Dallas Bar Association

HEADNOTES

October 2024 | Volume 49 | Number 10 | Focus | Appellate Law/Trial Skills

Hon. Harlin Hale to Receive DBF Fellows Justinian Award

BY JERRY C. ALEXANDER

The Fellows Justinian Award, much like the Lifetime Achievement Award at the Academy Awards, is awarded for the complete body of work over a professional's entire career. But the Fellows Justinian Award is unique in that it sets out specific criteria or categories of criteria that an attorney, as practitioner or judge, must meet to even be considered.

Harlin D. Hale

The two most aspirational are:

1. Must be recognized by their peers as having made an extraordinary contribution to the legal profession through their professional achievements;

2. Must have adhered to the highest principles and traditions of the legal profession while adhering to the highest ethical standards.

These criteria were written well before Judge **Harlin D. Hale** even entered law school, but it was inevitable that he would become a recipient of the award.

As far as having made an extraordinary contribution to the legal profession through his professional achievements, Judge Hale's achievements are legion and wide-ranging.

He received the William L. Norton, Jr. Judicial Excellence Award from the American Bankruptcy Institute in 2019. He is also the recipient of the 2021 American Inns of Court Bankruptcy Alliance Distinguished Service Award for exhibiting ongoing dedication to the highest standards of the legal profession, the rule of law, and personal ethics and integrity. Judge Hale also authored over 160 published opinions, one of which was cited favorably as authority by the United States Supreme Court. He has also served on or chaired most of the important "Bankruptcy Committees" that exist.

But these awards and accomplishments are not as telling as the recognition from his peers: the "simple fact" that for 20 years, every year, year in and year out, the attorneys who appeared before him in his court voted him an overall approval rating in the high 80th percentile, or in most years, an approval rating of over 90 percent in the Dallas Bar Association Judicial Evaluation Poll. This is something that very, very few other jurists have ever accomplished. The voting constituency was limited to attorneys who had appeared before him, many of whom, obviously, he had ruled against.

This achievement is undoubtedly a reflection of the manner in which Judge Hale made rulings. In literally thousands of hearings, many times from the bench, face to face with the attorneys, Judge Hale would always take time to explain his reasoning and compliment all counsel in such a way that no attorney felt personally they had a bad day in his court.

Hundreds of lawyers who were not successful in his court left and went back to their firms and home to their families, not angry about the events of the day, but knowing they had done their best—because Judge Hale had said so. Twenty years of goodwill that rippled through the profession, day in, day out, hearing by hearing, ruling by ruling.

To all the lawyers who appeared in his court, this was a most appreciated trait, in addition to their having received the highest caliber legal knowledge that he readily shared in his court. In these days when civility is trying to make a comeback, it never left his courtroom, ever.

Judge Hale never forgetting what it was like to be an advocate in the arena came not from intention, but from having been an advocate in that same arena for over 20 years before he was a judge. He did so in three different vehicles—a great Dallas firm (Strasburger), in his own boutique he started with some other young bankruptcy practitioners, and in a great national firm (Baker McKenzie).

To the people who were fortunate to work for him over an extended period—his assistants, clerks, law clerks, court reporters, and bailiffs—they all say the same thing about Judge Hale and family. "Put family first" was his mantra, and when any of them asked for permission to leave a little early or take time off for a family event, he would always say the same thing—"go," even if sometimes that meant an inconvenience for him.

When asked what he thought his greatest professional achievement was, Judge Hale, of course, answered selflessly and talked about others. Incredibly, at the same time he was a full time judge, Judge Hale taught Creditors Rights/Bankruptcy at SMU Dedman School of Law for 29 (not a typo) consecutive semesters. Fourteen hundred (1,400) of his former students have now

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Left to right: Cindy Tisdale, State Bar of Texas Past President, Belinda Seymour, and David Taubenfeld of Haynes Boone.

Haynes Boone Supports Equal Access to Justice

BY MICHELLE ALDEN

As the Equal Access to Justice Campaign gains momentum this fall, the Dallas Volunteer Attorney Program (DVAP) was fortunate to receive the generous support of Haynes and Boone, LLP, with a $25,500 donation. This makes an impressive total of $239,000 donated by Haynes Boone since 1997.

Why do the firm's accomplished attorneys support equal access to justice?

"One reason I became a Haynes Boone lawyer was because of the firm's profound commitment to community leadership, civic engagement, and support for pro bono legal work," Partner and 2025 Equal Access to Justice Campaign Co-Chair **Tim Newman** said. "This commitment to DVAP is continuing a long tradition of Haynes Boone helping to make the Dallas community a better place."

So far this year, the firm's lawyers have donated over 8,610 hours to pro bono work and over 626 hours to pro bono with DVAP. The firm's Dallas office was honored by the State Bar of Texas in June with the W. Frank Newton Award for their pro bono contributions. Haynes Boone further expanded its pro bono commitment this year by hiring **Rachel Elkin** as the firm's first Pro Bono Counsel to oversee the firm's global pro bono program.

"Our attorneys continue to demonstrate their commitment to pro bono and improving our community each year," Rachel said, "whether through the hundreds of hours spent representing DVAP clients and participating in DVAP clinics or contributing to the Equal Access to Justice Campaign. The compassion and dedication of our attorneys to DVAP and its mission are unmatched."

Each case placed with a volunteer attorney by DVAP can lead to life-changing results—one more parent with access to their children, one more veteran with access to benefits earned, one more grandparent able to adopt a child whose parents are absent, or one more person who is able to finally secure employment due to an old criminal charge being expunged.

Haynes Boone Associate **Hannah Shoss** is currently representing "Diana," a DVAP client, in a divorce that she has waited almost three years to obtain. "We don't always think of a divorce as something to celebrate or as an essential need. But for my client, it will mark the start of a new life. Soon, she will win back her personal and financial autonomy, confidence in her ability to choose her own path, and her own name—an essential piece of her identity. I'm grateful for the opportunity to be a part of this process and

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Inside

Calendar | October Events

Programs in green are Virtual Only programs. All in person programs are at the Arts District Mansion unless otherwise noted. Visit www.dallasbar.org for updates.

NATIONAL HISPANIC HERITAGE MONTH

September 15-October 15 is National Hispanic Heritage Month. For information about the Dallas Hispanic Bar Association, visit dallashispanicbar.com. For more on the DBA's Diversity Initiatives, log on to www.dallasbar.org.

WEDNESDAY WORKSHOPS

OCTOBER 9
Noon *"How to Spot Challenging Estates in Planning, Probate, or Guardianship," Greg Sampson.* (MCLE 1.00)* ***In person only***

OCTOBER 16
Noon *"Effective Legal Writing on Such Short Notice?" Scott Stolley.* (MCLE 1.00)*

TUESDAY, OCTOBER 1

Noon **Tort & Insurance Practice Section**
"Recognition of Tort & Insurance Legends. (MCLE 1.00)* ***In person only***

DWLA Board of Directors

5:00 p.m. **DBA Member Social Hour**
Join fellow DBA members for a social hour with drinks and hors d'oeuvres.

6:00 p.m. DAYL Board of Directors

WEDNESDAY, OCTOBER 2

Noon **Employee Benefits & Executive Compensation Law Section**
"ERISA at Fifty: The Shifting Landscape of Employee Benefits," Brian Giovannini. (MCLE 1.00)* *Virtual only*

Legal History Committee
"'The Pursuit of Happiness' with author Jeffrey Rosen interviewed by Talmage Boston. (Ethics 1.00)* ***In person only***

Solo & Small Firm Section
"Impact of Family Law on Your Practice," Mahrosh Nawaz. (MCLE 1.00, Ethics 0.50)*

Allied Bars Equality Committee. ***In person only***

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, OCTOBER 3

No DBA Events Scheduled

FRIDAY, OCTOBER 4

4:00 p.m. **Virtual Yoga**
Yoga designed to relax you from the week's stress and take you into the weekend.

SATURDAY, OCTOBER 5

10:00 a.m. Home Project Dedication (2828 Fish Trap Rd., Dallas)

6:00 p.m. **DHBA Noche de Luz Gala**
At The Statler-Dallas. Tickets at dallashispanicbar.com

MONDAY, OCTOBER 7

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

TUESDAY, OCTOBER 8

Noon **Immigration Law Section**
"From Policy to Reality: T-Visa Updates and the Fight Against Human Trafficking," William Nolan and Cory Sagduyu. (MCLE 1.00)* *Virtual only*

Mergers & Acquisitions Section
Topic Not Yet Available

Home Project Committee. ***In person only***

Legal Ethics Committee. *Virtual only*

5:00 p.m. **DBA Member Social Hour**
Celebrate Okotoberfest. Join fellow DBA members for a social hour with Oktoberfest-themed hors d'oeuvres.

6:00 p.m. Dallas LGBT Bar Board of Directors

JLTLA Board of Directors

WEDNESDAY, OCTOBER 9

Noon **Bankruptcy & Commercial Law Section**
"Appeals in Bankruptcy," Harrison Pavlasek, Coner White, and Grayson Williams. (MCLE 1.00)* ***In person only***

Family Law Section
"Have the Munchies?" Teresa Clark Evans and Kira White. (MCLE 1.00)* ***In person only***

Wednesday Workshop
"How to Spot Challenging Estates in Planning, Probate, or Guardianship," Greg Sampson. (MCLE 1.00)* ***In person only***

Public Forum Committee. *Virtual only*

4:00 p.m. **Criminal Law Section**
"The SEC Speaks: Hot Topics in Enforcement." (MCLE 2.00)* ***In person only***

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, OCTOBER 10

Noon **Alternative Dispute Resolution**
"Persuasion," Shane Read. (MCLE 1.00) *Virtual only*

Construction Law Section
"State of the Surety Industry," Tim Sherry. (MCLE 1.00)* ***In person only***

New Member Welcome Lunch. *RSVP sbush@dallasbar.org*

CLE Committee. *Virtual only*

Publications Committee. *Virtual only*

6:00 p.m. **DAABA's Annual Awards Night**
Tickets at daaba.org. At The Fairmont Hotel.

FRIDAY, OCTOBER 11

Noon **Trial Skills Section**
Topic Not Yet Available

4:00 p.m. **Virtual Yoga**
Yoga designed to relax you from the week's stress and take you into the weekend.

MONDAY, OCTOBER 14

Noon **Real Property Law Section**
"Changes to Texas Title Insurance," Roland Love. (MCLE 1.00)*

Attorney Wellness Committee. *Virtual only*

TUESDAY, OCTOBER 15

Noon **Education Law Section**
"IP Issues in Schools," Andrea Perez. (MCLE 1.00)* *Virtual only*

Franchise & Distribution Law Section
Topic Not Yet Available

International Law Section
"Recent and Important Reforms of Brazil's Legal System," Julio Dubeux. (MCLE 1.00)* *Virtual only*

Community Involvement Committee. *Virtual only*

6:00 p.m. DAYL Annual Meeting

WEDNESDAY, OCTOBER 16

Noon **Allied Bars Equality Committee**
"The Results Are In! How Using Tips from the DEI Toolkit Impact Firm Culture and Success!" Hon. Maria Aceves, Katie Anderson, Sylvia James, and moderator Jervonne Newsome. (DEI Ethics 1.00)* *Virtual only*

Energy Law Section
Topic Not Yet Available

Health Law Section
"Board Governance and Cybersecurity in the Loper-Era of False Claims Act and Dodd-Frank Whistleblowers," Bill Mateja and Rachel Rose. (MCLE 1.00, Ethics 0.25)*

Wednesday Workshop
"Effective Legal Writing on Such Short Notice?" Scott Stolley. (MCLE 1.00)*

Judiciary Committee. ***In person only***

Pro Bono Activities Committee. *Virtual only*

Law in the Schools & Community Committee. *Virtual only*

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, OCTOBER 17

11:30 a.m. **Dallas Bar Foundation Fellows Luncheon.**
Recipient: Hon. Harlin Hale. For more information contact ephilipp@dallasbar.org.

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

4:00 p.m. DBA Board of Directors

FRIDAY, OCTOBER 18

1:00 p.m. **Criminal Law Section**
Immigration program in conjunction with DCDLA. ***In person only***

4:00 p.m. **Virtual Yoga**
Yoga designed to relax you from the week's stress and take you into the weekend.

SATURDAY, OCTOBER 19

7:00 p.m. **DAYL Bolton Ball**
At On the Levee. Register at dayl.com/bolton-ball

MONDAY, OCTOBER 21

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

Labor & Employment Law Section
"Outsmarting the Smartphone," Noel Kersh. (MCLE 1.00, Ethics 0.25)*

TUESDAY, OCTOBER 22

10:00 a.m. **Community Blood Drive**
Sponsored by the DBA Community Involvement Committee and Carter BloodCare. At the Art District Mansion and other locations. Details at dallasbar.org.

Noon **Probate, Trusts & Estates Law Section**
"Ethical Implications of AI and Practical Tips," Joshua Weaver. (MCLE 1.00)* ***In person only***

5:00 p.m. **DWLA Annual Awards Ceremony**
Tickets at dallaswomenlawyers.org. At The Empire Room, Design District. Tickets at dallaswomenlawyers.org

5:30 p.m. **Online Evening Ethics**
"2024 Evening of Ethics." Free for DBA members; non-members: $190. Register online at dallasbar.org. (Ethics 3.00)* *Virtual only*

WEDNESDAY, OCTOBER 23

8:00 a.m. **AI Symposium**
Free for DBA members. Register at dallasbar.org. (MCLE 3.50, Ethics 1.50)* ***In person only***

Noon **Collaborative Law Section**
"Beneath the Behaviors: Effective, Targeted Interventions for Challenging Clients," Charissa Lopez. (MCLE 1.00)* *Virtual only*

Courthouse Committee
"*Panel Discussion with the County Clerk, District Clerk, and Judiciary: E-filing, and What Happens After - the Role of the Clerks and Court Coordinators," Judges Felicia Pitre, Monica Purdy, Nicole Taylor, Ingrid Warren, and John Warren.* (MCLE 1.00)* **At the George Allen Court Building**

Entertainment, Art & Sports Law Section
Topic Not Yet Available

4:00 p.m. LegalLine E-Clinic. V*olunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, OCTOBER 24

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

Intellectual Property Law Section
Topic Not Yet Available

Minority Participation Committee. *Virtual only*

FRIDAY, OCTOBER 25

Noon **Pro Bono Awards Celebration**
Help the Dallas Volunteer Attorney Program celebrate Pro Bono!

4:00 p.m. **Virtual Yoga**
Yoga designed to relax you from the week's stress and take you into the weekend.

MONDAY, OCTOBER 28

Noon **Securities Section**
"Reviving a Rule 10b-5 Private Action for MD&A Violations After Macquarie," Antonio Partida. (MCLE 1.00)*

TUESDAY, OCTOBER 29

Noon **Day of Civility**
Civility and Professionalism in Practice. ***In person only***

WEDNESDAY, OCTOBER 30

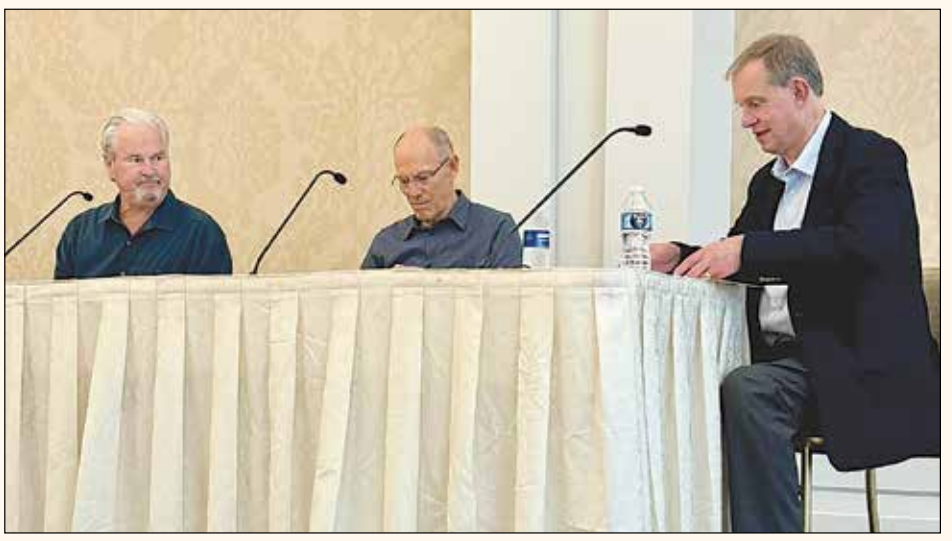
Noon **Living Legends Program**
Shonn Brown, interviewed by Diana Brooks and Brooke Ginsburg Guerrero. (Ethics 1.00)* *Virtual only*

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, OCTOBER 31

No DBA Events Scheduled

Baseball and Barristers



On September 11, the DBA hosted its second "Baseball and Barristers" with speakers Texas Rangers Hall of Famer Tom Grieve and Six-time Gold Glove Winner Jim Sundberg, interviewed by Executive Vice President, Public Affairs for the Texas Rangers, John Blake. Attendees were treated to ballpark food, including hot dogs, popcorn, Cracker Jacks, and cotton candy.

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 the DBA office at (214) 220-7447.

President's Column

In My Humble Opinion: Thoughts on Humility and Lawyering

BY BILL MATEJA

You Suck!

After watching my Fightin' Irish pull away from Texas A&M in the 4th quarter of the first football game this season (sorry, Aggie friends!), Notre Dame's new quarterback, Riley Leonard, was asked during his post-game interview whether he was sporting a "You Suck!" wristband. You Suck!—really??? When I heard that, I scratched my head.

The camera panned in on his wrist and, sure enough, there was a wristband in ND colors with the words "You Suck" emblazed on it. Leonard explained that his mom made the wristband for him and texts him before each game telling him that—"You Suck!" Really! And while he was speaking quickly, I think I heard Leonard quote Matthew 23:12 as well with words to the effect that: "And whosoever shall exalt himself shall be abased, and he that shall humble himself shall be exalted."

It all started in high school. Leonard had been getting a lot of praise but wanted just the opposite. He went to his parents, told them he wanted an ego-check as well as a little motivation, so his mom volunteered. It became a tradition and even after multiple years of playing football for Duke and now Notre Dame at the Division 1 level, his mom still texts him before games and important events that—"You Suck!"

Lawyers and Humility

At the risk of sounding a little preachy, which I'm really trying not to do, it strikes me that many of us could use some encouraging "You Suck!" notes from time-to-time if not for ego-checks just simply for motivation. Of course, who hasn't encountered a lawyer or two or three…who was at least a little arrogant, who was most certainly lacking in the humility category, and who needed a good swift "You Suck!" kick in the pants. We've all experienced it.

It's not hard to understand how lawyers can be arrogant or at least come across as arrogant. A career in the law is generally viewed as prestigious and elite. With this prestige comes pride, which can sometimes turn to arrogance. Coupled with the fact that lawyers are typecast as strong, confident and seemingly always right, it's no surprise that lawyers start along that path and never appropriately self-correct.

Humility Meter: Where Do You Stand?

While I think we lawyers as a whole get a bad rap from the public at large (just search among the never ending lawyer jokes), it's worth all of us noodling on our own humility as lawyers. On a scale of 1-5 with 5 being "strongly agree," please indulge me and consider where you stand on the following:

- I accept my own limitations (and strengths) as an attorney without defensiveness or judgment.
- I understand that I am no better than the clients I serve.
- I am teachable.
- I assume that opposing counsel is as equally intelligent, skilled and professional as I.
- I treat my opposing counsel with the same respect I would want to be treated.
- I consider my staff and co-workers as people who have helped me succeed and not simply tools that I use.

Are you in the same category as Mother Teresa, Ghandhi, Martin Luther King, or even our own former DBA President, Al Ellis? Maybe so, maybe not? Regardless of your scoring, for even the most humble of people, considering one's own humility is certainly something to be mindful of.

Humility: Making You The Greatest Human Being Ever

Dr. Vicki Zakrzewski is the education director at UC Berkley's Greater Good Science Center. She has written extensively on the subject of humility and its related sister—gratitude. Not to state the obvious, but she's a firm believer that humility can make you the greatest person ever. She notes:

> When I meet someone who radiates humility, my shoulders relax, my heart beats a little more quietly, and something inside me lets go. Why? Because I know that I'm being fully seen, heard, and accepted for who I am, warts and all—a precious and rare gift that allows our protective walls to come down.
>
> Truly humble people are able to offer this kind of gift to us because they see and accept their own strengths and limitations without defensiveness or judgment—a core dimension, according to researchers, of humility, and one that cultivates a powerful compassion for humanity. This kind of self-acceptance emerges from grounding one's worth in our intrinsic value as human beings rather than things such as six-figure salaries or the body of a movie star or climbing the corporate ladder or the number of friends on Facebook. Instead, humble people place high value on more meaningful things that benefit others, such as noble qualities.

Is Humility An Essential Trait for Good Lawyering?

Applying all of this to the law profession, consider that humility might just be an essential trait for good lawyering even though our profession emphasizes things that sometimes run counter, such as being confident and assertive. Humility leads to good lawyering because:

Improved Client Relationships: Humility helps develop stronger bonds with clients especially when you treat your clients as your equals. By quieting the ego and truly listening to your clients, not only will your clients know that s/he has been heard, but you'll be able to better understand their needs and concerns.

Towing the Ethical/Moral Line: Humility puts the kibosh on arrogance. And arrogance can often be the slippery slope that leads to unethical behavior at worst and immoral conduct at best.

Better Advocacy: All of us have seen the humble lawyer who walks into court or the conference room and immediately exudes credibility because that lawyer acknowledges that s/he doesn't have all the answers and makes clear that s/he is on an equal par with others. I've also seen time and time again that "aw shucks," humble demeanor become the means of knocking down walls that human beings naturally put up as defense mechanisms. By knocking down those walls, one can engage in a real dialogue with others, whether it be a judge, opposing counsel, or otherwise.

Cultural Sensitivity: Humility places a lawyer on equal footing with every other person no matter the ethnicity, economic/social status, or otherwise. Respecting one another's diverse backgrounds leads to better communication and relationship building.

Professional Growth: Admitting that you don't have all the answers, are teachable and willing to seek out new knowledge and skills, can only make you grow as a lawyer.

Come to think of it, ***yes,*** humility is an essential trait of ***good*** lawyering.

Tips for Cultivating Humility

Zakrzewski gives three tips for cultivating humanity which I'll repeat. First, she emphasizes ***embracing your humanness.*** She notes that when we fail, all too often our self-esteem plummets. "Not so for people with humility … their ability to withstand failure or criticism comes from their sense of intrinsic value of being human rather than outer means." It doesn't mean that there is something wrong with them because they're human beings just like the rest of us.

Second, consider ***practicing mindfulness and self-compassion.*** Mindfulness grows self-awareness and when we better understand our inner lives, it's easier to see unhealthy beliefs and actions that might be limiting.

Last, Zakrzewski suggests ***expressing gratitude,*** which is something that this author has been trying to become much better at. In fact, I have a yellow sticky on my computer monitor that I look at each day to force myself to not let the day get away without thanking those – whether they be my wife, kids, friends, co-workers, Bar colleagues and even God – for everything that I've been gifted. "Saying 'thank you' means that we recognize the gifts that come into our lives and, as a result, acknowledge the value of other people. Very simply, gratitude can make us less self-focused and more focused on those around us—a hallmark of humble people."

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

Headnotes serves the membership of the DBA and, as such, editorial submissions from members are welcome. The Executive Editor, Editor, and Publications Committee reserve the right to select editorial content to be published. Please submit article text via e-mail to jsmith@dallasbar.org (Communications Director) at least 45 days in advance of publication. Feature articles should be no longer than 800 words. DISCLAIMER: All legal content appearing in Headnotes is for informational and educational purposes and is not intended as legal advice. Opinions expressed in articles are not necessarily those of the Dallas Bar Association.

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Focus | *Appellate Law/Trial Skills*

Attorney Discipline Appeals

BY JASON BOATRIGHT

Attorney disciplinary appeals are very important, but not many lawyers know much about them. The Bar would probably benefit from an introduction to the disciplinary appellate process.

BODA Panel Appeals

The attorney discipline process usually begins with a grievance. The person who files the grievance is the complainant; the attorney whom the grievance is filed against is the respondent.

The Chief Disciplinary Counsel (CDC) screens each grievance to determine whether it alleges a violation of the Disciplinary Rules of Professional Conduct. If the CDC thinks the grievance does not allege a violation, the case is dismissed. Otherwise, the case advances in the disciplinary process.

An appeal of the decision to dismiss or proceed is taken to the Board of Disciplinary Appeals (BODA), an appellate body of 12 lawyers appointed by the Texas Supreme Court. BODA hears these appeals in panels of three members who meet via video conference. Each panel hears between 30 and 40 appeals, and every BODA member sits on two panels per month, so each member hears around 70 appeals each month.

Before panelists meet, they review the cases on their docket and flag the ones they are particularly interested in discussing. Between five and ten cases are typically flagged per panel.

Panelists usually vote to affirm or reverse the CDC's decision, but any panelist can vote to hold a case for consideration at the next en banc conference of all twelve BODA members. The en banc conferences are held quarterly in Austin.

BODA recently instituted a policy requiring that each panel's case files and results be distributed to the full board. Now, any member can flag a case for en banc decision, even if a member of the panel did not. At the en banc conference, BODA might discuss a flagged case for a half hour or more.

If a panel or the en banc board decides that a grievance does not allege a violation of a rule or if it is barred by a legal restriction like limitations, the case ends. Otherwise, BODA sends the case back to the CDC for further proceedings that could ultimately lead to a resolution of the case on its merits.

The CDC investigates and then takes one of several courses of action. If it determines that there is just cause for the case to proceed to a decision on the merits, the respondent can elect to have the case heard by a district court or an evidentiary panel of the State Bar.

If the respondent elects to have a court hear the case and wishes to appeal the result, the appeal is taken to an intermediate court of appeals. This is a regular appeal, with briefing, judicial opinions, and an opportunity to petition the Supreme Court for discretionary review.

But if the respondent elects to have an evidentiary panel of the State Bar hear the case and wants to challenge the result, the appeal is taken to BODA en banc, with an appeal as of right to the Supreme Court.

BODA En Banc Appeals

BODA en banc appeals are typically submitted on oral argument in the Texas Supreme Court courtroom. About two weeks before the argument, BODA staff prepares a detailed memo addressing the cases on the en banc docket. Each board member reviews the memo along with briefing from the parties and the appellate record.

At oral argument, each side has 20 minutes to argue, and BODA members can ask questions throughout. Immediately following the en banc proceeding, BODA members meet in private to discuss the resolution of each case on the docket. BODA announces the decision in a public written judgment a few days later, together with any dissenting opinion.

An appeal of BODA's decision is taken directly to the Texas Supreme Court. There is no petition process or discretionary review. The parties go straight to merits briefing, and the Court reviews the case under the substantial evidence rule. The Court often affirms BODA's decision without a written opinion, but it has reversed and issued full opinions many times over the years.

Things to Keep in Mind

Most grievances are dismissed early in the disciplinary process because they do not allege a violation of a rule. The grievances that do advance through the process tend to allege something simple, like a lack of responsiveness, so lawyers should respond to clients as quickly as possible.

Respondents in BODA en banc appeals tend to represent themselves, but that is often a mistake. More of them should hire counsel. **HN**

Jason Boatright is Special Counsel at Duane Morris and a member of BODA. He can be reached at jeboatright@duanemorris.com.

Focus | *Appellate Law/Trial Skills*

DIY Clerk's Records—How Could this Possibly Work?

BY THAD D. SPALDING AND CLAIRE MOULTON

For appeals filed after January 1, 2024, an appellant may now create its own clerk's record by filing an "appendix." Tex. R. App. P. 34.5a. Despite its label, this new "appendix" is fundamentally different from the "appendix" that Rule 38.1(k) requires with each appellant's brief. Do not confuse one for the other.

The Rule 34.5a "appendix" replaces the clerk's record, and it becomes the appellant's obligation to assemble and file it, removing that burden from the court clerk (along with the corresponding cost for its preparation). In fact, if an appellant opts to make its own record, the court clerk is prohibited from preparing one or charging a fee for doing so.

In concept, the do-it-yourself clerk's record looks a lot like a mandamus record, without any certification requirement. The appendix must be filed separately from the parties' briefs and its pages must be consecutively numbered. Sensitive information (minor's identity and other "sensitive data") must be redacted. Once filed, the "appendix" becomes part of the formal appellate record. This article provides some advice on how to best utilize this new procedure.

Timing

Acting fast is critical. To use Rule 34.5a, the appellant must file a "notice of election" in the trial court **and** the court of appeals within 10 days of filing the notice of appeal.

When is the "Appendix" Due?

The appendix is due when your brief is due. Electing to use Rule 34.5a could accelerate the due date because the briefing deadline is now tied to the date the notice of election is filed or the date the reporter's record is filed, whichever is later. If your case does not have, or require, a reporter's record (e.g., for a summary judgment motion), your brief could be due as soon as 40 days (30 for accelerated appeals) after your notice of appeal is filed. You can, however, still ask for an extension of that deadline.

A "Joint Appendix"?

Perhaps envisioning the prospect of cross-appeals, the rule allows the parties to prepare a "joint appendix." It is unclear whether a joint "notice of election" must be filed, or what happens if one appellant elects to prepare its own "appendix" and the other elects to have the clerk handle it. It is also unclear when the joint appendix must be filed, although to be workable, it would make sense to prepare and file it before or with the filing of the parties' opening briefs.

What Must Be in the "Appendix"?

The "appendix" must include all the documents required by Rule 34.5a plus any other items referenced in the appellant's brief. Do not include documents that were not filed with the trial court, unless they are documents issued by the trial court or documents included by mutual agreement of the parties. The documents should be file-stamped "when available." Presumably, this means that if you can find the file-stamped documents on a particular county's website, you should. But the rule's language also could imply that file-stamped copies are not necessarily required, which is oddly contrary to the mandatory language used in the statute that gave rise to Rule 34.5a, specifically Section 51.018(c) of the Civil Practice and Remedies Code ("An appendix … ***must*** contain a file-stamped copy of each document required by Rule 34.5a…").

What if Something Important Is Left Out?

Any other party involved in the case may file a supplemental appendix with its own brief. The court of appeals may also direct the appellant to prepare a supplemental appendix to include additional documents. If the appellant fails to do so, the appeal can be dismissed (if the missing documents impact the court's ability to determine its own jurisdiction) or the court may assume that the missing documents support the trial court's decision. Beware, however, that the burden remains on the appellant to ensure that the necessary documents are before the appellate court. While the court of appeals may direct that missing documents be added, it is not required to and could still find waiver if it feels that the documents necessary to review the case are not before it.

Will It Work?

Whether the new rule will work remains to be seen. Given that the existing procedure for requesting and preparing a clerk's record seemed to be working fine, the goal of the new rule is unclear. In theory, this new procedure could provide a more flexible and less costly approach to the overall appellate process and potentially reduce the administrative burden on court clerks. But it also presents a potential trap for inexperienced attorneys and pro se appellants who may inadvertently omit crucial documents from the "appendix" and not find out until it is too late. Whether in reality the new rule does any of these things will depend largely on the user. **HN**

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Defensive Strategies in Short Civil Jury Trials

BY YOUNG JENKINS

Every defense attorney has their own preferences for how to best defend a case when it goes to trial. That said, some common trial strategies (such as the rule of primacy and the use of trial themes) are arguably more applicable to longer trials. Will the jury remember the testimony accurately by the time you reach closing argument? Will the jury become bored and stop paying attention? Will the jury reach a decision prior to hearing all the evidence? All these concerns are still important in a short jury trial, but the shortened length can provide a defense attorney with additional options that may not be as practical in a longer trial. For purposes of this article, "short" means a jury trial that lasts one to two days from the beginning of voir dire through closing argument.

Opening Statements

The opening statement is a preview to the jury of what the evidence will show. However, in a short jury trial you may be making your closing argument within a couple of hours of the opening statement. In that situation, how important is it to give the jury a road map of the evidence? A thorough opening also runs the risk of informing opposing counsel of the areas of weakness in their case that they might overlook before resting. If you tip them off to these areas, they may address them more thoroughly in their examination of the witnesses. Instead, consider waiving your opening statement or making a very short opening statement to avoid alerting opposing counsel to those weaknesses without too much of a downside.

Trial Themes

Many attorneys use themes in a jury trial as a persuasive tool that will keep a jury's attention and lead the jurors into the frame of reference they want for closing argument. The theme is introduced in opening statement, developed in direct and cross-examination of the witnesses, and argued in closing argument. When you have a short jury trial, however, a theme has a greater risk of coming across as unwieldy or insincere. Because of the trial length, the attorney may have a limited amount of time to emphasize the theme to the jury through the stages of the trial. If you must use a theme in a short jury trial, keep it simple. A better strategy might be to emphasize the concept of "credibility," what it means, how it is used in the jury charge, and the role it plays in weighing the evidence and the plaintiff's burden of proof.

Impeachment in Closing

Impeachment of a witness is usually completed during cross-examination. If the matter of impeachment is contained in an exhibit (as opposed to prior testimony), the attorney will confront the witness with the contents of the exhibit after they have testified in an inconsistent manner. The trial attorney also has the option of saving the matter of impeachment for closing argument in this situation. For instance, imagine that a plaintiff has testified at trial that they were driving 10 mph at the time of the collision in question. Their emergency room records, however, indicate that they told the ER nurse on the date of the accident they were driving 50 mph. You have the option of waiting until closing argument to point out this contradiction between their testimony and the ER records to attack their credibility. This is beneficial in that the plaintiff will no longer be able to explain away this conflict through their testimony and will have to rely upon their attorney's arguments to do so in the remainder of their closing argument. It will also streamline your cross-examination and shorten the trial. Of course, this strategy only works if the document showing the inconsistency is already in evidence. Also, if the judge in your case limits the amount of time you have for closing argument due to the short length of the trial, you may not have time to address this matter of impeachment in closing and may need to address it during cross-examination.

While each case is different and there are exceptions to most rules in trial advocacy, the above strategies can be effective tools under the right circumstances. The next time you have a short jury trial, consider keeping your opening short, avoiding the use of trial themes, and saving matters of impeachment for closing argument. **HN**

Young Jenkins is Trial Counsel with the Law Offices of Sapna Perera / Client Legal Services / Allstate Insurance Company. He can be reached at young.jenkins@allstate.com.

Panel Discussion with the County Clerk, District Clerk, and Judiciary

E-filing, and What Happens After - the Role of the Clerks and Court Coordinators

Speakers:
Hon. Felicia Pitre, Dallas County District Clerk
Hon. Monica Purdy, 95th Civil District Court
Hon. Nicole Taylor, Dallas County Court at law No. 5
Hon. Ingrid Warren, Dallas County Probate Court No. 2
Hon. John Warren, Dallas County Clerk

Wednesday, October 23, Noon
At George Allen Court Building, Central Jury Room

MCLE 1.00 | *Sponsored by the Courthouse Committee*

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Five Ways to Make Your Motion a Lean, Mean Machine

BY STACY R. OBENHAUS

A persuasive written motion to the court should exhibit clarity and brevity (and sound legal analysis). While it is not all high art, there are simple ways to achieve that goal, and one way is to eliminate *clutter*. Here are five suggestions for doing that.

First, begin your motion—that first paragraph right under the title—with a clear, direct statement of the relief you seek: "All defendants ask this Court to compel Lone Star Company to appear for deposition before the discovery cut-off period and serve prompt sworn answers to defendants' recent interrogatories."

Avoid saying: "Plaintiff Alamo International Holdings Corporation hereby files this motion…" and repeating the title of your motion, which is right there on the page. Do not list or define the moving parties yet; do that later. Keep this simple. Say: "Plaintiff Alamo requests" followed by a plain, direct request for relief you want, so the judge can quickly see **who you are** and **what you want the court to do**.

Second, be spare with *defined terms*. They often confuse rather than clarify. Use normal speech. If the motion seeks relief for all defendants, say "All defendants ask this Court…" no need to list them. Dispense with all of those ("Alamo") parentheticals unless you cannot avoid it—like when the case has four "Alamo" affiliates but just two are presenting the motion. Refer to the Lone Star affiliates "the Lone Star defendants" and define them in a footnote. If John McAllen is the only McAllen in the case, refer to him throughout as McAllen. Avoid acronyms, too, unless they are commonly understood—like the FBI or the CFO. Define Lone Star International Holdings Company GP LLC as simply "Lone Star" or "Lone Star GP" but not "LSIHCGP."

The same is true for your *documents*. If the motion concerns the Master Services Agreement, and no other contract, once you identify it as the Master Services Agreement simply refer to it as "the agreement" thereafter. If the motion seeks relief as to the "Final Judgment and Decree of Divorce and Property Division," identify it once but later just call it "the judgment" or "the decree" unless that's confusing because the motion references other judgments or decrees in the case.

Third, avoid *dates* unless they are critical. There is often no need to provide a date for each filing in a procedural history or for each event in a statement of facts. It is enough to say: "This lawsuit began two years ago . . ." or "one month later Alamo filed a counterclaim." However, if a specific date is material to your motion—e.g., for a statute of limitations or the timing of contractual notice—provide the critical dates. But consider just explaining it in normal speech: "Over four years after the surgery, this suit was filed" or "A month after the delivery, Alamo had still paid nothing."

Fourth, simplify your *exhibit cites*. If your CFO's affidavit is Exhibit A, just cite it in parentheses: (Ex. A ¶ 15). If you're citing a document with Bates numbers, cite it as: (Ex. A-1 [Alamo 0334]). Don't say "Exhibit A – Affidavit of Lone Star CFO Omar Ibrahim ¶ 15." Say that in the text if it's important: "Company CFO Ibrahim testified . . . (Ex. A ¶ 15)." The same applies with a document: "Only once does the Master Services Agreement cite attachments (Ex. A-1 [Alamo 0334] § 15.4])."

A sound practice—required under various local rules—is to prepare an appendix of all your exhibits, number the pages consecutively, and cite appendix page numbers only: (App. 112-13 [¶ 7-8]). This permits simple record cites in the text, where the judge or staff attorney can readily see them on their computer without having to scroll down to the bottom, then up, then down, looking for footnotes.

Finally, end with a *specific prayer for relief*. Not: "Please grant this motion." That is obvious—that is why you filed it! State the precise interrogatories you want answered in Alamo's Third Interrogatories to Defendants; the specific claims the court should dismiss—Counts I and III in the Fifth Amended Petition; and the precise language of the injunction you seek. This will give the judge—and you—the target on which to focus in chambers and at the hearing.

Eliminating clutter with these simple steps can help your motion achieve brevity and clarity and make it a lean, mean machine. **HN**

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Mind the Mandate

BY STEPHEN J. HAMMER

If you ever find yourself on the short end of a federal appeal, the first question on your mind may be whether to seek vindication at the United States Supreme Court. But there may be an even more pressing task ahead of you. You will need to decide—sometimes in as little as seven days—whether you will seek to stay the court of appeals' mandate. If you do not, even getting your petition for certiorari granted will not necessarily stop proceedings in the district court. To avoid that unenviable outcome, mind the mandate.

Mandate Mechanics

An appellate mandate is a humble document—typically nothing more than a certified copy of the court's judgment, a copy of its opinion, and any directions about costs. But its consequences are stark. When the mandate is issued, jurisdiction immediately reverts from the appellate court to the district court from which the appeal was taken. After reassuming jurisdiction, the district court carries out the appellate court's directions—entering final judgment or holding further proceedings as ordered.

Stay With Me

Filing a petition for certiorari (a "cert petition")—or even being among the lucky one percent of petitions that get granted—does not automatically stay lower court proceedings. Fortunately, the Federal Rules of Appellate Procedure allow a party to move to stay the mandate pending the filing and disposition of a cert petition. The motion must show that the petition would present a substantial question and that there is good cause for a stay. That means you will need to persuade the appellate court—the one that just ruled against you—that there is a reasonable probability four justices will vote to grant certiorari and that five justices will vote to reverse the appellate court's judgment. Beyond even those daunting tasks, you must convince the appellate court that denying a stay would cause your client more than garden-variety financial harm. Instead, you will need to show that absent a stay your client will suffer irreparable injury.

Tick Tock

An appellate court's mandate issues seven days after the time to file a petition for rehearing expires or entry of an order denying such a petition—whichever is later. If you have not petitioned for rehearing, you will usually have 21 days to decide whether to move to stay the mandate. But if you have filed a rehearing petition and the court denies it, you will have just seven days to decide.

With that short timeline, you will need to decide whether to seek certiorari right away. Some courts even require a motion to stay the mandate to certify that the movant will seek certiorari and that the motion is not being filed for delay—buying yourself more time to consider whether to seek cert will not cut it. That means you will have only a few days to develop a strategy for enticing the Supreme Court to grant review, assess your likelihood of success, and persuade your client to commit to filing a cert petition, all before you can craft and polish the motion itself.

No Second Chances

Some appellate courts have established that after they deny a stay of the mandate, a district court lacks the power to stay its own proceedings pending certiorari because doing so would violate the spirit of the mandate. But that is not a good reason to avoid seeking a stay of the mandate. Some district courts have concluded that they lack power to stay their own proceedings pending certiorari even if the movant *never* asked the appellate court to stay its mandate. So, seeking a stay of the mandate from the appellate court may be your only shot to avoid going to trial while you seek further review—short of getting a stay from the Supreme Court itself.

Details, Details

If the Supreme Court denies your cert petition after the appellate court stays its mandate, the mandate will be issued, and you will head back to the district court. But if you are among the lucky few to have your petition granted, the stay extends until the Supreme Court's final disposition of your case. Just remember that you will need to inform the appellate court of your good news, so it does not inadvertently issue the mandate in the meantime.

Knowing the procedures and pitfalls surrounding appellate mandates can make a world of difference to how your case unfolds. So, the next time a federal appellate decision does not go your way, be prepared to quickly decide whether you need to move to stay the mandate to put yourself and your client in the best position while seeking review from the Supreme Court. **HN**

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PRESS RELEASE

Veteran RICO Litigator and Professor, Jeff Grell, Joins Ted Lyon & Associates.

Ted B. Lyon & Associates is proud to announce that Jeff Grell has joined our firm. Jeff has been a RICO attorney for over three decades and has taught RICO at the University of Minnesota since 1999. Now that he's moved to Dallas and joined our firm, Jeff will continue to teach at Southern Methodist University's Dedman School of Law in the Fall of 2024.

Jeff's RICO career began when he joined Jones Day after graduating, *magna cum laude*, from the Georgetown University Law Center in 1990. Jeff helped prepare and litigate RICO claims arising out of the collapse of the Bank of Credit and Commerce International (BCCI). Early in his career, Jeff also experienced a U.S. Supreme Court victory in *Kehr v. A.O. Smith Corp.*,521 U.S. 179 (1997), which clarified the accrual rule applicable to civil RICO claims.

During his career, Jeff has prosecuted and defended RICO claims in federal district courts throughout the United States, argued appeals in multiple U.S. Courts of Appeal, consulted with hundreds of lawyers and businesses, and served as an expert witness in both domestic and foreign arbitration tribunals. He is the author of *Grell on RICO* and the publisher of ricoact.com. Jeff is also a former Assistant Attorney General for the State of Minnesota.

Whenever RICO is in the news, Jeff is in the news. Jeff has provided RICO commentary for the *Wall Street Joumal*, the *New York Times*, the *Washington Post*, the *New Yorker*, the *Daily Beast*, *PBS Frontline*, the *Telegraph*, the *Irish Times*, CBS News, BBC, CBC, Fox Nation, NewsNation, Reuters, *Newsweek*, the U.S. *News & World Report*, the *Winnipeg Free Press*, *Law360*, *Vanity Fair*, *Forbes*, *Vice*, the *Chicago Tribune*, the *Atlanta Constitution Journal*, *Bloomberg Law*, the *Detroit News*, the *Boston Globe*, the *LA Times*, the *Economist*, *Business Insider*, and many more.

Jeff joined Ted Lyon & Associates as Special Counsel in January 2024, and is happy to help you explore the complexities of the RICO landscape.

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Texas Supreme Court Redefines Charge Error

BY CASSIE J. DALLAS
AND RYAN M. OWEN

The New Standard for "Harmful" Charge Error

Since the Texas Supreme Court decided *Crown Life Insurance v. Casteel* nearly 25 years ago, "*Casteel* error" has become shorthand for jury charge error that is presumed harmful.

The Texas Rules of Civil Procedure require submission of broad-form jury questions "whenever feasible," but *Casteel* recognized that the submission of broad-form liability questions based on invalid and valid theories of liability could prevent an appellant from properly presenting a case on appeal.

In *Casteel*, the Court explained that "when a trial court submits a single broad-form liability question incorporating multiple theories of liability, the error is harmful, and a new trial is required when the appellate court cannot determine whether the jury based its verdict on an improperly submitted invalid theory." After *Casteel*, the Court expanded its "presumed harm" framework to broad-form damage questions that mixed valid and invalid damage elements; proportionate responsibility questions predicated on valid and invalid liability theories; and sometimes to single-liability theory cases where the submission allows a finding of liability based on evidence that cannot support recovery.

The Texas Supreme Court's 2024 opinion on rehearing in *Horton v. Kansas City Southern Railway Co.*, No. 21-0769, 2024 WL 3210468 (Tex. June 28, 2024), fundamentally changes *Casteel*'s presumed-harm analysis.

The seven-justice majority in *Horton* held that "reviewing courts should not presume harm when a broad-form submission permits a jury to make a finding based on a theory or allegation that is invalid only because it lacks evidentiary support." Following *Horton*, *Casteel*-like errors create a rebuttable presumption of harm, which the prevailing party may overcome by showing that the alleged error "does not probably prevent the appellant from presenting the appeal." *Horton* further limits *Casteel*'s application by holding that a claim, liability theory, or damage element are no longer "invalid" merely because they are unsupported by legally sufficient evidence.

Practical Lessons from *Horton*

Horton limits *Casteel's* application, particularly the ability to argue on appeal that harm should be presumed and a new trial granted. *Horton* also forecloses *Casteel* error arguments where evidence is legally insufficient to support the submission of a question, liability theory, or element of damage. But it does not mean that harmful error can never be shown in those scenarios. *Horton* makes charge error preservation all the more critical. While the following suggested steps are not exhaustive, taking the following error preservation steps will help to ensure the broadest possible range of appellate charge error arguments post-*Horton*:

Practitioners should take care to preserve error by separately objecting to "legally invalid" theories and theories unsupported by sufficient evidence. It is important to make a clear record of which theories are legally "invalid" theories and which theories are unsupported by legally sufficient evidence by pointing out any part of the charge that relies on an invalid theory.

Consider Requesting More Questions

Practitioners should consider requesting limiting instructions and should draft language instructing the jury not to consider liability theories, claims, or allegations that are not supported by the evidence. The request should be supported by on-the-record argument that the jury will necessarily consider the improper liability theory, claim, or allegation in the absence of a limiting instruction, and practitioners should point out opposing counsel's arguments, as well as testimony developed during the trial, that focus on improper theories of liability.

We do not know how Texas courts will apply *Horton*, but several practical problems come to mind. At trial, parties must now distinguish legally invalid theories and theories unsupported by sufficient evidence, as well as draft and submit proposed questions and limiting instructions with the new framework in mind. Texas Courts of Appeals must decide whether to apply any presumption of harm has been "rebutted"—without guidance as to what it means to be "reasonably certain that the jury was not significantly influenced by issues erroneously submitted to it." The continuing vitality of *Casteel* remains to be seen based on real-world application of *Horton*. **HN**

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How to Best Position Your Case for Appeal

BY HON. KRISTINA WILLIAMS AND JOHN R. HERRING

It is easy to focus on selling your story to the jury and, in the process, lose sight of the reality that the jury verdict is not the end of the litigation war. A favorable verdict can be easily lost at the court of appeals. With that in mind, this article presents key opportunities in the trial court to set up a final win in the court of appeals.

1. Make your legal arguments first in the trial court. Be sure to assert legal arguments in the trial court and take the time to support them with strong written argument and authority. Do not squander a chance to get a favorable ruling from the trial court by waiting until appeal to properly brief the issue. If you do not make arguments with your best authority in the trial court and instead raise them for the first time on appeal, you may have a waiver problem. Trial judges are busy, but they do not want to be reversed on appeal because you gave them bad law.

2. Your best potential arguments on appeal should inform your trial strategy. Leading up to trial, ask yourself: If a verdict is returned against my client, how can I reverse that on appeal? If those arguments require certain evidence to come in, put that evidence on at trial, either in front of the jury or by offer of proof. If the potential argument on appeal is that certain evidence or argument was improper, make sure you object to it on the record and get a ruling.

3. Case-specific motions in limine are key. Motions in limine are a crucial opportunity to keep out improper evidence or arguments at trial. With that in mind, be sure that your motion in limine is tailored to the case. Vague motions in limine are unhelpful in keeping harmful arguments out of trial and waste the court's time having to hear them at pretrial.

At trial, you must object to improper evidence or argument and secure a ruling on the record to preserve the objection for appeal. A limine ruling alone is never reversible error. And, if the argument is prejudicial enough to later complain about on appeal, you must object during the other side's opening and closing.

4. Object early and often. Object to problematic evidence (or arguments) at the first opportunity, in writing, and with supporting legal authority. Mid-trial is not the first time the trial court should hear that evidence should not be introduced at trial or a certain argument should not be made to the jury. Reiterate your objections in future filings.

At trial, you must object when the error is made—i.e., when the other side first starts to introduce the evidence or make the argument. Objecting later carries risk of waiver. For the objection to count for appeal, it must be made on the record, and you must secure a ruling on the record. Unrecorded conferences, while perhaps less disruptive to the jury, never make it to the court of appeals. Finally, you must continue to object, on the record, until a request is overruled: (1) object, (2) ask for a limiting instruction, (3) ask to strike the improper evidence or argument from the record, and (4) ask for a mistrial. If your objection is sustained and you do not proceed until a request is overruled, you risk waiver.

This must be balanced with the judge's preferences and your presentation to the jury. Object to arguments or evidence that will give rise to reversible error on appeal instead of objecting to every technical rule violation. Our experience is that juries understand when the attorneys need to make trial objections, and as long as those objections are respectful, to the point, and used wisely, neither the judge nor the jury find them offensive.

5. Object the right way at the jury charge conference. The informal charge conference is where the real sausage is made with the jury charge—no judge wants to hear a surprise argument at the formal charge conference. That said, because the informal charge conference is irrelevant on appeal, you must make specific objections to the charge on the record and support those objections with legal authority. Be sure to tender proposed questions, instructions, and definitions, as well as make objections, when required. Having experienced appellate counsel on the team to focus on the jury charge can help avoid landmines. **HN**

Hon. Kristina Williams is a former Judge of the 192nd District Court in Dallas and current Senior Counsel at Norton Rose Fulbright. She can be reached at kristina.williams@nortonrosefulbright.com. John R. Herring is a Trial Partner at the firm and can be reached at john.herring@nortonrosefulbright.com.

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Hon. Harlin Hale to Receive DBF Fellows Justinian Award

CONTINUED FROM PAGE 1

populated the best law firms in the country or ventured out successfully on their own. Many have stayed in Dallas and practiced in his court. Many of them got started with an externship or judicial clerkship he helped them attain.

And with all the humility of a man who in the face of all these honors and accomplishments has allowed himself to still be called "Cooter." "Cooter" was what Judge Hale's father started calling him from the day he came home to the family farm in St. Joseph, Louisiana, from the hospital in Natchez, Mississippi in March of 1957. The source of his name and actual birth state have not been previously well known, especially when Ole Miss is playing his beloved LSU ('79) Tigers.

Judge Hale is happiest and takes the most satisfaction from seeing his former students and law clerks succeed. What a blessing it would be when some of these students become judges (and some of them will), if they would remember to conduct their courts with the professional acumen, grace, charm and overall goodness of their ultimate mentor—Judge Harlin "Cooter" Hale. Some of them might even sport a bow tie from time to time.

The Fellows Luncheon will be held on Thursday, October 17, 2024, at the Arts District Mansion. Tickets can be purchased at dallasbarfoundation.org or by calling Elizabeth Philipp at (214) 220-7487. **HN**

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The Texas Post-Pandemic Rules of Civil Procedure

BY ANDY JONES

The Texas Rules of Civil Procedure changed dramatically on January 1, 2021, and again on February 1, 2023. If you practice family law, you know these Rules changed yet again on November 17, 2023.

The Texas Supreme Court made Rule 21d effective February 2023 to address the use of remote proceedings. This rule sets the parameters for the use of remote proceedings and a framework for objecting to or obtaining a remote proceeding.

Per Rule 21d(b)(1), all court proceedings are in person "unless the notice…states otherwise[.]" Thus, the default for all proceedings is in person. This rule also removes the greatest fear of all—a remote jury trial. Rule 21d(b)(2) expressly states that a Court cannot require a party, lawyer, or juror to appear remotely for a jury trial. Rule 21d also precludes courts from requiring a party or lawyer to appear remotely for hearings in which oral testimony is heard.

Notably, Rule 21d(c) requires that the judge, even if appearing remotely, appear from the courthouse. The rule actually says, "from a location required by law." Section 24.030 of the Texas Government Code requires that a district court sit in the county seat for a jury trial or at a place decided by the Commissioners' Court for "motions, arguments, and other matters not heard before a jury in a civil case." Thus, for all practical purposes, the rule contemplates that the judge appear at the actual courthouse.

There is not any substantial case law interpreting Rule 21d. Only two appellate cases currently even mention Rule 21d. One is interesting for its possible implications going forward. In the case of *In Interest of F.L.*, a litigant in a family law case appeared to raise a due process challenge to the appearance of a witness by Zoom. There, the trial court allowed one witness (of seven) to testify by Zoom. The court allowed the testimony, and the party opposing the appearance by Zoom unsuccessfully objected. The Court of Appeals essentially dodged the due process challenge by holding that the objection was not specific enough and referenced Rule 21d in a footnote as a basis for allowing the Zoom testimony.

The takeaway? First, make sure you are clearly and sufficiently objecting. Second, the factors to ask for or oppose a remote proceeding under Rule 21d could be applicable to opposing a witness's appearance by remote means. Third, perhaps substantive law objections may have more of an impact on whether or not a witness's testimony or a proceeding can be conducted remotely than currently thought.

For these rules, the Texas Supreme Court made the biggest and most important overhaul since 1999. The Texas Rules of Civil Procedure have now been brought into alignment with the Federal Rules of Civil Procedure. This is especially true in three key areas. First, a "Request for Disclosure" has gone the way of the megalodon. Now, there are required disclosures. These required disclosures are phased—initial, expert, and pretrial—just like in federal court.

Also, you cannot send discovery with your initial pleading anymore. You must wait until after the Rule 194 initial disclosures have been exchanged. Just like in federal court. Sensing a theme?

Finally, expert disclosures have expanded and include much of the material required in—you guessed it—federal court. Now, Rule 194.3 refers the practitioner to Rule 195—the expanded expert disclosure requirement. Rule 195.5 requires disclosure of the usual identifying information and "general substance" of the expert's opinions (like old Rule 194). Yet, now, Rule 195.5 also requires, for retained experts, disclosure of not just the expert's file but also a list of the expert's publications for the last 10 years, a list of all depositions and trial testimony for the last four years, and a statement of compensation.

Yet, congratulations to the family law lobby! On November 17, 2023, the Texas Supreme Court added TRCP 194A and 195A, which brought back standard "family law" discovery rules. If you file an action "under the Family Code," you get all the old Rules of Civil Procedure back. "Requests for Disclosure," discovery with your petition, discovery periods that do not hinge on a disclosure deadline, expert disclosure rules you learned in law school, it is all back!

At this point, take a breath, grab your O'Connor's, and read the rules. Revise your standard discovery, schedule time to evaluate your cases, and stay calm. Knowing the Texas Post-Pandemic Rules of Civil Procedure is really the whole battle. Once you know them and feel comfortable with their applications, you can be confident in your discovery strategies and how you will get your case across the finish line. **HN**

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Haynes Boone Supports Equal Access to Justice

CONTINUED FROM PAGE 1

to witness my client's resilience and bravery," Hannah said.

Haynes Boone Associate **Sam Mallick** recently helped "Olivia," a DVAP client whose former landlord charged improper fees and refused to return her security deposit. Eventually, the landlord sent a collections agency after Olivia, and the hit to her credit score made it impossible to find a new place to live. Sam got the collections agency to back down and fix her credit score, the landlord to drop the erroneous charges, and finally got the security deposit returned. Although the case only involved a few hundred dollars, it ensured that Olivia could keep a roof over her head.

"I have worked on other pro bono cases outside of DVAP, but the DVAP cases are special. They aren't cases that will get written about in a press release or even sound very interesting most of the time, but the people who come to DVAP really need help. Some cases only take a few hours of attorney time but can greatly impact the client. When I've taken a DVAP case, it is ready to go right from the start, and the support from DVAP staff along the way has been incredible. DVAP makes it easy to do pro bono," Sam explained.

"Our attorneys provide access to justice to those in need in every way imaginable, and supporting the 2025 Equal Access to Justice Campaign is definitely one of those ways," Haynes Boone Partner and Pro Bono Committee Co-Chair **David Taubenfeld** said. "We love devoting time and will always devote the hours it takes to represent our pro bono clients, but without the money the EAJ Campaign raises to fund the system, we simply would not be able to represent as many folks as efficiently as we now can."

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.

Column | *Ethics*

Ethics and Appellate Law: What You Need to Know

BY RWAN SAFFARINI HARDESTY

For lawyers, competent and diligent representation is not just an ethical obligation—it is a foundation of effective advocacy. This article explores the requirements set forth by the Texas Disciplinary Rules of Professional Conduct (TDRPC), with a focus on Rule 1.01, and its implications for both trial and appellate practice.

TDRPC Rule 1.01 discusses competent and diligent representation by lawyers. It clearly states that attorneys shall not accept or continue employment in a legal matter which they know or should know is beyond their competence unless they have another competent lawyer associated in the matter with the informed consent of the client.

Comments 1 through 5 of TDRPC Rule 1.01 inform lawyers on whether they should accept employment. If a lawyer is unable to render competent legal services due to the complexity or specialized nature of a matter, then the lawyer should not accept employment. Regarding appeals, this is an extraordinarily important rule, especially when a trial attorney is representing a client in a matter that may go up on appeal. Although the trial attorney may be fully competent for the trial itself, the intricacies and complexities that arise due to preservation of error for appeal may be beyond that attorney's skillset. Thus, it is imperative that an attorney competent in appeals is associated in these instances.

Competent and diligent representation also means knowing the rules of evidence well. It requires attorneys to object every time evidence they wish to exclude is offered with a specific objection. If an attorney does not object to that piece of evidence the second or fourth or twelfth time it is offered, any error in the admission of the evidence will be cured if it is admitted without objection at any point in the trial, and they will have waived error on appeal. Challenges on appeal must be supported by specific objections. Attorneys must state the grounds with enough specificity that the trial court can understand the objection, make an informed ruling, and allow the offering party an opportunity to remedy the defect, if possible. Further, the challenge on appeal must comport with the objection made at trial. In demonstrating competence and diligence, attorneys should endeavor to cite every rule of evidence, legal principle, or constitutional basis to support their challenges.

Competent and diligent representation also includes obtaining a ruling on an objection. The record must reflect that the attorney has made a timely request, objection, or motion, and that the trial court ruled on that request, objection, or motion. When a judge says, "move along" or "rephrase your question," attorneys should note that these are not rulings, and they need to ask for an actual ruling—"sustained" or "overruled." If a court refuses to rule, the attorney must object to the court's refusal and put that on the record. Failing to obtain a ruling or failing to object to a court's refusal to give a ruling on a request, objection, or motion will waive error on appeal. If an objection is overruled and the evidence was improperly excluded, the attorney must make an offer of proof of what the evidence or testimony would have been.

In appellate practice, competent and diligent representation also means ensuring attorneys research the appropriate law and do not take shortcuts in their motion and appellate practice. This includes thoroughly verifying all cited cases and ensuring they are relevant and on point. The importance of this practice has been highlighted by recent developments in legal technology.

When ChatGPT and other AI-generated writing became more mainstream, courts have had to admonish and even sanction attorneys for not verifying caselaw used in their motions—these attorneys cited cases that did not even exist. This represents a new challenge in maintaining competent representation in the age of artificial intelligence.

In response to issues with attorneys who did not "check their work," when using generative artificial intelligence, Texas federal judge Brantley Starr issued an order warning lawyers against using artificial intelligence in drafting legal briefs and has required a certificate attesting that no portion of their briefing used "generative artificial intelligence."

Comment 8 of Rule 1.01 instructs lawyers to "strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology." This comment emphasizes the need for attorneys to continually educate themselves on technological advancements that impact legal practice, ensuring they can use these tools effectively and ethically.

Ultimately, competent and diligent representation means not only zealously advocating for clients, but it also means associating with competent attorneys to help advocate for those clients, making sure you are up to date on technological advances, and ensuring caselaw exists, is relevant, and is on point. **HN**

Rwan Saffarini Hardesty is a Senior Attorney at Atrium Legal Group, PLLC. She can be reached at rwan@saffarinihardesty.com.


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Column | Artificial Intelligence

Generative AI and Evidence: Navigating the New Frontier

BY KORIN MUNSTERMAN

As generative AI technology rapidly evolves, its implications for the legal profession, particularly in evidence handling, are profound. Generative AI tools can create hyper-realistic images, videos, and voice recordings, posing significant challenges to the authentication and admissibility of evidence in courtrooms. This article explores the impact of generative AI on legal evidence, the challenges it presents, and the strategies attorneys can adopt to navigate this new frontier.

Deepfakes are manipulated media that use artificial intelligence to create convincing fake content. While the term is most commonly associated with video and audio, deepfakes can indeed include documents as well. This technology can create highly convincing fake videos, audio recordings, images, and even text documents that appear to be authentic. Deepfakes challenge the traditional mechanisms of evidence authentication and admissibility. Courts must now grapple with the possibility that any digital evidence could be a sophisticated fake.

For example, deepfakes could be used to create false video, audio, or document evidence. This might include fabricated surveillance footage, doctored audio recordings of conversations, or forged text documents like contracts, emails, or official reports. These could make it appear that a defendant committed a crime they did not actually commit, potentially leading to wrongful convictions. Alternatively, deepfakes could be used to create false alibis, not just through manipulated video footage, but also through forged documents. For example, fake hotel receipts, airline tickets, or time-stamped social media posts could be created to suggest a suspect was in a different location at the time of a crime. While forgery and manipulation of media have long existed, recent advances in generative AI have dramatically lowered the barriers to creating convincing fakes. These AI-generated deceptions can be crafted from scratch and are increasingly difficult to distinguish from genuine content, presenting new challenges for verification and trust in digital information.

The primary challenge lies in authenticating digital evidence. Historically, evidence such as photographs, recordings, and documents were presumed authentic if they appeared unaltered and credible witnesses vouched for their validity. However, with the advent of deepfakes, these presumptions are no longer safe. Courts will increasingly rely on technical experts to verify the authenticity of digital evidence. Experts can use advanced forensic techniques to detect anomalies indicative of deepfakes. However, as the technology behind deepfakes advances, so too must the expertise and tools available to forensic analysts.

The existence of deepfake technology may cause courts and juries to be more skeptical of all types of evidence, including videos, audio recordings, and now even official-looking documents. This increased skepticism could undermine the credibility of legitimate evidence across all media types. One significant concern is the emotional impact of deepfakes on juries. Even if deepfakes are eventually exposed as fake, the initial emotional response they provoke can be hard to undo. This challenge underscores the importance of judicial education and the development of robust protocols to handle such evidence.

Education is paramount. Lawyers, judges, and juries must understand the basics of generative AI and deepfakes. Workshops and continuing legal education (CLE) courses on these topics can equip legal professionals with the knowledge needed to identify and challenge deepfake evidence effectively. Law firms should establish protocols for verifying the authenticity of digital evidence. And law schools should integrate comprehensive courses on digital forensics and AI-generated content into their curricula, equipping future legal professionals with the technical knowledge and critical thinking skills necessary to authenticate digital evidence.

Legal professionals must stay abreast of the latest advancements in AI detection and forensic analysis to effectively counter the threat posed by deepfakes. Judge Paul Grimm at Duke University School of Law and Maura Grossman at the University of Waterloo have extensively analyzed the challenges posed by digital evidence and the evolving landscape of AI. They emphasize the importance of updating legal standards to keep pace with technological advancements and suggest that courts should develop specific guidelines for the admissibility of AI-generated evidence, incorporating robust authentication protocols and expert testimony to ensure the integrity of the judicial process.

Finally, there is a pressing need for comprehensive legal reform to address the challenges posed by generative AI. Advocating for updated evidentiary rules and privacy protections can help create a legal framework that is better equipped to handle the complexities of AI-generated evidence.

Generative AI and deepfakes are reshaping the landscape of legal evidence. By educating themselves, implementing robust verification protocols, leveraging advanced technology, and advocating for legal reform, attorneys can navigate this new frontier with confidence and integrity. **HN**

Korin Munsterman is a Professor of Practice and Director of Legal Education Technology at UNT Dallas College of Law. She can be reached at korin.munsterman@untdallas.edu.

Equal Access to Justice Campaign Co-Chairs Named

STAFF REPORT

Lauren Black, **Matt Henry**, and **Tim Newman** have been named Co-Chairs of the 2024-2025 Equal Access to Justice (EAJ) Campaign benefiting the Dallas Volunteer Attorney Program (DVAP). This year's Honorary Chair is **Anna Alvarado**.

Ms. Alvarado is Managing Director, Chief Legal Officer and Corporate Secretary at Texas Capital Bank. In that role she is responsible for supervising and coordinating all legal services for the company, serving as key legal advisor to the Board of Directors, ensuring legal compliance with all securities laws and banking regulations, and serving as primary liaison with regulators.

Not only is Ms. Alvarado an advocate for pro bono services, but she also believes in the mission, vision, and work of DVAP: "Equal access to justice isn't just a legal imperative; it is a cornerstone of a thriving economy. In Texas, where opportunity and growth are deeply valued, ensuring everyone has the legal support they need strengthens our communities and fosters a fair business environment. As stewards of justice and commerce, it is our collective responsibility to make this a reality."

Anna Alvarado

Lauren Black

Matt Henry

Tim Newman

Lauren Black is Deputy Administrator of Bureau B in the Dallas County District Attorney's Office where she oversees multiple divisions, including the Appellate, Misdemeanor, Grand Jury/Intake, Restorative Justice and Mental Health Divisions, and the newly created Vehicular Crimes Unit. She is responsible for coordinating the training for all prosecutors in the office and assisting with creating and implementing policies.

A graduate of Texas A&M University School of Law, Ms. Black is passionate about mentoring the next generation of trial attorneys and enjoys working as an Adjunct Professor at UNT Dallas College of Law and Baylor University School of Law. She serves on the boards of the DBA and The Family Place, a nonprofit committed to helping victims of family violence. Ms. Black has demonstrated an unwavering commitment to public service and was honored by her alma mater, Texas A&M University School of Law, as the recipient of the 2023 Public Non-Profit Sector Achievement Award.

"The practice of law has always been and will always be about people," said Ms. Black. "As advocates, it is our privilege and responsibility to ensure that those in need of resources and representation receive the same justice under the law as those who can afford it. By giving, you are not just supporting a cause—you are empowering lives, upholding fairness, and reinforcing the very foundation of our society. Stand with us in championing access to justice for everyone."

Matt Henry is Senior Vice President, General Counsel, and Secretary at Oncor Electric Delivery. He is responsible for all legal, governmental affairs, and regulatory matters for Texas' largest electric utility. Prior to his position at Oncor, he spent nearly 20 years in private practice representing some of the largest energy and utility companies in the United States. He is a graduate of SMU Dedman School of Law.

"As legal professionals, we must ensure that individuals in need have access to capable legal representation, regardless of social or economic status," said Mr. Henry. "I am excited to co-chair this effort, and I know the legal community will rise to the occasion. We can do this!"

Tim Newman is a Partner at Haynes and Boone, LLP. He is a litigator with experience in white collar defense, government and internal investigations, complex litigation, and cybersecurity. He also serves as the inaugural chair of the firm's HB Building Leaders Committee, which supports Haynes Boone attorneys in developing their skills in people, practice, and community leadership.

Mr. Newman is a graduate of Texas A&M University and William & Mary Law School and currently serves on the DBA Board of Directors.

"For over 25 years, DVAP has been a beacon of hope for those who need legal help but can't afford it. From family law to housing issues and from bankruptcy to wills, DVAP ensures that justice truly means justice for all in our community. Please join us in this vital mission by donating today, and we can strengthen DVAP's ability to represent the underrepresented and build a more equitable legal system," said Mr. Newman.

The Campaign will culminate at the Inaugural of 2025 DBA President **Vicki Blanton**. For more information, or to donate, log on to www.dallasbar.org/dvapcampaign.org. **HN**

Focus | *Appellate Law/Trial Skills*

There's a Judgment, Now What?

BY BEN MESCHES & JASON JORDAN

To borrow from a famous Winston Churchill quote, the entry of final judgment in a lawsuit is not the end, and sometimes not even the beginning of the end. Counsel for a prevailing party must often consider how to collect on the judgment, and counsel for a losing party needs to advise a client on potential collections issues and the ability to supersede enforcement. This article addresses options and procedures that may be immediately available upon the entry of final judgment. Issues that may arise later, including writs of execution, post-judgment injunctions, and reviving dormant judgments are beyond the scope of this article.

Abstract of Judgment

One meaningful tool a judgment creditor may immediately pursue is an abstract of judgment to create a lien on a judgment debtor's real property. Chapter 52 of the Texas Property Code governs abstracts of judgment and should be consulted to ensure compliance.

Post-Judgment Discovery

A judgment creditor may also immediately pursue post-judgment discovery using the same mechanisms available before trial, such as document requests and depositions. Under Texas Rule of Civil Procedure 621a, a judgment creditor may seek information to aid in enforcement of the judgment or to assess the adequacy of security the judgment debtor posted. While the tools to pursue this information are quite broad, Texas law forbids using post-judgment discovery to re-open issues that were litigated in the case or to add new claims or parties. A judgment debtor may also challenge discovery on the same grounds available for pre-trial discovery (e.g., relevance, undue burden, expense, etc.).

Turnover

Another powerful tool immediately available to a judgment creditor is a turnover order under Section 31.002 of the Texas Civil Practice and Remedies Code. Under the statute, a judgment creditor may seek an order—either in the same proceeding in which the judgment was rendered or an independent proceeding—to require a judgment debtor to turn over property to a sheriff or constable that is (1) owned by the debtor; (2) not exempt from attachment, execution, or seizure; and (3) in the debtor's possession or subject to its control. The turnover statute does not require any evidentiary hearing before granting relief and applies to property both within and outside of Texas. A judgment debtor may even obtain a turnover order *ex parte*.

A judgment creditor may also have a receiver appointed under the turnover statute to take possession of the debtor's property, sell it, and turn over the proceeds to the judgment creditor. Typically, no bond is required to appoint such a receiver, and once the receivership is created, all property subject to seizure under the statute comes into constructive possession of the Court and may not be transferred without approval of the Court or the receiver.

Filing an appeal will not prevent a judgment creditor from pursuing these options under the turnover statute, but a supersedeas bond will. Therefore, even before a judgment is signed, a judgment debtor's counsel should begin a dialogue with the client about securing a supersedeas bond. That way, a bond can be posted and approved before judgment enforcement begins.

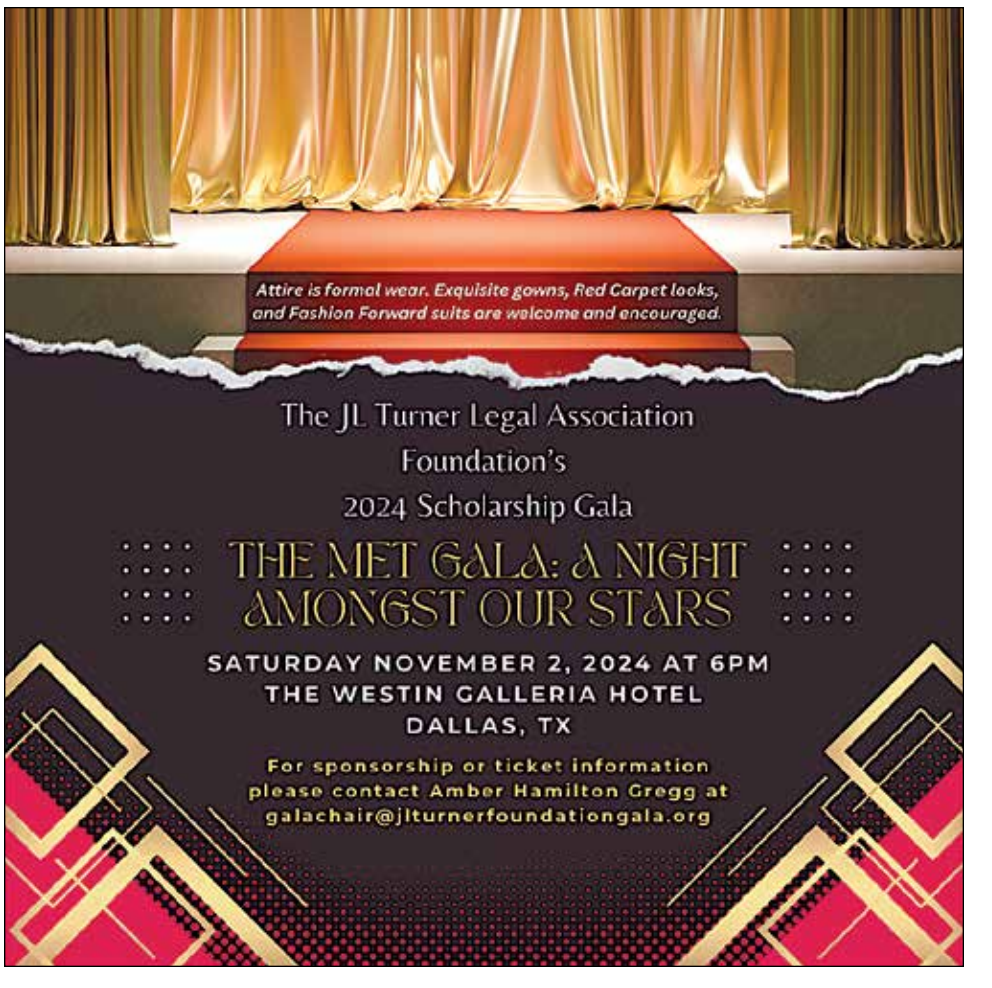
Attachment

Judgment creditors may also pursue attachment to seize property upon the entry of judgment. The rules and procedures for attachment are set out in Chapter 61 of the Texas Civil Practice and Remedies Code and Texas Rules of Civil Procedure 592 through 609. These requirements are more stringent than those for a turnover order. For example, attachment is available only if at least one of nine specific grounds is met under Section 61.002, and attachment likely cannot be used to seize property outside Texas. Debtors faced with a writ of attachment may post a replevy bond that takes the place of property otherwise subject to seizure. Debtors may also seek to vacate, dissolve, or modify the writ, or file a lawsuit for wrongful attachment if (1) the creditor's factual allegations to support the writ are false; (2) the debtor's due process rights were violated; or (3) other defects appear in the attachment pleadings, proceedings, or bond.

Garnishment

A garnishment proceeding is separate from the underlying action and usually consists of three parties: (1) the claimant, (2) the debtor, and (3) the garnishee that holds property or funds for the benefit of the debtor, which the judgment creditor seeks to have applied to payment of a judgment. The governing rules and procedures can be found in Chapter 63 of the Texas Civil Practice and Remedies Code and Texas Rules of Civil Procedure 657 through 679. Similar to the attachment context, a judgment debtor may respond to a writ of garnishment by (1) seeking to replevy property by filing a surety bond; (2) filing a sworn motion to vacate, dissolve, or modify the writ; or (3) filing an action for wrongful garnishment if the factual allegations in the creditor's affidavit are false. **HN**

Ben Mesches and Jason Jordan are Partners at Haynes and Boone, LLP. They can be reached at ben.mesches@haynesboone.com and jason.jordan@haynesboone.com, respectively.



Focus | *Appellate Law/Trial Skills*

How Juror Questions are Changing Texas Jury Trials

BY MIA FALZARANO

Juror involvement in civil jury trials through juror questions—the practice where jurors write down questions to be asked during trial—is becoming increasingly popular in Texas state court cases. This practice impacts every stage of trial from voir dire to closing argument. As it continues to gain traction, Texas attorneys should take care to learn how the process works and think critically about how to best implement it to their clients' advantage.

Allowing juror questions helps the jury feel a sense of ownership over the trial and tends to lead to higher levels of engagement and understanding—but that higher level of engagement and ownership can come at a cost. The attorney relinquishes some control during trial. With juror questions comes the possibility of increased focus on certain areas of a case that an attorney might not want highlighted, or decreased focus on more important areas.

With virtually no universally accepted procedures for juror questions and high levels of discretion afforded to the judge, trial attorneys are in a unique position to suggest an approach that will best suit their client and case. To capitalize on this, attorneys should prepare to work through the logistics of juror questions during the pre-trial conference, including: (1) whether the jury should write down questions after each witness or during designated breaks throughout the day; (2) whether the judge or attorneys will ask the jurors' questions aloud; and (3) whether attorneys can unilaterally reject questions submitted by jurors, or whether objections to questions must be grounded in the Texas Rules of Evidence.

Attorneys should keep in mind both the legal and practical implications when considering how they want to approach this practice, and the approach is likely to change on a trial-by-trial basis due to individualized case and client concerns. From a practical perspective, consider the situation where a juror writes down a question that uses inflammatory words or that frames your case poorly. Depending on the agreed upon procedure, if a judge reads that question aloud, as written, the act of doing so could be seen by the rest of the jury as lending credence to that one juror's perception of events. Or consider the situation where a juror writes down multiple questions, none of which are read aloud either due to legal issues or because you or opposing counsel objects to them; that juror might feel slighted or disheartened and ultimately become less engaged in the trial.

From a legal perspective, it is important to remember that juror questions may implicate other trial procedures, some of which may not be discretionary and, in extreme cases, could lead to reversible error. For example, consider a situation where questions are asked at designated breaks, instead of after individual witnesses' testimony. If a witness has been excused and is no longer in the courtroom, this may require the judge or attorneys to answer the jurors' questions. In that situation, the attorney has not been sworn in as a witness, so it is unclear whether the juror could rely on that answer as evidence and how an appellate court would treat the record for that portion of the case.

Likewise, agreeing ahead of time that attorneys have an ultimate veto right for questions does not absolve them of their responsibility to make objections on the record in a situation where a question that they sought to veto does ultimately get asked, either over their (informal) objection or because the judge believes it is a question deserving of an answer.

During trial, juror questions can provide valuable information to attorneys by cueing them into areas of interest or confusion for the jury, and attorneys should consider that information when tailoring their trial plan and determining how to approach each day and witness. However, do not forget that most questions may be coming from one or two jurors; they may not speak to the majority viewpoints. Moreover, keep in mind that while juror engagement and understanding is certainly beneficial, jurors will never achieve the same level of understanding as the attorney who has lived with the case for years. Juror questions are further limited by the fact that, unlike the attorney, they have no knowledge of what evidence is yet to come and thus can only ask questions based on their real-time knowledge of events. Any change in strategy must balance what the attorney knows (the questions heard) against what the attorney does not know (the unknown context or motivations behind the juror's questions).

Ultimately, juror questions are altering Texas jury trials, and they will continue to do so. As a result, Texas attorneys should be prepared to use such questions to their advantage by adequately informing their clients, suggesting beneficial procedures, adapting their trial strategies, and protecting appellate issues. **HN**

Mia Falzarano is a Senior Associate and Jury Consultant at Alston & Bird. She can be reached at mia.falzarano@alston.com.

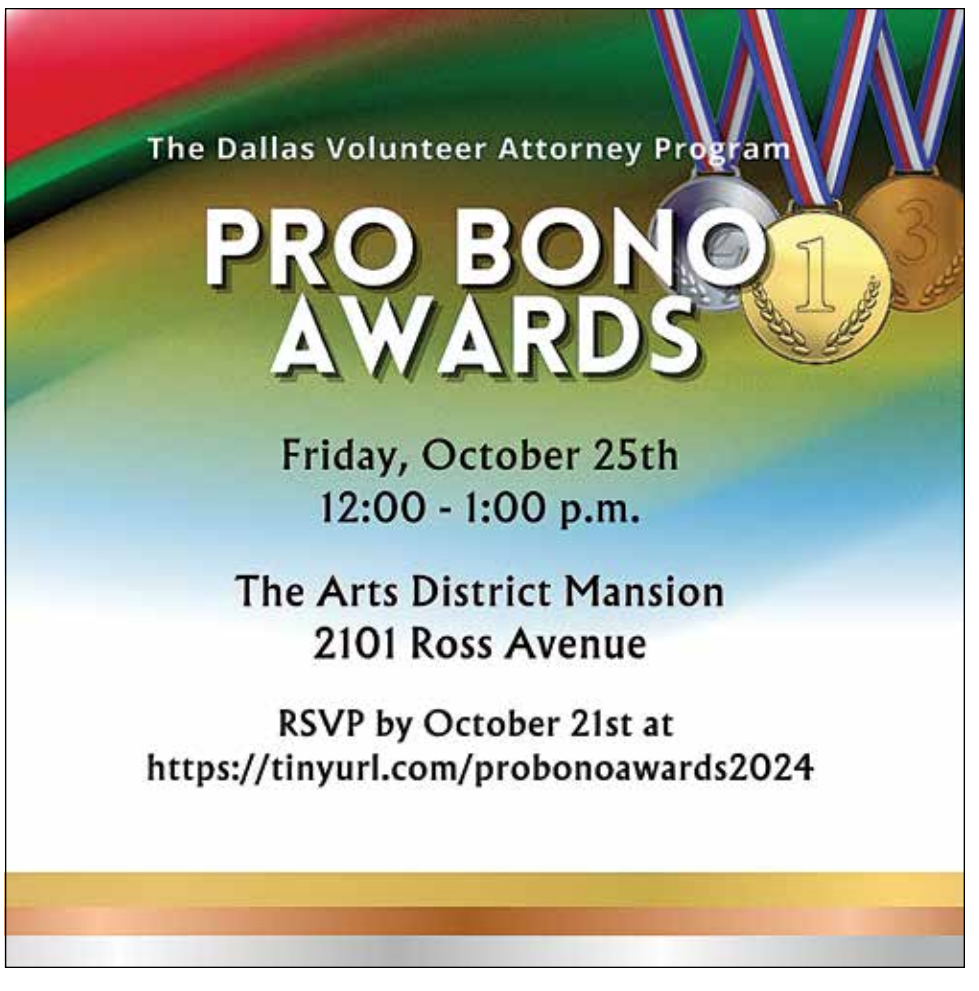
In My Humble Opinion

CONTINUED FROM PAGE 4

Humility – A Path To Happiness

New York Times columnist David Brooks, who spoke to the Dallas Bar several years ago, wrote extensively about humility in his book—*The Road to Character*. Not surprisingly, Brooks equates humble people with happy people, hence my reason for penning this column about humility in the first place—***because I want all our lawyers to be happy lawyers!*** So, I'll leave you with this excerpt from Brooks talking about humble people to further reflect on. Consider this my equivalent of a motivational "You Suck!" text from me to you:

"The self-effacing person is soothing and gracious, while the self-promoting person is fragile and jarring. Humility is freedom from the need to prove you are superior all the time, but egotism is a ravenous hunger in a small space—self-concerned, competitive, and distinction-hungry."



Entrepreneurs in Community Lawyering Class of 2024

STAFF REPORT

This year the Dallas Bar Association's Entrepreneurs in Community Lawyering (ECL) program welcomed seven attorneys who will launch solo practices aimed at serving Dallas residents of modest means.

The attorneys will spend the year building their practices with the aid of mentoring, business development training, access to practice management resources, and one-on-one coaching.

"I am excited to welcome the aspiring solo practitioners into our attorney incubator program," said new ECL Director, **Stephanie Walker**. "With the support of the Dallas Bar Association, attorneys who went through the program established law practices that serve everyday people in our community who were previously unable to afford representation."

Seeking flexibility to assist clients with labor and employment matters, **Kristin Mijares** is excited to start her own practice and looks forward to helping both employers and employees. "I hope to learn from other attorneys who have successfully started their own practices and gain insight into how they started off, what they would do differently, and which resources are the most helpful when starting out," she said.

Another member of the new cohort, **David Floyd, Jr.**, plans to utilize his background to help others start their own businesses and protect their intellectual property. "Since learning more about the ECL program, my goal was to one day participate in it so that I could start a practice that serves the real needs of my community, while still making a living. Now that I am in the program, I am excited to see the impact my ECL cohort and I will have in DFW," he said.

2024 ECL Class

Deborah Krane joined this year's ECL cohort hoping to continue representing workers and small businesses. "From the start of my career, I have represented labor unions and their members and individual workers in a wide variety of cases," she said. "The positions I have held have allowed me to assist my clients in a very important aspect of their lives, namely, their ability to earn a living and work in an environment free of discrimination and other barriers imposed by employers. I would like to continue my work on behalf of those in need, and I am confident that my participation in the ECL Program will enable me to achieve my goals."

Compelled by the idea of supporting the profession while expanding access to justice at the same time, **Laura Benitez Geisler** brought the incubator model to the DBA during her year as president of the organization. Geisler structured the program to require 200 hours of pro bono service from each of the participating attorneys during the program year.

"Past ECL cohorts continue to make legal services more accessible. They offer sliding scale fees, continue pro bono work, and offer unbundled services," said Ms. Walker.

In order to create opportunities for her clients, **Martha E. Penturf** plans to start a family-based immigration practice. "In my experience as an immigration lawyer almost all of my clients come from humble financial backgrounds. Much like I have benefited from the compounded efforts of those who came before me, I hope to create that opportunity for my clients through their investment in me," she said.

With plans to practice family law and estate planning**, Jasmine Long** hopes to fulfill needs in the community for access to legal services.

"I am committed to making legal services more accessible and affordable," she stated. "Running my practice allows me to implement pricing models and payment plans to ease the financial burden on clients who cannot afford legal representation."

Using his personal experiences and understanding, **L. Zachary Carrion** is looking forward to helping people overcome fear and uncertainty in navigating the legal system with their property-related claims. "Of course, being from a background such as mine also helps me better understand the people I intend to serve. These views cause most people to forgo their rights when a legal remedy is available to them."

Seeking to serve people who need help with issues where immigration and criminal law overlap, **Joseph Ulloa** looks forward to starting his own practice. "My goal in ECL is to help those in need gain access to legal resources and diligent representation," he said. "The Dallas Bar and the ECL program is community driven, and I intend to mirror that principle in my practice and my firm."

"I look forward to seeing this cohort expand access to legal services," said Ms. Walker.

To learn more about the ECL program or participating attorneys, email Stephanie Walker at ecl@dallasbar.org. **HN**

2024 Dallas Bar Association

Sustaining Members of the Dallas Bar Association

The DBA sincerely appreciates the following Sustaining Members whose financial contributions enhance the preservation of the historic Arts District Mansion. Thank you.

As of September 10, 2024

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Wednesday, October 2, Noon
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THE SEC SPEAKS: HOT TOPICS IN ENFORCEMENT

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Wednesday, October 9, 4:00 p.m.
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AI SYMPOSIUM

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Focus *Appellate Law/Trial Skills*

Supersedeas Bonds

BY LAWRENCE FISCHMAN

Introduction

As a trial lawyer, you know that trial courts sometimes get it wrong, and you have to appeal to make it right. An important part of that process is posting a supersedeas bond to stay enforcement of the judgment while it is being appealed. This might seem straightforward, but there are numerous complexities and pitfalls that every attorney should understand. This article explores some of the quirks and pitfalls lying beneath the surface of the relevant statutes.

Money Judgment

On motion, the trial court *must* fix the amount of the supersedeas bond. The amount is equal to the *compensatory* damages, plus taxable court costs and interest on the damage amount, during the probable time for the appellate process to play out. Non-contractual prejudgment interest, attorney's fees, punitive damages, and equitable disgorgement are **not** included.

The amount the appellant must post may not exceed the *lesser of* one-half the judgment debtor's net worth determined on a Generally Accepted Accounting Principles (GAAP) basis *or* $25 million. Liabilities may **not** include the amount of the judgment from which the appeal is taken. If there is more than one judgment debtor jointly and severally liable, the cap applies to each (e.g. $51 million judgment, each must post up to $25 million). There is no reported case dealing with whether an individual judgment debtor's *exempt* property must be included.

Section 52.006(c) of the Civil Practice and Remedies Code and Texas Rule of Appellate Procedure 24.2(b) provide that the court *must* lower the bond to an amount "that will not cause the judgment debtor *substantial economic harm*[.]" The ability to sell or encumber property is one of several factors to be considered in the economic harm analysis. But does this mean exempt property? Must the debtor sell or borrow against their homestead, or liquidate exempt retirement accounts? Counter-intuitive as that may seem, those are possibilities.

Rule 24.2(c) sets out the procedural steps to be followed in a proceeding to determine the bond amount. The debtor must file a GAAP-compliant affidavit with the tendered amount, if the bond amount is less than the judgment. Unless the sworn statement complies with Financial Accounting Standards Board (FASB) standards, it does not comply with GAAP. This seems more than a little onerous given that most people do not have time or resources available to pay for an audited statement. As the statement can be tested by cross-examination and opposing evidence, a compiled statement should suffice.

Injunction

Injunctions can be either prohibitory or mandatory. In either case, unless superseded, the injunction takes effect when the judgment is signed. Rule 24.2(a)(3) is *mandatory*, the court *must* allow the debtor to supersede. Under this provision, the court *may* allow the judgment plaintiff to supersede the defendant's supersedeas.

In such cases, complications can arise in the determination of each bond amount. In the case of a counter-bond, ascertaining the damages to the defendant if the injunction is dissolved on appeal can be particularly challenging.

In the case of a mandatory injunction counter-bond, three problems arise: 1) How does a court measure the defendant's loss if the injunction is dissolved? 2) What if the actions required by the injunction cannot be undone? 3) If a defendant complies with the injunction because a counter-bond is allowed, do they risk having their appeal dismissed as moot?

If the defendant complies with the injunction without a counter-bond, there could be cases where a court finds the appeal to have been rendered moot. However, there is authority to the effect that payment of a money judgment does not moot the appeal if the debtor clearly communicates an intention to pursue the appeal. *Miga v. Jensen* ,96 S.W.3d 207 (Tex. 2002). But there is no authority for the same rule in a mandatory injunction case.

Review

Section 52.006(6) of the Civil Practice and Remedies Code provides for review of supersedeas orders by appellate courts. Rule 24.4(a) provides for appellate review of trial court orders in the court of appeals by motion and in the supreme court by mandamus. In the trial court the burden of persuasion is on the debtor to prove net worth. The rule is silent with respect to other issues, such as the amount of an injunction bond, whether to allow a counter-bond and if so, in what amount. The standard of review is abuse of discretion. **HN**

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Focus | *Appellate Law/Trial Skills*

An In-House Lawyer's Guide to Trial Prep

BY JULIA A. SIMON

In 24 years of in-house practice, I had 12 cases go to trial. All but two made it to a jury verdict. Fortunately, we won most of the cases, "losing" only three. And we prevailed on appeal in one of the three cases. Reflecting on the successes and failures, I share the following key takeaways.

1. Define the "win" – know why the case is important to the company. We are all aware that over 90 percent of cases settle before trial. We also know that juries can be unpredictable. So, if a company is going to trial, there is a reason. For my company, the reason was always strategic. In some cases, we thought we had ample facts to uphold the application of an important legal principle in our favor and a strong probability of prevailing on most of the claims. At other times, the delta between the opposing party's case valuation and the company's valuation was significant. In those circumstances, our risk assessment was that there was a chance we could win, and even if we lost, we would have a better result than if we accepted plaintiff's settlement offer. Sometimes cases are about more than money—but money is always important. And no one likes to lose.

2. Make sure your case assessment is realistic. In one of the cases we lost at trial, I predicted the loss. I also predicted we would win on appeal. What I did not predict was the size of the jury verdict. It was about five times what I thought it would be. Fortunately, the trial court partially granted our motion for judgment notwithstanding the verdict, negating the punitive damage award. Because the company's executives and board were clear on what to expect, and things transpired generally as predicted, no one panicked—even with the unexpected size of the jury award. We ultimately prevailed on appeal, reversing the entire judgment. The decision benefited not just the company, but an entire industry. It was worth the fight and the cost—but only because we won, as expected.

In one case that was settled during trial, outside counsel did a poor job preparing for what they represented to be a "slam dunk" case. Counsel anticipated certain rulings from the court that did not come, and they did not have an alternative strategy prepared as trial was about to begin. When I arrived at the courthouse to watch opening statements, I was met with a surprise request to settle. This firm lost our business going forward, not because we settled, but because they failed to properly assess the case and keep us fully advised as the case progressed. No client wants to be surprised at trial.

3. Make sure witnesses are prepared. We lost one case early in my tenure. I trusted outside counsel to get our witnesses ready. They were not. The reason turned out to be that counsel was primarily concerned about the technical aspects of the testimony. They did not spend enough time helping the corporate witnesses understand how their testimony fit into the bigger picture and how to confidently convey their part of the story. I took over witness preparation in many of the cases that followed. I made sure my corporate witnesses were confident, calm, and ready for their testimony. This approach resulted in me switching counsel just a few months before trial on one case because it was clear that outside counsel was biased against a key witness. Counsel was convinced the jury would hate her. I was convinced counsel was wrong. I hired new lawyers with the skill to make this witness feel comfortable with the decisions she made and who helped her confidently tell her story to the jury. Ultimately, we added this case to the win column—zeroing out the plaintiff at trial and ending a string of copycat cases.

When preparing corporate witnesses, remember that most corporate witnesses hate testifying in court. It is a distraction from their day-to-day responsibilities. They often need a little handholding and a great deal of confidence building, regardless of their title.

4. Communication is key. It takes courage for a company to take its case to a jury. Counsel should ensure their client is clear on what it will take to win and the chances of success. Provide as much notice as possible, including the chance of the trial being delayed. Assist your client in preparing statements they can share with their executives or board, whether you win or lose at trial. And importantly, make sure your client understands the costs—they need to know what damages are likely to be *and* what attorney's fees are estimated. Lean on the side of overcommunicating. Your client will thank you. **HN**

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Newest DBA Section: Child Welfare and Juvenile Justice Section

BY DIANE M. SUMOSKI

We are excited to announce the creation of the Dallas Bar Association's newest Section—the Child Welfare and Juvenile Justice Section (CWJJ)!

CWJJ practitioners organized to form this Section focusing solely on the specialized areas of child welfare law and juvenile justice law for a reason. Although child welfare and juvenile delinquency cases fall under the umbrella of "family law," the practitioners in this area know they are fundamentally different from "traditional" family law. These legal fields involve potential or actual government intervention into the lives of children and their families, rather than legal issues that arise within and between members of a family itself. Although the DBA has long had a committee focused on this work, and has an active and dedicated Family Law Section, the Board's approval of this new Section recognizes the uniqueness of these areas of the law. Furthermore, it highlights the critical need to ensure that attorneys practicing in this field have the Bar's full support and recognition of the importance of their work serving the children and families in our community.

To add perspective to the magnitude of Child Welfare and Juvenile Justice practice, in fiscal year 2023, according to the Department of Family and Protective Services (DFPS)' Data Book, 18,833 Texas Families were receiving Family Preservation Services from Child Protective Services. In that same year, 31,475 Texas children were in the conservatorship of DFPS. Further, children in the child welfare system, who are struggling with loss of family and other related issues, frequently are at risk of becoming cross-system involved with the juvenile justice system. According to a Texas Juvenile Justice Department report, of the 2,079 youth served by the TJJD in fiscal years 2022-2023, 16 percent were in substitute care through DFPS at some point in their lives. The fields are substantial, socially significant, and related.

The CWJJ Section will focus on providing education and a gathering place for DBA attorneys who practice in, are interested in practicing in, want to know more about, or have other involvement in the specialized areas of child welfare and/or juvenile delinquency law. These practice areas require an attorney to have an understanding of multiple professional disciplines apart from the law, such as social work, psychology, psychiatry, state policy, and more. Accordingly, the Section will educate attorneys through interdisciplinary, as well as more traditional, legal continuing education.

Beyond its strong educational goal, the Section will provide a forum for discussion of and exchange of ideas regarding the unique and pressing issues that arise in these fields. The Section is dedicated to elevating the competency and skills of the association attorneys who practice in these areas, and to bringing in new attorneys who are interested in this impactful work.

The Section is already planning educational events, including a full day CWJJ Section Bench Bar Conference to be held at the Arts District Mansion on February 6, 2025. This Bench Bar Conference will be an ideal event for attorneys who want to explore this fascinating and critical practice area, for attorneys who are already involved in the practice, and for everyone to meet many of the judges who administer justice to the families and children involved in the child welfare and juvenile justice systems. The Section is also planning a Juvenile Delinquency Law Conference for later this fall.

The inaugural officers and Council of the Section are Chair **Diane Sumoski**, Vice-Chair **Patricia Hogue**, Secretary **Sarah Wahl**, and Treasurer **Walt McCool**. Council Members at Large include **Kris Hayes**, **Carolyn Hill**, **Cheri Leutz**, **Willis Ma**, **Lee Anne McKinney**, **Emory Osborn**, **Ebony Rivon**, and **Electra Watson**.

The Section will begin having regular monthly meetings in January 2025, and all are invited to join us and explore the child welfare and juvenile justice fields. Our Texas families need you and your skills! **HN**

Diane Sumoski is Director of the W.W. Caruth, Jr. Child Advocacy Clinic, Director of the W.W. Caruth, Jr. Institute for Children's Rights and a Clinical Professor of Law. She can be reached at dsumoski@smu.edu.

Professionalism Tip

"I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected."

- Excerpt from the Texas Lawyers Creed

Find the complete Creed online at https://shorturl.at/FQX26

Focus | *Appellate Law/Trial Skills*

Mastering Objections: When, Why, and How to Object Effectively

BY JULIE PETTIT GREESON

Mastering objections is a crucial skill for litigators, as master requires balancing legal acumen and strategic foresight. This article explores effective objecting techniques, providing insights for attorneys at all experience levels.

Key Substantive Objections

Frequently used substantive objections include relevance (Fed. R. Evid. 401, 402), unfair prejudice (Fed. R. Evid. 403), and lack of personal knowledge (Fed. R. Evid. 602). These objections allow attorneys to challenge irrelevant evidence, oppose prejudicial material, and contest testimony not based on direct experience.

Strategic Importance

Objections serve critical purposes beyond evidentiary gatekeeping. They protect clients' interests, prevent harmful evidence admission, shape jury perception, and preserve issues for appeal. Failure to object at trial often precludes appellate review of evidentiary issues.

Objections can strategically disrupt opposing counsel's rhythm, highlight case weaknesses, or emphasize key points. However, this tactical use must be balanced against appearing obstructionist.

When and How to Object

Effective objecting is a balancing act. Over-objecting risks alienating the jury or judge, while under-objecting may allow damaging evidence through. The process involves quickly identifying objectionable material, formulating the legal basis, and deciding whether to object based on strategy.

When objecting, attorneys should stand, address the court respectfully, state grounds concisely, avoid engaging opposing counsel directly, and time the objection carefully. A calm, professional demeanor lends credibility to objections and enhances court standing.

Preparation is Key

Thorough preparation is crucial for mastering objections. Attorneys should analyze their evidence's weaknesses, develop responses to foreseeable objections, and create an objection matrix for key evidence. This matrix might outline possible objections, their legal and factual support, and prepared responses.

Such preparation enhances courtroom readiness and informs overall trial strategy. It allows attorneys to anticipate opposing counsel's tactics and prepare effective countermeasures. A comprehensive understanding of the case's evidentiary landscape can inform decisions about witness order, exhibit presentation, and case narrative.

Responding to Objections

Equally important is the ability to respond effectively when your evidence or questioning is challenged. Quick thinking and deep understanding of evidentiary rules are crucial. When faced with an objection, consider whether rephrasing the question or a brief foundational line of questioning could overcome the issue.

Sometimes, withdrawing a question in the face of an objection may be strategic, rather than arguing the point. This can maintain presentation flow and prevent undue emphasis on potentially problematic areas. In other cases, a well-reasoned response can highlight the importance of the evidence you're seeking to introduce.

Impact on Trial Strategy

Effective use of objections can significantly influence a trial's trajectory. By limiting harmful evidence admission, emphasizing key points for the jury, and shaping the record for potential appeal, objections become integral to trial strategy.

The pattern of objections raised by both sides can provide valuable insights into opposing counsel's strategy and case strengths and weaknesses. Astute litigators can use this information to adjust their approach in real time, responding to evolving trial dynamics.

Conclusion

Skillful use of objections distinguishes adept litigators from their peers. By viewing objections as integral components of trial strategy rather than mere reactive tools, attorneys can more effectively advocate for clients, shape the evidentiary landscape, and position cases for success at trial and on appeal.

The art of objection, when applied judiciously, becomes a powerful instrument in achieving client objectives and ensuring fair justice administration. It requires thorough knowledge of evidentiary rules, strategic thinking, quick reflexes, and nuanced understanding of courtroom dynamics.

Consider these additional tips for effective objecting:

1. **Know your judge**: Familiarize yourself with the judge's preferences and tendencies regarding objections.
2. **Be selective**: Object only when necessary. Constant objections can annoy the judge and jury.
3. **Be specific**: Clearly state the grounds for your objection.
4. **Be prepared to explain**: If asked, be ready to articulate why the evidence is objectionable.
5. **Listen carefully**: Pay close attention to questions and answers to catch potential objections.
6. **Anticipate**: Try to predict opposing counsel's next move and be ready to object if necessary.
7. **Know when to let go**: If the judge overrules your objection, respectfully accept the ruling and move on.
8. **Use sidebar conferences**: For complex objections, request a sidebar to avoid arguing in front of the jury.
9. **Educate your client**: Explain the objection process to your client so they understand what's happening during trial.
10. **Practice**: Regularly practice making and responding to objections to improve your skills.

Mastering objections is a career-long journey that can significantly enhance an attorney's effectiveness and reputation in the courtroom. With practice and strategic thinking, you can turn objections into a powerful tool in your litigation arsenal. **HN**

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

Focus | *Appellate Law/Trial Skills*

Five Golden Rules of Witness Preparation

BY ROBERT J. BOGDANOWICZ AND J. COLLIN SPRING

I. Ensure your witness understands how they contribute to the story. Trial is, at its core, about storytelling. From the juiciest fraud case to a bone-dry tax matter, jurors are ultimately at trial because there are competing narratives about what happened—if there weren't, there is no need to impanel a jury in the first place. Effective witness communication is critical in swaying jurors over to your side—but for witnesses to communicate effectively, witnesses need to understand *what* they are trying to communicate.

Take the time to explain to your witness the overall case and how his or her testimony contributes to it. Explain your theory of the case and what part they must play. Articulating specific goals (*i.e.*, what facts you need to elicit) for the testimony is a helpful and necessary baseline, but when the witness has context for why those facts serve the overall narrative, it gives the witness a necessary perspective to refine their testimony on direct examination and safeguard weak points on cross.

II. Make sure your witness remembers that it is a show. Social scientists have arrived at a variety of figures, but there is an overwhelming consensus that non-verbal vocal elements (e.g., tone, clarity, and rate of speech) and wholly non-vocal elements such as dress and body language are integral to persuasion. An expert with an untucked, wrinkled shirt and a too-tight jacket will be viewed as less authoritative than that same expert smartly dressed. A Givenchy dress with Louboutin heels, while perhaps stylish, may read to a jury as pretentious, aloof, or uppity. Think through how your witness will present ahead of time and how a jury will perceive his or her appearance.

Body language and demeanor, too, are integral elements of the show. Witnesses who are twitchy or fidgety will be perceived as less credible. Some over-zealous witnesses fall prey to "Jekyll-and-Hyde syndrome," where they are friendly and pleasant with the questioning attorney on direct and then turn combative or even nasty on cross. Consistency breeds credibility—training the witness to remain calm, cool, and cordial with opposing counsel will both retain the credibility built on direct and limit the jurors' perception of how effective the cross-examination was. It's not just about telling the truth, it's about *how* you tell the truth.

III. Know thine enemy. One too-often skipped step in witness preparation is to provide the witness with as much insight as possible about opposing counsel's potential questioning style. If you're lucky enough to have worked across from your opposing counsel before or have a connection who can provide you with insight, you can tailor your cross-examination preparation to the style of questioning the witness is likely to face. Where that information is not available, you should prepare them with a variety of cross styles in mind.

It is important, too, to make sure to take the kid's gloves off when you are preparing for cross. If you have prepared the witness to weather an aggressive cross, they will fare better if they face one on the stand. Let the most difficult cross your witness experiences come from you in preparation before trial.

Make sure the witness understands that cross-examination- is not a time for argument, and that they will have the opportunity on redirect to clarify any points raised in cross that they did not get to delve into fully. When a witness digs in and argues with (instead of responding to) the questions asked, they signal to the jury that the point being argued is important and drives it further into the jurors' memories. Moreover, the more the witness tries to explain a point away, the more likely it is that they will end up saying something that can be misconstrued.

IV. Remind the witness: Take. Your. Time. We often suggest that witnesses take the time to repeat the question in their head before answering it, especially if the question is long and factually complex. Cross examining attorneys oftentimes ask questions in ways that are intentionally ambiguous or confusing. Witnesses may feel pressured to provide an answer immediately—a few seconds of silence on the stand can feel like hours when under oath. But taking time to understand the question will help the witness avoid any laid traps and will show the jurors that the witness is thorough in responses. A witness's off the cuff, half-considered comments often lead to the most persuasive moments of an effective cross-examination.

V. Don't forget to pack a parachute. Like anyone else, witnesses are human and make mistakes. Aim for perfection, but plan for the inevitable failures, and ensure that your witness knows how you can help them out in overcoming them. Discuss ahead of time the procedural rules that allow the witness to get past hurdles. If the witness does not understand the procedure for, say, having their recollection refreshed, they may not provide the right answers you need to lay the foundation that will let you help them out when they forget an integral detail. The more the witness understands the tools you have to help them, the more confident and persuasive the witness will be at trial **HN**

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