



(Front, L to R) – Brian Rawson, Stephanie Roark, C. Vernon Hartline, Jr., Melissa Dorman Matthews, Jeff Patterson. (Back, L to R) – Scott Edwards, Clayton Callen, Tyler Stuart, David Estes, Pryce Tucker, Tom Jacks

Not All Heroes Wear Capes: Hartline Barger Kicks Off 2020 EAJ Campaign

BY MICHELLE ALDEN

The Dallas Bar Association is pleased to announce that Hartline Barger LLP is the kickoff donor for this year's Equal Access to Justice Campaign, with a generous contribution of \$30,500. The firm has a long history of supporting pro bono in Dallas through the Campaign. Including this gift, the firm has donated more than \$123,000 to legal aid for the poor since 2007. The Equal Access to Justice Campaign is the annual fundraising campaign which supports the activities of the Dallas Volunteer Attorney Program (DVAP). The firm's gift makes it possible for DVAP to continue to provide and enhance legal aid to the poor in Dallas, keeping the doors to the courthouse and our overall justice system open to many more people in our community. Since 1982, DVAP has provided, recruited, and trained pro bono lawyers to provide free legal aid to the poor in Dallas. Last year, a 16-member staff supported over 3,000 volunteers in their efforts to volunteer at legal clinics and advise and represent clients.

Hartline Barger LLP (formerly Hartline Dacus Barger Dreyer) focuses on general civil litigation defense and trials. The firm's services are wide-ranging, focusing on product liability litigation, personal injury defense, commercial litigation, construction litigation, and labor & employment litigation, among other areas.

Responding to the needs of the local community is a core value of Hartline Barger, and they take pride in the impact that has come from these initiatives. The firm established a Charitable Giving Committee to properly focus their resources on these efforts. The committee is comprised of partners **Larry Grayson** (managing partner, Dallas), **Brian Rawson** (Dallas),

Melissa Dorman Matthews (Dallas), and **Peter Blomquist** (Houston). Through this committee, the firm has created a culture that actively seeks out opportunities to enrich and uplift the six communities in which they operate, investing the time, energy, and resources to ensure a lasting impact.

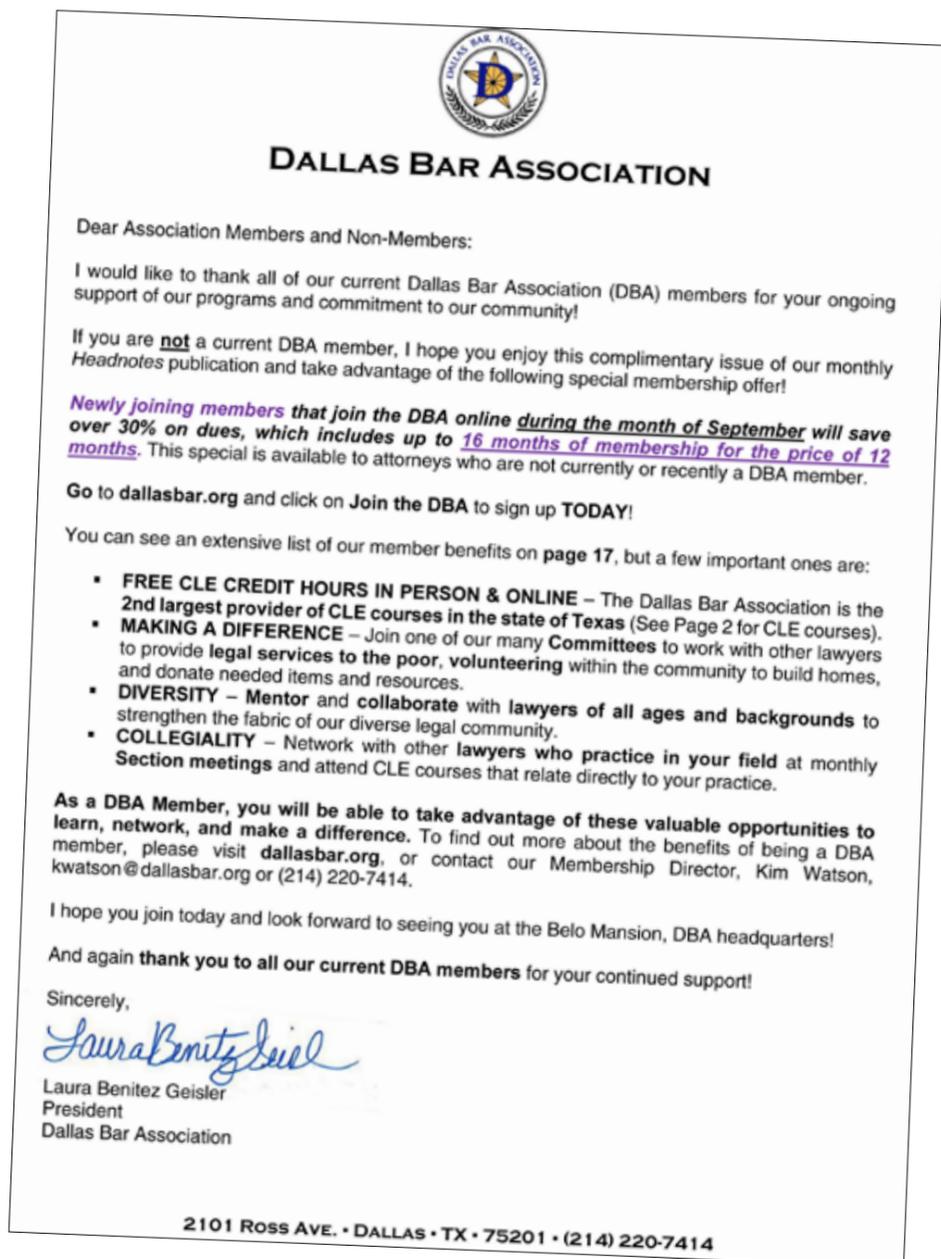
In the past year, members of the firm have helped to break the cycle of poverty by providing professional attire and resources to women looking to secure employment in Dallas, rallied against anti-Semitism and all forms of intolerance in Corpus Christi, volunteered to support abused and neglected children in the care of CPS in Dallas, and provided inventory to micro-entrepreneurs in developing and disaster-stricken nations around the globe. Hartline Barger spearheads initiatives that provide financial support to charitable and civic organizations throughout Texas and around the globe involved in health and social welfare, community, arts and culture, education, and legal advocacy.

Access to justice is a core value of the firm.

"While it is a privilege for us to practice law, we do not believe it should be a privilege to have access to quality legal representation. Unfortunately, this is a reality for much of society. The fact that we represent successful businesses makes it all the more important that we give back to those who lack such financial wherewithal," said Mr. Rawson.

The justice gap in Dallas County is daunting. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near the poverty level, and 42 percent have slim hope of being able to afford an

continued on page 10



Focus | Family Law

When Worlds Collide: Holiday Possession Headaches

BY BRAD JOHNSON

There is only one tricky part of the Standard Possession Order's (SPO) weekly schedule: trying to explain to clients that weekends start on Fridays. That means that when the penultimate or last day of a month is a Friday, even though the first of the next month happens during the weekend, that is a fifth weekend, so the next one coming is a FIRST weekend.

Holidays make everything more complicated. Each holiday has its own emotional baggage attached, and that stress can bring out the worst in parents who are mistrustful

scorekeepers, more concerned about getting every minute allowed by the current order. Family law attorneys have learned to expect "emergency" phone calls and emails in the 48 hours around the beginning of each holiday, because "that idiot [or some stronger word] isn't following the order, and I need an emergency order right now." Of course, most of these calls come on Friday afternoon after 5:00 p.m.

How do we minimize those calls? First, I recommend "preventive maintenance" in the form of client counseling. Explain to

continued on page 26



Inside

- 8** DBA Announces New Website, Member Engagement System
- 12** 50/50 Divorce Property Division: Three Common Myths
- 16** DBA Launches Entrepreneurs in Community Lawyering Program
- 24** Cohabitation Agreements: Avoiding Sticky Situations

The 2019 DBA Membership Directory is now available!

Check out the directory and legal resource guide used by Dallas attorneys!

To request a copy of the new directory, contact pictorial@dallasbar.org.



Calendar *September Events*

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

FRIDAY CLINICS

SEPTEMBER 6-BELO

Noon "Operation Underground Railroad," Matt Osborne. (MCLE 1.00)* RSVP to yhinojos@dallasbar.org.

SEPTEMBER 13-NORTH DALLAS**

Noon "Signs That Your Client Might be Under Criminal Investigation and How to Advise Them," James Whalen. (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.**

SEPTEMBER 20-BELO

Noon "The Foreign Corrupt Practices Act: An Inside Look at Enforcement and Why It Matters to You and Your Clients," Ephraim Wernick. (MCLE 1.00, Ethics 0.50)* RSVP to yhinojos@dallasbar.org.

SEPTEMBER 27-OAK CLIFF

Noon "Practicing for the Best While Planning for the Worst," Michelle Cheney. (MCLE 1.00, Ethics 0.50)* **Oak Cliff Chamber of Commerce, 1001 N Bishop Ave, Dallas. RSVP to yhinojos@dallasbar.org.**

MONDAY, SEPTEMBER 2

DBA Offices closed in observance of Labor Day

TUESDAY, SEPTEMBER 3

Noon **Tort & Insurance Practice Section**
"Legislative Update." (MCLE 1.00)*

Morris Harrell Professionalism Committee

DAYL Solo & Small Firm Meeting

WEDNESDAY, SEPTEMBER 4

9:00 a.m. **2019 Dallas County Criminal Practice Seminar**
At **Frank Crowley Courts Bldg.** (MCLE 6.00, Ethics 1.00)* Register at <https://tinyurl.com/y2kaldh6>. Sponsored by the DBA Criminal Justice Committee.

Noon **Employee Benefits & Executive Compensation Law Section**
"Tips and Traps for Cybersecurity for Benefit Plans," Jessica Morrison and Neely Munnerlyn. (MCLE 1.00)*

Solo & Small Firm Section
"Creating Systems and Workflows for Running an Efficient Law Firm: A Practical Approach," Kevin Ross. (MCLE 1.00, Ethics 0.50)*

Juvenile Justice Committee

Public Forum/Media Relations Committee

DAYL Judiciary Committee

DAYL Politically Aware Committee

THURSDAY, SEPTEMBER 5

Noon **Construction Law Section**
"Chess Anyone? The Ebb and Flow of Construction Defect Insurance Coverage since Lamar Homes," Patrick Wielinski. (MCLE 1.00)*

Government Law Section
Topic Not Yet Available

Admissions & Membership Committee

Judiciary Committee

St. Thomas More Society

FRIDAY, SEPTEMBER 6

Noon **Friday Clinic-Belo**
"Operation Underground Railroad," Matt Osborne. (MCLE 1.00)* RSVP to yhinojos@dallasbar.org.

MONDAY, SEPTEMBER 9

Noon **ADR/Collaborative Law Sections**
"The Icing on the Cake: Adding Collaborative Dispute Resolution to Your Transactional Practice," Ruth Rickard, Stephen Rizzieri, and Anne Shuttee. (MCLE 1.00, Ethics 0.25)*

Real Property Law Section
"Title Insurance for Tax Sale Properties," Leslie Johnson. (MCLE 1.00)*

Tax Law Section
"Basics of Tax Litigation," Jonathan Blacker, Abbey Garber, Audrey Morris, and Joshua Smeltzer. (MCLE 1.00)*

Peer Assistance Committee

DAYL Membership Committee

TUESDAY, SEPTEMBER 10

Noon **Corporate Counsel Section**
"2019 Texas Legislative Update," Sarah Lacy and Robert Miller. (MCLE 1.00)*

Mergers & Acquisitions Section
Topic Not Yet Available

Courthouse/Library Committee

Legal Ethics Committee

DBA/DAYL Moms in Law. Ida Claire (5001 Belt Line Rd., Dallas). RSVP rocio@snellingsinjurylaw.com.

Dallas Women Lawyers Association CLE

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

J.L. Turner Legal Association

WEDNESDAY, SEPTEMBER 11

Noon **Family Law Section**
"Pleading the 5th in Family Law Cases," Craig Bonham. (MCLE 1.00)*

Transition to Law Practice Program
"Interview with a Legal Legend: Hon. Barbara M.G. Lynn; interviewed by Ann Marie Arcadi of Arcadi Jackson. (Ethics 1.00)*

Dallas Asian American Bar Association

5:15 p.m. Legalline. Volunteers needed. Contact sbush@dallasbar.org.

5:30 p.m. **Bankruptcy & Commercial Law Section**
"Solvency Opinions: Relevance of Solvency Analysis in Bankruptcy Planning and Contemplated Transactions," Yusra Quershi and Rachael Smiley. (MCLE 1.00)*

THURSDAY, SEPTEMBER 12

8:30 a.m. **Coffee at the Courthouse**
At the Federal Courthouse, Central Jury Room, 1st floor. RSVP www.tinyurl.com/coffeesept2019. Sponsored by the Judiciary Committee.

Noon CLE Committee

Publications Committee

Christian Lawyers Fellowship

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

FRIDAY, SEPTEMBER 13

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

9:00 a.m. **DBA Tech Summit**
Keynote speaker: Erin Nealy Cox. Free to members. (MCLE 4.50, Ethics 1.00)*

Noon **North Dallas Friday Clinic**
"Signs That Your Client Might be Under Criminal Investigation and How to Advise Them," James Whalen. (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.**

Trial Skills Section
Topic Not Yet Available

DVAP Education Advocate Training

MONDAY, SEPTEMBER 16

Noon **Appellate Law/Business Litigation Sections**
"What I've Learned as an Appellate Judge That I Wish I had Known as an Advocate," Justice Brett Busby. (MCLE 1.00)*

Labor & Employment Law Section
"What Arbitrators Want—How to Improve Your Arbitration Advocacy," Mark Shank. (MCLE 1.00)*

Senior Lawyers Committee

TUESDAY, SEPTEMBER 17

Noon **Antitrust & Trade Regulation Section**
"What's Next for Antitrust Litigation after Apple v. Pepper," Tom York. (MCLE 1.00)*

Community Involvement Committee

Entertainment Committee

Dallas Bar Foundation Board of Directors Meeting

DAYL Elder Law Committee

6:00 p.m. Dallas Hispanic Bar Association

WEDNESDAY, SEPTEMBER 18

Noon **Energy Law Section**
"Mineral Purchase and Sale Agreements," Cliff Squibb. (MCLE 1.00)*

Health Law Section
"Hot Topics in the Business of Medicine and Dentistry," Samuel Pondrom and Jay Reyer. (MCLE 1.00)*

Law in the Schools & Community Committee

Pro Bono Activities Committee

DAYL/DWLA Women's Mentoring Circles

Non-Profit Law Study Group

5:15 p.m. Legalline. Volunteers needed. Contact sbush@dallasbar.org.

THURSDAY, SEPTEMBER 19

Noon **Independence of the Judiciary**
"Federal Judicial Selection," Allyson Ho, Karen Mitchell, and Kim Askew, moderator. (MCLE 1.00)* RSVP to bavina@dallasbar.org.

Minority Participation Committee

Christian Legal Society

Dallas Women Lawyers Association CLE

FRIDAY, SEPTEMBER 20

Noon **Friday Clinic-Belo**
"The Foreign Corrupt Practices Act: An Inside Look at Enforcement and Why It Matters to You and Your Clients," Ephraim Wernick. (MCLE 1.00, Ethics 0.50)* RSVP to yhinojos@dallasbar.org.

DBA/DAYL Moms in Law. Neiman's downtown. Only 25 spots available. RSVP www.dayl.com/moms-in-law-skin-regimen.

MONDAY, SEPTEMBER 23

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

Securities Section
Topic Not Yet Available

TUESDAY, SEPTEMBER 24

Noon **Probate, Trust & Estates Law Section**
"Income Tax Issues in Estate Administration," Mickey Davis and Melissa Willms. (MCLE 1.00)*

DBA CSF Board of Directors Meeting

American Immigration Lawyers Association

DAYL Lawyers Promoting Diversity Committee

DAYL Lunch & Learn CLE

DWLA Board of Directors Meeting

5:30 p.m. **Pro Bono Awards Celebration**
Help the Dallas Volunteer Attorney Program celebrate! RSVP tinyurl.com/pbawards2019.

WEDNESDAY, SEPTEMBER 25

8:00 a.m. Bench Bar Conference at Horseshoe Bay. Register online at dallasbar.org.

11:30 a.m. **Immigration Law Section**
"2nd Annual Immigration Excellence Awards Luncheon," Liz Cedillo-Pereira, Judge Clay Jenkins, Steven Ladik, and Jason Rademan. Register at <https://tinyurl.com/y6cxbmij>

Noon **Entertainment, Art & Sports Law Section**
"How to Start a Professional Sports League: A Conversation with Oliver Luck," Oliver Luck. (MCLE 1.00)*

DAYL Equal Access to Justice Committee

DVAP New Lawyer Luncheon. For more information, contact martinm@lanwt.org.

THURSDAY, SEPTEMBER 26

8:00 a.m. Bench Bar Conference at Horseshoe Bay. Register online at dallasbar.org.

Noon **Criminal Law Section**
"Juvenile & Criminal Law Crossover," George Ashford. (MCLE 1.00)*

Environmental Law Section
Topic Not Yet Available

Intellectual Property Law Section
"Where are we on IPRs? A Review of the Updated Trial Practice Guide, Claim Construction, and Federal Circuit Decisions," Andy Ehmke and Thomas Kelton. (MCLE 1.00)*

FRIDAY, SEPTEMBER 27

8:00 a.m. Bench Bar Conference at Horseshoe Bay. Register online at dallasbar.org.

Noon **Oak Cliff Clinic**
"Practicing for the Best While Planning for the Worst," Michelle Cheney. (MCLE 1.00, Ethics 0.50)* **Oak Cliff Chamber of Commerce, 1001 N Bishop Ave, Dallas. RSVP to yhinojos@dallasbar.org.**

MONDAY, SEPTEMBER 30

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

DBA Awarded Deborah G. Hankinson Award



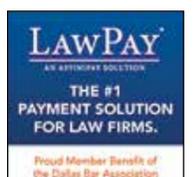
The Dallas Bar Association was awarded The Deborah G. Hankinson Access to Justice Award for their Justice Forever endowment fund, which has raised over a million dollars for the Dallas Volunteer Attorney Program to help ensure that low income residents of Dallas County have access to justice. Justice Eva Guzman presented the award to DBA President Laura Benitez Geisler.

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.



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President's Column

Community, Culture & Connection

BY LAURA BENITEZ GEISLER

September reminds me a lot of January. When I was a kid, going “back to school” was something I looked forward to each September. I loved how the beginning of a new school year bundled together the opportunity for a fresh start, with an excitement for the possibilities waiting ahead. The first day of school was my New Year’s Day, filled with the same kind of optimism and hope people typically reserve for January. Those back to school days seem so long ago, but when September rolls around each year, I am reminded of the excitement I felt as a kid going back to school to start a new year.

It isn’t necessary to wait until January 1 to begin something new, you can start a new year today. If you received this complimentary edition of Headnotes as a non-member, let it serve as a reminder that you don’t have to wait until January to expand your community, make new connections and find new opportunities. You can start right now and join the DBA. By joining in September, you not only get a dues discount, you get to enjoy all the community, culture and connections the DBA has to offer in 2019 bundled with the excitement of things to come in 2020.

As a DBA member you will be connected to a community of more than 11,000 lawyers. As a DBA member you will be part of a culture that embraces the core values of our profession—civility, professionalism, respect for the rule of law, and equal access to justice for those who cannot afford legal representation. With 30 substantive law sections and 29 committees, there is a place for everyone in the DBA community. The only downside to having a massive array of options is deciding where to start, so here are a few options to consider in September.

On September 13, the DBA will host a day long, dual track Tech Summit focused on issues related to cybersecurity, privacy and professional responsibility. The Tech Summit is designed to help lawyers from all practice areas understand and identify the potential risks and unique issues technology presents in today’s legal world. The dual track programming (basic and advanced) is intended to educate lawyers with varying levels of knowledge. At lunch, program attendees will hear **Erin Nealy Cox**, U.S. Attorney for the Northern District of Texas, discuss how and why cybersecurity is an issue all lawyers must be informed on and how the U.S. Attorney’s office is fighting against cybercrime. September 19, the third program in the “Protecting and Defending the Independence of the Judiciary” series will take place at noon. The focus for this program will be the current state of Federal judicial selection in Texas. **Kim Askew**, former Chair of the ABA Standing Committee on the Federal Judiciary, will moderate a discussion with **Karen Mitchell**, Clerk of the Northern District of Texas, and **Allyson Ho**, Federal Judicial Evaluation Committee.

If you are caught up on your CLE and would prefer to socialize with lawyers who are passionate and dedicated to pro bono, at 5:30 on September 24 the DBA is hosting the Pro Bono Awards Celebration. Perhaps you are looking for a mini-retreat that mixes 8.75 hours of CLE with fun, networking, and mingling with our local judges in a casual setting, then attend Bench Bar at Horseshoe Bay from September 25-27, where **Leon Carter** will be honored as Trial Lawyer of the Year.

These are just a few opportunities for DBA members this September, but there are many more. In fact, there are more than 50 different section and committee meetings not specifically mentioned in this column that are scheduled the month of September. There are also pro bono opportunities available. You can take a case with the Dallas Volunteer Attorney Program (DVAP), volunteer at a legal clinic, or attend pro bono training so you are ready to take a case in October. Anyone interested in learning more about DVAP can email Marisela Martin at martinm@lanwt.org to join DVAP for a complimentary lunch and informational meeting.

For all that is happening in September, I promise you there is much more through the end of 2019 and throughout 2020. If you are not a member, I hope you will start something new this month and join the DBA community where the potential for something new and exciting awaits you.

Laura



- WITH -

Hon. David C. Godbey
United States District Court,
Northern District of Texas

Hon. Barbara M.G. Lynn
Chief United States District Judge
United States District Court
Northern District of Texas

Hon. Irma Carillo Ramirez
United States District Court
Northern District of Texas

Sponsored by
DBA Judiciary Committee

Thursday, September 12
8:30 - 10:00 AM
Federal Courthouse
Central Jury Room, 1st Floor

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Focus | Family Law

Unusual Enforcement Remedies for Family Law Orders

BY MICHELLE MAY O'NEIL
AND KARRI BERTRAND

After entry of a final order in a divorce proceeding, the parties may seek enforcement of the order by filing a lawsuit. Under Chapter 9 of the Texas Family Code, a court may invoke various enforcement remedies or render further orders to enforce the prior order. Other than civil or criminal contempt, other unusual remedies exist for enforcement of family law orders. Under Federal law, additional unique remedies are exclusively available to the Child Support Division of the Office of the Attorney General. These remedies are described below.

License Suspension

License suspension is an effective collection remedy in that any license issued by the State of Texas is subject to suspension. Most Texas professional licensing agencies list their licensees online, making it relatively easy to

confirm an obligor's licensure. Additionally, the Texas Department of Public Safety can suspend a driver's license just as easily as the Texas Parks and Wildlife Department can suspend a hunting and fishing license. Denial of license renewal may also be requested (and the procedure is simpler) for any person who is six months delinquent in child support. The licensing agency cannot renew the individual's license until all child support arrearages are paid, unless the obligor is granted an exemption or contest.

Qualified Domestic Relations Orders

A qualified domestic relations order, or a "QDRO," may be used to secure payment of child support in the same manner it is used to divide property in a divorce. Prior to using a QDRO for child support, it is important to determine when payment to the alternate payee can be made under the plan's rules,

because the QDRO cannot change the form or timing of the benefit otherwise payable under the plan and may not violate the terms of the plan.

Liens

Child support liens arise by operation of law whenever a child support payment obligation is delinquent. The Family Code provides that a child support lien may issue regardless of whether the delinquent amount has been adjudicated. A lien attaches to all property owned by the obligor except for his or her homestead and is effective until all current support and child support arrearages have been paid. The lien is recorded with the county clerk and a copy must be provided to the obligor within 21 days of filing. Child support liens may be delivered to any financial institution that holds money belonging to the obligor, such as banks or credit unions. Service is not statutorily required.

Levies on Financial Institutions

A child support lien sent to a financial institution freezes the money so the obligor cannot reach it, but a levy is required to disburse the money to the obligee. A judgment or other administrative determination confirming a child support arrearage is required before a child support levy may be issued. If the financial institution receives no notice from the obligor that the levy is contested, the financial institution shall remit funds to the obligee no earlier than the 15th day nor later than the 21st day after receipt of the levy. The financial institution is also required to notify any other person who has a beneficial interest in the account. A financial institution that does not honor a levy may

be liable for the value of the property held by the institution, not to exceed the amount of arrearages owed by the obligor.

OAG's Exclusive Remedies

Under Federal Law, there are certain enforcement remedies unavailable to the private bar that the Child Support Division of the Office of the Attorney General (OAG) and its Title IV-D agencies may utilize to collect a child support obligation. For example, the OAG can conduct quarterly data matches with financial institutions for the purpose of identifying financial assets of delinquent obligors. The state is also authorized to garnish unemployment insurance benefits for the collection of child support from the state's employment security agency. Interception of income tax refunds is also an important enforcement mechanism utilized by Title IV-D agencies to satisfy past-due child support. Passport sanctions are available for obligors owing support exceeding a specified amount, and the state Title IV-D agency may revoke existing passports or deny issuance or renewal of passports. Delinquent obligors also risk being reported to consumer credit bureaus, subject to appropriate due process protections under which the obligor may contest the amount of the arrearage being reported.

The Texas Family Code provides many unusual remedies to enforce family law orders that may not be available in other areas of law, and utilizing these remedies helps to ensure that all parties satisfy their court ordered obligations. **HN**

Michelle May O'Neil is the Senior Shareholder at O'Neil Wysocki Family Law. She may be reached at michelle@owlawyers.com. Karri Bertrand is an associate at O'Neil Wysocki Family Law. She may be reached at karri@owlawyers.com.



In conjunction with the Dallas Bar Association IP Section's 25th Anniversary, please mark your calendars for a celebration of intellectual property and innovation in North Texas.

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DBA Announces New Website, Member Engagement System

STAFF REPORT

As of August 1, the Dallas Bar Association website has a new look. The site www.dallasbar.org is revamped, more user-friendly, and stream-lined for member engagement. You will find that it is much more mobile responsive. While the new website and Member Engagement System has a lot to offer, here are some areas to be sure to check out:

My DBA Page

The new My DBA Page feature allows each DBA member to have a personalized page where one can easily update their information, add an updated photo, find a quick way to view E-Communities, and more. Here you will find your personalized “hub” of DBA activity. You will see tabs for Invoices, Upcoming Events, Quick Links, CLEs, Announcements, Advertisers, My E-Communities, and My Subscriptions. Quick Links give you fast access to major points of interest within the website and E-Communities will take you straight to your Section’s new and improved portal.

Section E-Communities

One of the most exciting areas of the new website is the Section E-Communities. This area is where members of a Section can communicate among their group, post and interact in announcements, add files, view Section Member Directories, and easily have all Section information located in one place. The ease of use of these new Communities will make Section connections smoother and easier.

Calendar of Events

The redesigned CLE Event Calen-

dar is colored coded for ease of use. Green blocks are CLEs, blue blocks are Committee meetings, and special events will be highlighted in orange. If you prefer more of a list view, simply select either Event List (month) or Event List (All). Clicking into an event listing offers options to “Add to My Calendar” or “Tell a Colleague!” via social media. On most internal pages you will also notice a gray “upcoming events” bar which touts several approaching events.

Connection, Professional Development, Service

New areas on the website include easy one-click areas to help you find the tools to help you grow your practice, your social circle, or your service agenda. Looking to become more involved and meet new people? Check out our Connection area. Want to increase your professional skills? Be sure to go to the Professional Development page. And for those wanting an easy way to serve within the DBA and the Dallas community, the Service page is the place for you.

Better Access for All

Overall the best thing about the new website and member engagement system is better interaction, communication, and connection for all DBA members. And be sure to keep an eye on the weekly e-newsletters DBA Online and Weekly Spotlight to keep up with new developments, events, CLEs and member benefits. If you have not been receiving these e-newsletters, email mjohnson@dallasbar.org to get back on the mailing list. **HN**



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The Dallas Bar Association is excited to announce an upcoming CLE Abroad™ Taste of Lisbon and Northern Portugal: April 26 - May 1, 2020 with optional extension to May 3, 2020

We invite you and your guest(s) to join our delegation for a journey through Portugal's Old World allure and New World splendor, exploring Lisbon and Northern Portugal's rich cultural delights, diverse wines, and vibrant culinary scenes.

Our immersive program will engage with local scholars, attorneys, musicians and artists offering poignant commentary on the Portuguese and EU legal and political systems, US-Portuguese relations, art, history, architecture, and religion.

You do not want to miss this opportunity to experience the heart of Portugal while receiving CLE credit! Portugal has more to offer than what can be seen in a mere week and those who wish to extend their stays in Portugal or Europe beyond our program dates may certainly do so at their discretion.

* To request a brochure and registration information, please contact Judi Smalling at jsmalling@dallasbar.org.

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Recognizing Financial Abuse and Ways to Protect Your Client

BY ALEXANDRA M. GECZI

When people think of abuse, they usually think of physical abuse, or perhaps sexual, emotional, or psychological abuse. Few people think of financial (or economic) abuse as a form of domestic violence. But financial abuse is a powerful way for an abuser to control a partner and keep that person in a relationship prison.

As advocates and counselors, we become intimately familiar with our client's personal matters and often encounter situations where abuse is occurring. This article does not delve into the ethical or legal responsibilities we may or may not have to protect our clients or to report abuse. Rather, this article focuses on the more practical ways you may be able to help a client if you suspect he or she is being financially abused.

Financial abuse often begins subtly. An abuser may make taking care of joint finances seem like an act of kindness or a delegation of household responsibilities, especially when the other partner is less interested in controlling financial matters. But over time, the abuser tight-

ens his or her grip over the finances and restricts the victim's access to them. The victim then becomes more dependent on the abuser and more fearful of leaving the relationship.

Financial abuse can also devastate a person's credit and make it even harder to leave the relationship. When an abuser has access to credit card statements, Social Security numbers, dates of birth, or other identifying information, he or she can open accounts in the victim's name or access and modify current accounts. The abuser can also use children's information and destroy a child's financial future as well.

What Are Some Signs of Financial Abuse?

The abuser may forbid the victim from working or sabotage employment opportunities. The abuser may say that it was a joint decision or that the other person just is not interested in a "real job".

The abuser controls how money is spent and denies the victim access to accounts, providing only an allowance.

The abuser may say that the other person is fiscally irresponsible and needs to do this.

The victim may be working in the family business without adequate pay. The abuser may say it is a business decision.

A majority of the debts are in the victim's name. The abuser may also ask the victim to write bad checks or falsify tax returns.

The abuser may force the victim to account for all money spent by him or her. A victim may be a great record keeper, fearful of not having a receipt or credit card statement to show how money was spent.

An abuser may force the victim to work while he or she does not and yet still control the money.

What Are Some Things a Victim Can Do to Protect Her/Himself?

Call the bank and credit card companies and ask they change account numbers, PIN numbers, passwords and other codes. Set aside funds in an account that the abuser does not have access to.

Create strong passwords and do not share them with the abuser.

Use a safe computer that the abuser cannot access and has not installed spyware on. Clear cache history after every internet visit.

Consider enrolling in a reputable credit protection program.

Avoid co-signing any financial contracts with the abuser, like car loans and credit cards.

Do not believe the abuser's promises to be responsible for the debts.

Obtain a copy of your credit report. A free credit report is available at www.AnnualCreditReport.com. Review the report carefully and investigate anything you do not recognize. Consider a fraud alert.

Obtain originals or make copies of important documents and keep them in a safe place. Documents may include: tax returns, pay stubs, birth certificates, Social Security cards, insurance cards, bank account statements, credit card numbers and statements, records of retirement accounts, investment accounts, stock options, etc. Obtaining originals is best, but if you think doing so, or making copies, will put you in danger or violate the law, then discuss your options with a legal professional.

While these may be great practical tips, they are not intended to be expert advice. If you suspect that your client is in an abusive situation, the best practice is to advise that he or she seek out an expert to address the legal, mental health, and financial matters at issue. **HN**

Alexandra M. Gezzi is an attorney, mediator and founding member of Alexandra Gezzi PLLC. She can be reached at contact@familylawdfw.com.



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Crisis Hotline.....	1-800-SUICIDE
Suicide Crisis Ctr SMU.....	(214) 828-1000
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More resources available online at www.dallasbar.org/content/peer-assistance-committee

Not All Heroes Wear Capes: Hartline Barger Kicks Off 2020 EAJ Campaign

CONTINUED FROM PAGE 1

attorney. With annual poverty incomes of \$32,187 for a family of four, justice is a luxury for low and moderate income families.

As Ms. Dorman Matthews stated, "We are well acquainted with the impact that DVAP has on the underrepresented in North Texas; its efforts towards mitigating the staggering justice gap are unparalleled. We know our contribution helps put resources into the right hands. That's why we unanimously decided to kick off this year's Campaign again."

The commitment of Dallas attorneys and the DBA to the Equal Access to Justice Campaign is impressive. Since 1997, the DBA and Legal Aid have joined forces to raise money for the program,

with Dallas lawyers donating almost \$14 million. DVAP is pleased to announce that **Lauren Leahy**, Chief Legal Officer of Pizza Hut U.S., and **Sarah Teachout**, Senior Vice President and Chief Legal Officer of Trinity Industries, are serving as the Co-Chairs for this year's Campaign.

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

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







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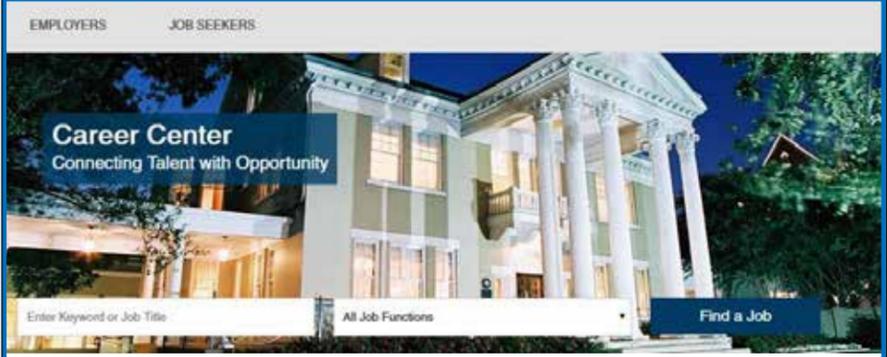


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Focus | Family Law

50/50 Divorce Property Division: Three Common Myths

BY KEVIN SEGLER

Common misconceptions persist about how property is, or can be, divided in a Texas divorce case. These misconceptions are often held by clients, as well as by some attorneys, and are sometimes even perpetuated in media coverage.

Myth #1

Texas law requires property to be divided 50/50 in a divorce case. This is perhaps the most common myth. Many believe that, in a Texas divorce case, a 50/50 property split is automatic and unchangeable. This is not true. The reality is that Texas law requires the division of property to be “just and right” taking into account “the rights of each party and any children of the marriage.” What a court considers a “just and right” division in one case might be wholly unjust and inequitable in another.

While a 50/50 property division is by no means mandatory, it is certainly a good place to start because of the seem-

ingly inherent equitable nature of an even, 50/50 split. However, the circumstances of the parties must be analyzed to determine if a disproportionate share of the property should be awarded to one spouse over the other to arrive at a “just and right” division.

Courts can assess a variety of factors to determine a “just and right” division, such as: each spouse’s capacities and abilities, fault in the break-up of the marriage, benefits which the party not at fault would have derived from continuation of the marriage, business opportunities, education, relative physical conditions, relative financial condition and obligations, disparity of ages, size of separate estates, and the nature of the property being divided. This is by no means an exclusive list of the factors a court can consider as it may consider any relevant factor that could make a disproportionate property division “just and right” under the circumstances.

Myth #2

Texas law requires each individual

asset and liability be divided according to the percentage awarded to each party, whether the division is 50/50 or otherwise. Similar to the 50/50 myth, it is often believed that a 50/50 division (or whatever the percentage split is) means that each and every asset and liability is individually divided according to that percentage. The truth is that the community estate is divided on an aggregate basis and often only involves splitting some of the individual assets.

Property division in a divorce case generally involves three broad phases: (1) identifying all of the community assets and liabilities; (2) determining the value of each of the assets and liabilities; and (3) dividing the assets and liabilities in a just and right manner. The total value of the community estate is the sum of all the individual assets and liabilities. The portion of the total value awarded to each party constitutes the percentage division.

The Court divides the overall value of the community estate in a “just and right” manner—not necessarily each individual asset and liability. As such, one party could be awarded twenty different assets and the other party only two, but the value awarded to each party is roughly equal. Similarly, an equal division can occur when one party is awarded the bulk of the assets but is also responsible for all of the liabilities and the other party receives a small portion of the assets and but is not

responsible for any of the liabilities. It is the division of value that matters.

Myth #3

The face value of assets and liabilities at the time of divorce is the only thing that matters in determining the appropriate division. The face value of the assets and liabilities at the time of divorce is unquestionably important. However, there are other important considerations to analyze in evaluating a “just and right” division and which assets and liabilities can, or should be, awarded to each party. The paramount consideration is the particular party’s circumstances, goals, and needs. This is the lens through which all other considerations are analyzed.

Other considerations include, without limitation: (1) cash flow and liquidity needs; (2) costs of ownership and maintenance of property; and (3) tax implications. For example, if a party needs cash next month to pay bills, it makes no sense to award them all illiquid assets, even if those illiquid assets may have cash value at some point in the future.

Ultimately, numerous factors are involved in determining the overall split of a marital estate as well as which particular assets and liabilities should be awarded to each party. **HN**

Kevin Segler is board certified family law attorney with KoonsFuller, P.C. He can be reached at kevin@koonsfuller.com.

Mental Illness at Work: The ADA and Disclosure Do's and Don'ts

Friday, October 4, Noon at Belo | Ethics 1.00

Speakers: Kelly Rentzel and Magistrate Judge Rebecca Rutherford

RSVP to sevans@dallasbar.org.

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Focus | Family Law

The Anatomy of an Inventory & Appraisal: What, Why, & How

BY LENÉ ALLEY DERUDDER

An inventory and appraisal (“inventory”) is a powerful and necessary tool in any divorce attorney’s toolbox. It is a document that assists divorcing parties to discover the assets and liabilities of their marital estate as well as any claims a party may raise as to that estate. Although Tex. Family Code § 6.502 allows a court to order parties to complete an inventory, it is generally best practice to instruct your client to do so without court order and at the commencement of the divorce action. Once completed, the completing party will sign the inventory, have it notarized, and at some point provide it to the opposing party.

Courts or local rules may specify the form and substance of an inventory. However, an inventory should always (1) identify all assets and liabilities in a marital estate, (2) characterize those

assets and liabilities as either separate or community property, and (3) assign a monetary value to the identified property. Identification of the assets and liabilities should include enough detail so that the other party can readily understand what property is being identified. Because all property is presumptively community property until asserted otherwise, when characterizing property as separate property, it is important to indicate the basis for such characterization, such as property acquired before marriage, by gift, or by inheritance. Lastly, documentation supporting the values assigned to assets and liabilities in an inventory, such as financial account statements, loan and mortgage statements, copies of titles or deeds, and the like should be attached to the inventory.

Completing an inventory is often a time-consuming exercise for a party and requires the guidance of his or her

attorney. An inaccurate or poorly completed inventory could be detrimental to a party in divorce litigation for a number of reasons. An inventory is what puts all parties on notice, as well as their attorneys, as to what it is in the marital estate, the value of the marital estate, what is to be divided, and whether there are any claims for reimbursement. Failure to disclose property in the inventory could lead to future litigation. Additionally, an inventory may be used as evidence in court. Although an inventory is hearsay, it is an exception to the hearsay rule under Tex. R. Evid. 803(15) (statement contained in a document purporting to establish or affect an interest in property) and, if introduced as evidence by the opposing party, an exclusion to hearsay under Tex. R. Evid. 801(e) (2) (admission by a party opponent). Failure to include values on an inventory or mischaracterization of property could yield an unfavorable result in court. Therefore, it is imperative that a party mindfully and thoroughly complete their inventory to the best of their ability.

Once the parties have exchanged their inventory documentation, that information may be used to facilitate settlement either informally or at mediation. At that point, if inventories were properly completed, parties should be able to (1) determine whether they agree that all assets and liabilities in the marital estate have been disclosed, (2) identify any disagreements as to the assigned values, as well as work to resolve those disagreements, and (3) formulate proposed

settlement offers to divide the marital estate based on actual supported values. If the parties are unable to reach settlement, an inventory may be used as evidence in court to establish the character or value of property and/or to bar contradictory testimony or evidence of the character or value of property. A party may offer the opposing party’s inventory as evidence of the character and value of property and, as long it is not objected to, a party may offer his or her own inventory as evidence of the same. More importantly, if a party files an inventory with the court and it is admitted into evidence at trial, the filing party is precluded from offering testimony or evidence that contradicts the inventory under the theory of judicial admission. However, if a party files an inventory but fails to properly admit it into evidence, then the court must undergo a quasi-admission analysis before it can preclude testimony or evidence contrary to the filed inventory.

Whether used for settlement or in court, an inventory is an essential tool in divorce. Even where a marital estate is relatively small, it is best practice for a party to complete an inventory. It protects the parties from inadvertently failing to divide assets and liabilities in the marital estate. Ultimately, a comprehensive and accurate inventory supports divorcing parties in reducing the cost, emotionally and financially, of divorce by streamlining the division of their marital estate. **HN**

Lené Alley DeRudder is an attorney at Calabrese Budner. She can be reached at lene@calabresebudner.com.

Protecting the Independence of the Judiciary: Federal Judicial Selection

Thursday, September 19, Noon at Belo | MCLE 1.00

Speakers: Allyson Ho, Karen Mitchell, and moderated by Kim Askew

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Texas Super Lawyers, Thomson Reuters, 2003-2019

[Dawn Ryan Budner](#)

Best Lawyers in Dallas, D Magazine, 2019

Best Lawyers in America® – Family Law, Woodward White, Inc., 2019

Woman Leader in the Law, American Lawyer, 2018-2019

DBA Launches Entrepreneurs in Community Lawyering Program

STAFF REPORT

The Dallas Bar Association (DBA) has launched its “Entrepreneurs in Community Lawyering” Program. The program begins this fall and is the first local legal incubator program in Dallas. The Entrepreneurs in Community Lawyering Program (Incubator Program) seeks to create a pipeline of socially conscious lawyers who are well equipped to launch a financially sustainable solo or small firm practice that caters to a lower income clientele.

The program, which received its startup monies from the generous donations of AT&T, the Dallas Bar Foundation, and The Texas Bar Foundation, was one of DBA President **Laura Benitez Geisler’s** main initiatives during her year as president of the organization. Participants are recent law school graduates licensed less than 5 years with a strong interest in starting a solo or small firm



Saedra Pinkerton

practice serving a modest-means clientele. Participants must demonstrate

determination, an entrepreneurial spirit, dedication to providing access to justice and a firm commitment to the program. Sustainability of the applicant’s proposed practice area is also critical. It is anticipated that the program will have eight to ten lawyers per session. **Saedra Pinkerton** has been contracted to lead the program.

“Inspired by **Frank Stevenson’s** development of the State Bar TOJI incubator, I wanted to create something similar here locally and began working toward that goal in early 2018. To see the program come to life is very exciting,” said Ms. Geisler. “I was compelled by the idea that we could do something to support the profession while expanding access to justice at the same time. We are very fortunate to have **Saedra Pinkerton** as the program director; I could not think of anyone better suited to oversee this program.”

Ms. Pinkerton began her career at a Dallas non-profit providing legal services to the homeless and victims of family violence. These early experiences helped shape her dedication to finding solutions that protect fragile families. In private practice since 2010, Ms. Pinkerton is an advocate for children and strives to reach resolutions that emphasize each family member’s strengths. She has always maintained a part of her private practice for pro bono and clients of modest means.

“I am thrilled to serve as director for the Entrepreneurs in Community Lawyering Program,” said Ms. Pinkerton. “I hope to share my experience and the resources of the entire Dallas Bar to help these new attorneys establish thriving practices that contribute to our community. We have an enthusiastic, passionate group that can’t wait to hang their shingles and get to work.”

Participants of the new program are excited for the opportunity to enhance their skills to become the best advocates possible for their clients, while contributing and investing in the Dallas community. Inaugural participants include: Blessing Ananti, Robert Anderson, Justin Bynum, Megan Erinakes, Tonyce Gustave, Tonya Jones-Craig, Kate Kim, John Vanbuskirk, and Noelle Vinson Saint Jean.

“Today, the public’s enormous need for justice and the profession’s enormous need for opportunity never meet,” said Mr. Stevenson. “President Geisler’s bold initiative—the DBA’s Legal Incubator—will help change that by providing justice for our fellow Texans and opportunity for our fellow Texas lawyers. The DBA’s Incubator will give its lawyers the tools to establish sustainable modest-means practices to reduce those numbers—practices that are rewarding professionally, financially, and emotionally.”

“Legal incubators are a proven tool to advance justice and opportunity; there are over 60 of them operating in the US and other countries,” Mr. Stevenson continued. “I am very proud that the Texas Opportunity & Justice Incubator, known by the acronym “TOJI,” went from a mere concept to the largest legal incubator in the world in only 2 1/2 years. But I am even more proud that, thanks to Laura’s leadership, my hometown bar association is bringing an incubator to Dallas.”

Only two in five middle-income Americans with civil legal needs ever find help. Those numbers are not the result of any single cause nor are they solvable by any single cure. Nevertheless, legal incubator programs are a critical part of that cure.

For more information, visit www.dallasbar.org/index.cfm?pg=incubatorProgram.

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Join Us for the Fifth Annual DBA Day of Service!

BY GEORGE SHAKE AND JOE HOFFMAN

“Unless someone like you cares a whole awful lot, nothing is going to get better. It’s not.”—*Dr. Seuss*. On September 28, 2019, the Dallas Bar Association hosts its Fifth Annual Day of Service. Now is your opportunity to finally take a stand for the beloved and late Dr. Seuss and let the world know you are not going to take it anymore. You are not going to stay home and watch the big Australian Football League Grand Final match. You are not going to clean out the garage. You are not going to go into the office. You are going to care a whole awful lot! The DBA is giving you the day off! We will see you and your family and friends at one of these wonderful locations and let us know that “it is going to get better.”

CC Young Senior Living

We are returning to CC Young on September 28, 2019. This amazing non-profit facility has been caring for seniors for nearly 100 years. CC Young has numerous programs and services for seniors, such as independent living at three locations. Assisted living is also available with a myriad of services and amenities, including medication management, a kitchenette and beauty salon and barbershop. CC Young also offers the option of an adult day-center with a full calendar of events. Memory support is a big part of the care at CC Young. Past volunteers have thoroughly enjoyed engaging clients with games and music. CC Young has exciting news for our community this year as it is preparing a transformed facility into a memory support residence. CC Young is always looking for dedicated volunteers, and the DBA is so happy to join its residents again this year.

Tango Tab

Tango Tab is a new DBA Day of Service participant. Tango Tab’s mission is to help the less fortunate by providing a meal to those who would otherwise not have access to food. Tango Tab has an app, through which it donates the monetary cost of a meal to a food organization when users check in at a restaurant on the app. How easy is that?!

In January 2015, Tango Tab launched the first Feed the City, a community engagement event to make meals for people less fortunate. Volunteers with Tango Tab on the DBA Day of Service will fill bags with sandwiches, oranges, chips, and other food items that will be sent to local homeless shelters and food banks. Volunteers may also bring food donations for the pantry.

New Friends New Life

We will be supporting New Friends New Life (NFNL) again this year on the DBA Day of Service. NFNL restores and empowers formerly trafficked teen girls and sexually exploited women and their children. By providing access to education, job training, interim financial assistance, mental health, and spiritual support, NFNL helps women and their children overcome backgrounds of abuse, addiction, poverty and limited opportunities, and thus fills a critical need in our community. Volunteers on the Day of Service will be counseling NFNL clients on legal matters, such as employment and landlord-tenant issues and will help assemble food baskets for NFNL clients. NFNL also has an Amazon Wish List for donations to its program.

Additional Opportunities

The DBA Community Involvement Committee is also supporting the following organizations at this year’s DBA Day of Service:

- City of Richardson parks;
- Dallas Volunteer Attorney Program;
- Friends of Oak Cliff Parks; and
- Texas Trees Foundation.

We look forward to seeing you on the DBA Day of Service. For more information and to sign up for one of the offered nonprofits, please go to www.dallasbar.org/index.cfm?pg=dbacommunitydayofservice. **HN**

George Shake is a member of the DBA Community Involvement Committee and Partner at Duffee+Eitzen and can be reached at george@d-elaw.com. Joe Hoffman is a member of the DBA Community Involvement Committee, is a Partner with Katten Muchin Rosenman LLP and can be reached at joseph.hoffman@kattenlaw.com.

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9. **Join a DBA Section** for monthly CLE programs and network with lawyers in your area of practice.

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Questions? Contact **Kim Watson, Membership Director**, (214) 220-7414 or kwatson@dallasbar.org

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Focus | Family Law

Five Tips to Protect and Maintain Your Separate Property

BY BRYCE HOPSON
AND JONATHAN JAMES

In the beginning, there was the word, and that word was Separate Property. Technically, that's two words, but who's counting anyway. To those readers who as kids sharpened their crayons so they would never color outside the lines—this article is for you! Unfortunately, that group also stopped reading after the whole word/words debacle in the first sentence, so we probably should have thought through the opening a bit more. Nevertheless, despite the distinct possibility of having already lost our target audience, we will press forward to our topic: protecting and maintaining your separate property.

In order to protect something, you should probably have an idea of what that something is first. Let us start by defining Separate Property, which we will refer to as "SP" for the remainder of this article.

SP includes the following: (1) property owned before marriage; and (2) property acquired during marriage by gift or inheritance.

Unlike community property, the SP of a spouse cannot be divided by a court, and it is instead awarded to a spouse independent of the division if that spouse can prove the property is SP by clear and convincing evidence. Because the law presumes all property owned by spouses to be community property, meeting the burden of proof to confirm your SP can quickly become an expensive undertaking. Here are a few quick tips to remember that will hopefully help you avoid some of the more expensive mistakes we commonly see married parties make in the management of their SP funds.

1. Avoid Commingling

If hypothetical husband David deposits \$100,000 he received as inheritance

from his mother's estate into a joint account he holds with hypothetical wife Deborah that already has \$100,000 of community property, David's SP inheritance has now been commingled with community property funds in a joint account. To establish his clear and convincing burden, David must trace the funds through this account from the time he deposited his inheritance through the date of divorce. Not only does this typically require a forensic financial expert, if the SP deposit was made in 2007 and the divorce is filed in 2019, David is going to have a difficult time tracking down statements going back 12 years.

2. Interest-Sweeping Accounts

David should have set up a separate account and deposited his \$100,000 inheritance there. But even then, David risks unintentionally commingling because the funds will likely bear interest. That interest is considered income, and income from SP is considered community property. Segregating your SP funds into a separate account is a good start, but depositing the funds into an interest-sweeping account will further ensure that David does not commingle his SP.

3. Dueling Dividends

If David had instead taken his \$100,000 over to "Mike the Money Manager" and used it to buy stocks or bonds, David still risks unintentionally commingling his SP funds as a number of stocks, bonds, and funds issue dividends to stockholders. These dividends are commonly used to reinvest and purchase additional stock; however, cash dividends, like interest, are considered community property. As such, over the years, David might have unintentionally commingled what he thought was a separate brokerage account, and

he would need to trace those individual stocks and bonds in order for a court to find it to be his SP.

4. Prenup/Postnup

Unlike David, who lost all of his money in a failed goat yoga business and came into the marriage with nothing, Deborah had a number of assets prior to being married. Deborah wisely obtained a premarital agreement before the wedding, which provides substantial protection to her SP. A prenup can be an effective tool for securing and protecting SP. For example, it can provide that income from SP will remain SP, so Deborah will not need to bother herself with interest-sweeping accounts or cash dividends. Additionally, when neither spouse brings assets into the marriage, but one spouse receives an inheritance, a post-marital property agreement can be prepared that will do essentially what the premarital agreement does for someone coming into the marriage with a considerable amount of SP.

5. Talk to a Family Lawyer

There are far too many twists and turns on the road to protecting SP. Whether you owned a home prior to marriage that is being sold, or you inherited a fortune from your Uncle Charlie during your marriage, you should contact a family lawyer for advice on how to effectively manage and protect your SP. More often than not, mistakes are made throughout the course of a marriage that make confirmation of your SP more challenging and expensive. A small investment of time and resources early on can save you a lot of headache and hassle (and money) down the road. **HN**

Bryce Hopson and Jonathan James are family law attorneys with Hance Law Group, PC. They can be reached at bhopson@hancelaw.com and jjames@hancelaw.com.

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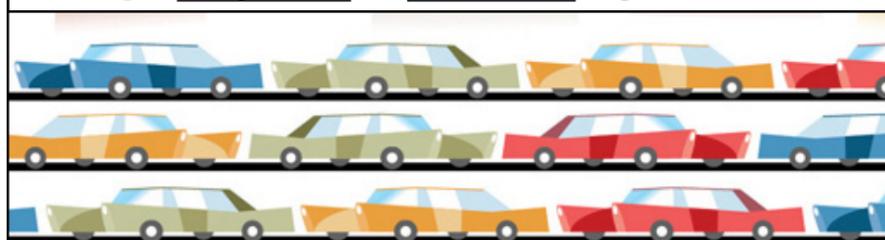
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Column | Wellness

Ten Tips for Lawyers Dealing with Stress

BY CHRIS RITTER

For those practicing law in Texas, it may be no surprise that lawyers suffer very high rates of mental health and substance use disorders. Attorneys have the highest rate of depression of any occupational group in the United States. A 1990 study indicated that attorneys suffer depression 3.6 times as often as the general population. With regard to alcohol use, researchers have found that attorneys have almost double the usual rate of problem drinking.

Regarding suicide, lawyers have historically topped the list of all professionals in suicide rates. They have been found to be twice as likely as the average person to die by suicide. A study of almost 13,000 employed attorneys showed that 45.7 percent of attorneys reported suffering from depression during their careers.

Obviously, these are major problems. The following are 10 practical tips which any affected attorney should consider:

1. Take Action!

Whether a lawyer is living in the darkness of depression or lost in a routine of substance abuse, there is a solution but it depends on *action*. Taking action requires courage. By expressing the need for help to someone, the process to peace begins.

2. Set Boundaries

Boundaries are important for a person practicing self-care. How does one establish healthy boundaries? Know

that you have a right to personal and professional boundaries. Set clear and decisive limits and let people know what you expect and when they have crossed the line, acted inappropriately or disrespected you.

3. Connect with Others

Connecting with others who know first-hand what you are going through can help reduce the fear and hopelessness that is often connected to mental health and substance use disorders. A growing body of research shows that the need to connect socially with others is as basic as our need for food, water and shelter. Fortunately, Texas Lawyers Concerned for Lawyers support groups exist all over the state, for a schedule go to www.tlaphelps.org.

4. Practice Acceptance

Acceptance is a big, meaningful word which encompasses a variety of important tools for a person seeking a positive life change. First, being able to honestly accept the place where you are at present is an important step in making a change. Acceptance of the fact that you have an issue for which help is needed is a major part of solving the problem.

5. Learn to Relax

For attorneys, relaxing can seem almost impossible. The mind is an instrument, but sometimes it seems that the instrument has become the master. Breathing exercises, meditation, and mindfulness practices have been very effective for attorneys who

need to relax, or “quiet the mind.” TLAP’s website includes links to breathing exercises and other ways to relax at www.tlaphelps.org.

6. Practice Positive Thinking

Studies have shown that taking the time to make a list of things for which you are grateful can result in significant improvement in the way you feel and the amount of happiness you experience. Try making a list of three to five things for which you are grateful each morning for a week and see what happens.

7. Help Others

Service work sounds like just one more thing to add to the list of things you do not have time for, but this is something helpful for you, so consider really making time to do. Obviously, until you secure your oxygen mask, you should not attempt to rescue others, but lawyers have been found to gain “intense satisfaction” from doing service work, and studies show it helps improve mental health and happiness.

8. Live in the Present

This cliché phrase may be one of the most under-appreciated tools for the legal profession of any listed here. As lawyers, this sounds like a joke. Deadlines loom. Trials approach. How can this work? Try it. Consider during

your day the things which you are able to do that day.

9. Expand your Spirituality or Consciousness

Whatever the variety, research has shown that expanding this area of life makes a major impact of the wellbeing of people, and particularly lawyers. Spirituality has many definitions, but at its core spirituality brings context to our lives and the struggles within them. For many lawyers dealing with the legal world and its many issues, expanding the spiritual life or a life beyond “self-focus” is invaluable.

10. Keep it Real

Recovering from a mental health or substance abuse problem requires honesty. If you begin to feel like you should be better than you are, but you are embarrassed to let others down by admitting your true condition, you are doing yourself a major disservice. Commit to be honest with someone about how you are doing so that you do not lose touch with those who can help.

If you or a lawyer, law student, or judge you know needs help, TLAP is available to provide guidance and support at 1(800) 343-TLAP (8527).

Chris Ritter, JD, is the Director of the Texas Lawyers' Assistance Program. He can be reached at chris.ritter@texasbar.com.

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Louise Raggio – Remembering “Mother of the Texas Family Code”

BY DAWN FOWLER

Trailblazer; Leader; Evolutionary. **Louise Ballerstedt** was born in 1919, and was almost 50 years old before married women could buy property, borrow money, open a bank account, or sign contracts in Texas. A married woman could not manage her own paycheck or property inherited from her family. From a legal perspective, married women were on the same level as children, prisoners, and the insane. And so it remained until 1967.

Mrs. Raggio often said that once a woman and man married, they become one, and he was the one. Mrs. Raggio dedicated her career to change the system and improve the positions of both women and men.

The only child of immigrants, Ballerstedt dropped out of elementary school to work in the fields. Her parents were determined that she obtain the best education possible and be the first college graduate in her family.

In her final year at UT Austin, she was accepted for a Rockefeller Foundation internship—one of 10 girls and 40 boys from all over the United States. She made significant connections during her year in Washington D.C., including then-Senator Lyndon and Lady Bird Johnson and First Lady Eleanor Roosevelt.

Returning to Texas, she worked for the National Youth Administration. On a recruiting trip, she met **Grier Raggio**, an attorney who three months later would become her husband, convince her to attend law school after



Louise Ballerstedt Raggio

they had two children, and become her law partner and biggest supporter.

Law school was challenging. She was the only woman in her graduating class, and by then had three children—nine, five, and two years old. The prevailing wisdom was that a woman was taking up the space of a man who would actually use the law degree to support his family and that law was an unsuitable profession for a woman.

The prevailing attitude of potential employers was not much better. Fortunately, Mrs. Raggio met Judge **Sarah T. Hughes** through volunteer work, leading to an interview with Dallas County District Attorney **Henry Wade**. He hired her as Dallas’ first female prosecutor in the family division. Years

later, he told her that he thought she would fall flat on her face, but at least Sarah Hughes would be off his back.

Mrs. Raggio was soon assigned to criminal cases. Her assignment coincided with the constitutional amendment permitting women to serve on juries. She tried an aggravated assault case to the first all-women jury in Texas to a unanimous guilty verdict.

Mr. Wade put Mrs. Raggio on the speaking circuit. Articles almost always referred to her as “Mrs. Grier Raggio,” and by physical characteristics. One of her favorites: “A little blonde, weighing no more than a small stack of law books . . .”

After several successful years as a prosecutor, the law firm of Raggio and Raggio was born. Eventually including all three sons—Grier, Jr., Tom, and Ken—Raggio & Raggio continues to be recognized as one of the best family law boutique firms in Texas.

Participation in bar activities is where Mrs. Raggio’s true legacy began. At the 1960 State Bar Convention, the chairman of the new Family Law Section asked her to be on a committee. In 1964, she was elected Chairperson. Simultaneously, the State Bar president appointed Professors Joe McKnight and Eugene Smith to draft a bill to address the demands of women seeking equality. Placed on the committee, Mrs. Raggio was amazed to find 44 different laws discriminating against married women, 27 legal disabilities of coverture, and the intertwining of laws. It was not a simple matter of writing one bill because of the domino effect on other laws. Quickly sensing that normal channels would result in years of road-blocks, she “worked the room” at

a bar social to get the Marital Property bill assigned to the Family Law Section rather than in special committee. Through equally astute maneuvers, she pushed the bill through the legislative and judiciary committees, and obtained passage by both the House and Senate.

Mrs. Raggio also used her position as Chairperson to add racial, religious, and age diversity. She brought in small and large firms. She joined with others in opening doors for women in business.

Having achieved a seeming miracle with the Marital Property Act of 1967, over the course of the next 10 years, the Family Law Section created the first complete Family Code of laws in the world.

Mrs. Raggio considered herself an evolutionary, not a revolutionary, working within the system for change. Men also benefitted. The new laws put men and women on equal footing to be awarded custody of their children and receive child support.

The awards and honors received by Mrs. Raggio would consume several pages, and include the State Bar President’s Award for Outstanding Lawyer of the Year, an endowed lecture series at SMU, and countless service awards in her name.

In spite of the recognition over the years, Mrs. Raggio was never a queen bee. She was a worker bee until her death in 2011. There is no way to measure the impact on generations of families benefitting from her lifetime’s work.

HN

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

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Focus | Family Law

Cohabitation Agreements: Avoiding Sticky Situations

BY LINDSEY UNDERWOOD

According to the Pew Research Center, the marriage rate of Americans has steadily declined and people are marrying later in life. Some adults are choosing not to marry and instead are opting to live, or cohabit, with a partner. However, many partners who are opting not to marry and moving in together do not understand that they are opening themselves up to a common law marriage claim, which means their income, contributions to retirement, and bank accounts, regardless if held jointly, and even pets, could be at risk.

To avoid this risk, cohabitating partners should enter a cohabitation agreement. Texas Business & Commerce Code section 26.01 permits agreements made on consideration of nonmarital conjugal cohabitation if the promise or agreement, or a memorandum of it, is (1) in writing; and (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

Most importantly, the parties should outline the intent of the agreement. For example, the parties may agree that they are not married as of the date of the agreement, and they do not intend to marry at any future date. This language may protect the parties in the event one party later tries to claim common law marriage (also known as informal marriage). The Texas Family Code provides that informal marriage may only be established by proof of three coexistent elements: (1) the parties agreed to be married, (2) after the agreement they lived together in this state as spouses, and (3) there represented to others that they were married. Accordingly, if the cohabitation agreement specifically denies an agreement to be married, then the agreement would be evidence against an informal marriage claim.

Further, the parties should define their property rights. For example, at the time of the agreement, each party should attach a list of the property owned at the time of the agreement and the intent that said property will remain the separate property

of that individual. The parties should state whether their future earnings, income, and other property acquired after the agreement, will also be the separate property of that party. Similarly, the parties should specifically list all liabilities existing at the time of the agreement and how the payment of liabilities that exist at the date of the agreement, and in the future, will be paid.

Additionally, the parties should address how they will pay living expenses. Illustratively, each party may agree to pay 50 percent of the parties' living expenses while they are living together. Alternatively, the parties may agree to each deposit a certain amount per month into a joint checking account, which will be used to pay the parties' living expenses. The parties may want to define what the term "living expenses" encompasses.

If one or both of the parties have children from previous relationships, the parties may want to agree that neither party will be responsible for or be required to pay any expenses for the children, including

education. Similarly, the parties may want to decide who takes custody of any jointly-owned pets, either then existing or to be acquired in the future. However, the parties most likely cannot address support for current or future children of the parties, as such agreement may be found to violate public policy. Indeed, for premarital agreements, Family Code section 4.003(b) provides that the right of a child to support may not be adversely affected by a premarital agreement.

Lastly, the parties should address the terms of separation, including whether separation will occur on the date the parties cease cohabitation or some other date. The parties should address how any jointly acquired property will be divided upon separation. If the parties created a joint account for living expenses, the parties should outline how any remaining funds will be divided. The agreement should also state that the agreement terminates if the parties marry each other.

With young people more willing to commit to living together over legally committing to one another, disputes over whose stuff is what and who lives in the house or who goes, is going to be more prevalent. With the cohabitation agreement you can plan—or rather contract—those sticky situations upfront. It would be wise for each party to hire an attorney to review any agreement before execution, as this will most likely help with enforceability in the event of a future dispute. **HN**

Lindsey Underwood is an associate at Armstrong Divorce & Family Law, PLLC. She can be reached at lindsey@armstronglawtexas.com.

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Focus | Family Law

Common Issues When Family Law and Special Needs Intersect

BY ROB MCANGUS

Often legal matters in family law require a deeper understanding of other areas of law since many decisions have a direct impact on the well-being of a child caught in the middle of divorce, especially if that child has special needs. A knowledgeable lawyer with specialized experience can assist their clients by helping them make decisions that will benefit rather than harm their child. Below are several areas of family law that relate to children with special needs.

Education

The primary parent is typically awarded the exclusive right to choose the school unless the parents agree otherwise. Parents who have children with special needs must consider instructional program options to find a school that meets their child's individual needs, which might include alternatives to public schools.

Children who qualify for special education services have the right to receive Free Appropriate Public Education (FAPE) that provides instructional programming based on individual needs. A child who qualifies for special education services has the right to receive these services at the school with the appropriate programming closest to the child's home school, as available. Once parents elect special education services for their child, all educational decisions are made through the Admission Review Dismissal (ARD) committee. Parents are part of the ARD committee and should actively participate in the process. When making decisions through the ARD, parents should use a data-driven decision process to help them move towards mutual agreement. Parents who

fail to mutually agree can cause a delay in programming and potentially hinder their child's academic progress.

A recommendation might be made for a child to be assessed through formalized testing to determine the presence or absence of a disability or impairment. Parents should work closely with school personnel/certified professionals, such as an educational diagnostician, to help them determine if their child would benefit from special programming.

Medication

Deciding to put the child on medication falls under a parent's right to make psychological and psychiatric decisions for the child. Parents should work closely with their child's physician and school to carefully review current academic data and educational records to help them make an informed decision.

Although medication should be considered as last resort, in certain circumstances, it is the most beneficial option. When exploring options, request a copy of data that specifically includes behavior tracking, such as Positive Behavior Intervention Support (PBIS). This type of data provides insight on how the child responds to positive behavior supports and to what extent his/her behavior impedes their academic performance and growth.

Special Education Services and Possession

If a child is receiving special education services at school or home, this could affect a parent's possession schedule. Some students will require additional services in the evening such as speech therapy, tutoring,

or Applied Behavioral Analysis (ABA) therapy for autism. Other students may be required to attend programs during the summer as part of Extended School Year (ESY) services. These services support students with a disability as classified under the Individuals with Disabilities Education Act (IDEA). If a child is required to participate in these extra services, the Court must ensure that each parent can deliver the child to each scheduled activity and that each parent has the equipment necessary for transportation and possession exchanges. Also, consider a possible right of first refusal when a parent cannot be with the child, and whether the non-primary parent should have an extended period of time during the summer or holiday if they are unable to take care of the child sufficiently.

Child Support

A parent of a special needs child may receive a child support amount above the guidelines set by the Texas Family Code. Courts consider the needs of the child, the parents' ability to support the child, and even whether other financial resources are

available.

Courts also can order one parent to pay child support for an indefinite period of time after the child turns 18 or graduates from high school if the court finds that the child, based on conditions existing before becoming an adult, requires substantial care and personal supervision because of a mental or physical disability that renders the child incapable of self-support.

For Supplemental Security Income (SSI) purposes, a child is disabled if they are unable to engage in any substantial/gainful activity because of a medically determinable physical or mental impairment. Disabled people who are eligible under the income requirements for SSI are also able to receive Medicaid. If a child earns more than \$2,000 in income, they do not qualify for SSI. Child support is income to a child, regardless of who receives the money directly. Child support can reduce the amount of SSI or even cause the child to not qualify. Once the child loses SSI, they lose Medicaid. **HN**

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Left to right: Brant Webb**, Chetammia Holmes**, Brian L. Webb†, Natalie L. Webb**†

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Brian is an alumni of SMU's Dedman School of Law and is in his 8th year as an adjunct professor teaching Texas Matrimonial Property.

In 2015, Brian was honored with his induction into the Texas Family Law Hall of Legends.

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Column | Life Skills for Lawyers

Conquering Communication and Cultural Differences

Understanding Gender and Generational Gaps

BY SABA SYED

We can take it for granted that words get lost in translation when people speak different languages. But what if it happens when people speak the same language? That was the heart of the recent DBA Life Skills presentation, “*This Is Awkward*,” which analyzed whether people of different genders and generations were socialized to speak differently, and how those speaking styles carried on into the workplace.

A committee at my firm initially researched this issue in the context of whether women were being quieted at work. What we found in the studies was eye-opening: women were interrupted twice as often as men (with both men and women interrupting), women spoke less in meetings, and when women *did* speak more, they were perceived less competent than their male counterparts.

Our research led us to the findings of Dr. Deborah Tannen, a linguist and expert on communication across cultures and genders in the workplace. In her research, Dr. Tannen discovered

that men and women are socialized at an early age to adopt different speaking styles: oppositional and self-deprecating. Though this categorization cannot capture the dynamic range of human personalities and speaking styles, it is still instructive.

At an early age, males are generally socialized to engage in an oppositional style of speaking. This oppositional style is characterized by encouragement to tell the best joke or story, or trade facts to demonstrate competence. In this way, young men are socialized to engage in “one-upping” so that one person takes the conversational limelight at any given point in time. Conceptually, this type of exchange resembles a seesaw, with participants competing for the top spot in a conversation. The style tends to be energetic and good-natured, while still functioning as a proxy to increase power.

On the other hand, females at an early age are generally socialized to speak in a “self-deprecating” style. If male conversations focus on “one-upping,” female conversations focus on “one-downing,” in which participants downplay their accomplishments and achievements. Each participant is trying to equalize the balance of power in a conversation, even if it requires the

speaker to put herself down for the sake of the group. If male conversations are a seesaw, female conversations are a balance scale and function as a proxy to increase connection.

The main takeaway is that one style is self-promotional and the other self-sacrificing. This is fine so long as everyone is communicating in the same way. But when conversational styles collide, studies show that self-deprecating speakers defer to their oppositional counterparts by speaking less. And when self-deprecating speakers do talk, their comments tend to be less substantive and more supportive.

To ameliorate this, experts have highlighted ways for oppositional and self-deprecating speakers to better communicate with each other.

Oppositional speakers have a tendency to interrupt. A recent Virginia Law Review article found that in 1995, 33 percent of all interruptions on the U.S. Supreme Court were directed to the single female justice on the bench, Justice O’Connor. In 2015, 67 percent of all interruptions were directed to the three female justices on the bench.

To counter this imbalance, interrupters should be more conscientious in conversation by allowing the other person to finish speaking. At the same time, people who get interrupted should feel empowered to respond to the interruption by stating that they are still talking and ignoring the interruption.

A challenge for self-deprecating speakers to overcome is indirectness, which is characterized by meandering

statements that prompt the directive “get to the point!” After first joining the bench, for instance, Justice Sotomayor would begin oral argument questions with lengthy prologues, only to be quickly interrupted by another justice. An indirect speaker can address this by adopting concise and direct speech, even at the cost of sounding “impolite.”

The framework of oppositional versus self-deprecating speech also applies to challenges between baby boomers and millennials. Baby-boomer attorneys (between 55 to 75 years old) often favor an oppositional style, given that their practices developed in a male-oriented era. Baby boomers may also be more oppositional because they are usually in charge, and oppositional speaking is the language of power.

Conversely, millennial attorneys (between 25 to 39 years old) tend to have a self-deprecating style. They gravitate towards collaborative communication as they develop their practices in a modern era that challenges traditional speaking styles. And as a result of their age, millennials are usually low on the pecking order, so they may feel more comfortable adopting a deferential tone.

Specifics notwithstanding, by reflecting on our own conversational style, we can understand why we said what we said. In that way, we can promote inclusiveness among our fellow members of the Bar. **HN**

Saba Syed is an associate at Bell Nunnally & Martin LLP and can be reached at ssyed@bellnunnally.com.

When Worlds Collide: Holiday Possession Headaches

CONTINUED FROM PAGE 1

your client that holiday schedules trump the regular possession order, and that, over time, the apparent imbalance in favor of “that idiot” will even out. Second, take the time to go over the SPO in that client’s orders. Subsequent conversations can then begin with, “Remember when we talked about...” Third, be prepared for those last-minute calls with explanations of why the dramatic action proposed by the client (calling the police, snatching the child, reporting a kidnapping) is not going to help advance the client’s case.

Most of the conflict about holiday and summer possession centers on the beginnings and endings, and the issues seem to always be the same, regardless of the occasion. The “standard” periods of extended possession in an SPO are spring break, summer vacation, Thanksgiving, Christmas, and New Year’s. The spring break, Thanksgiving, and Christmas periods all begin either when school is released or at 6:00 p.m. on the day school is released. That is always specified in the client’s order, so see “Remember when we talked about...” above. Christmas possession ends, and New Year’s possession begins, at noon on December 28. The others end whenever the order says, usually at 6:00 p.m. the night before school starts. That all seems clear-cut and simple, but I am no longer amazed when it is difficult for a client to grasp.

Next on the potential-confusion list are Mother’s Day and Father’s Day. Regardless of whose weekend it would be on the standard schedule, Mom gets every Mother’s Day weekend from Friday

at 6:00 p.m. to Sunday at 6:00 p.m., and the same for Dad on every Father’s Day weekend. Since Father’s Day usually falls outside the school year, there are specific provisions that Mom cannot elect any summer possession that would include Father’s Day weekend, but Moms still try on a regular basis.

As family law attorneys, we do not ever see those parents who are doing a good job of co-parenting. They talk to each other. They work out schedules to accommodate holiday traditions, vacations, and other deviations from the standard schedule that work out best for the children and the parents. Many of these parents do things like co-hosting birthday parties for their children instead of arguing over who “gets” the child when. We forget that most parents work things out without litigation, because we only see the ones that are dealing with an unreasonable parent, or are being unreasonable themselves. Sometimes, parents like that need an outside authority like a judge to set down and enforce strict rules. But the more we can encourage parents to cooperate, collaborate, and to put the best interest of their children first, the better it will be for the kids, the parents, and for us. Those parents are going to tell their friends about their understanding lawyer who helped them stay out of court, and left them with more money to spend on their children instead of giving it all to lawyers. And we get to see the big smiles on the faces of judges when we announce that we have an agreement instead of a battle. Happy holidays, indeed! **HN**

Brad Johnson practices family law at Ashmore & Ashmore in Rockwall. He can be reached at brad@ashmorelawfirm.com.

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Focus | Family Law

A Child's Best Interest: What Does it Mean, Really?

BY CHANTE BRANTLEY

There is perhaps no phrase more ubiquitous in family law cases than “a child’s best interest.” From the simplest of custody disputes to situations involving the termination of parental rights, cases that concern children often boil down to one question—what is in the child’s best interest? Despite the importance of the term, however, the Texas Family Code gives no consistent definition of what constitutes a child’s best interest, leaving attorneys and judges with only the vaguest of guidelines to determine which factors come into play when determining a child’s best interest, and what the relative importance of each factor is.

Section 263.307 of the Texas Family Code provides a list of best interest factors for permanency hearings in CPS cases, including questions about the child’s physical safety, mental and physical vulnerabilities, and the willingness of the family to improve the child’s home situation. Even this list of factors includes the circular question of “whether this transition is in the best interest of the child.” These factors are also not generally applicable to cases where both parents are indisputably fit parents. The Texas Supreme Court did outline a non-exhaustive list of factors for a best interest analysis in the 1976 case of *Holley v. Adams*. The included factors are the desires of the child; the emotional and physical needs of the child and dangers to the child, both now and in the future; the parental abilities and plans for the child by the parents and other individuals seeking custody; the programs available to assist these

individuals; the stability of the proposed home; any acts or omissions that indicate an improper parent-child relationship; and any excuses for those acts or omissions. However, the *Holley* factors are only explicitly approved for termination cases—again, cases where one or both parents are potentially unfit parents.

In cases where both parents are fit, the law is less clear as to what it means for a parenting plan to be in a child’s best interest. Generally, it is presumed that appointment of both parents as joint managing conservators is in the best interest of the child. In these cases, however, the court must make a best interest determination of which parent will have the right to designate the child’s primary residence. Some courts have adapted the *Holley* factors to any case involving children, passing judgment as to what parenting plans, home circumstances, or other factors are better for the children. Other courts have incorporated the joint recommendations of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law, contained in *A Judge’s Guide: Making Child-Centered Decisions in Custody Cases*. These questions ask about the parent’s physical and psychological health, as well as the child’s health and safety, for each of several developmental stages. They also ask whether the parent appropriately promotes the child’s intellectual, psychological, and emotional development. This can be demonstrated through behaviors such as providing stimulating learning opportunities, supporting the child’s relationship with the other parent, reinforcing

the child’s social skills, and maintaining an open channel of communication with the child as he or she grows.

Whereas the Family Code is generally quiet on what can be considered, it is not silent on what *cannot* be considered as a factor in a best interest analysis. Texas Family Code Section 153.003 indicates that gender and marital status of a parent are not valid factors—an express disavowal of the mother-favoring “tender years” doctrine. Texas Family Code Section 162.015 further excludes race and ethnicity as factors. Some appeals courts have also excluded a parent’s religious affiliation from being considered, citing the U.S. Constitution and Texas Constitution’s protections for freedom of religion.

Ultimately, any list of factors for best interest suffers from the same crucial flaw—no list explains how any of

these factors should be weighed against one another in terms of priority, nor do they claim to be complete and comprehensive lists. In Texas family law cases, the decision of which factors to consider, how to weigh those factors against one another, and how to interpret the results ultimately lies with the factfinder and his or her own notions of what constitutes a child’s best interest. Because family cases are mostly tried as bench trials, the personal element of best interest analyses makes it incredibly important for an attorney in a suit affecting the parent-child relationship to make an effort to understand what the judge’s stances and beliefs are regarding childrearing and family relationships. **HN**

Chante Brantley is Director of the VanSickle Family Law Clinic and Associate Clinical Professor at SMU Dedman School of Law. She can be reached at cprox@smu.edu.



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PRESTON MOORE

Preston Moore is an associate in the Corporate Department of Weil, Gotshal & Manges LLP. He also served as Weil's 2019 Lend-a-Lawyer, spending two months working full-time at DVAP on pro bono matters.

How did you first get involved in pro bono?

My experience with pro bono legal services started during law school. I worked in the UT Law Entrepreneurship and Community Development Clinic. The clinic provided pro bono transactional business law representation to low-income entrepreneurs, nonprofit organizations, and community groups throughout Austin. Now,

as a licensed attorney, I look forward to continuing to provide pro bono legal service here in Dallas, especially through the DVAP program.

What types of cases have you accepted?

With DVAP, I have worked on family law cases, consumer disputes, and small business matters. Most recently, I have worked with DVAP full-time as a Lend-a-Lawyer on secondment from Weil, Gotshal & Manges.

Which clinics have you assisted with?

I have mainly assisted with the East Clinic, but also have attended the South, West, and Veterans Clinics.

Why do you do pro bono?

I feel fortunate to have received training that allows me to help those in need of legal services, and I am grateful for the opportunity to give back by volunteering my time to pro bono matters.

What impact has pro bono service had on your career?

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Focus | Family Law

Emergency Ex Parte Applications for TROs

BY MARIANNE HOWLAND
AND GEORGE SHAKE

Attorneys are often approached by their family members and friends for legal advice on family law matters, regardless of the attorney's actual practice area. Below is some information that might be helpful for you when you are providing guidance to those you love (or are at least related to).

During a divorce or child custody suit, a party can request the court to provide an emergency order to address concerns for the protection of people or preservation of property without holding a hearing. This request is made by filing an Emergency Ex Parte Application for a Temporary Restraining Order (Application). The Texas Family Code lays out the process by which this extraordinary relief might be granted. The first step is that a lawsuit must be filed before or with the Application. A judge cannot legally help a party in an emergency until a lawsuit is filed.

The second step is to determine if an affidavit is required, and if so, attach it to the pleading. The Texas Family Code excludes some types of Applications from some of the requirements of an affidavit required from the Texas Rules of Civil Procedure. So, it is very important to read the relevant Texas Family Code section to determine when an affidavit is needed and to what facts must be sworn.

For example, if your brother is asking the court to temporarily prevent his wife from having any access to their children, he is going to have to prepare an affidavit explaining why the

children's safety and welfare require the court to grant the Application. His affidavit must state facts showing that immediate and irreparable injury will result before notice can be served and a hearing can be held.

For a temporary restraining order regarding property, Sections 6.501 and 6.503 of the Texas Family Code will guide you. A temporary restraining order may not exclude the other party from the marital residence though. According to the Texas Family Code, you do not need to attach an affidavit with your Application alleging that immediate or irreparable loss or damage before notice and hearing, nor do you need to define the injury or state why it is irreparable (as required by TRCP 680).

It is very important to note that Dallas County (and most surrounding counties) has a standing order in family law cases that goes into effect upon the filing of the original petition. These standing orders include many of the protections that parties seek and should be reviewed before filing an Application.

The next step is to review the local rules. In Dallas County, that means the dedicated "Local Rules of the Family Courts of Dallas County." (The Local Rules of The Civil Courts of Dallas County do not apply to family law cases). In surrounding counties, that may mean the general local rules or a section within those rules that are specific to family law cases.

Most counties have very specific local rules regarding the request for ex parte relief. Some counties require

that notice be provided to the opposing counsel, or even to an unrepresented opposing party, with a certain amount of notice prior to presenting an Application to the Court. Attorneys who do not comply with these technical rules are turned away, so the rules must be read and adhered to. Most counties require that you include a certificate on your Application certifying that you followed the applicable local rules.

Next, the attorney must make sure he or she is prepared to present the application to the court. An Application will be decided on its contents and an affidavit, if required. But the court will likely have a few questions. It is critical to be very familiar with the pleadings and facts alleged within.

Once the court reviews the Application it will determine whether to grant the Application. If the court does grant

the TRO, it will set a hearing within 14 days to review whether the Temporary Restraining Order shall be continued. This can be reset for another 14 days under particular circumstances. If the Application is denied, oftentimes a Temporary Orders hearing can be set in an expedited fashion.

It is the opinion of the authors that our local courts receive quite a number of Applications that fall far short of a true emergency. Therefore, we counsel caution before attempting to obtain this extraordinary relief unless necessary. A whole case could be colored by a dramatic claim that cannot be supported by the pleadings or underlying facts.

HN

Marianne Howland and George Shake are partners at Duffee+Eitzen and can be reached at marianne@d-elaw.com and george@d-elaw.com, respectively.

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Communication Skills: The Life Blood of Family Law Practice

BY CLAUDE E. DUCLOUX

Few civil matters generate more stress, fear, and apprehension among clients than the litigated family law case. Psychologists say that divorce is one of the five most stressful events in a person's life, joining birth, death, marriage, and employment changes. A good family lawyer acknowledges the benefit of skillful communication and uses it to help all parties through the process.

In my speeches to young lawyers around the country I tell them there is no more important skill to the successful practice of law than effective communication with all participants throughout the legal process. Your ability to communicate effectively demonstrates integrity, knowledge, empathy, and continuing thoughtful evaluation of changing circumstances.

It also makes you a better lawyer as effective communication practices require you to constantly evaluate, distill, and clarify positions, changing dynamics, opportunities for resolution, and risk. Let's discuss this in the general chronological order of a family law practice:

The Client

Always remember that family lawyers rarely encounter a new client in a celebratory mood. Clients are usually trying to address a stressful failure in their life, a betrayal, and an incredible stressor on self-worth and sanity. Bottom line: new clients are rarely happy.

Your communications skills, presentation, and forming the "bond" of trust and professionalism starts the moment the client meets you for the first time. In the majority of situations, nothing will be

more important than the bond of respect you form in your initial interview. So, how to you do that?

Be Sensitive, Attentive, and Thorough

In any initial interview, you "begin the healing process." Devote 100 percent of your attention to interviewing and sizing up this client. Emotionally, this means empathizing with their plight, being patient as they unload information, and simply allowing the client to vent. If you cut the interview off too soon, you damage your credibility when you must push back on a client's unreasonable expectations. Further, by being patient, you may discover facts that change your opinion of the case.

The Goal: Reasonable Expectations

Remember, your client is always looking for you to lead them to a solution. Just as a good contract requires a "meeting of the minds," so does the attorney-client relationship. The objective of a good interview is to result in reasonable expectations: the scope of work the lawyer will do, the relief or resolution being sought, *the alternatives to be explored*, and the basis of the fee.

Moreover, the client's willingness to pay you (as well as your willingness to continue working) depends on each side honoring this agreement. Boiled down to its most basic formula the interchanged messages should be:

From the lawyer's perspective, communicate: "I will do this for you, and you will compensate me by doing X."

From the client's perspective, the client should leave with these thoughts and understandings: "I understand *what* you are going to do for me, *what* my alternatives are, how long it might take, and *how* I will compensate you."

Keep this primary concept in mind: If you achieve reasonable expectation, it allows you to collaborate with the client to achieve realistic and lawful goals and outcomes.

Following Through

Once you have communicated and formed a bond of confidence and an impression in the client that you are competent to do the work, *you need to follow through*. Get started. Do the hard work. Early communication and updates following your initial interview seals the bond of confidence you are trying to encourage. It says, "You can count on me."

Communication During the Case

A lawyer should always report each event in the case to clients to keep them informed of each step in the process and allow the client the opportunity to ask questions. This serves not only to keep the client calm, but protects the lawyer from a claim of neglect. Vibrant communication can serve to either reassure the client that you have the matter in hand, or be a harbinger of likely adverse outcomes.

It is your responsibility to appear professional, knowledgeable and collaborative. Treat every person, firm, agency, and interest with respect and courtesy, observing your duty of civility. When stress arises, be "the adult in the room" who can control the emotion and act civilly and responsibly.

If you follow these rules, you will likely have clients who will be friends for life, and colleagues who will refer you more business because they have had a good experience working with you. In other words, you will be a success. **HN**

Claude Ducloux is the Director of Education at LawPay and is Board Certified, Civil Trial Law and Civil Appellate Law, Texas Board of Legal Specialization.

Save the Date! Evening Ethics

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For more information, contact yhinojos@dallasbar.org.

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VOTE NOW! DALLAS COUNTY COURT STAFF AWARDS

The Dallas Bar Association Judiciary Committee developed these awards to encourage court staff to do their personal best. This year, the awards will recognize the court staff team (court clerks, court coordinator, bailiff, etc.) that has consistently demonstrated a friendly and polite attitude, helpfulness, professionalism, and spirit of cooperation. Awards will be presented at the **DBA Awards Luncheon in November** to court staff teams in each of the following categories:

* Dallas Civil District Courts * Dallas County Courts at Law * Dallas Criminal District Courts
* Dallas County Criminal Courts * Dallas Family Courts * Dallas Probate Courts

For questions, contact kzack@dallasbar.org. **Deadline to vote October 21.**

Visit: www.tinyurl.com/2019courtawards to vote!

Moms in Law Events September

Being a working mom can be challenging. Being a working lawyer mom can be a different ballgame with its own unique challenges. Moms in Law is going on its third year of being a no pressure, no commitment, informal, fun, support group for lawyer moms. The September events are:

Tuesday, September 10: Noon, Ida Claire (5001 Belt Line Rd., Dallas)

RSVP rocio@snellingsinjurylaw.com

Friday, September 20: Noon, Neiman's downtown. Featuring celebrity global makeup artist Gilbert Soliz. Only 25 spots available.

RSVP www.dayl.com/moms-in-law-skin-regimen

Email christine@connatserfamilylaw.com to join the Moms in Law email listserv.



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