

## Frank Stevenson Named Recipient of Professionalism Award

BY DAWN FOWLER

The best advice that Frank Stevenson ever received was from his pastor—“Never let another person tell you who you are.” I hope he will forgive Harriet Miers and me, but we believe that his super-hero moniker would be “Renaissance Man.”

Frank is the 2019 recipient of the Morris Harrell Professionalism Award. The award, presented by the Dallas Bar Association and the Texas Center for Legal Ethics and Professionalism, honors the “attorney who best exemplifies, by their conduct and character, truly professional traits who others seek to emulate and who all in the bar admire.”

Frank graduated *magna cum laude* from Amherst College, and received his juris doctorate from the University of Virginia. He is a partner at Locke Lord, LLP with extensive experience in finance, real estate, transportation, government agencies, and drafting legislation and administrative rules.

Frank served as president of the State Bar of Texas and Dallas Bar Association; and Chair of the Dallas Bar Foundation. He is a Texas Bar Foundation Trustee and the current Vice-President of the Western States Bar Conference.

A tireless advocate of pro bono services, and member of the Texas Commission to Expand Civil Legal Services, Frank has received numerous awards and recognition from legal service providers serving veterans and helping those who are “the least, the last, and the lost.” He sees attorneys as “helpers, healers, and humanitarians.”

Frank has founded programs to advance professionalism for new attorneys and expand diversity.

“What Frank has done for others in civil circles and the organized bar is astounding,” said Justice Doug Lang. “If each of his accomplishments were written on a scroll that fully extended scroll would stretch at least a mile.”

An extraordinary accomplishment was the creation of the Transition to Law Practice mentor program during his tenure as DBA President. Still strong after over a decade,



Frank E. Stevenson II

Justice Lang reflects “the program has shown the ‘right path’ in the profession to hundreds of beginning lawyers and has been replicated across Texas. Frank’s decision to take a chance on that new program required fortitude and excellent judgment.”

Frank’s first DBA project was setting up the Summer Law Intern Program (SLIP), at the request of then-DBA President Peter Vogel. SLIP provides paid summer internships for DISD high school students in law firms and corporate legal departments. Over 600 interns have participated in the program since its inception in 1994. Many interns have never previously set foot in an office; past Program participants characterize it as transformative.

“In the summer of 1993 when I was President-Elect of the DBA I attended a Minority Participation Subcommittee meeting which Frank chaired, and when it was over I asked him to Chair the SLIP,” said Peter. “He seemed surprised and asked why, so I told him I went to the subcommittee meeting to see what he had to say and I considered it an audition for SLIP. With the great success of SLIP Frank asked me more than once—“why exactly did I select him to run SLIP?” And my answer has always been that it is the job of leaders to find

new leaders, and no doubt about it Frank has proven to be a great bar leader in Dallas and the State of Texas. Just doing my job as a DBA President.”

More recently, Frank co-founded the Texas Opportunity & Justice Incubator (TOJI), a nationally recognized program training lawyers for modest-means practices. Frank calls the program the perfect melding of “our citizens’ need for justice with our lawyers’ need for opportunity.” Within 2 years, TOJI was the largest of the 60+ legal incubators in the U.S.

Frank has also been a leader in numerous civic, charitable, arts and educational organizations. He is a former president of the Sammons Center of the Arts, Dallas Citizens Council member, recipient of the eminent service award from his college, and an elder and teacher at Northridge Presbyterian Church. A dedicated DBA volunteer, he has roofed a Habitat for Humanity house, judged mock trials, and taught DISD students through the Law in the Schools and Community Program.

“When I think of the things I’ve done that make me most proud to be a lawyer, virtually all of them were afforded through bar work,” said Frank.

Harriet Miers and Brad Weber, long-time friends and partners at Locke Lord (and past DBA Presidents), each admire Frank’s commitment to service and his skills as a lawyer. Ms. Miers noted that, “he is a great lawyer, and the epitome of a professional; what a professional should be.” She also shared that Frank, at the age of 32, selected the artwork for the office; art that still graces their walls, and has proven to be an excellent investment of classical, modern, and impressionist’s works. Ironically, one of the co-leaders of the firm was Morris Harrell, the first recipient of the Professionalism Award that now bears his name.

Mr. Weber reports that Frank is a master at using humor to motivate and energize groups. In that vein, the reader is encouraged to read Frank’s commencement address at Texas Tech Law School. Just a snippet: “You and I can be justifiably afraid of tornadoes, and the Zika virus, and that Flo woman from the insurance ads. But instead, as a nation, we have become

unjustifiably afraid of ideas. And there’s nothing more dangerous to a free society than that.”

Mr. Weber has witnessed Frank use his skills as a transactional attorney to bring people together. “He is a true professional. He is loyal, honest, courteous, and always does his best. I can’t think of anyone who is more deserving than Frank for this award.”

Laura Benitez Geisler, current DBA President, agrees: “Frank Stevenson exemplifies by his conduct and character a commitment to the highest levels of professionalism. Frank leads with a steady grace distinguished by his humble demeanor and razor sharp wit. Over the past two decades, I have repeatedly witnessed Frank’s selfless dedication to elevating the profession and helping young lawyers. I am delighted that my friend and mentor, Frank Stevenson, is recognized with this award.”

Frank’s social media feeds are full of support, encouragement, and gratitude for his colleagues and profession. It is clear that he believes that Texas lawyers want justice for the people and honor for the profession. And it is clear that he loves his family, and may have mastered one of the greatest challenge to attorneys—balance of personal and professional lives.

Justice Lang also shared Frank’s remarks at the last board meeting of Frank’s DBA presidency. Frank thanked everyone for their hard work and, alluding to a poem by William Blake, spoke of the significance of the friendship of the board members that caused them to move as one toward a goal of doing significant things. In part, Frank said “I wanted to end where we began, and from where we never strayed. I wanted to end by acknowledging the force that carried us every step of the way. That held us up and supported us throughout this year. That will hold us up and support us for all the years ahead. Just like bird, a nest. Just like a spider, a web. To friendship.”

Please join the Dallas Bar Association and the Texas Center for Legal Ethics and Professionalism for the award’s ceremony honoring Frank Stevenson at noon Friday, November 15, 2019, at Belo Mansion. **HN**

Dawn Fowler is a solo practitioner specializing in family law. She can be reached at dawn@dawnfowlerlaw.com.



### 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\*:

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## 2020 DBA Committee Preferences

Get ready for a simpler way to select and sign up for your Committees in 2020!

You will be able to easily sign up via your My DBA Page.

Keep an eye out for more information this fall.

# Calendar *October Events*

Visit [www.dallasbar.org](http://www.dallasbar.org) for updates on Friday Clinics and other CLEs.

## FRIDAY CLINICS

### OCTOBER 4-BELO

**Noon** "Mental Illness at Work: The ADA and Disclosure Do's and Don'ts," Kelly Rentzel and Hon. Rebecca Rutherford. (Ethics 1.00)\* RSVP to [sevans@dallasbar.org](mailto:sevans@dallasbar.org). Co-sponsored by the CLE and Peer Assistance Committees.

### OCTOBER 11-NORTH DALLAS\*\*

**Noon** "CBS 48 Hours Murder on Red River," Barry Wernick. (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 [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org).

### OCTOBER 25-OAK CLIFF

**Noon** "Where There Is Help, There is Hope: Understanding TLAP and the Available Resources," Trey Dowdy and Dan Garrigan. (Ethics 1.00)\* **Oak Cliff Chamber of Commerce, 1001 N Bishop Ave, Dallas.** RSVP to [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org). Co-sponsored by the CLE and Peer Assistance Committees.

## TUESDAY, OCTOBER 1

**Noon Corporate Counsel Section**  
"Challenges and Responsibilities of In-house Counsel in Company Sale Transactions," Michael Foley, David Kilpatrick, Roger Nober, Scott Young, and moderators April Goff and William Swart. (Ethics 1.00)\*

**Tort & Insurance Practice Section**  
"Legal Legends Program recognizing Jerry Clements, Mike Huddleston, Steve Malouf, and Mark Stradley; moderated by Hon. Maricela Moore." (MCLE 1.00)\*

DAYL Solo & Small Firm Meeting

**6:00 p.m. Intellectual Property Law Section**  
25th Anniversary Dinner and a Celebration of IP & Innovation in North Texas. RSVP at [www.tinyurl.com/IPSection25](http://www.tinyurl.com/IPSection25).

DAYL Board of Directors

## WEDNESDAY, OCTOBER 2

**9:00 a.m. Solo & Small Firm Section**  
"Turning 65: What You Need to Know if You or Your Clients Are Turning 65." (MCLE 7.30, Ethics 1.25)\*. Free to DBA Members; Non-Members: \$245. Register at <https://tinyurl.com/turning65solo>.

**Noon Criminal Law Section**  
"A Dialogue About Criminal Justice Reform: Bridging the Gap with Re-Entry and Legislation," Hector Garza, Richard Miles, and Gary Udashen. (Ethics 1.00)\*

**Life Skills for Lawyers**  
"How to Write More Persuasively," Trish Hall. (MCLE 1.00)\* Co-sponsored by DBA Life Skills Program, Appellate Law, Business Litigation, Probate, Trusts & Estates, Solo & Small Firm, and Trial Skills Sections. RSVP at [www.tinyurl.com/lifeskillsoc2](http://www.tinyurl.com/lifeskillsoc2).

Juvenile Justice Committee

DAYL Judiciary Committee

## THURSDAY, OCTOBER 3

**8:30 a.m. Juvenile Delinquency Conference**  
To register, go to [www.dallasbar.org](http://www.dallasbar.org) or contact [mgarcia@dallasbar.org](mailto:mgarcia@dallasbar.org). Presented by the DBA Juvenile Justice Committee. (MCLE 6.00, Ethics 3.00)\*

**Noon Construction Law Section**  
"Really? Compliance Issues on State and Local Construction Procurements: Impact of Federal and Texas Statutes," Timothy Matheny. (MCLE 1.00)\*

Lawyer Referral Service Committee

St. Thomas More Society

## FRIDAY, OCTOBER 4

**Noon Day of Civility & Professionalism**  
A special program promoting civility presented by the DBA Professionalism Committee. (Ethics 4.50)\* Free for DBA Members. Non-Members: \$245. Register at [www.tinyurl.com/civility2019](http://www.tinyurl.com/civility2019).

**Friday Clinic-Belo**  
"Mental Illness at Work: The ADA and Disclosure Do's and Don'ts," Kelly Rentzel and Hon. Rebecca Rutherford. (Ethics 1.00)\* RSVP to [sevans@dallasbar.org](mailto:sevans@dallasbar.org). Co-sponsored by the CLE and Peer Assistance Committees.

**4:30 p.m.** DBA/DAYL Moms in Law. At Nick and Sam's (8111 Preston Rd., Ste. 150). RSVP [christine@connatserfamilylaw.com](mailto:christine@connatserfamilylaw.com).

## MONDAY, OCTOBER 7

**Noon Tax Law Section**  
"Tax Legend Interview: Tom Helfand," interviewed by Bill Elliott. (MCLE 1.00)\*

## TUESDAY, OCTOBER 8

**Noon Mergers & Acquisitions Section**  
"Highlights from SRS Acquiom's 2019 Private Target M&A Study," Eric Martin. (MCLE 1.00)\*

Home Project Committee

Legal Ethics Committee

**5:30 p.m. Tort & Insurance Practice Section**  
Topic Not Yet Available

**6:00 p.m.** J.L. Turner Legal Association

## WEDNESDAY, OCTOBER 9

**Noon ADR/Family Law Sections**  
"Arbitration, Pros and Cons," Fred Adams, Curtis Loveless, Shannon Lynch, and John Withers. (Ethics 1.00)\*

**Bankruptcy & Commercial Law Section**  
"Compensation Conundrums in Down Times," Allison Hoeninghaus and Ian Roberts. (MCLE 1.00)\*

**5:15 p.m.** LegalLine. Volunteers needed. Contact [sbush@dallasbar.org](mailto:sbush@dallasbar.org).

## THURSDAY, OCTOBER 10

**Noon Minority Participation Committee**  
"Creating and Managing a Law Practice on a Shoestring: Tips from over 20 years of Practice," Lisa McKnight. (MCLE 1.00)\* RSVP to [kwatson@dallasbar.org](mailto:kwatson@dallasbar.org).

CLE Committee

Publications Committee

Christian Lawyers Fellowship

## FRIDAY, OCTOBER 11

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

**Noon Implicit Bias Program**  
"Effective Lawyering: Exploring Unconscious Bias-At Trial, In Mediation, At Work," Paulette Brown, Rhonda Hunter, Hon. Tonya Parker, and Sarah Redfield. (MCLE 3.50, Ethics 1.00)\*

**North Dallas Friday Clinic**  
"CBS 48 Hours Murder on Red River," Barry Wernick. (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 [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org).

**Trial Skills Section**  
"Mistakes I've Made," Rod Phelan. (MCLE 1.00)\*

## MONDAY, OCTOBER 14

**Noon Immigration Law Section**  
"Mandamus and Declaratory Judgment Litigation Training," Tammy Fox-Isicoff and Ronald Klasko. (MCLE 4.00)\*

**Life Skills for Lawyers Program**  
"Legal Decision Making, Learning, & Communication: Breakthrough Lessons from Neuroscience," Lori Cook and Jillian Jones. (Ethics 1.00)\* RSVP online at [www.dallasbar.org](http://www.dallasbar.org).

**Real Property Law Section**  
"Landlord's Duty to Mitigate: The History, Risks, Challenges, and Solutions to Representing Landlords Effectively to Defend Claims of Defaulting Commercial Tenants," Gary Kessler and John M. Walsh, III. (MCLE 1.00)\*

Peer Assistance Committee

DAYL Membership Committee

## TUESDAY, OCTOBER 15

**Noon Franchise & Distribution Law Section**  
"No-Poaching Clauses in Franchise Agreements," Elizabeth Griffin. (MCLE 1.00)\*

**International Law Section**  
Topic Not Yet Available

**DVAP CLE**  
"Where There is a Will, There is a Way," Melinda Hartnett. (MCLE 1.00)\*

Community Involvement Committee

**5:00 p.m. Jeff Coen Family Law Nuts & Bolts Training, Part I**  
Presented by DVAP. Register online at [www.tinyurl.com/dvapnutsbolts2019](http://www.tinyurl.com/dvapnutsbolts2019). (MCLE 3.00, Ethics 1.00)\*

**5:30 p.m. Labor & Employment Law Section**  
"28th Annual Employment Law Update," Joseph Gillespie and Christie Newkirk. (MCLE 1.50)\*

J.L. Turner Legal Association Foundation

**6:00 p.m. Evening Ethics Program**  
"Annual Evening Ethics Program." DBA members: \$40, Non-members: \$90. Late/On-Site Registration \$100. RSVP required at [www.tinyurl.com/eveningethics2019](http://www.tinyurl.com/eveningethics2019). (Ethics 3.00)\*

Dallas Hispanic Bar Association

## WEDNESDAY, OCTOBER 16

**Noon Fireside Chat with Police Chief Renee Hall**  
Dallas Police Chief Renee Hall, interviewed by Rob Crain. RSVP at [tinyurl.com/DallasPoliceChief](http://tinyurl.com/DallasPoliceChief).

**Energy Law Section**  
"Current Issues Under the Louisiana Law of Oil and Gas," Pat Ottinger. (MCLE 1.00)\*

**Health Law Section**  
Topic Not Yet Available

Law in the Schools & Community Committee

Pro Bono Activities Committee

Non-Profit Law Study Group

**5:00 p.m. Jeff Coen Family Law Nuts & Bolts Training, Part II**  
Presented by DVAP. Register online at [www.tinyurl.com/dvapnutsbolts2019](http://www.tinyurl.com/dvapnutsbolts2019). (MCLE 3.00, Ethics 1.00)\*

**5:15 p.m.** LegalLine. Volunteers needed. Contact [sbush@dallasbar.org](mailto:sbush@dallasbar.org).

## THURSDAY, OCTOBER 17

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

**Government Law Section**  
Topic Not Yet Available

Minority Participation Committee

Christian Legal Society

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

## FRIDAY, OCTOBER 18

No DBA Events Scheduled

## MONDAY, OCTOBER 21

**Noon Labor & Employment Law Section**  
"Wrongful Termination Claims under ERISA, USERRA and the FCA: They're Technical But They Pack a Punch!" Robert Goodman, Jr. (MCLE 1.00)\*

**Legal History Discussion Group**  
"Toward the History of the Texas Bar Association: the 'Galveston Era' (1882-1901) and the 'Middle Period' (1902-1923)," Josiah Daniel. (MCLE 1.00, Ethics 0.50)\*

## TUESDAY, OCTOBER 22

**Noon Probate, Trust & Estates Law Section**  
Topic Not Yet Available

American Immigration Lawyers Association

DAYL Lawyers Promoting Diversity Committee

## WEDNESDAY, OCTOBER 23

**Noon Collaborative Law Section**  
"Using a Financial Advocate to Empower Clients," Joelle Hinds. (MCLE 1.00)\*

DAYL Foundation Board of Directors

DAYL Lunch & Learn CLE

DVAP New Lawyer Luncheon. For more information, contact [martinm@lanwt.org](mailto:martinm@lanwt.org).

## THURSDAY, OCTOBER 24

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

**6:00 p.m. Intellectual Property Law Section**  
At Craft & Growler (3601 Parry Ave.) "Cannabis and IP: A Budding Field," James Gourley and Chelsie Spencer. (MCLE 1.00)\*

## FRIDAY, OCTOBER 25

**Noon Fighting for Justice: Access to Justice for All**  
"Chief Justice Nathan Hecht, James Sandman, and Laura Benitez Geisler. (Ethics 1.00)\*

**Oak Cliff Clinic**  
"Where There Is Help, There is Hope: Understanding TLAP and the Available Resources," Trey Dowdy and Dan Garrigan. (Ethics 1.00)\* **Oak Cliff Chamber of Commerce, 1001 N Bishop Ave, Dallas.** RSVP to [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org). Co-sponsored by the CLE and Peer Assistance Committees.

DBA/DAYL Moms in Law. At Del Frisco's Grille (3232 McKinney Ave., Ste. 175) RSVP [rfitzgeb@gmail.com](mailto:rfitzgeb@gmail.com).

DAYL Equal Access to Justice Committee

## MONDAY, OCTOBER 28

**Noon Science & Technology Law Section**  
Topic Not Yet Available

**Securities Section**  
"New Interpretations of Fiduciary Duties under Delaware and Federal Securities Laws," Jason Daniel. (MCLE 1.00)\*

## TUESDAY, OCTOBER 29

**Noon** DAYL Continuing the Conversation Program

## WEDNESDAY, OCTOBER 30

**8:30 a.m. 2019 Education Symposium**  
Improving the Lives of Children Through Advocacy. CLE, CEU, and CPE credit available. Co-sponsored by the DBA and the W.W. Caruth, Jr. Institute for Children's Rights. (MCLE 5.00)\* Questions? Contact [mgarcia@dallasbar.org](mailto:mgarcia@dallasbar.org).

**Noon** DAYL Equal Access to Justice Committee

## THURSDAY, OCTOBER 31

**Noon DVAP Probate Symposium**  
Topic Not Yet Available

## FRIDAY, NOVEMBER 1

**Noon Friday Clinic-Belo**  
"The Legality of Active Duty Military Operations in the U.S.," James Creedon. (MCLE 1.00)\*

**3:30 p.m.** DBA Annual Meeting

## DBA Dedicates 29th Habitat House



On August 24, DBA dedicated its 29th Habitat for Humanity home to the Mata family. Thank you to all the DBA members and firms who volunteered this year, and a special thank you to DBA Home Project Co-Chairs David Fisk and Michael Bielby, Jr. To participate in the project for next year, contact Mr. Fisk at [dfisk@krcl.com](mailto:dfisk@krcl.com).

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 Grecia Alfaro at the DBA office at (214) 220-7447.

\*\*For information on the location of this month's North Dallas Friday Clinic, contact [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org).



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## President's Column

# Writer's Block and Wisdom Shared

BY LAURA BENITEZ GEISLER

A blank slate and writer's block. As I approached this month's column I felt weighted down by both so I started asking my friends for topic ideas. Based on the initial round of responses I decided to stop soliciting topics at happy hour and to ask instead "what would you write about if you were DBA President?" The suggested topics ranged the gamut from a wish list of things judges could do to make the lawyer and litigant experience better, to the importance of creating a law firm culture that prioritizes lawyer wellness. Reframing the question gave me some great insight, but as I sat down to write, the suggestions did not translate into a finished product of beautifully crafted words I could turn in for this month's column. Thankfully, Saba Syed sent me in written form, two mini-columns she would write if she were DBA President.

Before I share with you Saba's beautifully crafted words, let me first tell you a little bit about her for context. Saba is representative of many young lawyers who care about the profession, who want to succeed in their practice and to do so while giving back. She is a 2013 graduate of Baylor Law School and an associate at Bell Nunnally. The first time I met Saba she shared with me a presentation she made on Speaking and Listening Across Gender Lines. It was a topic she immersed herself in after realizing that she was having difficulty communicating effectively with some of the lawyers in her prior law firm. Her presentation was thoughtful, well-researched, and insightful. Saba identified a problem not unique to her, endeavored to figure out the source of the problem, and worked to find solutions she could share with others. Visiting with Saba and other young lawyers inspired me to form a President's Millennial Counsel so I could glean from them the wisdom that comes from listening to different perspectives. From the first time I met Saba I found her "wise" beyond her years so it is not at all surprising that she put into words a mini-President's column that speaks to the wisdom we can gain from one another.

## "Can the Practice of Law Make Us Wise?" by Saba Syed

Can the practice of law make us wise? True to legal form, the answer is, it depends. If wisdom is the art of growing through experiences, then lawyers have an excellent shot at it. Lawyers have no shortage of experiences: dealing with confrontation, unpacking traumatizing events, and examining harrowing misdeeds. Lawyers, then, have a unique vantage by examining the seedy cross section of life that creates problems for our community.

But how can we take these experiences and grow from them, instead of letting them gnaw at us? While there are a number of answers, I think the best lawyers counteract life's difficulties by being the change they wish to see in others, and sharing that wisdom. The goal then, is to not only become great attorneys, but also become great people who are conscientious, gracious, and caring. In that way, we can witness societal challenges, and learn from them, while also helping others learn from those experiences. In our community, the DBA serves as a treasure trove containing the wisdom lawyers have shared with each other to become better attorneys and better people.

## Exchanging Wisdom

Saba is right. The DBA provides a community and forum to exchange wisdom and to learn from one another. There is a large audience with whom to share your wisdom and many to learn from if you listen. Serving as DBA President this year I have gained wisdom by listening to others and hope that I have shared wisdom that is helpful to others. It is why this month I am happy to pass along Saba's words of wisdom, in particular "the best lawyers counteract life's difficulties by being the change they wish to see in others, and sharing that wisdom." Thank you Saba (I am saving your second mini-column just in case I have writer's block next month).

Laura

## Join us at the DBA Awards Luncheon Friday, November 15, noon at Belo.

We will honor  
**Frank Stevenson**  
with the DBA Morris Harrell Professionalism Award

And other award recipients to be announced.

All members are invited to attend. RSVP to [lhayden@dallasbar.org](mailto:lhayden@dallasbar.org).

## The National Institute for Trial Advocacy is the nation's leading provider of legal advocacy skills training.

Find out more at [www.nita.org](http://www.nita.org).

Thank you for supplying the DBA Trial Academy  
with award-winning materials.

## DBA Annual Meeting

The Annual Meeting is Friday, November 1, 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, please contact Alicia Hernandez ([ahernandez@dallasbar.org](mailto:ahernandez@dallasbar.org)) (214) 220-7401, no later than **Thursday,  
October 31, 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](http://www.dallasbar.org), or call Kim  
Watson at (214) 220-7414 before **5:00 p.m. on Thursday,  
October 31, 2019.**

Please update your spam software to allow the e-mail ballot to  
enter your inbox from [noreply@ballotboxonline.com](mailto:noreply@ballotboxonline.com).

## HEADNOTES

Published by:  
DALLAS BAR ASSOCIATION

2101 Ross Avenue  
Dallas, Texas 75201  
Phone: (214) 220-7400  
Fax: (214) 220-7465  
Website: [www.dallasbar.org](http://www.dallasbar.org)  
Established 1873

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# Scope of Protections Afforded When Designating a Client an Expert

BY TY M. SHEAKS

When the client testifies as an expert witness, are the protections afforded by the attorney-client privilege waived? More practically, do the discovery rules authorizing production of “all documents...provided to, reviewed by, or prepared by or for [an] expert in anticipation of a testifying expert’s testimony” trump assertions of attorney-client privilege or work product doctrine?

Most practitioners have faced this conundrum when determining whether to designate a client as an expert in litigation. *In re City of Dickinson* is a must-read for any practitioner facing this decision, as the Texas Supreme Court recently affirmed the applicability of the attorney-client privilege in this context.

In *Dickinson*, the underlying litigation arose between the city and its commercial windstorm insurer for property damage caused by Hurricane Ike. In defense to a summary judgment motion filed by the city, the insurer included an affidavit from its corporate repre-

sentative that contained both factual and expert opinions. At the representative’s deposition, the city learned that the affidavit had been revised through a series of e-mails with counsel. The city moved to compel production of the e-mail exchanges along with all other “documents, tangible things, reports...” reviewed or prepared by or for the representative under Rules 192.3(e)(6) and 194.2(f).

The trial court granted the city’s motion and ordered production of the e-mails and accompanying drafts. The Court of Appeals overruled, concluding the e-mail exchanges and accompanying drafts of the affidavit were attorney-client privileged communications. The city filed a mandamus petition asserting that the appeals court abused its discretion because discovery rules clearly require production of documents in this context and argued there is no exception for when an expert is also party or employee of a party to the litigation.

At the issue before the *Dickinson* court was whether a client, when

testifying as an expert witness in the client’s own case, waives the attorney-client privilege with respect to the client’s testimony. In its analysis, the court noted that Rules 192.3(e)(6) and 194.2(f)(4) contain identical language allowing for discovery or disclosure of “all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert’s testimony.”

However, the court determined Rule 192.3(e) only provides that a party “may discover” testifying-expert materials and subsection (a) contradicts and confirms that, absent some specific provision otherwise, Rule 192.3 does not require disclosure of information that is attorney-client privileged. Similarly, the court found Rule 194.2 merely permits a party to request disclosure; it does not require disclosure as the words “require” or “must” do not appear in the text of the Rule. In support of its analysis, the court noted that official comments to the Rules make clear that requests for disclosure under Rule 194 are subject to the attorney-client privilege just like under the provisions of Rule 192.

Additionally, the court looked to prior lower court decisions addressing the attorney-client privilege in the context of expert discovery and noted those decisions, on balance, upheld the privilege. Specifically, the court noted

those prior decisions underscored the status of the attorney-client privilege as “quintessentially imperative” to our legal system because without it, attorneys would not be able to give candid advice to clients.

Finally, the *Dickinson* court distinguished its prior decision in *In re Christus Spohn Hosp. Kleberg*, which, the city argued, would require disclosure of the e-mail communications at issue. In *Christus Spohn*, the court required a hospital to turn over a report prepared by an internal investigator and furnished to the hospital’s testifying expert. The *Dickinson* court noted that decision was not controlling here since the internal investigative report was not attorney-client communications but work product.

Ultimately, the *Dickinson* court held that, while Texas’ expert discovery rules are broad, they remain subject to the attorney-client privilege, which is not waived when the client is designated as an expert.

The bottom line for practitioners who are considering designating a client (or client representative or employee) as an expert is that they should be aware of the protections afforded by the attorney-client privilege, as well as the potential pitfalls of relying on the work product doctrine. **HN**

Ty M. Sheaks is a partner at McCathern, PLLC. He can be reached at [tsheaks@mccathernlaw.com](mailto:tsheaks@mccathernlaw.com).

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## Focus | Antitrust & Trade Regulation/Business Litigation

# Roadmap to Recover and Retain Awards of Attorney's Fees

BY RYAN D. STARBIRD

In Texas, as in federal courts, the American Rule applies: win or lose—each litigant pays his own fees unless an applicable statute or contract provides otherwise.

However, even when recovery of fees is legally authorized, the prevailing party is not automatically entitled to a specific sum. Instead, that party must provide sufficient evidence to establish the reasonableness and necessity of requested attorney's fees.

The method of determining the reasonableness and necessity of fees has evolved over the years. In 1997, in *Arthur Andersen*, the Texas Supreme Court identified eight non-exclusive factors to guide the fact finder in its determination. Later, 2012, in *El Apple I, Ltd. V. Olivas*, 370 S.W.3d 757, 760 (Tex.2012), the Texas Supreme Court introduced the lodestar method, which uti-

lizes a two-step process.

There has been some confusion among courts and practitioners as to whether *Arthur Andersen* and *El Apple* represent separate methods and, if so, which method applies. In April, in *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 16-0006, 2019 WL 1873428 (Tex. 2019), the Texas Supreme Court removed any such doubt and clarified the requirements to establish attorneys' fees in any fee-shifting situation.

The case stemmed from a dispute between UTSW and its landlord, Rohrmoos. After water penetrated the property, UTSW terminated the lease and vacated the premises. The lease included a fee-shifting provision whereby "the prevailing party shall be entitled to an award for its reasonable attorneys' fees" from the non-prevailing party "[i]n any action to enforce the terms of [the] Lease."

UTSW sued Rohrmoos; and Rohrmoos counterclaimed. The jury determined both parties failed to comply with the lease, but Rohrmoos failed first and breached a warranty. While UTSW did not submit its claim for monetary damages and was not awarded damages, UTSW was awarded \$1,025,000 in attorney's fees.

On appeal, Rohrmoos raised two arguments against fees: (i) UTSW was not a "prevailing party"; and (ii) there was legally insufficient evidence to support the award.

The appellate court held UTSW was a prevailing party, the lodestar method was inapplicable, billing records were not required, and the testimony from UTSW's attorney complied with *Arthur Andersen* and supported the award.

Even though UTSW did not seek or obtain damages, the Texas Supreme Court agreed UTSW was a prevailing party based on the terms of the lease and the results of the case. Accordingly, UTSW was entitled to reasonable and necessary attorney's fees.

Before considering UTSW's evidence and finding it insufficient, the Court examined the law on attorney's fees in fee-shifting situations, which it summarized as follows: "to secure an award of attorney's fees from an opponent, the prevailing party must prove that: (1) recovery of attorney's fees is legally authorized, and (2) the requested attorney's fees are reasonable and necessary for the legal representation, so that such an award will compensate the prevailing party generally for its losses resulting from the litigation process."

The *Rohrmoos* Court acknowledged the recent confusion over the two seemingly separate methods for proving reasonableness; however, they noted the lodestar method was simply meant as a "short-hand-

version" of the *Arthur Andersen* factors.

The Court "reaffirm[ed]" that the "starting point for calculating an attorney's fee award is determining the reasonable hours worked multiplied by a reasonable hourly rate, and the fee claimant bears the burden of providing sufficient evidence on both counts."

It also explained conclusory testimony consisting of generalities is insufficient. Sufficient evidence includes, at minimum: the specific services performed, the identity of the person performing such services, the approximate date of the services, the reasonable amount of time required, and the reasonable hourly rate for each person. Contemporaneous billing records are not required; however, they "are strongly encouraged."

After considering UTSW's counsel's testimony, the Court determined it was too general to be sufficient, stating "[w]ithout detail about the work done, how much time was spent on the tasks, and how he arrived at the \$800,000 sum, [the attorney's] testimony lacks the substance required to uphold a fee award." Accordingly, the Court reversed the award of fees and remanded the case to the trial court for a redetermination of fees.

Since *Rohrmoos* was decided, the high court has confirmed the requirements detailed therein apply to all fee-shifting requests. In *Nath v. Texas Children's Hosp.*, 576 S.W.3d 707 (Tex. 2019), for example, the Court rejected the argument *Rohrmoos* was inapplicable to attorney's fees awarded as sanctions. Put simply, the fee-shifting standard clarified in *Rohrmoos* represents the current roadmap lawyers may utilize in their quest to recover attorney's fees. **HN**

Ryan D. Starbird is an attorney at Parsons McEntire McCreary PLLC. He can be reached at [rstarbird@pmmlaw.com](mailto:rstarbird@pmmlaw.com).

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# Reasons to see Evan Thomas Speak on Sandra Day O'Connor

BY TALMAGE BOSTON

Most lawyers seeking to pursue life in a mode of high emotional intelligence have two choices: either they can read any number of books on the subject written by more than 70 psychologists over the last quarter century OR they can read *First*, preeminent historian Evan Thomas' superb best-selling biography of Sandra Day O'Connor that came out earlier this year, and see how she demonstrated best practices in EI over the course of her life.

Dallas lawyers now have a third option. They can attend the Dallas Bar Foundation's annual fundraising dinner "An Evening With..." on Tuesday, November 12, 2019, and hear Mr. Thomas, this year's keynoter, speak on Justice O'Connor and learn how she broke the Supreme Court's gender barrier and became its most influential member during her 24 years on the Court, due in large part to her extraordinary powers of emotional intelligence.

There is quite a record of Sandra Day O'Connor's frequent demonstrations of her personal and interpersonal horsepower throughout Thomas' well-researched book. Among the most instructive are the following:

She consistently avoided ego-butting quarrels and emotional flare-ups with the likes of legislator Thomas Goodwin (while she served as an Arizona state senator) and Justices Harry Blackmun and Antonin Scalia (while she served on the Supreme Court), who frequently taunted her, yet their antics never triggered retaliation due to her steely self-control and adamant refusal to take their bait.

Being solomonically wise, she managed to find the center when facing controversial issues, and then cobbled together majorities to support her positions, first in Arizona state politics and



Evan Thomas

then on the Supreme Court, by balancing realism vs idealism and practicality vs principles; accurately reading a person's willingness (or unwillingness) to compromise; rejecting extreme positions; favoring flexibility over rigid lines when attempting to lay out the law; and being willing to accept "better" as a response to an issue when achieving "best" was not politically possible.

Despite the demands of her legal, political, and judicial careers, she managed to lead a balanced life by putting her family first, maintaining an exercise regimen, staying engaged with nature and the arts, and enjoying lively dinner parties and civic events with her many friends.

Despite her status as a bona fide celebrity during her years on the Supreme Court, she avoided the gossip mill by never gossiping herself and maintaining her privacy, such that she never publicly complained about

anything, refused to engage in personal confession, and would not reveal to the world her areas of introspection.

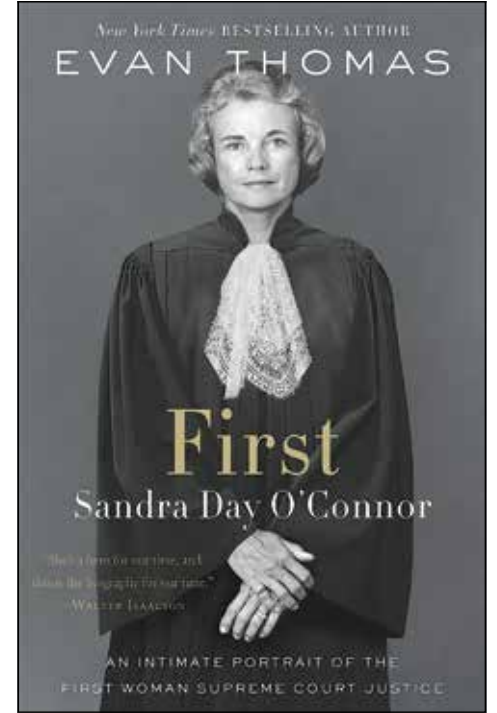
She mastered the art of building and maintaining a varied circle of bi-partisan relationships by invoking the power of hospitality through hosting meals at her home for her left-right and-center political and judicial colleagues, serving as an engaged mentor to her diverse variety of briefing clerks, and motivating all her fellow Supreme Court Justices to eat lunch together on a regular basis which made her become the social glue among the brethren.

She had the wherewithal to charm people with a sense of intimacy but without flirting; and maintained professionalism and didn't drop her guard in her communications.

With her extraordinary powers of empathy and intuition, she knew "when to tease, when to flatter, and when to punch the bully in the nose."

She never allowed setbacks to drive her into a prolonged funk, and dealt with them by moving forward and taking action on today's and tomorrow's challenges.

With her pragmatism and gift for knowing what truly mattered, and unafraid of humanizing the law, she took



on her era's toughest issues by cutting to the chase with her favorite question: "What's fair?"

Even on her toughest days, she rigidly maintained civility in her discourse, turning the other cheek to her adversaries, bending over backwards to give deference, and confronting friction by asking: "Can't we all just get along?"

To go deeper on these lessons from Sandra Day O'Connor, the legal profession's ultimate role model for embracing life with high emotional intelligence, please make arrangements to attend "An Evening With Evan Thomas" on Tuesday, November 12, 2019, at the Belo, and thereby support the Dallas Bar Foundation, with all proceeds from the event going to the Sarah T. Hughes Scholarships for minority law students at SMU, UNT, and Texas A&M law schools. For tickets, contact the Dallas Bar Foundation's Executive Director, Elizabeth Philipp at [ephilipp@dallasbar.org](mailto:ephilipp@dallasbar.org), (214) 220-7487. **HN**

Talmage Boston is a member of the Dallas Bar Foundation's board of directors and a partner in the Dallas office of Shackelford, Bowen, McKinley & Norton, LLP. He may be reached at [tboston@shackelford.law](mailto:tboston@shackelford.law).

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## Column | Ethics

# Don't Cut Yourself on the Bleeding Edge of Technology

BY JERRY R. HALL

Back in February, the Supreme Court of Texas amended the Texas Disciplinary Rules of Professional Conduct to make a subtle addition to Rule 1.01 (the rule concerning a lawyer's obligation to provide competent and diligent representation). The amendment did not change the text of the rule itself, but added new language to Comment 8: "Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, **including the benefits and risks associated with relevant technology.**" Tex. Disciplinary Rules Prof'l Conduct R. 1.01 cmt. 8, *amended by Sup. Ct. of Tex., Order Amended Comment to the Texas Disciplinary Rules of Professional Conduct*, Misc. Docket No. 19-9016 (Feb. 26, 2019) (new language emphasized in order).

The amendment suggests a lawyer's obligation of competence already applies to the use of technology in the practice

of law. This position was previously suggested in an ethics opinion regarding metadata: "a lawyer's duty of competence requires that lawyers who use electronic documents understand that metadata is created in the generation of electronic documents, that transmission of electronic documents will include transmission of metadata, that the transmitted metadata may include confidential information, that recipients of the documents can access metadata, and that actions can be taken to prevent or minimize the transmission of metadata." Tex. Comm. On Prof'l Ethics, Op. 665 (2016).

Of course, in the modern practice of law, "lawyers who use electronic documents" might as well be simplified to just "lawyers." But keeping pace with rapid technological change can be a full-time job in and of itself. Nevertheless, in light of this recent change to Rule 1.01, Texas lawyers must consider how their use of technology might affect other obligations under the Texas Disciplinary Rules of Professional Conduct.

**Confidentiality of Information (TDRPC 1.05).** The definition of "confidential information" in this rule is extremely broad, including both "privileged information" and "unprivileged client information." Some implications of this rule are already addressed in Opinion 665 of the Committee on Professional Ethics (as mentioned above), but the potential risk of exposure goes beyond just metadata. For example, if a lawyer knows Yahoo had multiple data breaches exposing its user accounts to unauthorized access, should the lawyer ask a client to change a Yahoo account's password before sending privileged communications to that email address?

**Safekeeping Property (TDRPC 1.14).** How often do people actually read the Terms of Service before clicking "I Agree?" The terms for some cloud storage services may be incompatible with a lawyer's obligation to make sure "client property shall be identified as such and appropriately safeguarded." Tex. Disciplinary Rules Prof'l Conduct R. 1.14(a). For example, the Terms of Service published for Google Drive at the time of writing appear to give Google wide latitude to use anything a user uploads or receives through the service: "you give Google a worldwide license to use, host, store, reproduce, modify, create derivative works . . . communicate, publish, publicly perform, publicly display and distribute such content." While Google states these rights are "for the limited purpose of operating, promoting, and improving our services, and to develop new ones," those limited purposes do not appear to be valid exceptions under Rule 1.14 that

would support granting such a license without client knowledge and consent.

**Fairness in Adjudicatory Proceedings (TDRPC 3.04).** Rule 3.04 prohibits a lawyer from unlawfully altering, destroying, or concealing "a document or other material that a competent lawyer would believe has potential or actual evidentiary value" in anticipation of a dispute (or from counseling or assisting another person to do so). Tex. Disciplinary Rules Prof'l Conduct R. 3.04(a) (emphasis added). With Rule 1.01 now being interpreted as including technological competence in the definition of competent representation, Texas lawyers may be expected to recognize the potential or actual evidentiary value of metadata even if they do not understand it—and even expected to maintain a copy of an electronic file with metadata when providing a copy without metadata, in case production of the metadata becomes necessary.

This list is intended to be demonstrative, not exhaustive. An attempt to form an exhaustive list would not only be too long for this column, but might even be obsolete by the time of its publication, given how sudden and swift technological change can be. Texas lawyers will be best served not by a one-time examination of their policies and practices, but by an ongoing dialogue with their service providers about their obligations and potential technological solutions. **HN**

*Jerry R. Hall is an attorney at Campbell & Associates Law Firm, P.C. and the 2019 Chair of the DBA Legal Ethics Committee. He can be reached at [jhall@cllegal.com](mailto:jhall@cllegal.com).*

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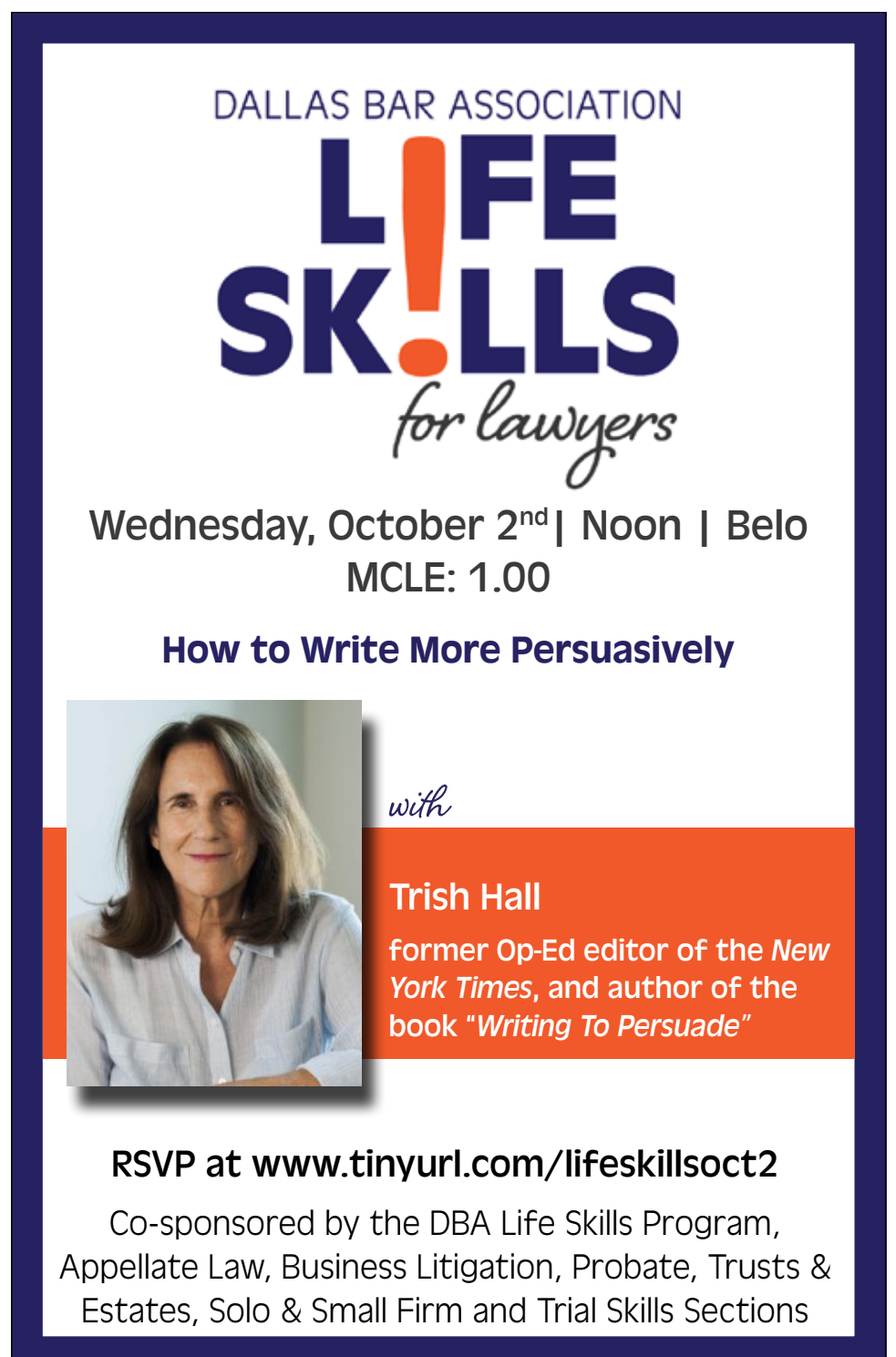
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# Getting around *Ritchie*: Choice-of-Law in Minority Oppression Claims

BY WADE L. MCCLURE  
AND BRANDON W. MAXEY

Since the Texas Supreme Court's clarification in *Ritchie v. Rupe*, finding there is no recognized common-law claim for minority shareholder oppression, much has been written of the hurdles facing minority shareholders now under Texas law. The limitations are apparent, but the creativity of the lawyers facing those hurdles is noteworthy.

One of the responses to *Ritchie* in this global economy is to assert that other state law applies. In today's environment, this is hardly a stretch. Even the smaller closely held entities have offices in multiple states, with employees, shareholders, and directors in different locations. Meetings occur by phone, via Skype or other modes available through the continued advancement in technology.

This new-age economy leads to a fundamental question. Which state law applies to the alleged oppressive activity? By examining analogous Texas case law and the Restatement, some guiding factors emerge.

## Start With the Contract

A Texas court would start with any

written contract between the parties. Often, this will be the Shareholders' Agreement—which may form the basis of any potential minority shareholder oppression claim. A choice-of-law provision may answer the question, if it is broad enough to encompass the oppression claim. But, a typical provision such as "Texas law governs the interpretation of the Shareholders' Agreement" may not control an independent claim of shareholder oppression.

Moreover, even a broadly drafted choice of law provision may be disregarded by the Court if: (1) the chosen state has no substantial relationship to the facts, or (2) the application of the law of the chosen state would violate public policy. See *Ennis, Inc. v. Dunbrooke Apparel Corp.*, 427 S.W.3d 527, 530-31 (Tex.App.—Dallas 2014).

But what happens when the agreement is silent on the applicable law or is not broad enough to cover alleged shareholder oppression claims?

## What is the Choice-of-Law Standard?

There are two views on the classifica-

tion of a minority shareholder oppression claim. Some courts have considered it a tort claim, but other courts and academic treatises characterize it as stemming from the internal governance of the company (or a "derivative" claim). This distinction is of interest because Texas courts apply a different standard for choice-of-law considerations with respect to these different claims.

For most causes of actions, including those sounding in tort, Texas follows the Restatement (Second) Conflict of Laws—which provides that, where a contract does not specify which law to apply, the Court will apply the law of the state with "the most significant relationship to the transaction and the parties..." See *Minnesota Min. and Mfg. Co. v. Nishika Ltd.*, 955 S.W.2d 853, 856 (Tex. 1996); see also *Ford Motor Co. v. Aguiniga*, 9 S.W.3d 252, 259-260 (Tex.App.—San Antonio 1999).

This analysis will focus first on "the place of injury," but will also consider (i) the place where the conduct causing the injury occurred, (ii) the place of incorporation and place of business of the parties, and (iii) the place where the parties' relationship is centered. *Alarcon v. Velazquez*, 552 S.W.3d 354, 362-63 (Tex.App.—Houston [14th Dist.] 2018). In minority shareholder oppression fact patterns, this could implicate several different states (and even countries). In short, this analysis will depend heavily on the facts of the case and the relationships of the parties.

In the pre-*Ritchie* case of *Chapa v. Chapa*, the Court of Appeals for San Antonio referred to a minority shareholder oppression claim as a tort. 2012 WL 6728242 \*1 (Dec. 28, 2012). Later,

the *Ritchie* Court found clearly that such a claim is one sounding in tort. See 443 S.W.3d 856, 889 (Tex. 2014). Thus, the multi-factor test discussed above is likely the operative standard.

On the other hand, derivative claims in Texas are generally litigated under the laws of the place of incorporation, as stated in Tex. Bus. Org. § 21.562 and in the newly added § 21.555. See 2019 Tex. Sess. Law Serv. Ch. 899 (H.B. 3603).

## Why Does This Matter?

The "significant relationship" test gives counsel considerable room for argument and trial courts discretion on how to rule. Given the nature of minority shareholder oppression claims, it is often difficult to determine where the alleged injury took place. Further, given the global reach of today's companies, it can also be difficult to discern where the conduct giving rise to these injuries took place.

For example, which law would apply for a shareholder oppression claim filed by a Texas resident concerning alleged oppressive conduct of a foreign corporation with its main offices in New Mexico? While facts would need to be developed further, expect that a creative lawyer may argue New Mexico law would apply.

In sum, *Ritchie* is not necessarily the last word on all minority shareholder oppression claims in Texas. A creative lawyer, given the right facts, could convince a trial court to apply law from another state that still recognizes a common-law shareholder oppression cause of action. **HN**

Wade L. McClure is a partner at Mayer LLP and Brandon W. Maxey is an associate at the firm. They can be reached at [wmcclure@mayerllp.com](mailto:wmcclure@mayerllp.com) and [bmaxey@mayerllp.com](mailto:bmaxey@mayerllp.com), respectively.

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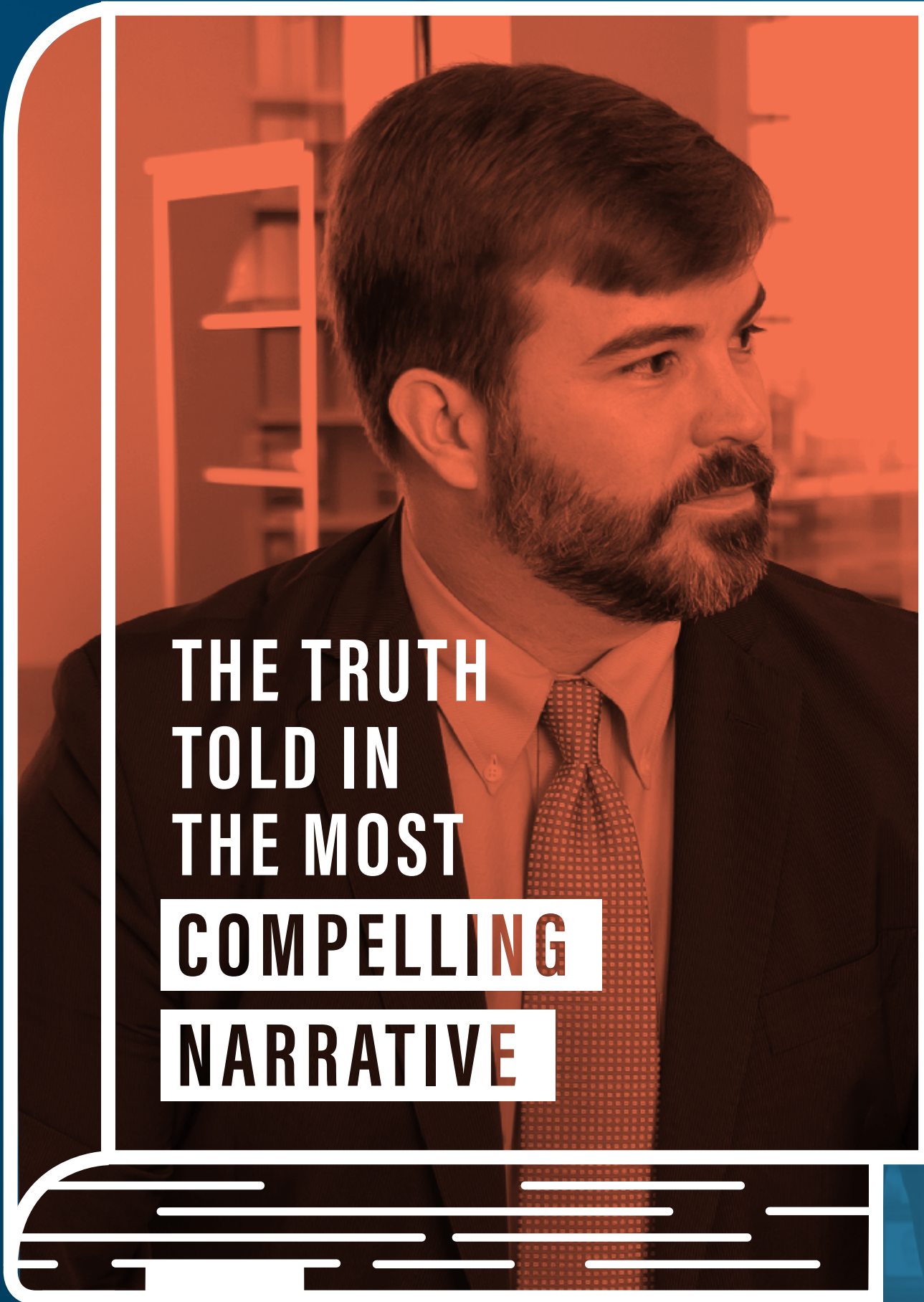
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## Column | Wellness

# Their Finest Hour - Lessons in Leadership

BY PAUL WINGO

Litigation is our civilized way of conducting war. It is oftentimes a bruising and brutal affair. Late nights, early mornings, high stress, strain on personal relationships, these are just some of the realities of an aggressive litigation practice. When the stakes are high, litigants simply do not care about what is going on in your personal life. Effective leadership is critical in high-stakes advocacy when everything is on the line for your clients. It is the difference between a steely eyed team ready to march into battle and a broken line that is fumbling in retreat. Lessons in leadership are crucial for us as lawyers. We can look to how one leader faced great adversity for guidance.

Winston Churchill was a flawed human like all of us. He wasn't a

saint. He was not an oracle. He was a bald, obese man who drank too much and took multiple baths a day. But he understood that times of deep adversity are an opportunity to heed the greatest calls of leadership. We should always remember the example he set for us on June 18, 1940, when he showed us that extreme adversity is a chance to find what is best about ourselves.

Two weeks prior, 338,000 Allied soldiers were desperately evacuated from Dunkirk in a hastily assembled civilian armada. Four days prior, the world had seen Nazi soldiers marching past the Arc de Triomphe after the surrender of Paris. The British Empire, which had spanned centuries, was precariously teetering on the edge of oblivion. The barbarians were quite literally at the gate. Simply put, the stakes could not have been higher for the new Prime

Minister as he stood to address the House of Commons on June 18, 1940. After a brief recitation of how dire the situation was, Churchill moved to rally the troops:

"There are many who would hold an inquest in the House of Commons on the conduct of the Governments... They seek to indict those who were responsible for the guidance of our affairs... Of this I am quite sure, that if we open a quarrel between the past and the present, we shall find that we have lost the future."

Churchill acknowledged that all the leaders, including himself, had fallen short leading up to their current dire situation. But he stopped it there. He insisted on absolution for everyone's collective sins, so they could move forward to face the challenge together.

It's easy for us to dismiss the importance of forgiveness in the rallying call. The human experience is never wanting for individual shortcomings. When bombs are falling in a litigation practice, it is easy to start assigning blame. We all fall short at times. If you wait for a blameless team you never rise to the challenge of the moment. Acknowledge mistakes but give a path to forgiveness. Leadership requires reconciling the past with the present, so you may meet the challenges of today. Churchill stated:

"I do not at all underrate the severity of the ordeal which lies before us; but I

believe our countrymen will show themselves capable of standing up to it... Much will depend upon this; every man and every woman will have the chance to show the finest qualities...and render the highest service to their cause."

Churchill knew Britain's refusal to capitulate to Hitler's demands meant an imminent German bombing campaign and a potential land invasion. Instead of hiding from the dark days ahead, he made a call for his people to rise to the highest of their potential.

So when the settlement talks have cratered and you are heading for a difficult trial—that is the time to truly make a call to service. Often we assume everyone is a professional and they are on board. An effective leader does not assume; they confirm and engage their team, so they are ready for the battle ahead. In Churchill's words, "Let us therefore brace ourselves to our duties, and so bear ourselves that if the British Empire and its Commonwealth last for a thousand years, men will still say, 'This was their finest hour.'"

Litigation can be one of the most rewarding experiences in modern life. The sheer agony and ecstasy of it lets us explore some of the deepest recesses of our souls. If you want to be successful, you simply must let go and give it all you've got. Find your finest hours. **HN**

Paul Wingo is a partner at Hamilton | Wingo, LLP and can be reached at [pwingo@hamiltonwingo.com](mailto:pwingo@hamiltonwingo.com).

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### SAMIRE K. ELHOUTY

Samire K. Elhouty is a civil rights attorney for a federal agency. He also provides legal services to his own clients in estate planning and business transactions.

#### 1. How did you first get involved in pro bono?

Volunteer work has been a priority for me for as long as I can remember. I spent a significant amount of time volunteering in college, so it remained a natural part of my career once I became an attorney. When I graduated from law school and returned to California, I happened to live close to the largest senior housing community in the country and thought it would be great if I could simply volunteer. I walked right in and asked how I could help and, as a relatively new attorney, I ended up providing free estate planning and end-of-life advice to many residents for about two years. Then I moved to Dallas and I volunteered to teach a GED English class at one of the local library branches until I became licensed to practice in Texas. Once that volunteer opportunity wrapped up, I registered for the DVAP's monthly email list of pro bono cases and I have been providing estate planning services pro bono to clients ever since.

#### 2. What impact has pro bono service had on your career?

Pro bono service allowed me to gain a tremendous amount of experience early in my career, which I would not have been able to do as quickly otherwise. More importantly, pro bono service has made my career much more rewarding. During especially stressful or busy periods in my career, my pro bono clients have brought me so much laughter and enjoyment. Estate planning is such a great practice area to do pro bono work in, because you can learn a lot about a person's life. I always aim for a personable approach and you never know which clients have amazing life stories and family histories that they may want to share once they get to know you.

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# Email, Text and Public Wi-Fi, Oh My! Protecting Client Data

BY JESSICA HOFFMAN

When I started practicing in 2002, email was relatively new, and access on mobile devices was rare. Within two years, the firm issued Blackberry devices and a few years later, smart phones were prevalent. Fast forward to 2019, and it is commonplace to wear a smart device for communication. I have taken calls from my watch while out on a run or walking my child to school. Technology is evolving so quickly that industries like ours are playing catch-up on how to integrate it into our work while ensuring we are complying with our duties. Grab your antacid; this may make you queasy as we review common issues lawyers face regarding technology.

HIPAA HITECH, House Bill 300, privacy protection statutes, and ethical obligations all govern the manner in which we should interact with technology. In February, Texas became the 36th state to adopt a 2012 update to ABA Model rule 1.1 which requires

lawyers be competent on the risks and benefits of relevant technology. Some states have pushed further: Florida requires periodic technology-related CLE, and California requires lawyers be competent in e-discovery or partner with someone who is. These requirements are only going to expand, particularly as this year's ABA Tech report focused on cyber-security and reaffirmed former FBI Director Robert Mueller's statement that "[t]here are two kinds of companies: those that have been hacked and those that will be." Cyber-attacks have been confirmed by large firms such as Cravath and Weil Gotshal. Hackers are targeting law firms because they are easier to breach, and important information is easier to find.

The biggest vulnerability is us; we unwittingly allow malfeasants to access our systems. We click on phishing emails, wire money to phony accounts, access unsecured Wi-Fi, and lose mobile devices. Ask your accounting and IT departments about your firm's

experience with this—you will not like the answer!

Below are practical steps you can take, or avoid, to protect yourself, your firm, and your clients.

Educate yourself on the risks of technology. It can happen to you and your firm.

Install software patches and updates. Developers release updates in response to weaknesses they find in their systems, such as the FaceTime bug which allowed callers to eavesdrop on the recipient even if the call was unanswered.

Do not open email from a sender you do not recognize. If you are unsure if email is legitimate, hover over the sender's address to view the entire domain. This can help identify spam.

Regularly update and use complex passwords. Passphrases help me keep up. Pokémon! and Bullw!nk13 are examples a boy mom may use!

Do not store client information solely on a hard drive unless backed up regularly—this includes desktops, laptops, and mobile devices. Not only is information stored locally easier to access if a device is stolen, a single point of failure for client data such as spilled coffee on your computer or a misplaced phone may not comply with your fiduciary obligations.

Avoid texts with clients. Texts often exist on your smart phone hard drive which we noted is easier to access and you are probably not storing them for your file. Texts are risky as well because they tend to be clipped and casual. Imagine a text string being read to a jury before you send it. Is it profes-

sional, clear, and comprehensive?

Public Wi-Fi is not for banking transactions or confidential client work. If you use it beware; hackers set up fake networks like "FREE AIR-PORT" to lure you to join. Then, they can see your keystrokes and other activity. While on public Wi-Fi, only use secured websites (identified by "https" and often marked with a padlock on the left) which encrypt your information and protect you while using them. Many firms use these sites to allow you to remotely connect to your network.

Before emailing files, even PDFs, remove metadata. If you do not, opposing counsel may be able to see a \$300,000 offer was \$400,000 in a prior draft.

Turn off "reply all" and auto-fill for email addresses. You or someone you know has sent sensitive client information to the wrong person with a similar name or inadvertently included opposing counsel, a mediator, or testifying expert on an email.

Be aware of other technology that may be relevant to your practice. Social media, smart home devices, location services, music, and TV accounts may have relevant evidence in family-law, criminal, personal-injury, trade-secret, non-compete cases and more. For additional information, check out my article in the January edition of the *Texas Bar Journal* "Living Spaces: Is Your Smart Home Friend or Foe When Litigation Starts." **HN**

Jessica Hoffmann is the Founder and CEO of FamilyDocket, and can be reached at [jessica.hoffmann@familydocket.com](mailto:jessica.hoffmann@familydocket.com).

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# No-Poach Agreements: Too Many Chefs in the Kitchen?

BY CLAYTON E. BAILEY AND ADAM BELL

Company counsel and human resources professionals face additional challenges ensuring their employment practices comply with federal and state antitrust laws. Although antitrust law is already complex, it has become particularly murky with respect to no-poach agreements. Recent guidance, lawsuits, and advocacy by the United States Department of Justice (DOJ), enforcement actions by various states, and lawsuits filed by employees have raised as many questions as they have provided answers for determining whether a no-poach agreement is illegal and may subject the company and its representatives to the grave risk of criminal penalties (up to \$100 million fine if a corporation, or, if an individual, a felony, up to 10 years imprisonment, and/or a fine of up to \$1 million) and treble civil damages.

In its simplest form, a no-poach covenant is an agreement, formal or informal, written or unwritten, explicit or implicit, between two or more companies not to solicit one another's employees during their employment or refusing to hire the employees for a period of time after the termination of their employment. No-poach agreements appear in various transactions, such as franchise agreements, settlement agreements in business disputes, and agreements involving the due diligence phase of a potential merger or acquisition.

Generally, it has been the DOJ's position that no-poach agreements between labor market competitors that are not reasonably necessary to any separate, legitimate business collaboration are per se, or automatically, unlawful. According to the DOJ, the chief evil of illegal no-poach agreements is that they distort the labor market by robbing employees of job opportunities, information, and the ability to use competing offers to negotiate better employment terms. This position was expressed in the DOJ and Federal Trade Commission's landmark Antitrust Guidance for Human Resources Professionals issued in October 2016 (HR Guidance). The HR Guidance also stated that no-poach agreements that are ancillary or reasonably related to otherwise pro-competitive agreements would be reviewed under a more lenient mode of analysis known as the "rule-of-reason". The rule-of-reason analysis balances a restraint's procompetitive and anticompetitive effects.

HR Guidance's issuance put market

participants on notice that the DOJ intended to proceed criminally against no-poach agreements determined to be illegal.

Following the release of HR Guidance, various states' attorneys general (AGs) began aggressive enforcement activities against parties using no-poach agreements. The most aggressive enforcer is Washington State Attorney General Bob Ferguson, who has commenced investigations and enforcement actions that have nationwide implications. Attorney General Ferguson has adopted the position that no-poach provisions in franchise agreements are per se illegal. As of August 2019, 67 corporate chains in various industries (e.g., fast food, restaurants, rent-to-own retailers, tax preparation providers, shipping service providers) have agreed to stop enforcing agreements prohibiting franchisees from recruiting and hiring employees from members of the franchise chain.

As AG prosecutions attacking no-poach agreements in franchise agreements

increased, so have tag along lawsuits filed by franchise employees. These cases have resulted in decisions applying different standards of analysis. For instance, while some courts refuse to impose the per se rule in favor of applying a hybrid analytical approach known as a "quick-look" analysis, others are less reluctant. Moreover, in at least one instance, a court determined it was too early to decide whether the no-poach agreement was per se illegal.

As the wave of AG and private lawsuits gained momentum, the DOJ has endeavored to clarify how no-poach agreements should be analyzed. In doing so, the DOJ has taken a position that is different from the various AGs, as well as contradicts several courts. On March 7, 2019, the DOJ intervened in three antitrust class actions and filed statements of interests advocating that no-poach agreements in vertically related firms should be analyzed under the rule-of-reason and that a quick-look analysis does not apply.

Beyond signaling the DOJ's interest in litigations attacking no-poach agreements, the statements of interest appear to be designed to persuade courts to remain open to certain defendants' motions to dismiss filed in the future. However, the DOJ's position in the statements of interest is not binding on any court.

Considering the current uncertainty involving no-poach agreements, employers (particularly in vertically related firms) should review their existing contracts for no-poach clauses and evaluate removing them after seeking advice from antitrust counsel. While the DOJ has provided a framework of "the right questions to ask in a systematic way" for preliminarily reviewing no-poach agreements, there is no guarantee that a state AG or judge will view the law similarly. **HN**

Clayton E. Bailey is a co-founder of, and partner at, Bailey Brauer PLLC. Adam Bell is an associate at the firm. They can be reached at [cbailey@baileybrauer.com](mailto:cbailey@baileybrauer.com) and [abell@baileybrauer.com](mailto:abell@baileybrauer.com), respectively.

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**The Cathedral Shrine of the Virgin of Guadalupe**

The St. Thomas More Society invites you to join us for our annual Red Mass on Saturday, October 19, at 5:00 p.m., at the Cathedral Shrine of the Virgin of Guadalupe, followed by a dinner reception at the Petroleum Club. Children are encouraged to attend this family event. For more details, and to register for this event, visit [www.stmsdallas.org](http://www.stmsdallas.org).

# DBA *Inspiring* WOMEN XI

The DBA celebrated the 11th annual “Inspiring Women” luncheon on Thursday, August 29, to a record crowd of 820 attendees! Members of the Dallas legal community came to hear inspiring stories from a panel of esteemed women lawyers who related humorous and honest insights into professionalism and how they have reached the pinnacles in their careers. Those participating in the panel included: Dawn Estes, Estes Thorne & Carr PLLC; Vicky Gunning, Locke Lord; Terry Bentley Hill, The Law Offices of Terry Bentley Hill, moderator; Veronica S. Lewis, Gibson Dunn & Crutcher; Elaine Flud Rodriguez, DFW International Airport; Hon. Karen Gren Scholer, Northern District of Texas; Hon. Renee Harris Toliver, Northern District of Texas; and Cynthia Hoff Trochu, Texas Instruments.



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## Focus | Antitrust & Trade Regulation/Business Litigation

# Significant Ramifications of the Texas Business Opportunity Act

JODY RODENBERG

We have all seen the advertisements in one form or another that require investing some amount of money up front for the “opportunity” to have bigger returns in the future. The Texas Business Opportunity Act, which is a tie-in statute to the Texas Deceptive Trade Practices Act, provides rules for those types of “opportunities” in the Lone Star state. Unlike the DTPA, there is not much case law interpreting the statute.

Determining whether a particular transaction falls within the statutory definition of a “business opportunity” is a complicated, but important, analysis. Those who offer “business opportunities” are required to follow a number of rules in doing so. Failure to follow the statutory requirements, which provide a significant amount of information to the buyer, can leave sellers with significant financial liability.

### What is a “Business Opportunity?”

The statute defines a business opportunity as a “sale or lease for an initial consideration of more than \$500.00 of products, equipment, supplies or services that will be used by the purchaser to begin a business” in which a seller represents the buyer will earn (or is likely to earn) more than their initial investment.

This alone is not enough. To qualify as a “business opportunity” under the statute, the seller must also do one of three things: (1) provide or assist in providing a location for the use of the products, equipment, supplies or services; (2)

provide a sales, production or marketing program; or (3) buy back the products, equipment, or supplies purchased.

The statute also expressly excludes eight types of sales or transactions from the definition of “business opportunity.” This includes, but is not limited to, real-estate syndications, offers of business opportunities if the seller has a net worth of \$25 million or more, and traditional franchise arrangements.

### What is a Seller Required to Do?

The answer comprises a great deal more than can be addressed here. Ten business days before a contract is executed or the seller receives any conditions, the seller must provide a disclosure statement containing certain information to buyer.

Fourteen sections of the statute address the contents and requirements of the disclosure statements, so a thorough reading is required. Some of that information includes: (1) the names under which the seller has transacted, is transacting, or intends to transact business, as well as the names and addresses of officers, directors, trustees, general partners, general managers, principal executives, and shareholders owning more than 20% of the shares; (2) a financial statement prepared according to generally-accepted accounting principles; (3) documentation to support the sale or earnings representations made by the seller, including the total number of purchasers compared to the total number of purchasers who achieved the

represented sales; and (4) a detailed legal history.

### What are the Consequences?

Among other things, sellers of a “business opportunity” cannot make representations about earning potential unless the seller actually has documented data to substantiate the representation and has disclosed that information to the buyer. Sellers are also not allowed to make claims or representations that are inconsistent with any of the information required to be disclosed by the Texas Business Opportunity Act.

The Texas Business Opportunity Act can be enforced by the attorney general or a private cause of action. Because a

violation of this Act is also “false, misleading or deceptive act or practice” under the DTPA, a single buyer is entitled to variety of remedies for a violation, including economic damages, mental anguish, treble damages in the amount of three times the economic damages, court costs and attorneys’ fees.

Due to the significant requirements and consequences for failing to comply with the Texas Business Opportunities Act, Texas lawyers should have a basic working knowledge of what situations may trigger application of the Act. **HN**

Jody Rodenberg is an attorney at Sommerman, McCafferty, Quesada & Geisler, LLP and can be reached at [jrodenberg@textrial.com](mailto:jrodenberg@textrial.com).

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# An Agreement to Agree Is No Agreement At All

BY MATT STAMMEL AND MELISSA JAMES

Contracting parties are at times inclined, or perhaps forced, to leave a material term for later agreement. Because it has been well established under Texas law that “agreements to agree” are not enforceable, contracting parties may try to get around this by contracting for “good faith” efforts to reach agreement on an open term. This approach works in some states. But not in Texas. This summer, in *Dallas Fort Worth International Airport Board v. Vizant Technologies, LLC*, the Texas Supreme Court held that a contract requiring a “good faith effort” to take a certain action was not enforceable. 2019 WL 2147262 (Tex. May 17, 2019).

In that case, Vizant entered into a contract with the DFW Airport Board under which it would recommend cost-reduction strategies for the airport’s payment processing systems. The contract required the Board to pay Vizant a fee based on a calculation of any savings achieved. The contract further required the airport Board’s staff to “make a good faith effort to receive board authorization to increase the compensation” payable to Vizant if certain metrics were achieved. Those metrics were achieved as a result of Vizant’s efforts, but the Board denied the staff’s request to increase Vizant’s compensation.

Vizant sued the Board for breach of contract, claiming it was entitled to the fee increase as recommended by the staff. The Board responded by claiming that it was immune from Vizant’s

claims based on its status as a local governmental entity. The issue in the case was whether the legislature waived the Board’s governmental immunity under the Local Government Code, which provides that immunity is waived for a claim arising from a contract that states “the essential terms of the agreement for providing goods or services to the local governmental entity.” The court had to decide whether the agreement stated the “essential terms” to support Vizant’s claim to the additional payment.

The court found the agreement’s language requiring a “good faith effort” to agree was “the equivalent of a promise to negotiate towards a future bargain in good faith.” The court first noted its previous holdings that agreements to negotiate towards a future contract are not enforceable. The court then recognized that some lower courts of appeal have held that adding a contractual requirement that the negotiations be conducted “in good faith” does not change the analysis. Then, while recognizing that the “trend line” in other states appears to be moving toward recognizing a cause of action for breach for failing to negotiate in good faith, the court stated that it would not take that “drastic step.” It concluded that the contract “does not state the essential terms of a legally enforceable agreement requiring the Board to make a good-faith effort to authorize a higher payment to Vizant.”

While contractual provisions requiring good faith negotiations to supply a missing term will not stand up to challenge, there are ways for contracting parties to solve for terms

not yet agreed or certain. For example, the parties can agree to a formula or metric to apply to deduce the missing term. The Texas Supreme Court addressed this situation in *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231 (Tex. 2016). There, the contract required the buyer of a company to pay a part of the purchase price after three years based on percentages of various work in progress at that time. The contract provided that those percentages of the work then in progress “will have to be mutually agreed upon” by the parties. The buyer argued that this “agreement to agree” on the percentages made the contract unenforceable. The court disagreed, finding “the clause is sufficiently definite to be enforceable.” The court highlighted that the parties previously had determined completion percentages for a prior-year end and that their undertaking to agree on the percentages for the future year did not leave room for the parties to “negotiate” or get a “better deal.” Instead, the court concluded that it could imply a “reasonable price based on objective facts and the specific standard to which the parties agreed, without rewriting the clause’s language.”

The main lesson from these cases is that it is best to specify all material terms in a contract, but, if one must be left open, the parties should provide a way for a court to determine the open term based on a specified standard and objective facts. **HN**

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**Focus** | Antitrust & Trade Regulation/Business Litigation

# TCPA – New Theories of Vicarious Liability

BY BILL S. RICHMOND

Companies hiring out telemarketing and text-message advertisements now face fuzziest guidance on being vicariously liable for their vendors’ acts following a host of new opinions under the Telephone Consumer Protection Act of 1991 (TCPA). Cases this year show that ratification has gained new grounds with courts, leading some to find potential liability even where a company has not actually hired a telemarketer.

Codified in 47 U.S.C. 227 *et seq.* and subject to the Federal Communications Commission, the federal TCPA has in recent years seen a surge of both individual and class-action lawsuits. A 2013 FCC ruling marked a new era of TCPA liability beyond the actual party making the calls or sending the texts when it held that a seller “may be held vicariously liable under federal common law agency principles for a TCPA violation by third-party telemarketer.”

The U.S. Supreme Court bolstered this theory when it agreed that TCPA liability need not be direct but is subject to the classical definition of agency: one person (principal) manifests assent to another person (agent) that the agent shall act on the principal’s behalf and subject to the principal’s control. Under the TCPA, in many courts, this means that a seller will be vicariously liable when it has control over the manner and means of the agent’s calling activities, whether by formal agency relationship, apparent authority, or ratification of the alleged TCPA violations.

In actual practice, however, 2019 has marked a new era in varied interpretations

of vicarious liability that warn of less clear lines of demarcation when companies hire third parties to conduct calls or send messages.

A July 2019 opinion from the Western District of Oklahoma set out a litany of facts that ultimately supported summary judgment against a company based on its telemarketer’s calls due to “ongoing and significant” involvement in the means and manner of the calls: the company helped determine the call scripts, which numbers to call, and calling procedures. Key to the court’s grant of summary judgment was evidence of actual control over material aspects of the calls themselves, as opposed to mere “passive permission to place the calls in question.”

Major involvement in the calls is not required by some courts, however. In an April 2019 decision in the Eastern District of Texas, vicarious liability allegations survived dismissal due to the plausible existence of an agency relationship. Agency was sufficiently pleaded where the plaintiff alleged that he received a call from a person who represented she was calling on behalf of “Seller” and he was then directly transferred to the “Seller.”

Not hiring the callers still may not relieve a company of vicarious liability in the face of ratification allegations. Ratification occurs when an agent acts for the principal’s benefit, and the principal does not repudiate the agent’s actions. In a March 2019 opinion of the Ninth Circuit, a student loan company failed to extricate itself from a suit alleging it was vicariously liable for calls made by independent contractors hired by a third party for debt collection purposes. The loan company undisputedly had no

direct contractual relationship with the contractors. But, a material fact issue existed as to whether the company, by accepting payments collected by the collectors and conducting audits that that could have uncovered TCPA violations, ratified the collectors’ actions despite having no prior relationship and no actual knowledge of violations because the company should have investigated further based on the circumstantial evidence available to the company.

Likewise, the Western District of Wisconsin issued an opinion in May 2019 refusing to allow a defendant escape vicarious liability via summary judgment. Under a “totality of the circumstances” analysis, the owner of a telemarketing company could be personally liable on vicarious liability grounds for customers utilizing his autodialing platform (a platform provided by a third party)

despite no direct evidence that he or his company actually sent any messages. The owner sometimes sent messages for his clients, he could not affirmatively state he did *not* send the messages at issue, and he admitted that he might have written scripts for his customers. These facts supported an inference of vicarious liability.

Whether wanting to advertise by calls, texts, or even ringless voicemails, recent cases show the risk of vicarious liability requires new revisiting policies to help avoid missteps when hiring third party vendors. Particularly given the new breadth in ratification-friendly opinions, a “head in the sand” approach is now a much riskier proposition when trying to avoid TCPA liability. **HN**

Bill S. Richmond is a founding partner of Platt Cheema Richmond PLLC. He can be reached at [brichmond@pcfirm.com](mailto:brichmond@pcfirm.com).

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# DVAP Veterans Legal Clinic Celebrates 10th Anniversary

BY JOHN C. VANBUSKIRK

The Dallas Volunteer Attorneys Program (DVAP) Veterans Legal Clinic addresses civil legal issues such as family law, probate, wills, landlord/tenant disputes, tax, employment, consumer, and bankruptcy issues, as well as expunctions and nondisclosures, for veterans and their families. While on-the-spot advice is provided, cases are also processed through DVAP and many are placed with volunteer attorneys for full representation. Veteran-specific topics such as veteran's benefits are also handled, either through an on-site Texas Veterans Commission counselor or via legal representation through DVAP.

The DVAP Veterans Legal Clinic was formed in 2009 when the country was suffering in the aftermath of 2008's financial meltdown. The awful economic situation impacted everyone, including veterans.

Through DVAP, many local attorneys, law firms, and corporations have supported the thousands of veterans who have come through the legal clinic since it opened. While a number of individuals, law firms, and organizations were part of the effort, **Michael Regitz** and **Dan Scott** were instrumental in putting the program together initially. The DVAP Veterans Legal Clinic has grown to be DVAP's largest legal intake clinic, with more than 50 applicants routinely showing up each month.

Want to help? The legal needs of veterans are many and varied, and extra help is always needed. Attorneys are needed to interview the veterans about their legal matters, and non-attorneys help with income and asset screening.

The DVAP Veterans Legal Clinic is held on the first Friday of each month, from



1:30 to 4:00 p.m. at the Veterans Affairs Medical Center—Spinal Cord Injury Center, 4500 S. Lancaster Road, Dallas, Texas 75216.

## How Can You Get Involved?

To volunteer individually or as a firm at the Veterans Legal Clinic, please contact Marisela Martin at [martinm@lanwt.org](mailto:martinm@lanwt.org).

Join the Dallas Bar Association Pro Bono Activities Committee Veterans Outreach Subcommittee, or just come to a meeting. Contact Robert J. Anderson, Veterans Outreach Subcommittee Chair, at [robertjanderson@yahoo.com](mailto:robertjanderson@yahoo.com).

Support the Veterans Legal Clinic by donating to DVAP at [www.DVAPcampaign.org](http://www.DVAPcampaign.org). **HN**

John C. Vanbuskirk is a solo attorney who can be reached at [johnc47@tx.rr.com](mailto:johnc47@tx.rr.com).

# School Shooter Safety: What you Need to Know to Keep Your Kids Safe

NIGEL WHEELER AND KEITH PILLERS

Run. Hide. As a last resort, Fight.

These were just a handful of the tips offered by school officials during an August 12<sup>th</sup> public forum held at the Belo Mansion. The purpose of the forum was to arm students, parents, teachers and administrators with tools and strategies to use in the event of an on campus shooting. The event, which was planned in June, coincidentally took place nine days after the August 3<sup>rd</sup> shooting at an El Paso Walmart. In the wake of the El Paso tragedy, which left twenty-two people dead and twenty-four people injured, school officials were eager to address ways to stay safe during mass shootings.

John Lawton, Dallas ISD Acting Chief of Police, Sherry West Christian, Dallas ISD Superintendent of Student Services and Tonya Knowlton, Lexington ISD Superintendent of Schools, participated in the panel and offered personal stories and practical tips on what we should do in an active shooter situation. The tips below summarize some of their key points during the forum:

## Tips for students during an active shooting at school:

- Don't set off the fire alarm. By activating the fire alarm, all of the students will head out of the school to a designated area where the shooter could be waiting. Remember, school shooters are often current or former students who have previously participated in fire drills.
- For students, actively participate in school shooter safety drills and if you have questions afterwards, ask your teacher.
- For parents, teachers, and administrators, encourage students to listen and engage during school shooting drills.
- For parents, if an active shooter is on campus, tell your children to listen to their teacher because the teacher has been trained on what to do.
- For students, be aware of where all of the exits are in your building and any surrounding buildings, including windows.
- If a student is outside of class during an active shooting, they may be locked out of the classroom and should leave the building and run to their reunification site.
- Do not use social media of any form during a shooting. This could give the shooter insight into where you are located and how many students and

teachers are with you.

• If you call 911, keep the line open because emergency operators may be able to use that information to help police respond to the scene.

• For teachers in districts that have limited resources for training for school shootings, seek out CRASE (Civilian Response to Active Shooter Events) events for training and advice offered by law enforcement.

• Students are the greatest resource for intelligence because they are on social media and often times hear about the shooter's plans before the shooting. Encourage all students that if they "See something, Say something."

• Students are encouraged to report any suspicious or abnormal student behavior to their teachers and school administrators.

## Tips for the public during an active shooting in public places or work:

- As general rule, if you have a back door, keep it locked.
- Be aware of exits at all times including windows.
- Have an escape plan.
- If you are on a high floor, don't use elevator, use the stairs.
- Practice lock down, lockdown, evacuation, shelter drills.
- If possible, run away from the shooter, hide if it's necessary, and as an absolute last resort, fight back.
- Always seek escape first if possible.
- When running away from an active shooter, leave your things, don't delay.
- Have a door stopper in your office; if you have to hide, use the door stopper to block the door because shooters seek easy targets. If you do not have a door stopper, pile furniture, or anything else that you have to block the door.
- Turn your ringer off, call 911, speak softly and leave the phone on—don't hang up.
- Stay as low as possible.
- Only open the door for someone you know, even if they say they are police, wait for confirmation.
- When police arrive, keep hands visible and don't ask questions of police until they've cleared the threat or direct you to speak to them.

Nigel Wheeler is an attorney at Bracewell LLP with a focus on mergers and acquisitions and public finance. He can be reached at [Nigel.Wheeler@bracewell.com](mailto:Nigel.Wheeler@bracewell.com). Keith Pillers is Director of Wealth Management and Financial Planning for Ackerman Capital Management and can be reached at [kpillers@gmail.com](mailto:kpillers@gmail.com)

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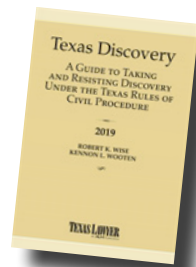
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### ABOUT THE AUTHORS

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**Focus** | Antitrust & Trade Regulation/Business Litigation

# The Future of Antitrust Litigation after *Apple v. Pepper*

BY THOMAS D. YORK

Earlier this year, the U.S. Supreme Court issued a 5-4 decision in *Apple v. Pepper*, one of the Court's most significant antitrust rulings in the last several years. In a majority opinion by Justice Kavanaugh, the Court held that iPhone owners who purchased applications ("apps") from Apple's App Store are "direct purchasers" and therefore have standing to sue Apple for alleged monopolization of a market for iPhone apps. The *Apple* decision narrows the so-called *Illinois Brick* defense against antitrust claims by purchasers against retailers, distributors, and other electronic marketplaces.

## Background to the Decision

Every iPhone has a direct connection to Apple's App Store, a marketplace of more than two million apps with myriad purposes. While some apps are free, others are sold for a price that is set by the third-party developer. When an iPhone user purchases an app from the App Store, Apple collects the purchase price and allows the purchaser to download the app. Apple then sends 70 percent of the price to the developer and keeps the remaining 30 percent as its commission.

In 2011, four iPhone owners filed a putative class action against Apple. Plaintiffs allege that, by making the App Store the only place to purchase apps and then charging a 30 percent commission, Apple forced customers to pay above-competitive prices for apps.

The district court dismissed the complaint, finding that the consumers were "indirect purchasers" suing for "pass on" damages that are barred by the Supreme Court's prior decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). In *Illinois Brick*, the

Court held that consumers who purchased clay bricks from contractors lacked standing to bring antitrust claims against brick manufacturers, as those consumers did not purchase products directly from the manufacturer. The *Illinois Brick* decision relied on common law principles of proximate causation to create a bright-line rule barring indirect purchasers from bringing antitrust claims against parties one or two steps removed in the distribution chain. Applying this rationale, the district court in *Apple* determined that app store consumers were "indirect purchasers" who purchased apps from app developers, not from Apple, and thus lacked standing. The Ninth Circuit reversed, and the Supreme Court granted certiorari.

## The Supreme Court's Decision

In a 5-4 decision, Justice Kavanaugh's majority opinion (with Justices Breyer, Ginsberg, Kagan, and Sotomayor) held that the consumers had standing to assert antitrust claims against Apple. To the majority, the decision was simple: because consumers purchased apps directly from Apple, the *Illinois Brick* indirect purchaser doctrine did not apply. *Illinois Brick*'s bright-line rule only applies when consumers purchase products through an intermediary, and the lack of an intermediary between Apple and the customers was dispositive.

In reaching its decision, the Court rejected Apple's theory that consumers can only assert claims against the party who sets the retail price (here, the developers). Instead, the Court emphasized substance over form—since the consumers purchased the app from Apple, it made no difference who set the price, or how Apple structured its financial arrangements with developers.

Justice Gorsuch wrote the opinion for

the four dissenting justices. According to the dissent, *Illinois Brick* held that an antitrust plaintiff cannot sue a defendant for overcharging someone else who may or may not have passed on that overcharge to plaintiffs. *Apple v. Pepper* presented this precise scenario: Apple imposes a 30 percent commission on developers, who may or may not pass on that fee to consumers. With the case proceeding, Apple and plaintiffs will have to determine which of the tens of thousands of app developers passed on the 30 percent commission to consumers, and how much. This presented difficult proximate causation issues that would become even more complicated should app developers bring their own antitrust claims.


## More Antitrust Litigation to Come

The Court's ruling will lead to more pri-

vate antitrust litigation. While the Court declined Texas and 30 other states' invitation to overturn *Illinois Brick* completely, Justice Kavanaugh's majority decision nevertheless narrowed the scope of the defense. Post-*Apple*, courts will no longer rely on who sets the prices or how a retailer structures its arrangements with upstream suppliers. Instead, if there is an intermediary between the plaintiff and the would-be defendant, an antitrust claim is barred by *Illinois Brick*. If there is no intermediary, a buyer may bring an antitrust claim for damages.

This will lead to additional antitrust litigation for retailers, distributors, and companies operating electronic marketplaces—though *Apple* will have no impact on the merit of such claims. **HN**

Tom York is an associate at Jones Day, and is the Chair of the DBA Antitrust & Trade Regulation Section. He can be reached at [tdyork@jonesday.com](mailto:tdyork@jonesday.com).



**2019 Education Symposium**  
 IMPROVING THE LIVES OF CHILDREN THROUGH ADVOCACY  
**Wednesday, October 30, 2019**  
**8:30 a.m. - 4:00 p.m.**  
 Belo Mansion  
 2101 Ross Ave. Dallas, TX 75201  
 SMU DEDMAN  
NEW CASES, INSTITUTE FOR CHILDREN'S RIGHTS  
 CLE, CEU, and CPE Credit Available  
 QUESTIONS? CONTACT MELISSA GARCIA AT [MGARCIA@DALLASBAR.ORG](mailto:MGARCIA@DALLASBAR.ORG)  
 OR CALL 214-220-7484

# 8 ATTORNEYS OF HIGH DISTINCTION

Diamond McCarthy LLP is proud to recognize eight distinguished attorneys who have received prestigious recognitions for their dedication to client service and the legal community.



**Mark K. Sales**  
 Partner – Dallas  
 "Lawyer of the Year"  
 Litigation – Trusts and Estates  
 "Best Lawyers in America"  
 Commercial Litigation  
 Litigation – Trusts and Estates  
 Texas "Super Lawyer"



**Mark A. Shank**  
 Senior Counsel – Dallas  
 Fellow  
 College of Commercial Arbitrators  
 Chartered Institute of Arbitrators  
 "Best Lawyers in America"  
 Arbitration  
 Commercial Litigation  
 Litigation – Labor and Employment  
 Texas "Super Lawyer" • "Top 100: 2019 Dallas/Fort Worth Super Lawyers List" • "Top 100: 2019 Texas Super Lawyers List"



**Christopher D. Sullivan**  
 Partner – San Francisco  
 "Lawyer of the Year"  
 Litigation – Bankruptcy  
 "Best Lawyers in America"  
 Bankruptcy and Creditor Debtor  
 Rights/Insolvency and Reorganization Law  
 Litigation – Bankruptcy  
 Northern California "Super Lawyer"



**Christie A. Newkirk**  
 Partner – Dallas  
 "Best Lawyers in America"  
 Employment Law – Management  
 Labor Law – Management  
 Litigation – Labor and Employment  
 Texas "Super Lawyer"



**James D. McCarthy**  
 Partner – Dallas  
 "Best Lawyers in America"  
 Bankruptcy and Creditor Debtor  
 Rights/Insolvency and Reorganization Law  
 Texas "Super Lawyer"



**Sofia Adrogué**  
 Partner – Houston  
 Texas "Super Lawyer"  
 Sofia has been recognized as a "Super Lawyer" for the past 9 years.



**Allan B. Diamond**  
 Partner – Houston  
 Texas "Super Lawyer"  
 Allan has been recognized as a "Super Lawyer" for the past 17 consecutive years and was also previously selected as a "Top 100" recipient in Houston.



**J. Gregory Taylor**  
 Partner – Dallas  
 Texas "Super Lawyer"  
 Greg has been recognized as a "Super Lawyer" for the past 10 years.

# Revocable Trusts

BY TERRY E. SMITH

The primary reason to create a “revocable trust” is to avoid the otherwise required Texas probate process. When a decedent’s last will and testament is filed and administered in a probate court of competent jurisdiction, the entirety of the will, as well as an inventory of the decedent’s assets and bequests, becomes a public record. In other words, what you consider to be your private personal information, such as your net worth, becomes available to the general public upon the probate of your will. Creating a revocable trust will allow your descendants to avoid the attorney’s fees associated with the probate process and the disclosure of private information as required to complete the process of probating a will in Texas.

A revocable trust is created by drafting a trust instrument. The trust instrument involves three primary named parties: (i) the creator of the trust, or grantor, (ii) the trustee, and (iii) the beneficiary. It is commonplace in revocable trust scenarios for the creator or grantor and trustee to be the same person. As grantor, you have the power to fund the trust. As current trustee, you will manage the revocable trust’s assets during your lifetime in the manner set forth and described within the revocable trust instrument. Unless otherwise set forth within the trust instrument, as current trustee, you have sole power to change your rights and duties as manager of the trust’s assets. Within the trust instrument, beneficiaries must be named to allocate the distribution of your assets upon your passing. Because the trust is revocable, if you, as trustee, determine that you no longer wish to use a revocable trust as the vehicle to ensure that your estate is administered as you desire, you may terminate the trust.

As grantor, you can fund your revocable trust by assigning assets into

the trust such as real property, private investments, and bank accounts. Once these assets are transferred into your trust, the assets are then owned by you, not individually, but in your capacity as the appointed current trustee for the benefit of the beneficiaries named within the trust instrument. A key concept to remember is that after the trust has been created and all assets have been transferred into the trust, all after-acquired assets should also be transferred into the trust, as acquired. If these later acquired assets are not transferred into the trust during your lifetime, they will be excluded from your revocable trust and your heirs will be compelled to complete the probate process so that these excluded assets may be distributed to your beneficiaries.

If you are the grantor and current trustee of your revocable trust, you must name a successor trustee to step into your shoes and administer the trust upon your passing. This successor trustee may be a spouse, adult child, or another third party. Within the trust instrument, you can set forth and describe in exact terms the rights and responsibilities of your successor trustee. If so granted pursuant to your trust instrument, your named successor trustee may gain control of your bank accounts or other investments, pay outstanding debts and taxes owed by you, and distribute remaining assets from your trust to your named beneficiaries.

A carefully drafted revocable trust instrument can be utilized to ensure that the disposition of your estate will be administered in the exact manner of your choosing, without your beneficiaries being required to navigate the probate process, without involvement of the probate court and associated costs, and without disclosure of your private information to the general public. **HN**

Terry “Ted” Smith is an attorney at Friedman & Feiger and can be reached at [tsmith@fllawoffice.com](mailto:tsmith@fllawoffice.com).

## Column | In The News

### FROM THE DAIS

Sally C. Helppie, of Vincent Serafino Geary Waddell and Jenevein, P.C., spoke at the Texas Women Film Festival.

### KUDOS

Earsa Jackson, of Clark Hill Strasburger, received the *Texas Monthly* 2019 Diversity and Inclusion Champion for Professional Excellence Award.

Elizabeth Lang Miers, of Locke Lord LLP, has been elected to Chair the ABA’s Judicial Division. Joe Unis, of the firm, has been selected for the Institute for Energy Law’s (IEL) second Leadership Class.

Larry Newman, of Newman Law Firm, P.C., received the Hillcrest High School Distinguished Alumni Award.

Terry Bentley Hill, of The Law Offices of Terry Bentley Hill, was awarded the Carmen Miller Michael Mental Health Advocate Award from Mental Health America of Greater Dallas.

Hon. Audrey Moorehead, of the Dallas County Criminal Court No. 3, was elected to the Board of Trustees of the Texas Center for Legal Ethics.

Quentin Brogdon, of Crain Lewis Brogdon, is being recognized in the 2020 Edition of *Lawdragon Magazine* as a “Lawdragon 500 Leading Plaintiff Consumer Lawyer” in the United States.”

Chrysta Castañeda, of The Castañeda Firm, received the *Dallas Business Journal’s* 2019 Women in Business Award.

Ken Raggio, of Raggio & Raggio, has been elected President of the Texas Chapter of the American Academy of Matrimonial Lawyers (AAML).

Neil J. Orleans, of Ross & Smith, P.C.,

was reelected Treasurer, Vice- President of Finance and member of the Executive Committee of the Richardson Symphony Orchestra.

### ON THE MOVE

Daniel Troiano joined McGlinchey Stafford as Associate.

Natalie Fortenberry and Michelle Schulz joined Polsinelli as Shareholders.

Sheri Higgins joined Munck Wilson Mandala, LLP as Of Counsel.

Kiri Deonarine and Alyssa Morrison joined Skierski Jain PLLC as Associates.

Regan Donnenfield joined KoonsFuller’s Denton office as Associate.

Jarrett Reed joined SheppardMullin as Partner.

Rebecca Tillery Rowan joined Turner McDowell as Partner, and the firm has become Turner McDowell Rowan, PLLC.

Michaela C. Crocker has joined Jones Day as Of Counsel.

Brenda Serafino has opened HSTX Title, located at 8300 Douglas Avenue, Suite 100, Dallas, Texas.

Anthony Magee has launched the firm of Magee Legal PLLC, located at 5050 Quorum Drive, Suite 700, Dallas, Texas 75254. 972-687-9107 (office).

Stromberg Stock, PLLC has recently moved to 8350 North Central Expressway, Suite 1225, Dallas, TX 75206.

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](mailto:jsmalling@dallasbar.org)

**A Salute to Service**  
J.L. TURNER LEGAL ASSOCIATION FOUNDATION  
**ANNUAL SCHOLARSHIP GALA**  
NOVEMBER 2, 2019  
THE FAIRMONT DALLAS  
1717 NORTH AKARD STREET | DALLAS, TEXAS 75201  
COCKTAILS: 6:00 P.M. | DINNER: 7:00 P.M.  
\*\*\*USO - MILITARY/1910S INSPIRED EVENT\*\*\*  
INDIVIDUAL TICKETS \$150.00  
SUPPORT @ [WWW.JLTURNERFOUNDATION.ORG](http://WWW.JLTURNERFOUNDATION.ORG)  
FOR SPONSORSHIP OPPORTUNITIES CONTACT  
ALEXANDER | [ALEXANDER@JLTURNERFOUNDATION.ORG](mailto:ALEXANDER@JLTURNERFOUNDATION.ORG)

## TEXAS ERISA ATTORNEYS

### Short & Long Term Disability Claims



*Are The  
Heart Of  
Our Practice*

ERISA and Non-ERISA



6500 Greenville Ave., Ste. 320  
Dallas, Texas 75206

[info@erisaltd.com](mailto:info@erisaltd.com)  
214-692-6556

**GUERRINI & THOMPSON, P.C.**

## Let's Keep it Social. Follow Us!

Find out what's going on at the #DallasBarAssoc  
[www.dallasbar.org](http://www.dallasbar.org)



## Jeff Coen Family Law Nuts and Bolts Training

presented by DVAP

October 15th & 16th  
4:40 - 8:00 p.m.  
Belo Mansion



MCLE Credit: 6 hours  
Ethics Credit: 2 hours  
(for both days)

Please RSVP by October 11th at  
[www.tinyurl.com/dvapnutsbolts2019](http://www.tinyurl.com/dvapnutsbolts2019)

# Classifieds | October

## EXPERT WITNESS

**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](mailto:troney@thomasroneyllc.com). "We Count."

**Economic Damages Experts-GMCO Litigation Damages Firm.** Economic Damages Valuation Experts. GMCO a CPA firm with significant testifying experience. George Mendez CPA CVA has more than twenty years' experience providing economic damages, lost profits, damage calculation testimony in court, deposition and arbitration. The firm provides services regarding commercial damages, lost profits, intellectual properties, employment, personal injury/lost earnings wrongful death, and insurance litigation. George Mendez has experience in most industries including energy/oil & gas, manufacturing, transportation, hospitality, service, distribution, and construction. GMCO serves attorneys in Dallas/Ft. Worth, Houston, Austin/San Antonio. Contact George Mendez CPA CVA. Dallas/Ft Worth 469-248-4477 or Houston (713) 8925037 [experts@georgemendez.com](mailto:experts@georgemendez.com)

**ERISA and executive compensation expert.** Board-certified in Tax Law, substantial experience as both a consulting and testifying expert in ERISA claims matters, taxation of IRAs, executive compensation and ERISA benefits, and similar matters. FINRA arbitration experience as well. Contact Linda Wilkins, J.D., LL.M. at Wilkins Finston Friedman Law Group LLP, (972) 638-8390. See <http://www.wiflawgroup.com/lindatestimonial.html>.

## OFFICE SPACE

**Skillman & Abrams.** Office space available at 6510 Abrams Road, Dal-

las, TX, Ste. 302 at corner of Skillman & Abrams. Lease includes private office space; separate secretarial space/waiting area; and spacious conference room. \$1200/ mo. Please call or text (214) 935 -3288.

**North Dallas – Two professional offices available** in suite with four attorney's with access to two conference rooms, kitchen, fax machine, free Wi-Fi, and free parking. Contact Ron at (972) 231-8855 or [rmiller@legalcpa.com](mailto:rmiller@legalcpa.com).

**4054 McKinney Avenue.** Office space available at 4054 McKinney Avenue. Third floor corner suite with three offices and reception. This space is 1175 sq/ft and rents for \$1,800.00 per month fixed rate. Across from Cole Park with surface parking. Full service with weekend and evening HVAC. Call (214) 520-0600.

**Private offices designed for attorneys available at 75 & NW Hwy - Class A High Rise.** ENGAGE is an innovative attorney-only workspace. Plug in to a secure & professional environment with mail/parcel handling, guest reception, conference rooms, free garage parking, office/kitchen amenities, and networking opportunities. Contact Chelsea at (214) 865-7770 or [chelsea@engagelawspace.com](mailto:chelsea@engagelawspace.com).

**Office Space Available in Uptown.** Office space available at 4303 N. Central Expressway for lease in a professional legal environment, in uptown. Share office space with experienced and established lawyers. Case referrals and other case arrangements are possible. Amenities include: Bi-lingual receptionist, fax copy machines, notary, internet, two conference rooms, two kitchen areas and plenty of free parking. Location is convenient to all Dallas Courts and traffic arteries. Please call Rosa at (214) 696-9253.

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

**One Month Free Rent- N. Central Expwy/SMU Blvd.** Partner office, Beautiful 12th floor view of SMU/Bush

Library/Park Cities. Professionally decorated, beautifully furnished. Overflow business. Bi-lingual receptionist, elegant conference room, kitchen, DSL, door signage, restaurant, bank, parking, DART. Office \$1,095.00/mo., secretarial space available. (214) 369-9888.

## POSITIONS AVAILABLE

**Experienced Attorney.** Palmer & Manuel, PLLC provides a platform in iconic Campbell Centre where you get to do what you love – practice law while we handle the administration and logistics. Run your practice and be an entrepreneur as part of our well-established group of respected and collegial attorneys with varied practice areas. Keep 95% of your fees plus earn on your internal referrals. Reasonable fixed overhead covers rent, legal assistant (or bring your own), office administrator, PCLaw/ProDoc, Lexis, phone, internet, website, parking, malpractice insurance, etc.). See [www.pamlaw.com](http://www.pamlaw.com) or contact Larry, Marty, or Jeff at (214) 242-6444.

**Dallas Family Firm** that helps people through divorce with empathy and unyielding representation seeks associate with 5+ years' experience. Email resume to [christina@katielewisfamilylaw.com](mailto:christina@katielewisfamilylaw.com); subject line should be your last name in all caps plus one word that describes you.

**Fifth District Court of Appeals. Staff Attorney.** Closing Date: When Filled Salary Upon Request. Responsible for legal research, analysis of legal issues, and assisting with the preparation of complex civil and criminal opinions. Superior academic credentials and writing ability. Excellent analytical and research skills. State provides health

insurance, pension plan, and 401k savings option. Flex time is available. Licensed Texas Attorney with minimum of six years of legal experience. Please submit State of Texas job application, resume, academic transcript, and writing sample to Fifth Court of Appeals c/o Susan Fox, 600 Commerce, Ste. 200, Dallas, TX 75202. Military Occupational Specialty Codes 27A & 250X. Please call for reasonable work place accommodations. (214) 712-3417. EOE/AA

## SERVICES

**The Attorney's Therapist: Kate Casey, LPC, JD.** As a former practicing attorney, Kate understands the overwhelming feelings of stress, burnout, and isolation that often accompany the art of balancing life with the practice of law. Kate will help you evaluate your choices, identify areas for change, and implement an achievable plan which will allow you to become the best version of yourself both at work and home. Autumn Ridge Counseling and Wellness is conveniently located at 270 Miron Drive, Suite 112 in Southlake. Kate can be reached at (817) 881-1914 or [Kate@AutumnRidgeLPC.com](mailto:Kate@AutumnRidgeLPC.com) or [AutumnRidgeLPC.com](http://AutumnRidgeLPC.com).

**Contract Attorney.** Need help with some overflow work? Whether it is a complex contract, commercial lease, EULAs, an MSJ or IP issues, I can help. Extensive experience in IP litigation, Transactional Business matters, and Commercial Litigation. Reasonable rates. [nida@nadirlaw.com](mailto:nida@nadirlaw.com).

To place an affordable classified ad here, contact **Judi Smalling** at (214) 220-7452 or email [jsmalling@dallasbar.org](mailto:jsmalling@dallasbar.org).



Polish your speaking skills and perfect your deposition techniques through live exercises with the DBA Trial Academy.

Apply Today!

### Dallas Bar Association TRIAL ACADEMY 2019 Session

**About:** Trial Academy is a hands-on deposition skills training program intended to improve on deposition techniques for solo and/or small firm lawyers licensed five or less years through a combination of lectures and live exercises.

**Required attendance:**

- October 11, 8:30-5:00 PM
- October 18, 8:30-5:00 PM

**Speakers:**

- Law Professors and Top Practitioners

**Cost:**

- \$150 - includes meals, course materials and E-textbook

**MCLE:**

- Approved for MCLE & Ethics credit

**Trial Academy Participation Criteria:**

- Licensed 5 or less years; need not be a DBA member to participate
- Have trial practice in federal or state district, county, or municipal courts
- Solo or small firm practitioner
- Commitment to attend October 11 and October 18 programs

**Apply:** [www.tinyurl.com/trialacademy2019](http://www.tinyurl.com/trialacademy2019)

### From Dondi to the Digital Age: DBA Day of Civility 2019

October 4, 2019 | 12:00 - 4:30 PM | Reception to Follow  
**FREE MCLE: 4.50 Ethics Hours for DBA Members (Nonmembers \$245)**



#### Dondi After 30 Years



Don Colleluori  
Figari + Davenport



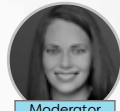
Paul Coggins  
Locke Lord



Hon. Sidney A. Fitzwater  
U.S. District Court  
Northern District



Wes Loegering  
Jones Day



Moderator  
Amber Reece  
Figari + Davenport

#### Mind the Gap: Generational Differences in Communication



Bill Compton  
Stanton LLP



Cynthia Hollingsworth  
Hollingsworth Walker



Dwayne Lewis  
Burford & Ryburn, L.L.P.



Saba Syed  
Bell Nunnally

#### Digital Civility



Trey Cox  
Lynn Pinker Cox  
and Hurst



Charles Hosch  
Hosch & Morris



Moderator  
Wei Wei Jeang  
Grable Martin Fulton PLLC



Anthony Magee  
Magee Legal PLLC

#### Civility as Seen From the Bench



Hon. Catharina Haynes  
Fifth Circuit U.S.  
Court of Appeals



Hon. Raquel Jones  
203<sup>rd</sup> District Court



Moderator  
James M. Stanton  
Former State District  
Judge, Stanton LLP



Hon. Emily Tobolowsky  
298<sup>th</sup> District Court



Hon. Ingrid Warren  
Probate Court No. 2

RSVP at [www.tinyurl.com/civility2019](http://www.tinyurl.com/civility2019)  
 Can't Make It To Belo? Live Stream this event at [DallasBar.org](http://DallasBar.org).

# 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](http://www.dvapcampaign.org)  
Michelle Alden at 214.243.2234  
or [aldenm@lanwt.org](mailto:aldenm@lanwt.org)

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