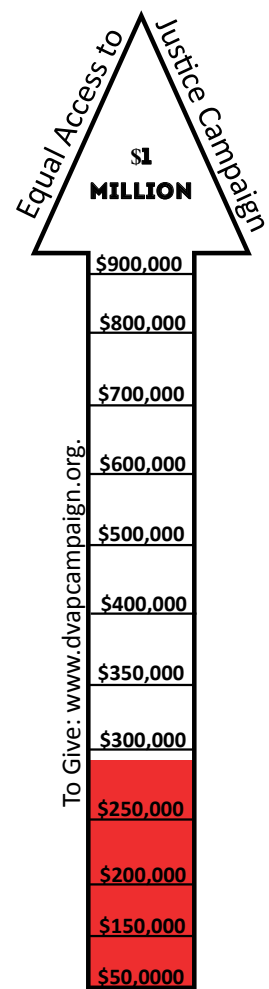
Jeff Patterson reminisced, “As a young lawyer, I was influenced by **Judge Merrill Hartman**, a champion of pro bono. I handled dozens of pro bono matters, and tried several pro bono cases. These are experiences that were valuable to me personally, to my clients, and that I remember twenty years later.”

Many volunteers can attest to similar pro bono experiences, which is why DVAP’s tagline, “pro bono: it’s like billable hours for your soul,” resonates with so many attorneys, paralegals, law students, judges, clerks, and others who donate their time.

The commitment of Dallas attorneys and the Dallas Bar Association (DBA) to the Equal Access to Justice Campaign is impressive. Since 1997, the DBA and Legal Aid have joined forces to raise money for the program, with Dallas lawyers donating almost \$12 million. DVAP is pleased to announce that **Sandra Phillips Rogers**, General Counsel of Toyota, is serving as the Honorary Chair for this year’s Campaign.

DVAP is a joint pro bono program of the DBA and Legal Aid of NorthWest Texas. The program is the only one of its kind in Texas and brings together the volunteer resources of a major metropolitan bar association with the legal aid expertise of the largest and oldest civil legal aid program in North Texas. For more information, or to donate, visit www.dallasvolunteerattorneyprogram.org. **HN**

Michelle Alden is the Director of the Dallas Volunteer Attorney Program. She can be reached at aldenm@lanwt.org.



THANK YOU TO OUR MAJOR DONORS

The Dallas Bar Association and Legal Aid of NorthWest Texas kicked off their annual Equal Access to Justice Campaign benefitting the Dallas Volunteer Attorney Program. A number of Dallas firms, corporations, and friends have committed major support. Join us in recognizing and thanking the following for their generous gifts*:

PRESIDENT’S COUNCIL (\$30,000)

Crain Lewis Brogdon, LLP
Hartline Dacus Barger Dreyer LLP

CHAIRMAN’S COUNCIL (25,000)

Anonymous

DIAMOND (15,000)

AT&T Services, Inc.
Dallas Association of Young Lawyers

PLATINUM (\$10,000)

The Hartnett Law Firm
Haynes and Boone, LLP
Vistra Energy/TXU Energy

GOLD (\$5,100+)

W. Gary and Donna Fowler
Gruber Hail Johansen Hail Shank LLP
Jeff and Annette Patterson

GOLD (\$5,100+)

Baker Botts, LLP
Balch & Bingham LLP
Enoch Kever PLLC
Gibson, Dunn & Crutcher LLP
Latham & Watkins LLP
Simpson Thacher
Nancy & John Solana Advised Fund of The Dallas Foundation
Robert Tobey

Law firms, corporations, and individuals wishing to make a pledge will be prominently recognized beginning at the \$5,000 level each month through January. To donate, contact Michelle Alden, aldenm@lanwt.org. For more information about the Campaign visit www.dallasbar.org/dvapcampaign. *Donors as of press time.



Inside

- 06** Roy Stacy Selected for Professionalism Award
- 09** Who’s Your Client? The Business or the Executive?
- 16** Can’t Shake the Shackles
- 20** DBF Announces Diversity Scholarship Dinner

2018 DBA COMMITTEE PREFERENCES

Please take a minute to submit your committee preferences online. Submit your preferences by Friday, October 13. Please note, if you are on a 2017 Committee **you must still sign up again** if you wish to continue to serve on a Committee in 2018. You will not be automatically assigned to Committees.

Sign up online here: <https://goo.gl/2UT85L>.

Calendar | October Events

Visit www.dallasbar.org for updates on Friday Clinics and other CLEs.

FRIDAY CLINICS

OCTOBER 6-BELO

Noon "How Lawyers Can Use Social Media: The Legality & Ethical Considerations of Email," Bruce Bowman Jr. (Ethics 1.00)* *RSVP to mmejia@dallasbar.org.*

OCTOBER 13-NORTH DALLAS**

Noon "Hot Topics in Employment," Monica Narvaez. (MCLE 1.00)* **Two Lincoln Centre, 5420 Lyndon B. Johnson Frwy., Ste. 240, Dallas, TX 75240.** Parking is available in the Visitor's Lot located in front of the entrance to Two and Three Lincoln Centre. There are several delis within the building. Food is allowed inside the Conference Center. Thank you to our sponsor Fox Rothschild LLP. *RSVP to mmejia@dallasbar.org. Directory photographer available 11:00 a.m.-1:30 p.m.*

OCTOBER 20-BELO

Noon "Keeping Secrets: Evidentiary Privileges in Bankruptcy Cases," Amber Carson and Hon. Harlin Hale. (MCLE 1.00)* *RSVP to mmejia@dallasbar.org.*

MONDAY, OCTOBER 2

Noon **Tax Law Section**
"Tax Reform: Where Are We Now and Where Are We Going?" Eric Solomon. (MCLE 1.00)*

TUESDAY, OCTOBER 3

Noon **Corporate Counsel Section**
"Head in the Clouds," Steve Mann. (MCLE 1.00)*

Tort & Insurance Practice Section
"Supreme Court Update," Justice Debra Lehrmann. (MCLE 1.00)*

6:00 p.m. DAYL Board of Directors Meeting

WEDNESDAY, OCTOBER 4

Noon **Employee Benefits & Executive Compensation Section**
"DOL Initiatives, Updates & and Industry Happenings," Deborah Perry. (MCLE 1.00)*

Solo & Small Firm Section
"What You and Your Clients Need to Know About the ADA," Richard Hunt. (MCLE 1.00, Ethics 0.50)*

Juvenile Justice Committee
Public Forum Committee
DAYL Judiciary Committee

5:30 p.m. **Bankruptcy & Commercial Law Section**
"Ethical and Practical Considerations for Challenges Facing the Bankruptcy Bar: Substance Abuse, Mental Health and Wellness," Amara Durham and Hon. Brenda Rhoades. (Ethics 1.00)*

THURSDAY, OCTOBER 5

8:30 a.m. **Juvenile Delinquency Advanced Topics Conference**
To register, go to www.dallasbar.org or contact mgarcia@dallasbar.org. Presented by the DBA Juvenile Justice Committee. (MCLE 6.25, Ethics 3.00)*

Noon **Construction Law Section**
"What Happens To The Subs While the Owner and GC Battle It Out in Arbitration?," Misty Gutierrez. (MCLE 1.00)*

Family Law Section Board Meeting
Judiciary Committee
St. Thomas More Society

FRIDAY, OCTOBER 6

Noon **Friday Clinic-Belo**
"How Lawyers Can Use Social Media: The Legality & Ethical Considerations of Email," Bruce Bowman Jr. (Ethics 1.00)* *RSVP to mmejia@dallasbar.org.*

MONDAY, OCTOBER 9

Noon **Real Property Law Section**
"Magna Carta and the Charter of the Forest," Joshua Tate. (Ethics 1.00)*

Peer Assistance Committee

TUESDAY, OCTOBER 10

Noon **Business Litigation Section**
"Should Try Your Business Litigation Case Before a U.S. Magistrate Judge - Important Considerations For Counsel and Clients," Hon. Jeffrey Cureton, Hon. David Horan, Hon. Christine Nowak, Hon. Irma Ramirez, and Hon. Renee Toliver, moderator. (MCLE 1.00)*

Government Law Section
Topic Not Yet Available

Immigration Law Section
"Current ICE Enforcement Priorities and Policies," Paul Hunker. (MCLE 1.00)*

Mergers & Acquisitions Section
"In House Counsel Roundtable," Scott Ellis, moderator. (MCLE 1.00)*

Home Project Committee
6:00 p.m. J.L. Turner Legal Association

WEDNESDAY, OCTOBER 11

7:45 a.m. Dallas Area Real Estate Lawyers Discussion Group

9:00 a.m. Directory Photographer at Belo

11:30 a.m. **ADR/Family Law Sections**
"Lions and Tigers and Bears, Oh My!, Dealing with Dysfunctional People in Litigation," Dr. Benjamin Albritton, Othel Burse, Dr. Alexandria Doyle, Hon. Martin Hoffman, and Georganna Simpson. (MCLE 2.00, Ethics 1.00)*

Noon **Minority Participation Committee**
"Practice Essentials for the New Lawyer (or How Not to Look Stupid in Court)," Hon. Dennise Garcia, Hon. Julia Hayes, Hon. Tonya Parker, Hon. Monica Purdy, and Hon. Ernest White. (MCLE 1.00)*

5:15 p.m. Dallas Hispanic Bar Association CLE
LegalLine. *Volunteers needed. RSVP to sbush@dallasbar.org.*

THURSDAY, OCTOBER 12

Noon **Courthouse Committee**
"Advice on E-Filing from the Dallas County District & County Clerks," Felicia Pitre and John Warren. (MCLE 1.00)* Held at George Allen Courts Building, Central Jury Room, 1st floor

Publications Committee
Christian Lawyers Fellowship
DAYL Pro Bono Partners Committee
DAYL Lunch & Learn CLE. *For more information, contact cherieh@dayl.com.*

6:00 p.m. **An Evening With Jon Meacham**
VIP Reception at 6:00 p.m.; Dinner at 7:15 p.m. Benefiting the Sarah T. Hughes Diversity Scholarships. Hosted by the Dallas Bar Foundation. Tickets \$300. To purchase, log on to www.dallasbarfoundation.org or call (214) 220-7487.

FRIDAY, OCTOBER 13

Noon **34th Annual Stephen Philbin Awards Luncheon**
Recognizing Excellence in Legal Reporting.

Keynote speaker: David McCraw. (MCLE 1.00)* Tickets \$50/Tables \$500. Register online at www.dallasbar.org.

North Dallas Friday Clinic
"Hot Topics in Employment," Monica Narvaez. (MCLE 1.00)* **Two At Two Lincoln Centre, 5420 Lyndon B. Johnson Frwy., Ste. 240, Dallas, TX 75240.** Parking is available in the Visitor's Lot located in front of the entrance to Two and Three Lincoln Centre. There are several delis within the building. Food is allowed inside the Conference Center. Thank you to our sponsor Fox Rothschild LLP. *RSVP to mmejia@dallasbar.org. Directory photographer available 11:00 a.m.-1:30 p.m.*

MONDAY, OCTOBER 16

Noon **Labor & Employment Law Section**
"Negotiating the Right to Equal Pay," Christine Hopkins. (MCLE 1.00)*

Trial Skills Section
"Keeping Your Sanity and Your Law License: Avoiding and Dealing With Difficult Clients," Nathan Johnson, Bill Pedersen, and Robert Tobey. (Ethics 1.00)*

TUESDAY, OCTOBER 17

Noon **Blockchain Law Study Group**
"Bitcoin and Other Virtual Currencies as Commodities and the Role of the Commodity Futures Trading Commission (CFTC)," Gavin Fearey. (MCLE 1.00)*

International Law Section
"International Joint Ventures: Unique Challenges, Strategies, and Risk Management," Mohammad Alturk and Jorge Gonzalez. (MCLE 1.00)*

DAYL Elder Law Committee

5:45 p.m. DAYL Dinner with the Judiciary

6:00 p.m. DAYL Aid to the Homeless Committee
Dallas Hispanic Bar Association

WEDNESDAY, OCTOBER 18

8:00 a.m. **Intellectual Property Law Section**
"Table Discussion on Ethical Issues and Client Representation Issues Surrounding Attorney-Client Engagement Letters." Held at Blue Mesa (14866 Montfort Dr.) (Ethics 1.00)*

Noon **Energy Law Section**
Topic Not Yet Available

Health Law Section
"Hot Topics in the Business of Medicine and Dentistry," Brad Adatto. (MCLE 1.00)*

Law in the Schools & Community Committee
Library Committee

Pro Bono Activities Committee
Non-Profit Law Study Group

5:15 p.m. LegalLine. *Volunteers needed. RSVP to sbush@dallasbar.org.*

6:30 p.m. DAYL Annual Meeting

THURSDAY, OCTOBER 19

Noon **Appellate Law Section**
"Personal Jurisdiction Update," Katherine Elrich. (MCLE 1.00)*

Minority Participation Committee
Christian Legal Society

"Faith in Practice Series," Harriet Miers.

DAYL Animal Welfare Committee

DAYL Lawyers Against Domestic Violence CLE

Dallas LGBT Bar Association

J.L. Turner Legal Association CLE

3:30 p.m. DBA Board of Directors Meeting

FRIDAY, OCTOBER 20

11:30 a.m. **Day of Civility & Professionalism**
"A special program promoting civility presented by the DBA and ABOTA. (Ethics 2.00)* For more information, contact kzack@dallasbar.org.

Noon **Friday Clinic-Belo**
"Keeping Secrets: Evidentiary Privileges in Bankruptcy Cases," Amber Carson and Hon. Harlin Hale. (MCLE 1.00)* *RSVP to mmejia@dallasbar.org.*

DAYL Lawyers Against Domestic Violence Committee

SATURDAY, OCTOBER 21

9:00 a.m. DBA Community Day of Service. *For more information, or to volunteer, log on to*

www.dallasbar.org/dbacommunitydayofservice.

9:30 a.m. DHBA's Dallas Latina Leadership Program. *For more information, log on to www.dallashispanicbar.com.*

MONDAY, OCTOBER 23

Noon **Science & Technology Law Section**
"Supply Chain Security Issues," Andy Purdy. (MCLE 1.00)*

Securities Section
"The Corporate Securities Attorney - Ethical and Liability Concerns," Prof. Marc Steinberg. (Ethics 1.00)*

Celebrate Pro Bono Week: DVAP/ JTLA CLE
"Handling a DVAP Divorce," Ebony Rivot. (MCLE 1.00)*

DAYL Membership Committee

TUESDAY, OCTOBER 24

9:00 a.m. **Celebrate Pro Bono Week**
"Kinship Custody." (MCLE 4.00)*

Noon **Probate Trusts & Estates Law Section**
"Legislative Update," Craig Hopper. (MCLE 1.00)*

American Immigration Lawyers Association
DAYL Lawyers Promoting Diversity Committee

6:00 p.m. **Annual Evening Ethics Program**
"Annual Evening Ethics Program," Hon. Kerry Fitzgerald, E.X. Martin, Frank Stevenson, and Johannes Walker. DBA members: \$40, Non-members: \$90. *RSVP required, contact mmejia@dallasbar.org. (Ethics 3.00)**

WEDNESDAY, OCTOBER 25

Noon **Collaborative Law Section**
"The Splitting Syndrome: How to Keep Unity in Your Case," David S. Bouschor, II, MaryAnn Kildebeck, Camille Milner, and Steve Walker. (MCLE 1.00, Ethics 0.25)*

DAYL Foundation Board Meeting
DVAP New Lawyers Luncheon. *For more information, contact reed-brownc@lanwt.org.*

Municipal Justice Bar Association

5:00 p.m. **Celebrate Pro Bono Week: DVAP Belo Legal Clinic**
Volunteers needed. For more information, contact reed-brownc@lanwt.org

THURSDAY, OCTOBER 26

Noon **Criminal Law Section**
"Federal Magistrate Judges: A Panel Discussion - the CJA and Best Practices," Hon. David Horan, Hon. Irma Ramirez, Hon. Renee Toliver, and Hon. Paul Stickney. (MCLE 1.00)*

Environmental Law Section
"EPA's Superfund Task Force Recommendations," Stephen Fitzgerald. (MCLE 1.00)*

Celebrate Pro Bono Week
"Expunction," Douglas Gladden and Karen Wise. (MCLE 1.00)*

Christian Legal Society

DAYL Wellness CLE

Dallas Women Lawyers Association Board Meeting

6:00 p.m. DAYL Happy Hour Celebrating Cherie Harris' 25th DAYL anniversary. At 2616 Commerce Street. Sponsored by O'Neil Wyszocki Family Law.

FRIDAY, OCTOBER 27

9:00 a.m. **Celebrate Pro Bono Week: Probate Symposium**
"Probate Symposium." (MCLE 7.00)* Co-sponsored by DVAP and DAYL Elder Law Committee.

Noon **Intellectual Property Law Section**
"Administrative Law Fundamentals and Strategies for IP Lawyers," Donald Puckett and Chris Rourk. (MCLE 1.50)*

DAYL Solo & Small Firm Committee

MONDAY, OCTOBER 30

Noon **Fireside Chat with Mayor Mike Rawlings**
Presented by the DBA Public Forum Committee. *RSVP to sevans@dallasbar.org.*

TUESDAY, OCTOBER 31

Noon **Legal History Discussion Group**
"Lawyers and Slaves on Galveston Island," Prof. Jason Gillmer. (MCLE 1.00)*

The Dallas Bar Association 34th Annual Stephen Philbin Awards Luncheon

Friday, October 13, 2017
Noon at the Belo Mansion

Tickets: \$45 (\$450 for tables of 10)
Purchase tickets by 9/22 to receive the early bird rate.
Direct ticket inquiries to Judi Smalling
at jsmalling@dallasbar.org



Keynote Speaker
David McCraw
The New York Times

Recognizing Excellence in Legal Reporting

If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Alicia Hernandez at (214) 220-7401 as soon as possible and no later than two business days before the seminar.

All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.

*For confirmation of State Bar of Texas MCLE approval, please call Yedenia Hinojos at the DBA office at (214) 220-7447.

**For information on the location of this month's North Dallas Friday Clinic, contact mmejia@dallasbar.org.

Brad LaMorgese

'Can't imagine doing anything else.'

Brad LaMorgese has always loved puzzles and ferreting out answers to difficult problems. An avid writer and voracious reader as well, Brad seemed destined to go to law school.

"I knew I wanted to be a trial lawyer, and Family Law is one of the most interesting and rewarding ways to be a trial lawyer," says Brad, whose practice focuses on complex divorces involving disputes over jurisdiction, premarital agreements, business valuations and other hard-to-resolve disputes, at both the trial and appellate level.

YOUR FUTURE OUR FOCUS

His commitment to problem-solving – combined with his love of research and writing – has made him a resource for other attorneys looking for help resolving complex issues.

"I like nothing better than to wrap my head around a big problem and get it to the finish line," he says. "Whether it's working with my clients or other attorneys, I enjoy helping other people solve their problems. I can't imagine doing anything else with my life."

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Richard R. Orsinger, Keith M. Nelson, R. Scott Downing, Jeffrey O. Anderson, William M. Reppeto, Brad M. LaMorgese, Amber Liddell Alwais, Lon M. Loveless, Marilea Lewis, Paula A. Bennett and Hunter Lewis are Board Certified in Family Law by the Texas Board of Legal Specialization. Richard Orsinger is also Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. Chris Oldner is Board Certified in Criminal Law by the Texas Board of Legal Specialization.



President's Column

Stronger Together

BY ROB CRAIN

As we go to print on this column, we are only a short time removed from Hurricane Harvey ravaging a swath of Texas with rainfall levels never seen before in our country. The death toll continues to climb, flood waters continue to recede, and the unknown effects of disease and infrastructure-failure will soon become apparent. From the City's founder, John Neely Bryan, to present day community leaders, lawyers help shape the city of Dallas and beyond. It may, however, be in the face of tragedy and hardship where lawyers show their true heart.

In the aftermath of Hurricane Katrina, thousands of evacuees migrated to Dallas. They were housed in multiple shelters around Dallas. Such an unprecedented migration brought challenges never experienced by our city. Individuals and families were cramped on concrete floors without enough cots or blankets to go around. Many of the evacuees lost their homes, cars, jobs, and less meaningful but important items like drivers licenses, passports, medications, clothes, and cell phones. Children were displaced from their schools and getting behind in their coursework. These immediate needs gave way to more complicated problems such as rent obligations even though their homes were not livable, insurance claims complicated by coverage issues of wind versus flood damage, and many other unforeseen legal complications. Many evacuees were swindled by the unscrupulous who routinely prey on disaster victims.

In addition to the practical and logistical challenges, evacuees faced a complexity of emotions—fear, anxiousness, sadness, hopelessness, anger, and more. The City of Dallas has a big heart. Community leaders, elected officials, and people from all walks of life pitched in to meet the needs of our new residents. It would have been easy for people to sit in their dry homes with a benign attitude for circumstances that did not affect them. But that is not how the people of Dallas respond. Over the course of months, basic needs were met, children were assimilated into local schools, assistance was provided to re-integrate evacuees to their homes in Louisiana or to make homes in new places.

Likewise, free legal aid was provided to the evacuees. **Alicia Hernandez**, now the DBA's Executive Director, then the Director of the Dallas Volunteer Attorney Program (DVAP), was on the front lines sorting through how to help. Through funding from the Texas Access to Justice Foundation (TAJF), Legal Aid of NorthWest Texas (LANWT) hired **Maryann D'Aniello** to lead their response. Maryann was no stranger to legal aid as she routinely volunteered at DVAP. For those of you unfamiliar with the organizations, DVAP and LANWT are the primary legal aid agencies for much of north Texas and beyond. They coordinate and partner on many fronts, and both are recipients of funds from the DBA's annual Equal Access to Justice Campaign (EAJ).

Initially, Alicia and volunteer attorneys loaded up tables and chairs into a van, traveled downtown, and set up a free legal aid station on the sidewalk under a bridge near Reunion Arena. Legend has it that then DBA Immediate Past President, **Rhonda Hunter**, not only dispensed free legal advice, but also assisted with barbecue preparations in the adjacent parking lot.

Eventually, DVAP and LANWT were allowed inside the shelter where they continued to advise evacuees, not only during the time of the temporary shelter, but also over the course of the next year while evacuees attempted to rebuild their lives. This is one of the lessons learned from Hurricane Katrina—legal issues for those affected by such storms continue well beyond the closing of shelters and the assimilation back into homes.

The lessons from Hurricane Katrina are serving well the evacuees from Hurricane Harvey. The Dallas Convention Center was immediately set up with cots to serve 5,000 people. Corporations and agencies like Walmart, AT&T, Verizon, Dallas Independent School District, the Texas Department of Motor Vehicles, the Salvation Army, and many others immediately set up stations inside the shelter to provide free food, medications, clothing, replacement cell phones, replacement drivers licenses, enrollment of students into local schools, and many other services. Likewise, DVAP and LANWT partnered with Disability Rights Texas to provide free counseling and legal advice to all those displaced. It is an impressive scene of support, collaboration, and kindness.

Due to the intense response to the needs of the evacuees, it appears the Convention Center shelter will complete its service much sooner than expected. The need for legal services, however, is expected to continue for many months.

As we enter into Fall and the coming holiday season, the Equal Access to Justice Campaign is in full motion. The Dallas Volunteer Attorney Program was started by a band of volunteers led by **Judge Merrill Hartman**. They initially provided free legal clinics out of a local church. In the years after, the EAJ Campaign was created to help fund DVAP. This need is greater than ever as other funding for legal aid is increasingly in jeopardy.

Service is the cornerstone of the Dallas Bar. Last year over 1,100 attorneys volunteered through DVAP. More than 2,466 clients were provided free legal assistance. DBA service projects are diverse and many, but what may be our most important collective effort is ensuring that those well below the poverty line have equal access to a lawyer. As Judge Hartman believed, "Justice for All" means access to the courts starts with access to a lawyer.

This month I ask you to consider your participation in our tradition of service. Not only can you make a donation to the EAJ Campaign or serve as a volunteer attorney, you can also participate in the third annual Day of Service on Saturday, October 21. The DBA's Community Involvement Committee founded a lawyer-led day to encourage volunteering and promote good relations among lawyers and the Dallas community. You can learn more at dallasbar.org.

Your service is a pillar of our community, as well as to those who unexpectedly become part of our community. It is humbling to be witness to all that you do. Thank you.

Stronger Together
Rob

HEADNOTES

Published by:
DALLAS BAR ASSOCIATION

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Phone: (214) 220-7400
Fax: (214) 220-7465
Website: www.dallasbar.org
Established 1873

The DBA's purpose is to serve and support the legal profession in Dallas and to promote good relations among lawyers, the judiciary, and the community.

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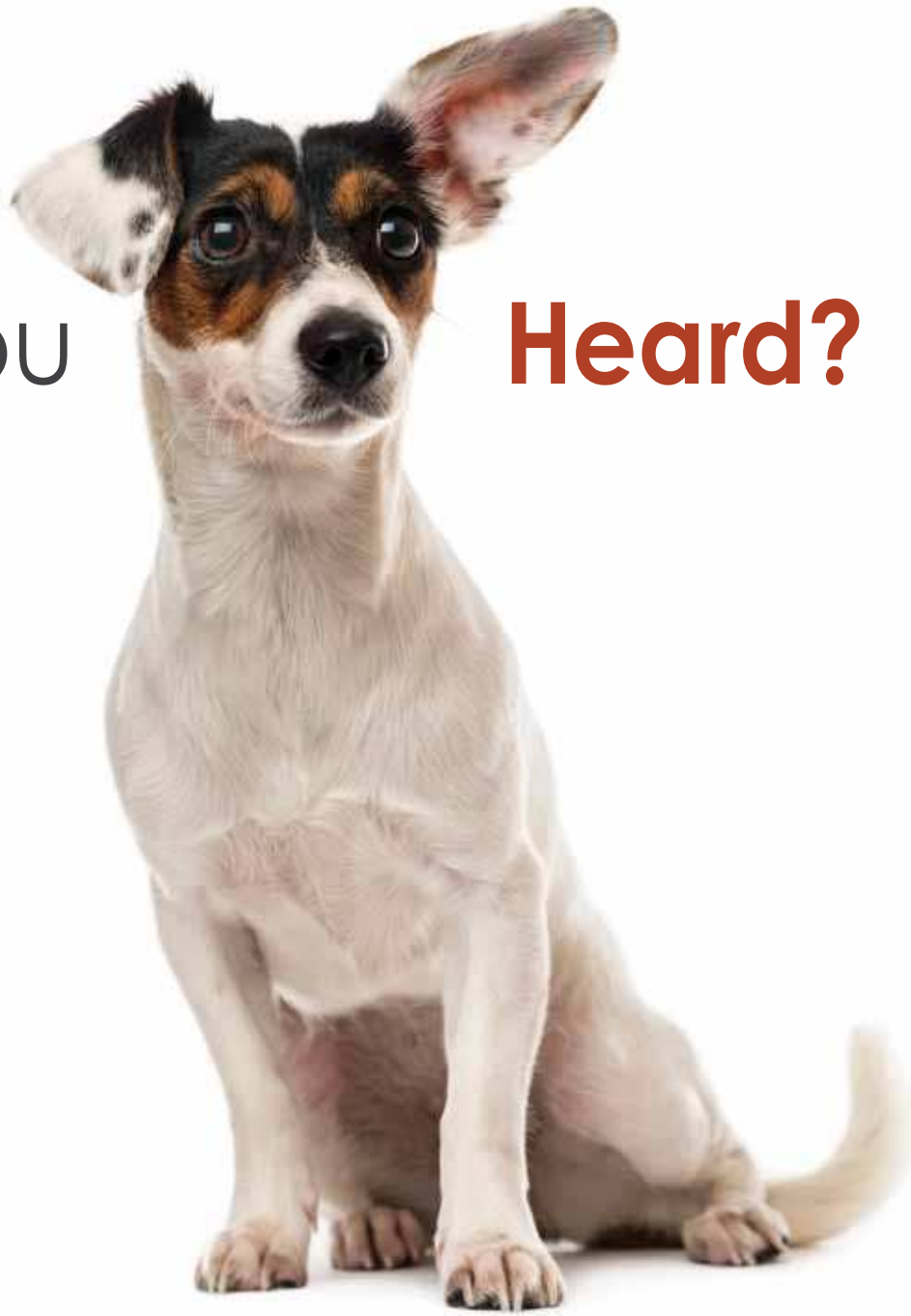
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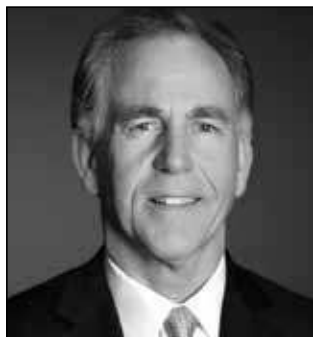
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Roy Stacy Selected for Professionalism Award

BY JENNIFER GREEN

The 2017 recipient of the Morris Harrell Professionalism Award, **Roy L. Stacy**, of Stacy Conder Allen LLP, is an inspiration and exemplar for trial lawyers and legal practitioners throughout Texas. Graduating first in his law school class with honors from Baylor Law School in 1974, Mr. Stacy set out on the path of the trial lawyer and found his passion in its challenges. He has been practicing trial law for more than 40 years, and founded his current law firm, Stacy Conder Allen, around the concepts of integrity and dedication to client-centered practice of law. His attention to high standards has paid off, with many of the firm's clients and employees in for the long haul.

Focusing on personal injury law, specifically insurance defense litigation, and on commercial litigation and malpractice litigation, including claims for misrepresentation and breach of fiduciary duty, Mr. Stacy understands how the practice of law stands apart from many, more

technology-driven, fields of modern endeavor in its people-centered approach. He has built a reputation for effective and efficient litigation for both insurance companies and their insureds, as well as for successfully representing insurance companies and agencies in first party bad faith cases and coverage disputes.

The Dallas Bar Association and the Texas Center for Legal Ethics and Professionalism this year recognize Roy L. Stacy as the Texas attorney who stands as our beacon of professional conduct and character, one that we might all hope to emulate. Mr. Stacy has been recognized as one of Texas' Super Lawyers by Thomson Reuters since 2003. Board Certified by the Texas Board of Legal Specialization



Roy Stacy

in Personal Injury Trial Law in 1999, Mr. Stacy has also been admitted to the various U.S. District Courts of Texas, to the U.S. Courts of Appeals in the 5th and 11th Circuits, and to the ultimate venue, the U.S. Supreme Court. He has also served as appellate counsel in the Texas Supreme Court and in the United States Court

of Appeals for the 5th Circuit.

Attorney **David Elrod**, of Shackleford, Bowen, McKinley & Norton, has known Roy Stacy since 1989 as a close colleague and onetime partner in a firm. He speaks of Mr. Stacy and his qualities as a lawyer and as an individual with the highest praise: "Roy is one of the best trial lawyers I know and more importantly one of the best individuals I have had the privilege to practice law with. His integrity is one of his major strengths. You can simply take him at his word."

Mr. Elrod is just one of many attorneys in Texas who admire Mr. Stacy's ideals. **Rob Crain**, President of the Dallas Bar Association, agrees. He lauds Roy Stacy as an exemplary member of the Bar who personifies professionalism and integrity in his daily practice and dealings with his peers.

"Roy Stacy sets the standard for the way lawyers should conduct themselves. Never one to boast or seek the spotlight, he earns the respect of every lawyer who works with him. He is the epitome of genuine, trustworthy, ethical and professional," said Mr. Crain.

"As a Plaintiff's trial lawyer, it is always a good news/bad news scenario when Roy appears as defense counsel in a case. The good news is you will be working with one of the most congenial, honest, and quality attorneys in the nation. That is also the bad news; you can count on the jury liking and trusting Roy as well. No matter how bad the case may be for the defendant, you know Roy will put on the best face for his client and keep the damages to a minimum. For a person who always downplays his achievements, it is with a lot of joy that the Dallas Bar Association proudly recognizes Roy Stacy, one of our true statesmen and role models," added Mr. Crain.

In a difficult, demanding, and often draining profession, one which exists largely because people have made mistakes and need learned guidance to help them rectify these difficulties as best they can, we can hold Mr. Stacy's model of professionalism, integrity, and client-centered practice as an example to help us through our own daily tribulations in the practice of law.

It is with great pleasure that the Dallas Bar Association and the Texas Center for Legal Ethics and Professionalism honor Mr. Roy L. Stacy with the well-deserved Morris Harrell Professionalism Award at the DBA's Awards Luncheon on Tuesday, November 7, noon at the Belo Mansion. Come celebrate the highest standards of our profession on November 7 at the award ceremony and recognize Roy Stacy as one of the profession's best exemplars of what we all try to stand for. **HN**

Jennifer Green is an attorney at Kenneth G. Wincorn and Associates, P.C. She can be reached at jgreen@wincorn.com.



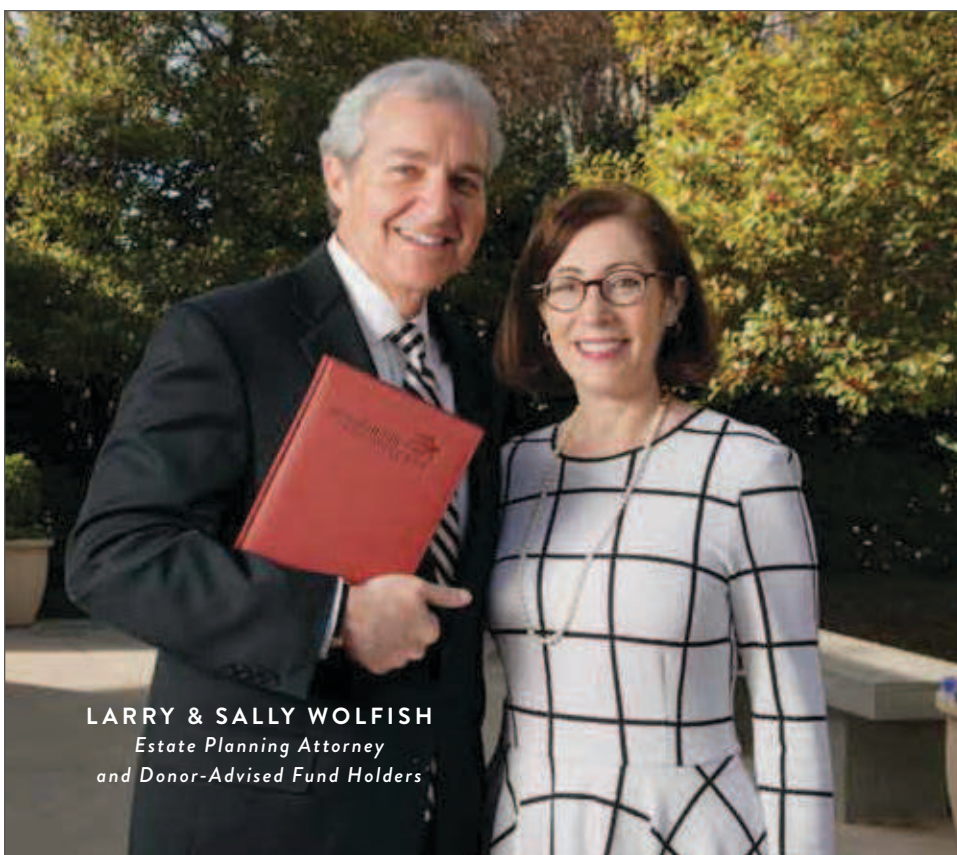
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Who's Your Client? The Business or the Executive?

BY BRITTA STANTON

You are sitting in a deposition with the CEO of a company. You have been together for the past 10 working hours, preparing her for her deposition. She is ready. You are ready. You have a good relationship with her, and she is in charge of a major client. You give her a nod and she is sworn in. Things are going exactly as you prepared her and you both relax. Opposing counsel asks if she is represented today and she says, "Yes, my lawyer is here," and nods her head in your direction. Opposing counsel notes on the record that she is referring to you. You say nothing.

Six months later, the CEO is fired and tries to bring a lawsuit against you for breach of fiduciary duty for things related to her deposition preparation.

Who was your client during the deposition? The CEO, the company, or both?

First, you did represent the company. That one is easy, right? You are the company's lawyer and the company was a party. But the thing that kept you from clarifying on the record that you were *only* the company's lawyer were privilege issues. You did not want to reveal what was discussed during the preparatory sessions. So, were those preparatory sessions and other communications with *the executive* privileged? Yes, they undoubtedly were.

In *Upjohn Co. v. United States*, 449 U.S. 383 (1981) the Supreme Court held that the attorney-client privilege applies to communications by any level employee to corporate counsel—as long as the communications are to seek legal advice about a matter within the employee's scope of employment. *Upjohn* at 394-95.

Lesson one? Always provide employees with an *Upjohn* warning during your interviews or deposition preparation sessions with something like the following: "You know you are not a defendant [or plaintiff] in this case, the company is. So I represent the company, but I am not your lawyer, personally." During interviews where there are potential employee/company conflicts, you should also consider a written waiver and a warning to the employee that the information reported (and any attorney-client privilege) is within the company's control.

This should solve the problem, because your CEO will not testify that you are "her" lawyer in the first place. And you will know to clarify on the record that you are not her lawyer, but that you represent the company. You will feel confident doing this, knowing your preparation session is still privileged.

But what is done is done. So, **did you represent the CEO** personally

during the preparation session because she said you did? You may have. An attorney-client relationship can arise with an organization's employees even without a formal agreement. In fact, an agreement to form an attorney-client relationship can be implied from the parties' conduct. *Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 265 (Tex. App. --Corpus Christi 1991, writ den.).

Okay, am I safe? I stated "I represent Ms. CEO for the limited purposes of this deposition." You are probably safe. You probably did not represent the CEO. An attorney-client relationship may arise by implication if the lawyer knows a person reasonably expects him to provide legal services but does nothing to correct that misapprehension. See *Span Enters. v. Wood*, 274 S.W.3d 854, 857-58 (Tex.App.--Houston [1st Dist.] 2008, no pet.). You can argue you corrected the misapprehension when she said you are her lawyer by describing the limited purpose. A better practice is not to create an attorney client relationship with the CEO for a six hour deposition. There is no need for it, since your preparation session is already privileged.

How does this come up? And how does it get resolved? Hopefully, it does not arise. But if it does, it usually is not good for the lawyer. First, you may have to withdraw from representing everyone (including your

corporate client) if there are multiple representations and a conflict develops. Unless you can get a client to consent and waive the conflict, you have to withdraw. If you do not, you could be disqualified under Texas Disciplinary Rule 1.09. Further, you could be subjected to attorney discipline under Disciplinary Rules 1.05-1.09. And, as in our scenario at the outset, there is a possible breach of fiduciary duty claim you might have to confront. Even if there are not actual damages, courts have held that fee-forfeiture can be an appropriate remedy in certain circumstances where withdrawal is required due to a conflict. *Burrow v. Arce*, 997 S.W.2d 229, 240 (Tex. 1999).

So what is the best future practice? When you are in doubt, be clear you do not represent the client. Give a good *Upjohn* warning. Put notes of making the warning in your prep or interview notes. It could help you during an *in camera* review in the future. Next? Get consent or an *Upjohn* waiver if you think a conflict is likely to arise. Finally, if a conflict has arisen and it is too late to take the steps mentioned above, withdraw from the case before consequences get more serious. **HN**

Britta Stanton is a partner in the firm Lynn Pinker Cox & Hurst, LLP. She can be reached at bstanton@lynnllp.com



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What To Do When the Judge Rules Against You

BY BRAD LAMORGESE

None of us relish receiving a ruling that goes against the client. However, once the initial shock subsides, you realize that it is part of the process and you have the opportunity to turn things around, if the ruling was legally wrong. The key is understanding what, if anything, to do about the error.

If the bad ruling occurs early on in the case, there are several things to consider. First, would it be appropriate, given the client's resources, to associate appellate counsel to help with the rest of the case? This can frequently be a valuable asset and take some of the technical load off of the trial lawyer, even if the case is not a good candidate for a mandamus or other emergency relief. Second, especially when mandamus applies, consider whether or not to seek immediate relief to the Court of Appeals. This primarily applies to discovery rulings where a client or case may be compromised. It is also pos-

sible to address legal errors surrounding arbitration, or whether initial statutory hurdles to a suit were properly met.

Though successful mandamuses are rare, many of these types of cases can reach the Court of Appeals before a final judgment. It is also worth examining filing a more detailed motion for reconsideration if the error occurs before a final judgment is entered.

The most common circumstance presenting grounds for appeal is when the judge rules against a client at final trial. In this situation, request transcripts and exhibits to identify possible legal error. It is best to bring an appellate lawyer aboard to perform the review, as the trial lawyer may remember details differently from the actual record, and may have some bias. Regardless, an objective reading of the record and a good legal analysis is a must before recommending an appeal.

At this point, an urgent consideration is to request findings of fact and conclusions of law. Generally, this must

be done within 20 days of the judgment, and in some cases even sooner. If the judge does not file findings of fact and conclusions of law within 20 days after the request, you must file a past due reminder within 10 days after the deadline. This is critical as the failure to file a past due notice of findings is the same as never requesting it in the first place. It can result in findings deemed in support of the judgment on grounds other than the actual grounds the court found. It is not necessarily fatal to an appeal if you do not request findings, but it definitely does not help the client's case. Additional findings may be requested within 10 days if the findings are deficient and do not address some of the grounds for recovery.

Once a judgment is issued, the next deadline of concern is the 30 days you have in which to file a notice of appeal or motion for new trial. Most appeals are preceded by a motion for new trial. This not only gives the trial judge one last chance to change the judgment, but also will preserve the legal issues for appeal. Generally it is best to prepare a full briefing just as it will be presented to the Court of Appeals.

This will help the litigant avoid waiver and provide the best chance of the trial judge changing the ruling.

Finally, and perhaps most importantly, is the evaluation of the appeal. The desire to appeal an error should be balanced against the standards of review on appeal. Standards of review like abuse of discretion are the most difficult to prove, while others, like the de novo standard, are typically the most favorable. Economics must also be considered, looking at projected attorney's fees, the costs of the clerk and reporter's records, as well as the expected duration of the appeal. A single-issue appeal of a one-day trial, for example, will most likely be a lot less expensive than an appeal of a two-week bench trial with 10 issues.

A bad judgment by a trial court is not the end of the story. On the contrary, it can be a great opportunity to turn things around for the client. A proper strategy, preservation of the client's legal rights, and a well-executed appeal can mean a complete reversal for the client. **HN**

Brad LaMorgese is partner at Orsinger, Nelson, Downing & Anderson, LLP. He can be reached at brad@ondafamilylaw.com.

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Requirements of Pre-Suit Discovery Under Rule 202

BY SEAN MCCAFFITY AND JODY RODENBERG

Petition Requirements

Rule 202 of the Texas Rules of Civil Procedure allows a person to ask a court for oral depositions or depositions on written questions to obtain testimony for use in anticipated suit or to investigate a potential claim.

The ability to perform pre-suit discovery is not absolute. Nuances have developed in certain practice areas when utilizing this tool. Accordingly, thorough legal research prior to filing a Rule 202 Petition is required. Always start with reading Rule 202 in its entirety. The scope of discovery is the same as if the anticipated suit had been filed. However, the depositions are governed by the rules applicable to non-parties.

The first step in obtaining pre-suit discovery is filing a pre-suit petition with the court. Rule 202 identifies eight requirements. It must (1) be verified, (2) filed in the proper county, (3) be in the name of the petitioner, (4) state either that the petitioner anticipates suit in which he or she may be a party or that the petitioner is investigating a claim, (5) state the subject matter of the anticipated action, (6) contain either the names of the persons expected to have interests adverse to the petitioner, including their address and telephone number, or state such information cannot be ascertained through diligent inquiry, (7) include the name, address and telephone number of the persons to be deposed, the substance of their expected testimony, and the reason for obtaining the

testimony, and (8) request an order authorizing the depositions.

Service and Notice

After the petition is filed, it must be served on all persons sought to be deposed and, if suit is anticipated, on all persons expected to have interests adverse to the petitioner in the anticipated suit. Again, this is information that should be included in the pre-suit petition. The pre-suit petition and notice of the hearing must be served at least fifteen (15) days before the hearing.

Interestingly, Rule 202.3 allows for service by publication on persons not named, and contains specific rules on the contents of the publications and the length of time it must run. There are also unique requirements for service in probate cases, which should be considered if the petitioner seeks to take a deposition in anticipation of an application for probate of a will. It is worth noting courts can shorten or lengthen the notice periods, if appropriate.

Obtaining an Order

After the pre-suit petition has been filed and all parties have been given proper notice, a hearing will be held. A court must order the deposition be taken if it finds that (1) allowing the petitioner to take the deposition may prevent a failure of delay of justice or (2) the likely benefit outweighs the burden or expense.

In deciding whether the likely benefit outweighs the burden or

expense, courts may treat issues related to the revelation of trade secrets differently than other types of information. At least one court of appeals incorporated the burden-shifting analysis typically used in litigation when determining whether a trade secret should be disclosed in pre-suit discovery. In litigation, the party resisting discovery first establishes certain information is, in fact, a trade secret. The party seeking discovery must then establish the requested information is necessary for a fair adjudication of its claims. This is typically accomplished by identifying exactly how the lack of the information will impair the ability to present the case on the merits. Regardless of the area of law, litigants should keep this in mind when preparing for the hearing.

When drafting the order granting the depositions, you must state whether the deposition will be taken on oral examination or on written questions. If the order does not state the time and place of the deposition, the petitioner must notice the deposition as required by Rule 199 or 200 of the Texas Rules of Civil Procedure. If the court finds any protections are necessary or appropriate, such protections must be contained in the order. **HN**

Sean McCaffity is a partner at Sommerman, McCaffity and Quesada, LLP and can be reached at smccaffity@textrial.com. Jody Rodenberg is an associate at the firm and can be reached at jrodenberg@textrial.com.

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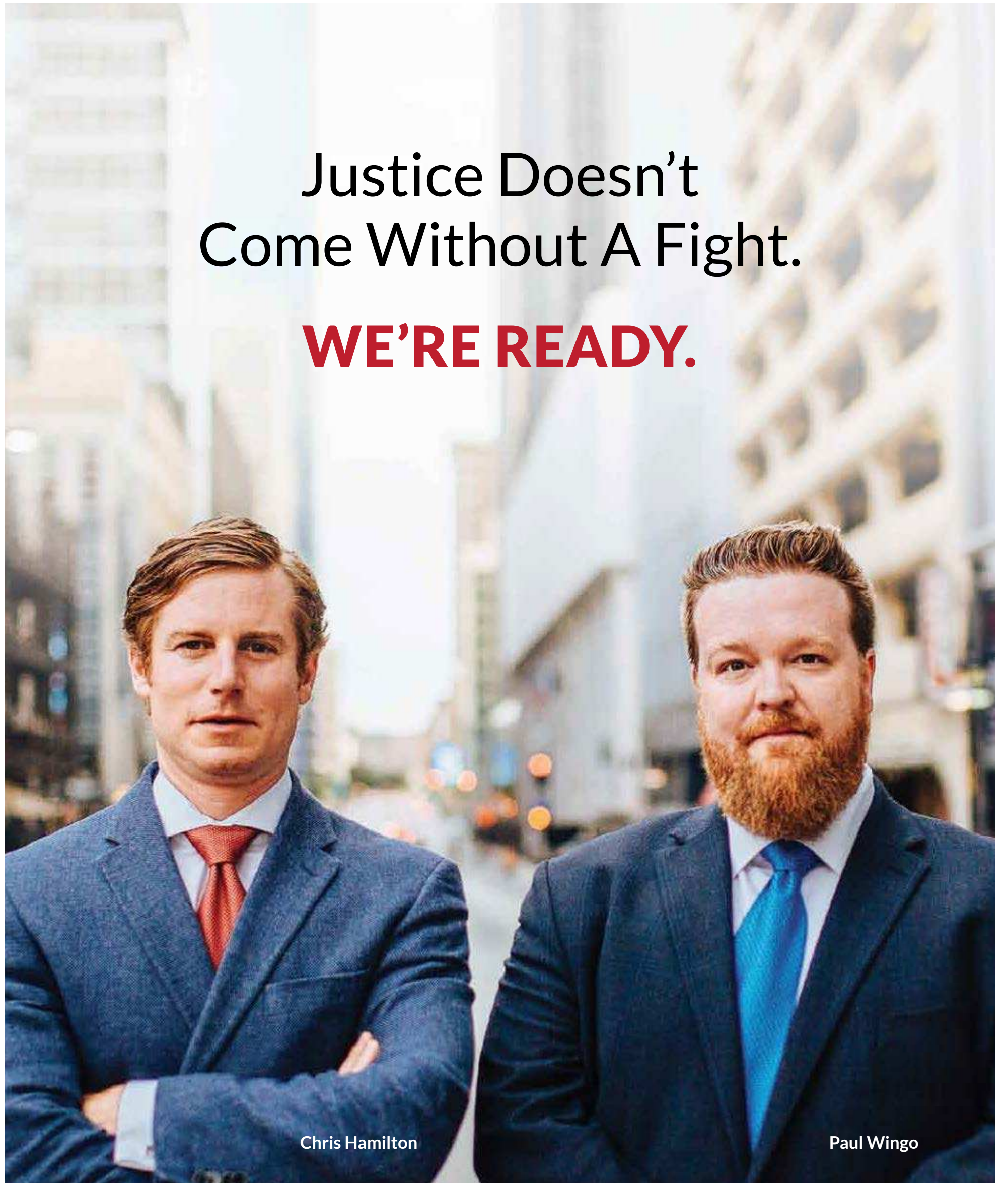
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FIRESIDE CHAT WITH LESLEY STAHL

On Friday, August 25, the DBA and DWLA hosted a Fireside Chat with Lesley Stahl to celebrate Women's Equality Day. Ms. Stahl entertained the crowd with stories and accounts of her early experiences at CBS and 60 Minutes, and spoke of the various challenges and hurdles that women sometimes face when advancing in their professions. AT&T was the premier sponsor of the sold-out event. Co-sponsors were Crain Lewis Brogdon, Estes Thorne & Car, and Gardere.



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Focus | Antitrust & Trade/Business Litigation

Can't Shake the Shackles

BY SAM JOHNSON

The U.S. Constitution and the Texas Constitution guarantee a criminal defendant protection from being compelled to be a witness against himself or herself. *U.S. Const. amend. V; Tex. Const. art. I, §10*. The plain language of these documents doesn't reference civil cases, however, SCOTUS long ago held that the privilege "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it." *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924). The Texas Court of Criminal Appeals agrees, stating that "the nature of the protection goes to the questions asked, not the proceeding itself." *Butterfield v. State*, 992 S.W.2d 448, 449 (Tex. Crim. App. 1999).

Several obstacles present themselves, though, in asserting 5th Amendment rights in civil cases:

Timing. Spotting applicability of the privilege early on is crucial, because once a defendant has relayed part of the facts of the allegedly criminal transaction, the privilege is waived. See *Draper v. State*, 596 S.W.2d 855, 857 (Tex. Crim. App. 1980). This can be a challenge, as the pending criminal investigation or case may not be known even to the defendant, let alone their civil attorney. Where injunctive relief is sought, for example, the case may move too quickly for counsel to recognize the need to assert the privilege.

Individuals vs. Entities. In various cases, discoverable documents may

belong to an entity rather than to the defendant(s) individually. However, the privilege is a "purely personal one," and does not apply to entity records and documents. *Bellis v. US*, 417 U.S. 85, 90 (1974). At the same time, though, an individual retains the right to refuse to answer questions on behalf of the company when doing so would put them in criminal jeopardy.

Adverse Inference Rule. Unlike in criminal cases, "it is constitutionally permissible to draw an adverse inference from a party's invocation of the [5th] Amendment in a non-criminal proceeding." *Baxter v. Palmigiano*, 425 U.S. 308 (1976). In other words, the judge may instruct the jury to infer that the defendant's testimony would be harmful to his/her defense in the civil case. Even though assertion of the privilege cannot be the sole basis for liability, and the plaintiff retains the burden of proof, a jury could conceivably run with adverse inference instruction to find liability.

Practical Matters. Otherwise mundane litigation procedures can become landmines where parallel criminal and civil proceedings are pending.

Answer. An unverified answer signed only by counsel does not waive the privilege, whereas a verified denial signed by the defendant can be deemed a waiver as to the facts relating to the defense.

Discovery. The privilege must be asserted every time—in written discovery and in depositions. In deposition, the examining attorney must ask every question they have, leaving the witness's

attorney to instruct not to answer and assert the privilege repeatedly. If the criminal proceeding is resolved before the civil case is, the party-witness should amend discovery responses and offer another, curative deposition to weaken a request and adverse inference instruction. A defendant can serve discovery without waiving the privilege, but jurisprudence disfavors a plaintiff from bringing suit and then hiding behind the privilege in discovery.

Abatement. A parallel criminal proceeding is not usually sufficient to justify abating a civil case, but abatement should be sought right away.

Motion to Seal. Texas strongly favors open courts, and matters touching public concern—such as criminal and related proceedings—typically will not be sealed.

Criminal Defense Counsel. Civil counsel and criminal counsel must work in conjunction to ensure that no criminal liability is created in the civil

case and, to the extent possible, vice versa. A guilty plea is an admission by a party opponent, but pursuant to *Tex. R. EVID. 410*, a plea of *nolo contendere* is inadmissible in a civil case. Still, civil counsel needs to know what type of documents and admissions are necessary to effect the no contest plea to try and ward off harmful admissions in the civil case. At the end of the day, though, most clients would much rather face a civil judgment than jail time.

By recognizing the overlap and the impact each proceeding may have on the other, civil counsel can be a key player in both matters. These considerations should be the subject of frequent, regular, and documented conversations with your client as soon as the need becomes evident. **HN**

Sam Johnson is an attorney at Rosenberg, Johnson & Sparks, PLLC. He can be reached at sam@rjs-legal.com.

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(Above, Left to Right): The Corporate Counsel Diversity panel included Sandra Phillips Rogers, of Toyota USA; Phyllis Perrin Harris, of Walmart; David McAtee II, of AT&T; and moderator Dena Stroh, of North Texas Tollway Authority. The event brought together nearly 100 firm and corporate leaders.



Focus | Antitrust & Trade/Business Litigation

Keeping Client Confidences in the Digital Age

BY JEANNE M. HUEY

Clients text, send Facebook messages, and tweet—often expecting an immediate response from you, their lawyer. Yes, client communication has changed, but our duty to keep client confidences has not.

“Confidential Information” is a term of art that includes all information a lawyer learns that relates to a case, both privileged and unprivileged, regardless of how or when it was learned. (Texas Disciplinary Rules of Professional Conduct 1.05). Without the client’s informed consent or implied authorization a lawyer may not reveal “confidential information”. Remember this definition and that information can be “confidential” as to you under the Rules even if the whole world knows it.

Email has been the primary form of client communication for years, but in some cases the use of unencrypted email presents an unacceptable risk that client confidences will be revealed; sensitive communications may need to take place over encrypted email or another secure medium. (ABA Formal Opinion 477). Other circumstances such as the use of public computers or a client’s work email address pose different risks, and in those cases a lawyer should advise the client about those risks and protect against them.

An even greater risk in the digital age is letting the need for speed override the need for care. Lawyers get paid to think, and our disciplinary rules require that we promptly comply with reasonable requests and keep our clients reasonably informed. (Rule 1.03). Client complaints about the speed and frequency of communications often form the basis of ethics grievances, so while it may be tempting to keep the client happy by immediately responding to every text, you should bear in mind that not every form of communication is appropriate to every kind of content. Critical communications should be in a form that can be preserved and tracked. Before responding, consider whether you can adequately communicate a complex subject in the client’s chosen medium.

Take steps from the outset to manage the client’s expectations about the speed, security, and form of lawyer/client communications. Let the client

know in your fee agreement that because of security and record keeping purposes you use only certain forms of communication, that you will take time to give important advice, and that they should carefully consider the advice you are giving. Consider an automatic response to texts and messages acknowledging receipt and explaining that you will be sending a thoughtful response by email. This will also keep you out of the habit of immediately responding before you have had a chance to fulfill your twin obligations under the Rules to provide good legal advice and communicate that advice with enough detail to permit the client to make an informed decision.

We also live in an era of self-promotion. Marketing experts urge us to post early and often. This makes it all too easy to forget that we have obligations most businesses do not. For example,

the Texas Committee on Professional Ethics recently issued an advisory opinion that focused on the duty to keep client confidences when responding to a client’s negative review online. In that situation the committee held that a lawyer can only respond with a “proportional and restrained response that does not reveal any confidential information.” (Opinion 662). In other words, because of the duty of confidentiality, you cannot defend yourself online; any substantive response would likely reveal confidential client information.

Lawyers are also responsible for their social media use and management. You may have a marketing department, social media director or outside consultant who does this work for you—but whether it is a Facebook update, a series of tweets or your LinkedIn profile you, the lawyer, are responsible for its

content. Keep client confidences on social media sites by limiting any personally identifiable and client-related information in posts. If clients follow you, then know, set, and monitor privacy settings of the social media platforms you use to limit access to personally identifiable information about your followers. This is especially true of information available to advertisers who may target a lawyer’s followers as needing law related goods or services.

In the digital world of speed and self-promotion, it is easy to forget that our duty to keep client confidences comes first. Keeping the issues raised in this article in mind will help protect you from some of the potential pitfalls that come with practicing law in the digital age. **HN**

Jeanne M. Huey is a partner at Hunt Huey PLLC and can be contacted at jhuey@hunthuey.com



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Focus | Antitrust & Trade/Business Litigation

FRCP 26: How are the New Changes Working in Texas?

BY JULIE PETTIT

Out with the old. In with the new. With the 2015 amendments to the Federal Rules of Civil Procedure came a wave of changes. Perhaps the most significant change was the change to Rule 26(b)(1). Rule 26 previously defined the scope of discovery as all matters “reasonably calculated to lead to the discovery of admissible evidence,” an objection that practitioners have recited in discovery objections for decades. In its place is a seemingly new standard—a “proportionality standard.” The new rule requires a party requesting discovery to tailor requests to account for the significance of the information requested and the cost of gathering the information.

The proportionality standard explicitly imposes a responsibility on litigants to tailor their discovery requests to account for the following:

(1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties’ relative access to relevant information; (4) the parties’ resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

Magistrate Judge David L. Horan explained that proportionality concept that is now present in Rule 26 was present in a different section of Rule 26 as early as 1983. *Carr v. State Farm Mut. Auto. Ins.*, 312 F.R.D. 459 (N.D. Tex. 2015).

Judge Horan also pointed out that the new rule potentially places a burden on the party requesting discovery to demonstrate proportionality once an objection is made. For this reason and others, defendants involved in complex corporate litigation, the return to the proportionality concept has likely been seen as good news.

On the other hand, of course, a party resisting discovery may not do so “simply by making a boilerplate objection that it is not proportional.” FED. R. CIV. P. 26, 2015 comm. note. Instead, the resisting party “still bears the burden of making a specific objection and showing that the discovery fails the proportionality calculation” . . . by coming forward with specific information.” *Robinson v. Dallas Cnty. Cmty. Coll. Dist.*, No. 3:14-CV-4187-D, 2016 WL 1273900, at *4 (N.D. Tex. Feb. 18, 2016).

In one recent example, a plaintiff resisting discovery argued that the defendant’s requests exceeded the scope of discovery, calling them “sweeping” and “not proportional,” while disclaiming what it called “a burden . . . to prove obviously improper discovery should not be permitted.” See *Samsung Elecs. Am. Inc. v. Yang Kun “Michael” Chung*, No. 3:15-CV-4108-D, 2017 WL 896897, at *3 (N.D. Tex. Mar. 7, 2017). The court disagreed, reasoning that: “under Fifth Circuit law, the party resisting discovery must show specifically how each discovery request is not relevant or otherwise objectionable. . . . And the 2015 amendments to Rule 26 did not change this allocation of burdens.” *Id.* at *12–13.

The court also stopped short of stating that the burden to demonstrate proportionality is that of the resisting party alone, indicating “[t]he parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.” *Id.* at *14 (quoting *Carr*, 312 F.R.D. at 467 (quoting FED. R. CIV. P. 26, 2015 comm. note)).

No matter what new burden—if any—the amended rule places on the parties requesting or resisting discovery, it is forcing parties and the courts to address both the cost and expense of discovery in relation to its relevance and importance.

In one example, Judge Horan found 564 requests for admissions to be proportional where they were “well-parsed, discrete questions about relevant facts that present the likely benefit of facilitating proof as to the issues in this case and of narrowing its triable issues.” See

McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co., No. 3:14-CV-2498-B, 2016 WL 98603, at *15 (N.D. Tex. Jan. 8, 2016)

In another recent case, proportionality factors were looked at like a checklist. See *RealPage, Inc. v. Enter. Risk Control, LLC*, No. 4:16-CV-00737, 2017 WL 1165688, at *6 (E.D. Tex. Mar. 29, 2017).

So how do lawyers best prepare to fulfill their “collective responsibility” when it comes to proportionality?

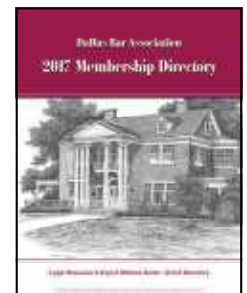
From a practical standpoint, lawyers should be aware that: (1) a party requesting discovery must establish that its discovery requests satisfy the proportionality factors; and (2) a party responding to discovery must make sufficiently specific proportionality objections. **HN**

Julie Pettit is the founder of The Pettit Law Firm. She can be reached at jpettit@pettitfirm.com.

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Foundation Announces Annual Diversity Scholarship Dinner Fundraiser

STAFF REPORT

The Dallas Bar Foundation (DBF) is pleased to announce that for its 7th annual fundraiser dinner event, **Jon Meacham**, Pulitzer Prize author and presidential historian, will be the keynote speaker. The event, *An Evening with Jon Meacham*, will be held on Thursday, October 12, 2017.

This annual event, which debuted in 2011, under the leadership of **Rob Roby** and **Mark Shank**, raises funds for the Foundation's Judge Sarah T. Hughes Diversity Scholarship program for minority law students. Previous events, which have featured David Brooks, Doris Kearns Goodwin, former Senator Bill Bradley, Ken Burns, David McCullough, and Bob Woodward as keynote speakers, were sold out, and organizers are expecting a similar response this year.

"We are excited to have Jon Meacham join us, for this year's event," said **Frank Stevenson**, DBF Chair, noting that Meacham has written three #1 *New York Times* Best Sellers on Presidents George H. W. Bush, Thomas Jefferson, and Andrew Jackson. In addition to Meacham being awarded the Pulitzer Prize for *American Lion*, *Andrew Jackson in the White House*, Stevenson remarked that Meacham has also been named a "Global Leader for



Jon Meacham

Tomorrow" by the World Economic Forum. "We are looking forward to his discussion of Andrew Jackson and the presidency in general." **Talmage Boston**, a DBF Trustee and member of the Executive Committee, will introduce Meacham and serve as interviewer again this year.

The evening event is a great venue for law firms and businesses to entertain guests and meet Meacham while supporting the Hughes Scholarships, which serve to enhance the diversity pipeline for the Dallas legal community. Stevenson commented, "As the Chair of the Dallas Bar Foundation Board of Trustees, I have the privilege of helping select the recipients of the Hughes Scholarship. It is a life-changing

event for the students to receive this full-tuition scholarship and be named a Hughes Scholar."

The scholarship program, which the event supports, was established in 1981 and promotes diversity in the Dallas legal profession by attracting exceptional minority student leaders to Dallas and the three area law schools. To date, the Foundation has awarded over \$2.3 million in Hughes Scholarships to 58 students. The recently selected 2017 Hughes Scholarship recipient started law school in August and brings the total number of Hughes Scholars to 59 students, who have been provided an opportunity to achieve their dream of becoming a lawyer and practicing in Dallas.

Together we are making a difference and addressing the need for increased diversity in the North Texas legal community.

For information about table sponsorships and tickets for "An Evening with Jon Meacham" please contact Elizabeth Philipp at the Dallas Bar Foundation, (214) 220-7487, or go to <https://www.dallasbarfoundation.org> for more information. **HN**

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2. Describe your most compelling pro bono case.

I cannot describe the most compelling case because I cannot pick just one! Cases involving grandmothers who could not afford legal help but who were trying to get custody of grandchildren due to neglect or abuse were always important to me.

3. Why do you do pro bono?

I believe that pro bono is the only way that some deserving people are able to get help. Pro bono has made me ever mindful of my many, many blessings in life and encouraged me to support organizations that assist people in need.

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Focus | Antitrust & Trade/Business Litigation

Texas Damages Law: Four New Developments

BY CONNOR G. SHEEHAN

Damages are a central focus in nearly every case. Here are a few recent developments that may impact your practice:

Lost Profits Damages

In *Southwestern Energy Production Co. v. Berry-Helfand*, 491 S.W.3d 699 (Tex. 2016), the Texas Supreme Court reversed a jury award of lost profits, finding insufficient evidence to support the award. The damage finding at issue was based on expert testimony applying a *fixed* overriding royalty, whereas the third party contract that the plaintiffs contended resulted from a breach of their nondisclosure agreement utilized a sliding scale for the royalty that eventually zeroed out at a specified threshold. The court found the expert's failure to apply the sliding scale royalty was "a critical misstep" that rendered the evidence insufficient to support the lost profit damages awarded. The Court held that while the plaintiffs' expert could rely on the proffered agreement as a benchmark for lost profits damages, the expert was required to consider the precise sliding scale profit formula contained in the agreement. Indeed, it was the fact that the expert had available, but did not correctly apply, the formula that led to the reversal of the damages award.

While financial experts often use averages or approximations in their calculations, *Southwestern* cautions that an expert should not disregard available evidence bearing directly on the lost profits calculation.

Property Damage

In *partial* property damage cases, a property owner has long been entitled to recover both the market value of the property and damages for loss-of-use. Until recently, however, most Texas appellate courts considered loss-of-use damages in total destruction cases an impermissible double recovery. In *J & D Towing, LLC v. American Alternative Insurance Corporation*, 478 S.W.3d 649 (Tex. 2016), the Texas Supreme Court resolved the issue, permitting recovery of loss-of-use damages in total destruction cases. The Court made clear that the availability of loss-of-use damages is not absolute, adding that loss-of-use damages should only be awarded for a period "reasonably necessary" to replace the property; that the damages must be "foreseeable and directly traceable" to the tortious act; and that while "mathematical exactness is not required," the damages must not be speculative. Thus, the facts and circumstances in each total loss case should be carefully examined to determine whether and how much loss of use damages will be appropriate.

Nuisance Damages

The Texas Supreme Court clarified Texas nuisance law through its 54-page opinion in *Crosstex North Texas Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580 (Tex. 2016). The Court defined nuisance as "a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it." *Id.* at 593. While determining what is "substantial, unreasonable and ordinary" for the purpose of nuisance remains a question of fact, the Court made clear that it does not intend to protect landowners from "petty annoyances and disturbances of everyday life." The Court identified damages, injunctive relief and self-help abatement as three remedies that are potentially available in a nuisance action. The type of damages that may be recovered depends on whether the injury is "temporary" or "permanent." If temporary, the owner may recover only for lost use and enjoyment that has occurred up to the time of trial. If permanent, the owner may recover the lost market value of the land affected by the nuisance. The case is significant because it defines the scope of private actions by the public against companies which, given their necessary operations, often create noise that can interfere with others' enjoyment of the use of their property.

Discovery and Damages

FED. R. CIV. P. 26(b)(1) was amended effective December 1, 2015 to explicitly require parties to consider whether the discovery at issue is proportional to the needs of the case. While only a limited number of Texas cases address the recent amendments, the existing case law suggests that some evidence of damages should be presented relative to proportionality when a party is seeking or attempting to restrict the scope of discovery. See *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Commis'n*, 2016 WL 5922315 at *2 (W.D. Tex. Oct. 11, 2016) (the "sheer number of attorneys who have made appearances" was considered "a persuasive demonstration" of the significance of the case such that proportionality was "not at issue in this discovery dispute"); *Robinson v. Dallas County Comm. Coll. Dist.*, 2016 WL 1273900 at *3-4 (N.D. Tex. Feb. 18, 2016) (a party resisting discovery must come forward with specific information to address the proportionality factors); *Labaty v. UWT, Inc.*, 2015 WL 1393641 at *4 (W.D. Tex. Mar. 24, 2015) (denying motion to compel because damages were "relatively low" compared to the cost of production). **HN**

Connor G. Sheehan is with the firm of Dunn Sheehan LLP and can be reached at csheehan@dunnsheehan.com.

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You've Decided to Go Out on Your Own. Now What?

BY AMY MANN

There is no shortage of voices out there offering tips to attorneys who are looking to go out and start their own firm. Unfortunately, with so many lengthy articles, e-books, webinars, and other resources circulating, it can be hard for attorneys to narrow down this information into practical, actionable items they can take to help make their new venture a success.

Here at LawPay, we have worked with countless attorneys over the past decade who have taken the leap and started their own firms, and here are a few pieces of advice that we have heard from them time and time again.

Make a Plan

Whether you worked in a larger firm or you are fresh out of law school, starting your own firm is going to come with a host of responsibilities you have never dealt with before. As such, you should make a detailed plan for running your firm before

you jump in and start attracting clients and taking cases.

Things you are going to want to do will include creating a formal business plan, buying necessary office supplies, and investing in legal software that will help you run your firm. You may also consider talking to various professionals who can inform different parts of your business plan, including cybersecurity experts, accountants, and other attorneys who have successfully started their own practices.

Take Advantage of Technology

For a new practitioner who is trying to do more with less, taking advantage of existing technology is a must when setting up your business. For example, rather than investing in a large, expensive copy/fax machine, get an affordable, desktop printer/scanner and make the jump to digital communications.

There is incredible legal technology that exists solely to make your life easier. For example, many online legal tools were specifically developed to help solo and small firms run efficiently even with a small staff and a small budget. Some options you should look into for your practice include full service practice management software, online credit card processing/payment solutions, document automation software, client-intake software, lead generating resource, invoicing/billing tools, and more.

Choose a Specialization for Your Practice

A common mistake among attorneys starting their own firm is that they think being a general practitioner is the safest way to drum up a large client base. Unfortunately, trying to be everything to everyone will not only wear you out as an attorney, but it will also limit your ability to truly become an expert in your field and gain recognition for this.

Choose a specialty and focus in on it. If you have multiple areas of interest, you may benefit from doing some simple market research in your targeted area of service to see if any particular practice areas are over- or underrepresented.

Take Marketing Seriously

Marketing your practice is obviously necessary, but using an outside firm can be financially draining. To save your new firm serious money, take the time to learn some legal marketing best practices and handle your marketing yourself, at least initially.

The first thing you need to do from a marketing standpoint is build a professional looking website. The Internet is the main way that people will search for a lawyer, and potential clients will make lots of assumptions about you based on the appearance of your website.

Once you have a sleek, professional website, you can start marketing your practice. Some simple and free or low-cost ways you can market your practice include:

- Regularly add rich, meaningful content to your website to help improve your site's search engine rankings
- Contribute content to industry publications to help build your reputation
- Make sure your business is listed in major legal directories (like FindLaw and AVVO), and ensure that your profiles are as robust as possible
- Network on professional social networking sites like LinkedIn and attend local networking events to cultivate potential professional referral sources
- Cultivate relationships with the clients and former clients to try and secure repeat business and referrals
- Develop a social media presence for your firm

Once you establish a steady cash flow for your practice, you will be able to explore other paid marketing opportunities. In the meantime, the options will allow you to effectively market your new practice without spending thousands of dollars that you may not have in your budget.

HN

Amy Mann is the Content Writer for Lawpay. She can be reached at amann@affinipay.com.

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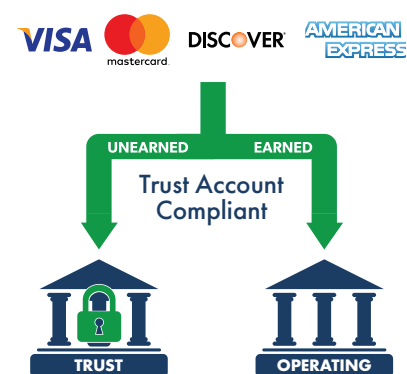
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Focus | Antitrust & Trade/Business Litigation

New Guidance on Wage Fixing and No-Poaching Agreements

BY THOMAS YORK

The U.S. Department of Justice Antitrust Division (DOJ) and the Federal Trade Commission (FTC) issued new guidance alerting managers and human resource (HR) professionals on how to avoid antitrust issues in hiring and compensation practices. The guidance addresses so-called “no-poaching” agreements, other agreements among employers to limit or fix wages or other terms of employment, as well as HR-related information exchanges. Importantly, the guidance makes clear that DOJ intends to proceed criminally against “naked” wage-fixing and no-poaching agreements. Entering these agreements poses significant risks for both companies and their employees. Companies should consider renewed attention to these issues through compliance training.

Potential criminal prosecution of agreements on recruitment of employees and terms of employment. Wage-fixing agreements seek to limit or fix employee compensation, either at a specific or general level. An illegal agreement could also include agreements on other terms and conditions of employment, such as job benefits (employees’ perks and subsidies) that are part of the total compensation package. No-poaching agreements include scenarios when individuals from different companies refuse to either solicit or hire each other’s employees.

Wage-fixing and no-poaching agreements have triggered both government enforcement actions and private litigation. Following a 2009 DOJ investigation of alleged anti-solicitation agreements in Silicon Valley, a class action suit was filed against Apple, Intel, and other high-tech companies alleging that senior executives conspired to suppress wages by agreeing not to solicit each other’s employees. Plaintiffs’ experts estimated damages of \$3 billion, which would be trebled to \$9 billion under the antitrust laws. More recently, class actions involving no-poaching agreements have been brought against a variety of industries, including major animation studios (Disney, LucasFilm, DreamWorks). A class action complaint was filed last year against Samsung Electronics and LG Corp., based in part on a recruiter’s statement that he was forbidden to solicit LG employees due to a no-poaching agreement involving the companies’ executives.

According to the new DOJ/FTC guidance, “naked” wage-fixing and no-poaching agreements among employers will be viewed as per se illegal—that is, condemned without the need to show anticompetitive effects. A “naked” agreement is one that is not reasonably necessary to advance a larger legitimate collaboration between employers, such as participation in a joint venture.

In the past, the federal agencies have brought civil enforcement actions

challenging alleged no-poaching and wage-fixing agreements. The new guidance makes clear that, going forward, DOJ will criminally investigate allegations that employers have agreed to fix compensation or not solicit or hire each other’s employees. If an investigation uncovers evidence of a “naked” agreement, DOJ may pursue criminal charges against culpable companies and individuals.

Unfortunately, the guidance leaves many important questions unresolved. For example, it is unclear what factors DOJ will take into account in exercising its prosecutorial discretion to pursue criminal charges for no-poach or no-hire agreements. Likewise, many no-poach or no-hire agreements are made ancillary to an underlying collaboration between employers (e.g., a joint R&D agreement). It is unclear when the agencies will view such restraints as justifiable, and when they are overbroad (e.g., the scope of covered employees or the duration of the agreement).

Agreements to exchange HR-related information. The agencies also provided guidance on permissible HR information exchanges among employers. Unlike no-poach or similar agreements, information exchanges are not per se illegal and therefore not prosecuted criminally. However, exchanges of HR-related information can result in civil liability when they have, or are likely to have, an anticompetitive

effect. For example, evidence that two or more companies agreed to share current or future compensation information could violate antitrust laws.

Not all information exchanges are illegal. For example, companies routinely exchange compensation-related information during merger discussions. In these and other cases where there is a legitimate basis for the information exchange, companies can minimize antitrust risk by following certain procedures, including:

- hiring a neutral third party to manage the exchange of nonpublic information,
- aggregating information such that recipients cannot identify the particular source,
- aggregating sources to prevent competitors from linking compensation data to a particular employer, and
- exchanging relatively old compensation information.

The DOJ/FTC guidance highlights the need for antitrust review of HR practices and appropriate training for HR professionals. Employers should consult with antitrust and labor counsel before sharing hiring and compensation information and to ensure their employment agreements do not contain potentially unlawful restrictions. **HN**

Thomas York is an associate at Jones Day. He can be reached at tdyork@jonesday.com.

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Emeritus Attorneys: It's Time to Report MCLE Hours

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The Supreme Court issued an order dated April 28, 2015, that amends Article XII of the State Bar Rules to eliminate the MCLE exemption for emeritus attorneys.

Beginning June 1, 2017, emeritus members will be required to comply with MCLE reporting requirements.

FAQs

Why was the MCLE exemption for emeritus attorneys removed?

The recommendation to remove the MCLE emeritus exemption came from the State Bar Task Force on Aging Lawyer Issues. The MCLE emeritus exemption was removed to ensure that all active practicing attorneys remain current in the law. The recommendation was approved by the State Bar MCLE Committee and then by the State Bar Board of Directors and the Supreme Court of Texas.

Are current emeritus members "grandfathered" and exempt from the new requirements?

No.

When does the MCLE requirement for emeritus attorneys become effective?

The MCLE requirement applies to compliance years starting on or after June 1, 2016. Previously exempt attorneys may claim credit for CLE completed within 12 months immediately preceding the first compliance year beginning on or after June 1, 2016, provided that these CLE hours have

not been used for compliance in a prior year.

What if I am retired and no longer practice law, or I practice only for family?

Attorneys who no longer practice law may claim MCLE non-practicing status or inactive membership status. To be eligible for either status as an option for MCLE compliance, an attorney must be non-practicing or inactive during the entire MCLE com-

pliance year. Members who practice law at the beginning of a compliance year and later change to inactive status are not eligible for an exemption but may defer their MCLE requirements. Members who practice law only for family members may claim the MCLE non-practicing status, but must remain on an active membership status. To request inactive membership status, contact the Membership Department at membership@texasbar.com or (800) 204-2222, ext. 1383. To request MCLE

non-practicing status, contact the MCLE Department at mcle@texasbar.com or (800) 204-2222, ext. 1806.

What is the difference between MCLE non-practicing status and inactive membership status?

Either status will exempt an attorney from MCLE requirements. However, members who request inactive membership status are ineligible to vote in State Bar elections. Members who request MCLE non-practicing status are considered active members of the State Bar, can continue to vote in State Bar elections, but do not need to complete the yearly 15-hour MCLE requirement.

What if I am ill, disabled, or unable to travel to MCLE courses?

Travel and attendance at live CLE is not required. All MCLE hours can be completed through approved webinars, teleconferences, DVDs, and downloadable programs. Hardship exemptions and extensions may be available for those who have experienced medical or other extraordinary hardship during the compliance year. Contact MCLE staff for information on applying for an extension or hardship exemption.

Are there low-cost CLE options for those on a fixed income?

Yes. There are a variety of low-cost and free options available. MCLE staff can help with finding suitable CLE, or attorneys can use the course search site at texasbar.com/coursesearch. **HN**

COMPLIANCE YEAR CALCULATION FOR PREVIOUSLY AGE-EXEMPT EMERITUS ATTORNEYS		
Official Compliance Year (Includes one-year period prior to initial start date)		
Birth Month	Beginning Date	Ending Date
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JULY	07/01/15	06/30/17
AUGUST	08/01/15	07/31/17
SEPTEMBER	09/01/15	08/31/17
OCTOBER	10/01/15	09/30/17
NOVEMBER	11/01/15	10/31/17
DECEMBER	12/01/15	11/30/17
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Pro Bono Week Schedule of Activities

Monday, Oct. 23	Noon-1:00 p.m.	Handling a DVAP Divorce
Tuesday, Oct. 24	9:00 a.m.-1:30 p.m.	Kinship Legal Custody
Wednesday, Oct. 25	5:00-8:00 p.m.	Belo Legal Clinic
Thursday, Oct. 26	Noon-1:00 p.m.	Expunction CLE
Friday, Oct. 27	9:00 a.m.-4:00 p.m.	Probate Symposium

Focus | *Antitrust & Trade/Business Litigation*

What You Know About Personal Jurisdiction is Now (Probably) Wrong

BY ROB VELEVIS AND DAVID SILLERS

What almost all of us learned in law school about personal jurisdiction has been significantly narrowed by the Supreme Court in a series of recent cases culminating this term. These decisions have wide-ranging effects for corporate defendants and mass action plaintiffs alike.

Significant Limiting of General Jurisdiction

This term, the Supreme Court further narrowed the scope of reach of “general” jurisdiction in *BNSF Railroad Company v. Tyrrell*, 581 U.S. ____, 137 S.Ct. 1549 (2017). In brief:

- A court has general jurisdiction over a corporate defendant only where the defendant’s contacts are so “continuous and systematic” that the defendant is “at home” in the forum state, “comparable to a domestic enterprise” in the forum state. *Daimler AG v. Bauman*, 134 S.Ct. 746, 758 n.11 (2014). The “paradigm” (and perhaps only) such places are the corporation’s principal place of business and its place of incorporation.
- *Tyrrell* further narrowed the doctrine because it was insufficient that the defendant had 2,000 employees and 2,000 miles of railroad track in the forum state.

- Previously, it was an open question of whether a large, sustained presence in the forum state could be sufficient for general jurisdiction. In *Tyrrell*, the Court appeared to practically limit general jurisdiction to only the principal place of business and state of incorporation. The Court held open the possibility for an “exceptional case.”
- State courts are not free to expand past the Supreme Court’s rule, nor does it matter what type of claim is brought. *Tyrrell* suggests changes in best practices:
- When analyzing a motion to dismiss for lack of personal jurisdiction, counsel are used to creating a “laundry list” of contacts (or lack of contacts) to the forum such as physical presence, sales agents, or the like in the forum state.
- Such lists are increasingly irrelevant in light of *Tyrrell* and the *Daimler* and *Goodyear* cases that preceded it.
- The Supreme Court’s rule has greatly increased predictability and consistency in where lawsuits may be brought.
- Corporate defendants have a powerful new tool to dismiss suits based on general jurisdiction outside their principal place of business and state of incorporation.

Potential Pitfalls and Open Issues

- **Individuals.** While the Supreme Court has strongly suggested that individuals may be subject to general jurisdiction only in their state of domicile, it has not been directly decided by the Supreme Court.
- **Unincorporated Entities.** General jurisdiction regarding unincorporated entities are much trickier than corporations.
 - LLCs, for example, are citizens of every state of residence of each of their members. If there are multiple layers of LLCs, they may be citizens of dozens of states.
 - It is also not settled how general jurisdiction will work for LLCs and partnerships because they are not “incorporated” anywhere.
 - The logical extension of *Tyrrell* is that the “at home” test will be applied to them, but it is unclear exactly how it will be applied.

Specific Jurisdiction

The Court also substantially limited specific jurisdiction in the “mass action” arena by *Bristol-Meyers v. Superior Court of California*, No. 16-466, 582 U.S. ___ (2017):

- 600 plaintiffs, most of whom were out-of-state residents injured out-of-state, filed against Bristol Meyers in California.
- The Supreme Court held that the California court lacked specific jurisdiction over the defendants for the out-of-state claims; there must be an “affiliation between the forum and the underlying controversy . . . [an] activity or an occurrence that takes place in the forum State[.]” *Id.* at 6.
- It rejected that the factual similarity between the in-state and out-of-state claims could give jurisdiction over the entire “mass action,” in a seeming blow to what some describe as litigation tourism.

The Big Future Issue: Class Actions

The critical question is whether the holding will be extended to class actions; the rationale seems applicable and could lead to specific jurisdiction only extending to in-state plaintiffs even in the class arena. Stay tuned. **HN**

Rob Velevis is a partner at Sidley Austin L.L.P. David Sillers is an associate at the firm. They can be reached at rvelevis@sidley.com and dsillers@sidley.com, respectively.

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Questions? Contact Kim Watson, Membership Director,
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In the News | October

FROM THE DAIS

Audrey Moorehead, of Kastl Law, PC, presented on Ethics at Advanced Criminal Law Seminar in Houston.

Paula Beasley, of McTaggart & Beasley, PLLC, spoke at the CREW Network Spring Leadership Summit in Toronto, Canada.

Scott Harper, of Griffith Bates Champion & Harper LLP, spoke at the Professional Outdoor Media Association's 12th annual business conference.

KUDOS

Justice Elizabeth Lang-Miers, of the Fifth District Court of Appeals, was awarded the Samuel Pesarra Outstanding Jurist Award from the Texas Bar Foundation for outstanding jurist. She also was elected Vice-Chair of the Judicial Division of the American Bar Association at the annual meeting in New York.

Kent Hofmeister, of Brown & Hofmeister, L.L.P., was awarded the 2017 Federal Bar Association's Kintner Award for Distinguished Service.

Audrey Moorehead, of Kastl Law, PC, was appointed to the Executive Committee, Nominations and Elections Committee, and Chair of the Section Representatives to the Board Committee of the State Bar of Texas.

Sonya Hoskins, of Robinson & Hoskins, L.L.P., was elected Chair of the General Practice, Solo and Small Firm Section of the State Bar of Texas.

Harriet Miers, of Locke Lord LLP, has been selected as Texas Appleseed's honoree for the Good Apple Award.

Art Anthony, of Locke Lord LLP, has been named one of National Diversity Council's Top 50 Multicultural Lawyers in Dallas.

Cynthia Timms of Locke Lord LLP, has been named Chair of the Firm's Appellate Practice Group.

Jody L. Johnson, of JLI Family Law, has received the designation of "Master Credentialed Collaborative Professional" by Collaborative Divorce Texas.

Melinda Phelan, of Baker McKenzie, has been named Chair of the Firm's North America Tax Practice Group.

ON THE MOVE

Seth Horwitz joined Carrington, Coleman, Sloman & Blumenthal, LLP as Of Counsel.

Laura Brandt and **Evangeline Lalangas** joined Gray Reed & McGraw LLP as Associates.

Patrick Kelly joined Cordell & Cordell PC as Associate.

Laura Fontaine joined Hedrick Kring, PLLC as Partner.

Audrey Moorehead joined Kastl Law, PC as Of Counsel.

Michael Hewitt and **Frank Kennedy** joined Tollefson Bradley Mitchell & Melendi, LLP as Associate and Partner, respectively.

Christopher Montez has opened The Law Firm of Christopher D. Montez, PLLC, 12222 Merit Drive, Suite 1200, Dallas, TX 75251.

Penny R. Robe is now with the Robe Law Firm.

Adam Vanek joined Susan G. Komen Breast Cancer Foundation, Inc. as General Counsel & Assistant Corporate Secretary.

J. Evan Farrior joined Fletcher, Farley, Shipman & Salinas, LLP as Associate.

Kimberly Annelo, **Catherine Bowe**, and **Scott Garelick** joined Exall+Wood, PLLC as Associates.

John "Rusty" Lane joined Kane Russell Coleman Logan PC as Associate.

David Elrod and **Worthy Walker** joined Shackelford, Bowen, McKinley & Norton, LLP as Partners. **Hayley Ellison** and **Barbara Wohlrahe** joined the firm as Associate and Of Counsel, respectively.

Susan Rankin joined Quilling, Selander, Lownds, Winslett and Moser P.C.

Esther R. Donald joined Goranson Bain, PLLC as Partner.

Allison Hodge joined Brown Fox PLLC as Associate.

Mark R. Clasby joined the Law Office of Jodi McShan, PLLC as Associate.

News items regarding current members of the Dallas Bar Association are included in Headnotes as space permits. Please send your announcements to Judi Smalling at jsmalling@dallasbar.org



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Classifieds | October

EXPERT WITNESS

Mexican Law Expert - Attorney, former law professor testifying for 20 years in U.S. lawsuits involving Mexican law issues: FNC motions, Mexican claims/defenses, personal injury, moral damages, contract law, corporations. Co-author, leading treatise in field. J.D., Harvard Law. David Lopez, (210) 602-9895. dlopez@ccn-law.com.

Economic Damages Experts - Thomas Roney has more than thirty years' experience providing economic consulting services, expert reports and expert testimony in court, deposition and arbitration. His firm specializes in the calculation of economic damages in personal injury, wrongful death, employment, commercial litigation, IP, and business valuation matters. Mr. Roney and his experienced team of economic, accounting and finance experts can help you with a variety of litigation services. Thomas Roney LLC serves attorneys across Texas with offices in Dallas, Fort Worth and Houston. Contact Thomas Roney in Dallas/Fort Worth (214) 665-9458 or Houston (713) 513-7113. troney@thomasroneyllc.com. "We Count."

Insurance Industry Expert. R. P. "Bob" Gaddis, JD, 46 years' experience in Property/Casualty Insurance, sequentially as Underwriter, Agent, and Insurance Litigation Attorney. His underwriting and agency work concentrated on complex commercial accounts. Served as Expert Witness in over 65 cases. Visit complexinsuranceconsulting.com or contact him at bgaddis@complexins.com, (713) 621-1601.

Economic Damages Experts - HSNO is the Forensics Firm. The Dallas office of HSNO has six CPA testifying experts who specialize in the calculation of economic damages in areas such as commercial lost profits, personal lost earnings, business valuations, property damage, insurance litigation, intellectual properties, commercial litigation, contract disputes, bankruptcy, and fraud. HSNO is qualified in most industries including, but not limited to; energy (offshore and onshore), manufacturing, hospitality, service, insurance, transportation, entertainment, product liability and construction. HSNO has 17 U.S. offices and an office in London. Contact Peter Hagen at (972) 980-5060 or go to HSNO.com.

FOR SALE

Top-rated legal marketing firm, Texas' Best the last two years. Will work with new owner. Email info@texlawmkg.com or call(214) 405-5093.

OFFICE SPACE

Galleria Tower Sublease through July 2021. 2369 sq. ft., 5+ offices, conference room, work room, parking,

great views! - \$21 + E. Lincoln Centre Sublease - through April 2019, 7261 sq. ft., 14 window offices, 2 conference rooms, furniture, parking - call Suzy Featherston, (214) 505-6613.

Virtual Office - Available Immediately! Contemporary office space, 12222 Merit Drive, Suite 1200, offers nine conference rooms, receptionist, Internet service, mail service, parking, fully equipped breakroom. \$300 monthly fee - competitive rates! Email Amy at arobinson@englishpllc.com or (214) 528-4300.

Downtown Dallas - Arts District. Beautiful office space available near Arts District. Amenities include conference room, kitchen, Wi-Fi. Furnished offices, with or without downtown view. Located near DART rail. Notary and mail service. Parking available. Virtual space \$300/month. Office space \$1000-1250. Call (214) 624-9803.

Downtown Dallas - KATY Building. Two window offices with included secretarial space available, in the historic KATY Building overlooking the Old Red Courthouse and Kennedy Memorial. Receptionist, notary, phone system, conference room, Wi-Fi, fax and copier provided for tenants use. No deposit or lease required. Please inquire at (214) 748-1948.

Professional office suites for lease in Uptown State Thomas area. Restored Victorian home circa 1890 w/ hardwood floors throughout. Shared conference room. 2619/2608 Hibernia St 1 block from McKinney Avenue Whole Foods. Lawyers preferred. \$750-\$850/month. Includes phone & Internet. Phone (214) 987-8240.

Lee Park Area - executive office space available for lease in a professional, legal environment. Two large executive window offices available (furnished or unfurnished) to share with experienced and established lawyers. Separate areas available for assistants or paraprofessionals. Three bench seat spaces available for daily or short-term use, if desired. Referrals and other case arrangements are possible. Amenities include reception area, telephone, fax and copy machines, Wi-Fi, notary, conference room, kitchen area, covered visitor parking, and free secured office parking. Location convenient to Dallas courts, downtown, and all traffic arteries. Please contact Judy at (214) 740-5033 for a tour and information.

North Dallas. Law Firm - Merit Tower Office Space - For Lease: Contemporary office space, 12222 Merit Drive, offers nine conference rooms, receptionist, Internet service, lobby, library, fully equipped breakroom, parking, workout facilities. Available 10/1/17. Email Amy at arobinson@englishpllc.com or (214) 528-4300.

North Dallas - Hillcrest/LBJ En-Suite Offices: Monthly Rental includes

electricity, phone and Internet connection, reserved underground parking, 24/7 security. Large suite has receptionist, conference rooms, library, secure filing space, break room, kitchen and copier. Call (214) 697-3537 or email hicks@morganmediations.com

Downtown Dallas - Arts District. Offices available for rent with law firm located in Downtown Dallas Class A, Arts District building. Amenities include conference room, law library, secretarial station, kitchen, parking garage, photocopy/scanner/postage/facsimile and related amenities. Contact Laura at (214) 922-9265.

Uptown - Bowen & Carlisle. Kilgore Law/MADI building at Bowen and Carlisle has 1200 square feet to lease. Perfect for two or three lawyers and supporting assistants. Two window offices. Possibility of sharing breakroom, copy and fax resources with Kilgore Law exists. Conference rooms, free surface parking or underground parking available. Please email: ecb@kilgorelaw.com.

Walnut Glen Tower (Walnut Hill/Central). Great Deal! Terrific offices in Class A building near Northpark with views of downtown over lake with fountains. Convenient access to DART station. Prized, central location wherever you need to go in the Metroplex. Do business in a relaxed yet professional environment which includes administrative stations, conference room, kitchen, copier, phones, reserved garage parking, on-site restaurant and other amenities. A larger executive office and/or smaller offices/flex space for as little as \$500/month. A fully furnished office is an option. Why not have a professional location for your business and quality of life at work? Please call (214) 373-0404 for details.

POSITION AVAILABLE

Real Estate & Corporate Transactional Attorney. Friedman & Feiger, LLP is seeking an attorney with a real estate and corporate transactional practice to join their team. The ideal candidate will offer a portable book of business and have the desire to continually develop and bring new business to the firm. We offer incentives for the referral of work among partners. Job Requirements: J.D. Degree and licensed to practice in the State of Texas. Active practice in the Dallas-Fort Worth area. Must have solid experience with commercial development, multi-family, office and retail transactions. Portable book of business in real estate and corporate transactional matters with a proven record of success for at least the preceding five (5) years. A desire to continue to grow your business through practice development opportunities offered by the firm and through colleague referrals. The firm offers medical, dental, vision, long-term disability, 401k, CLE/Dues Allowance and paid covered parking. Please send resume with details on your current practice to: jfriedman@fflawoffice.com.

Experienced plaintiff's employment and benefits (ERISA and non-ERISA) lawyer looking for attorney with 10-15 years' experience as protégé and ultimately to take over practice within 5-10 years. Applicant should be ready to work on mostly contingent fee basis. Please forward resumes with cover letter emphasizing appropriateness of interest in position to ecb@kilgorelaw.com.

SEC Regulatory Enforcement Attorney. Friedman & Feiger, LLP is seeking an associate with 5-10 years' experience in SEC regulatory enforcement litigation. The firm is looking for an attorney eager to assume a leading role in a prominent, complex SEC enforcement action. Former experience within the SEC enforcement division preferred; and, former SEC enforcement litigation

experience a must. If you would like to explore the unique opportunities our firm has to offer to take your practice to the next level, please submit your resume to jfriedman@fflawoffice.com.

Far North Dallas/Farmers Branch area firm seeks one to three experienced attorneys with portable business. We are established (AV rated), with seasoned attorneys who primarily practice in Family Law/Civil Litigation and Real Estate Law. Cross pollination of business and ideas with experienced attorneys available. Our formula based compensation is very profitable for organized attorneys. Call our Office Manager, Cathy Hayes for more information 214-691-1776 ext. 201.

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DBA Annual Meeting

The Annual Meeting is Friday, November 3, in the Pavilion. A reception begins at 3:30 p.m. and the meeting begins at 4:00 p.m.

If you have prior DBA service and wish to run for a position, you must contact Alicia Hernandez (ahernandez@dallasbar.org (214) 220-7401), no later than Thursday, November 2, at 5:00 p.m. to receive information about service on the Board. You are required to complete a biographical form prior to the meeting.

Following the meeting all DBA resident members with an e-mail address on file will receive an online ballot. If you wish to vote online, please make sure the DBA has your e-mail address by visiting the DBA website at www.dallasbar.org, or call Kim Watson at (214) 220-7414 before 5:00 p.m. on Thursday, November 2, 2017.

Please update your spam software to allow the e-mail ballot to enter your inbox from DallasBar@BallotBoxOnline.com.

Justice for All

In 1983, Judge Merrill Hartman led a group of Dallas visionaries to create the first volunteer attorney program in North Texas. Today, the project is known as DVAP, the Dallas Volunteer Attorney Program.

DVAP attorneys help families living at or below the federal poverty guidelines who cannot afford an attorney in civil cases. For Judge Hartman, 'Justice for All' was not just a slogan, it meant access to the courts started with access to a lawyer.

Among the many remarkable projects organized by you, the members of the Dallas Bar Association, this may be the most important effort we endeavor.

If you have not given before, please consider a gift, regardless of amount.

To the many champions of DVAP who have given so generously in the past, thank you for setting our example.

*For more details and to
make a donation:*

www.dvapcampaign.org
Michelle Alden at 214.243.2234
or aldenm@lanwt.org



and please join us for the

Dallas Bar Association's Fireside Chat with Dallas Mayor Mike Rawlings

Monday, October 30, 2017
Noon – 1:00pm
Pavilion at the Belo

Please RSVP to Sherri Evans at
sevens@dallasbar.org

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