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"PRO BONO SPOTLIGHT: GARY KRUPKIN," JULY/AUGUST 2023, P. 530

I have been a Texas bar member since 1995. The July/August article on pro bono featuring Gary Krupkin was the best article I have ever read in the *Texas Bar Journal*. Thank you so much for featuring him. Both he and his father are an inspiration!

CHARLOTTE HUGHART
Loveland, Colorado

"FROM VICTIM TO ADVOCATE," JULY/AUGUST 2023, P. 481

Long ago in a land far away with Blackie Holmes as chair and myself as vice chair, the Dallas Bar, in response to the *Dondi* decision, drafted the first Lawyers Creed in Texas. Both of us subsequently sat on the Supreme Court Advisory Committee on Professionalism, formed by the Supreme Court of Texas, that formulated the Texas Lawyer's Creed—A Mandate for Professionalism. Since that time, I've spoken, preached, and written on the importance of every Texas lawyer following the creed. In all this time, I've never seen such a personal, inspirational, and impactful statement of the importance of following the creed and similar mandates in the Texas Disciplinary Rules of Professional Conduct as was written by Belinda May Arambula in the July/August issue of the TBJ. Here is a trial lawyer whose personal experience following the death of her dad had every reason not to follow the creed, yet she overcame her personal grief and dedicates herself to zealous, yet compassionate, representation of her clients. Kudos to this great young trial lawyer.

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Trey Apffel can be reached at 512-427-1500, trey.apffel@texasbar.com, or @ApffelT on X (formerly Twitter).

State Bars BY THE NUMBERS

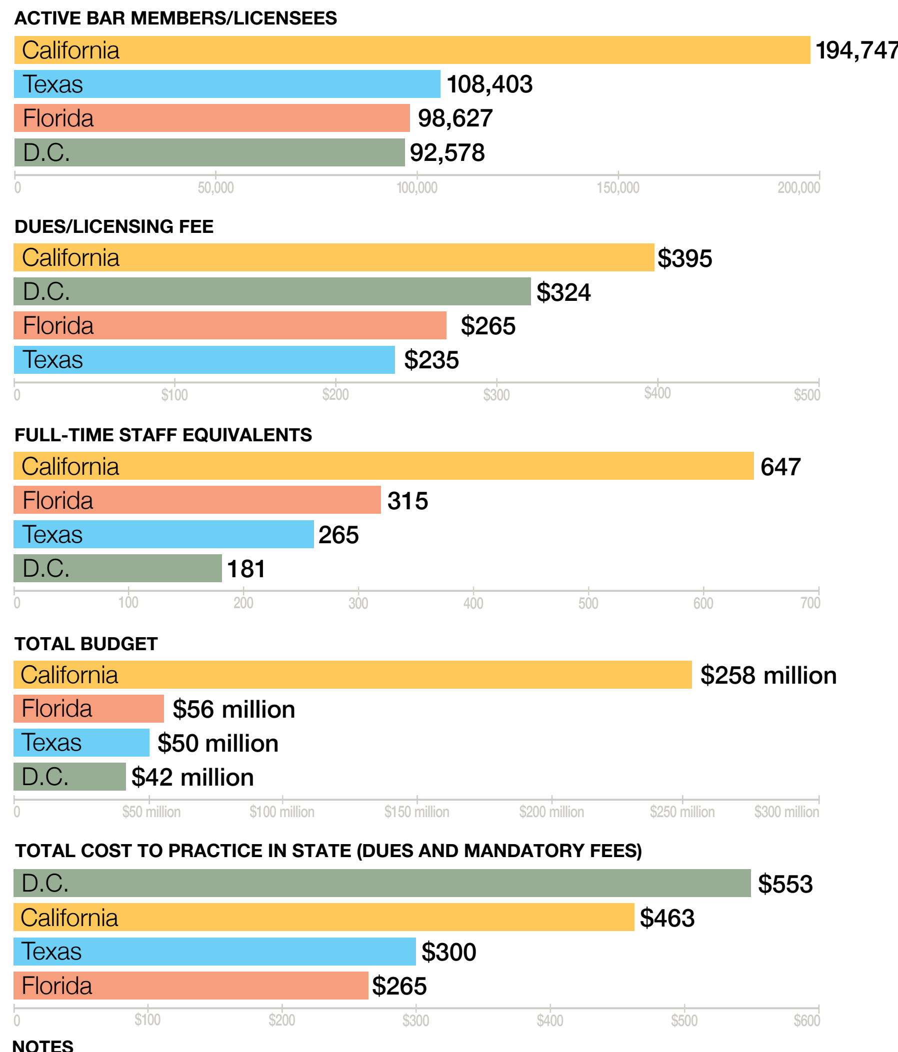
BACK IN FEBRUARY OF LAST YEAR, I brought you some statistics showing how mandatory bar associations across the country that have at least 50,000 members operate. Since the latest survey results are out,[1] it seemed like time for an update.

Below, we're looking at statistics from the country's four largest mandatory bars. California remains the largest in membership, with Texas following. Florida and Washington, D.C., are not far behind.

It's interesting to note that while the State Bar of Texas has more than half the membership of the nation's largest mandatory bar, our budget is less than 20% of theirs. Even as our dues remain low—holding steady since 1991—we continue to bring you an array of benefits and services as we work to achieve our duty to regulate the legal profession and improve the quality of legal services available in Texas. We hope you take advantage of these services and get the maximum benefit from your membership. Take a look at what's available to you at texasbar.com/benefits.

Sincerely,

TREY APFFEL
Executive Director, State Bar of Texas
Editor in Chief, *Texas Bar Journal*



NOTES

1. "2022 State and Local Bar Benchmarks Survey: Membership," American Bar Association Bar Services Division.

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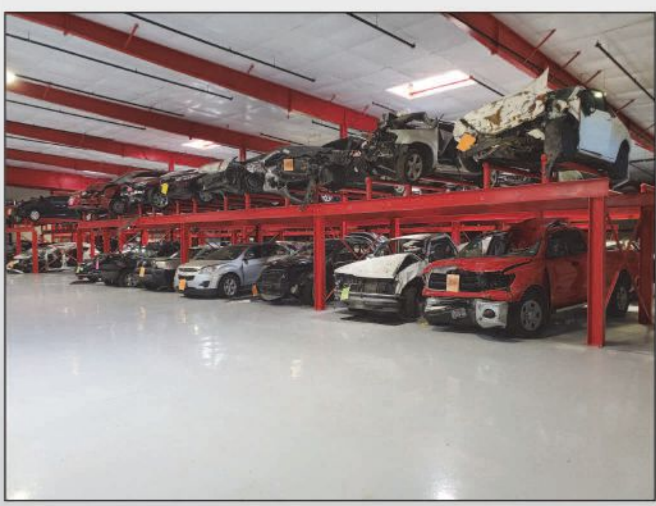

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If you have any questions about a potential case, please call us. There may be vehicle safety system defects that caused your clients' catastrophic injury or death.

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Cindy Tisdale can be reached by email at cindy.tisdale@texasbar.com.

A Good MENTOR

> *"A good mentor hopes you will move on. A great mentor knows you will."*
>
> —Leslie Higgins in *Ted Lasso*

Two sentences and 14 words that say it all. What a great lesson in leadership!

We all know that mentorship offers mentors the opportunity to give back to this profession by sharing knowledge, expertise, and experiences. What people do not always realize is how much the mentor also benefits from this relationship. It allows the mentor to enhance their own skills and knowledge by staying updated with current legal trends, research, and technology.

For the mentee, the relationship provides a safe place to be vulnerable in asking questions. It allows the mentee to make more informed decisions, avoid common pitfalls, and develop the skills necessary for a successful legal career. It is a win-win situation!

I am blessed that I had great mentors early in my career and still have mentors 30 years into my career. You are never too seasoned to have a mentor. You learn from each other, you bounce ideas off each other, and you open your mind to new ways of practice.

There are too many lawyers to name that mentored me as a young lawyer. I had no problem asking someone a question if I did not know the answer. I count everyone who answered me as a mentor. They took time out of their day to help me. That is the definition of mentoring.

A few still stand out in my mind, though, including the late Judge Bill Logue, who presided over the 19th District Court in McLennan County. My first job was as an assistant district attorney, and I handled all of the civil cases, including all of the CPS cases, which were in the 19th District Court. Judge Logue took me under his wing. We would have regular meetings in his office, not to discuss cases, but to discuss *me*. He was interested in me not just as a lawyer who appeared in his courtroom, but also in me as a person. I will never forget that.

Other mentors later in my career include Tom Vick, Gary Nickelson, Wendy Burgower, Kristal Thomson, Kathryn Murphy, and the list goes on and on. I consider every one of them a leader in their field. If I called any one of them, they would instantly pick up the phone and spend time answering my question or working through a problem with me.

Unfortunately, not all leaders are good mentors. To me, mentoring is an integral part of leadership. A leader needs to make those 14 words uttered by Higgins his or her mantra. This is the difference between a good leader and a bad one. Some leaders mentor their team hoping they will succeed one day. A good leader mentors his or her team knowing they will succeed.

I read an article once that stated mentoring people isn't about bringing people to your level. It is about preparing them to succeed at a lever higher than you. I want to take this opportunity to thank all of my mentors who helped me along my path, took time for me, and poured into me so I, like them, could succeed at a higher level. Thank you.

CINDY TISDALE
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Robert TOBEY

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INTERVIEW BY **WILL KORN**
PHOTO COURTESY OF **ROBERT TOBEY**

I AM A THIRD-GENERATION DALLASITE. My grandparents moved to Dallas from Eastern Europe. My dad, Nathan, was a general surgeon, and my mom, Rose, was an artist. Except for two years at the University of Pennsylvania as an undergraduate and law school at the University of Texas, I have lived in Dallas all of my life. I have been married to JoAnn for 33 years and our two kids are Morgan, 30, and Brandon, 24. Morgan is studying to become a rabbi and Brandon is a second-year law student at SMU. JoAnn, Morgan, and Brandon are my anchors!

IN A WORD, TEXASBARCLE IS GREAT! I have been honored to speak at several State Bar seminars on a variety of topics, have served on the planning committee of several seminars, and have served as course director for the Advanced Civil Trial Course. I encourage all members of the State Bar to speak at CLE presentations both with the State Bar and their local bar associations. Speaking at CLE presentations builds self-confidence, shows attendees that you know your stuff, and leads to referrals.

WHEN IMPORTANT ISSUES COME BEFORE THE BOARD OF DIRECTORS, THERE MAY BE VIGOROUS DEBATE WITH DIFFERING VIEWPOINTS. But the tone of the discussion always remains professional and cordial. If only these discussions could be used as a model for legislative bodies around the country who all too often are unable to discuss tough issues without name calling and insults!

OUR FIRM'S COMMERCIAL LITIGATION AND PROFESSIONAL LIABILITY PRACTICE IS STATEWIDE. It is great to be able to call a State Bar director in another part of the state and get their help. Service on the board of directors raises your profile across Texas.

DIRECTORS OWE A FIDUCIARY DUTY TO THE ORGANIZATION THEY SERVE. That means putting the organization's interest before your own, and sometimes taking a position that you may not personally agree with but is in the best interest of the organization.

MENTORSHIP IS EVERYTHING! While law schools have become more practice oriented in recent years, no one graduates from law school truly knowing how to practice law. An old expression says it takes 10,000 hours to become good at something. At 2,000 hours per year, it will take five years to learn your craft. Having a mentor—especially if you are a solo or in a small firm—can be the difference between becoming a good lawyer after 10,000 hours and not.

IT IS A BIG CHALLENGE TO DEFINE THE BEGINNING AND END OF THE WORKDAY. I live five minutes from my office, so that helps. I start my days by walking our dog Bravo, and I try to have dinner at home about the same time every night. I try to shut down emails around 9 p.m. In the evening, I love to watch the end of Dallas Stars, Mavericks, and Texas Rangers games or sports documentaries to wind down. We are looking for a series to replace *Ted Lasso*. Our family went to Israel last summer, and my wife and I are looking forward to rekindling our love of pleasure travel in the coming years. **TBJ**

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A Blazing New Challenge

Houston attorney David Adler on his battle against the unforgiving elements.

INTERVIEW BY **WILL KORN**

THE GRIND OF BECOMING A SUCCESSFUL CRIMINAL DEFENSE attorney might be more than enough for most practitioners to handle. But not David Adler. He had always loved the great outdoors and wildlife, and after the devastating 2011 Bastrop wildfire, he realized he wanted to take on more than just his own caseload. As a volunteer firefighter, Adler doesn't fear raging infernos but instead embraces them as a way to help—and as an escape from a demanding law career. "I've been very fortunate that so many judges and opposing counsel have been willing to accommodate my schedule when I've been called to a fire," he told the *Texas Bar Journal*.

TELL ME ABOUT YOUR START IN WILDLAND FIREFIGHTING.

I had no interest in any type of firefighting until the 2011 Bastrop wildfire. I watched the media reports of homes and businesses being destroyed. There were interviews of people who had to evacuate and didn't know if their home had survived the fire. I thought I could do something to help on future wildfires and started researching training opportunities. I went to a school in Colorado for a certification program. Then I started knocking on doors of fire agencies to see if I could help. I learned pretty quickly that the wildland firefighting system is not set up for unaffiliated volunteers. I

TOP: David Adler works on a fire at the Roy E. Larsen Sandyland Sanctuary in Silsbee.
MIDDLE: Adler working at the Nature Conservancy's Mad Island Marsh Preserve.
BOTTOM: Adler and his son, Joel, at Aransas National Wildlife Refuge in Austwell. PHOTOS COURTESY OF DAVID ADLER

also got a lot of strange looks when I told them I was a practicing lawyer. Eventually, I went to the opening ceremony for a park north of Houston and ran into the head of the Texas Parks and Wildlife Department. I told him what I was trying to do. He said I was nuts but agreed to put me in touch with some of TPWD's firefighting crews. The first fire I worked on was with a TPWD crew at Sheldon Lake State Park. Afterward, those firefighters helped me open doors with other TPWD crews, as well as crews with the Nature Conservancy, the U.S. Fish and Wildlife Service, etc.

WHAT WAS TRAINING LIKE? I IMAGINE IT WAS QUITE INTENSE TO PROPERLY EQUIP YOU TO BE ABLE TO CONTAIN POTENTIALLY UNSTOPPABLE FIRES.

The program I attended was divided between classroom instruction and field work, along with the physical fitness test. I was 47—the second oldest student in the class. All but three of the students were under 25 years old. The other two old guys and I decided we would not come in last on the physical fitness portion of the class, even if we died trying. I finished slightly above one-half of the class. The three of us made it. The classroom training included sections on fire behavior, weather, tools and equipment, and communications. Safety was a constant theme. Before the class, I was not aware of the number of wildland firefighters who have been killed or injured while working. In addition to burns, firefighters have been killed or hurt in vehicle accidents, falling timber incidents, aircraft crashes, and heart attacks. The training was extensive but could not, of course, involve an actual wildfire. I found out on my first fire that no training experience could fully recreate all that goes on at an actual fire.

THE VERY FIRST TIME YOU SUITED UP AND WENT INTO ACTION, WHAT WAS THAT EXPERIENCE LIKE FOR YOU?

Not surprisingly, I was excited and a little scared. The risk of burning didn't worry me as much as the risk of doing something embarrassing. I had not purchased my own personal protective equipment (clothes, helmet, gloves, etc.) by then so I had to borrow them. The only thing the TPWD folks couldn't loan me was boots. At the end of the day, the soles of my shoes fell off from the heat. I think being older and from a different line of work helped because I wasn't hesitant to ask questions that a younger person might have been afraid to ask. I was taken aback by the speed a fire can travel, by the noise it can cause, and by the distance at which the heat can be felt. I was very impressed by the teamwork and safety-consciousness of the TPWD crew. They were constantly checking on each other's status and location by radio or just by yelling through the woods.

IN THE WORLD OF FIREFIGHTING, WHAT MIGHT BE CONSIDERED "EMBARRASSING?"

The wind can change direction and change the direction of a fire quickly. On my first fire, a firefighter parked an ATV in an unburned area he thought was safe. When we returned to the area, the vehicle looked like a piece of modern art. The wind had turned. The fire melted much of the ATV. I think it was a good reminder for everyone on the crew of the unpredictable nature of a fire, and I've since told that story to less-experienced firefighters I work with.

HOW DO YOU STAY CALM AND CONTROLLED WHEN FACING A FIRE?

The crews I work with are very focused on safety. We do all we can to avoid problem situations before they start. When the unexpected has happened, everyone knew what needed to be done to remedy the situation as soon as possible. This has made me comfortable that we can handle problems as they may arise. Also, freaking out won't fix the situation or make it even a little better. That's one similarity between being a lawyer and a firefighter.

DO YOU OPERATE MOSTLY IN A PARTICULAR AREA, OR TRAVEL AROUND AS NEEDED?

I work throughout Texas, though I was part of a crew that worked with the U.S. Forest Service on a fire in New Mexico a few years ago. A crew from the New Mexico State Penitentiary was nearby. I asked the men and women on my crew not to let on that I was a criminal defense lawyer so that I wouldn't face a lot of potential legal questions from the inmates. The inmates were well trained and very hard working. I love being a lawyer, but I didn't want to go back to lawyering any sooner than I had to.

WHAT IS THE MOST IMPORTANT THING PEOPLE (CAMPERS, TRAVELERS, LOCALS) CAN DO IN WILDLAND AREAS TO PREVENT THE START OF A POTENTIALLY DEVASTATING FIRE?

We've been in drought conditions off and on for the past several years in Texas. This means there are thousands of square miles that have heavy loads of dried fuels. Even something as seemingly minor as tossing a cigarette from a moving car can start a fire that quickly grows to immense proportions. Of course, campers need to ensure any campfire is completely doused before leaving the site. Homeowners would be smart to create defensible space around structures by clearing out brush and dead trees.

HOW HAS YOUR TIME AS A FIREFIGHTER CONNECTED TO YOUR CAREER IN LAW? IS THERE A MEANINGFUL INTERSECTION FOR YOU?

Working in the field is an escape from the pressures of the legal world. I love being a criminal defense attorney, but any day I don't spend under fluorescent lights is a great day.

IS THERE ANYTHING ELSE YOU WANT TO ADD?

I'm proud my son, Joel, went through the wildland firefighting training program and has started volunteering as well. He's in the forestry program at Stephen F. Austin State University. I'm glad so many of his generation are concerned about environmental issues. He is interested in protecting our great wild spaces in Texas and throughout the U.S., especially as climate change becomes worse. **TBJ**

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WRITTEN BY **JIM CHESTER**

SOCIAL INFLUENCE ADVERTISING LEGAL GUIDE

The rise of the global influencer market affords opportunities for individuals seeking to become influencers and content creators with very little startup costs. However, because content creators often do not have legal guidance, their assets and interests are vulnerable to attack and theft, and they could also face costly legal actions from others or from the government.

SOCIAL INFLUENCE ADVERTISING THROUGH TV

For many years, the most valuable form of consumer advertising involved television commercials. Television ads involved people extolling the virtues of various products and services, and these endorsements typically came from the ranks of athletes and celebrities who had gained fame through their success in sports, modeling, or entertainment. However, an increasing number of consumers no longer watch traditional television, opting instead for commercial-free streaming services like Netflix, YouTube, and Hulu. This shift has forced makers of consumer products to find new ways to reach potential consumers.

SOCIAL MEDIA AND SOCIAL INFLUENCE

Fortunately for makers of consumer products and their advertising firms, the downturn in television viewership coincided with the rise of social media platforms like Facebook, YouTube, Instagram, and TikTok. These platforms generated a new type of product spokesperson: content creators (commonly referred to as "influencers").

Most content creators are not anointed by a cabal of advertisers nor selected for prowess at throwing a baseball or making action films. Instead, most start their own social media channels and produce content for a small number of followers. All one needs is a camera and microphone, a creative hook, and commitment to post regularly. Over time, they gain a grassroots following and eventually gain the attention of advertisers who provide free products and direct compensation to content creators willing to share their endorsements and reviews via their own platforms.

MONETIZING SOCIAL INFLUENCE

So-called "influencer marketing" has become immensely lucrative. According to some estimates, the global influencer market was less than $2 billion in 2016 but has exploded to more than $21 billion U.S. dollars as of 2023. Of course, most do not become rich from their content creation venture. While only a small percentage of content creators earn over $1 million, nearly a quarter make $50,000 or more a year.[1] Of those, about half are full-time content creators, while the rest use social media platforms as a side hustle or financially friendly hobby.

LEGAL ISSUES FOR SOCIAL INFLUENCERS

Unlike prior generations of ad spokesmodels, sports stars, and other celebrities, today's content creators typically don't have teams of lawyers, managers, and agents protecting their interests. As such, they often do not have legal guidance, and thus can fall prey to legal pitfalls. Thus, whether a content creator makes $500 a year or $10 million, they must protect their legal rights, respect the rights of others, and comply with state and federal advertising laws. In this article, we discuss some of the typical legal considerations and issues that content creators commonly need to address.

INTELLECTUAL PROPERTY CONSIDERATIONS

Intellectual property, or IP, refers to a range of creative properties that content creators own, including the content they post and upload, as well as their own name, image, and likeness, or NIL. These rights, which typically fall under either copyright or trademark law, must be identified, secured, and then enforced. Unfortunately, many content creators do not fully appreciate or understand their IP rights. In addition, content creators must respect the IP rights of others, or risk legal action and social media bans for infringement.

LEGAL ENTITIES FOR SAFEGUARDING EARNINGS

Once a content creator begins to monetize their content, it often makes sense for them to form a legal entity. These entities, like limited liability companies, or LLCs, and corporations can provide a number of benefits, including limited liability protecting their personal assets from claims related to the business. Choosing an entity requires consideration of a number of factors, such as tax implications and management flexibility, and should involve discussions with legal counsel as well as tax planning.

CONTRACTS FOR SOCIAL INFLUENCERS

Like any business, contracts drive the relationships between content creators and their various clients, vendors, affiliates, and advertisers. Contracts of principal importance for content creators include endorsement contracts and the terms of use for the platforms where their content appears. Endorsement or "brand ambassador" relationships are an important source of income for many content creators, and these relationships are governed by contracts. These agreements outline what services the content creator is expected to provide, as well as what type of compensation they will receive. Aside from the definition of services and compensation, key terms in these agreements often involve IP and NIL rights and termination provisions.

All users of social media platforms must comply with the terms of use for those platforms, and those terms are

contractual obligations that govern a wide range of behavior on and with the sites. Otherwise, they risk censure or even removal from the platform. For content creators, having an account suspended or demonetized can effectively close their business.

REGULATIONS AND DISCLAIMERS—COMPLIANCE IN SOCIAL INFLUENCE ADVERTISING

In addition, content creators must comply with state and federal advertising laws, including Federal Trade Commission, or FTC, regulations and guidelines against false and deceptive advertising. If a content creator agrees to serve as a brand ambassador or otherwise endorse a product through social media, their endorsement message should make it obvious when they have a relationship (i.e., a "material connection") with the brand. A "material connection" to the brand includes a personal, family, or employment relationship or a financial relationship, such as the brand paying the content creator or giving them free or discounted products or services.

Financial relationships aren't limited to money and can include anything of value to mention a product. For example, if a brand gives a content creator who mentions one of its products free or discounted products or other perks, they must make a disclosure. Telling followers about these kinds of relationships is important because it helps keep recommendations honest and truthful, and it allows people to weigh the value of content creator endorsements.

It is the responsibility of the content creator to make these disclosures, to be familiar with the FTC's Endorsement Guides, and to comply with laws against deceptive ads. A content creator cannot offload this responsibility to the advertiser or manufacturer who compensates them to promote their products.

According to the FTC's publication, *Disclosures 101 for Social Media Influencers*, which is available on the FTC website, it is important to make disclosures even if the content creator believes their evaluations are unbiased. Content creators should not assume their followers already know about their brand relationships, and they should keep in mind that tags, likes, pins, and similar ways of showing they like a brand or product are also considered endorsements. Of course, if a content creator has no brand relationship and is just telling people about a product they bought and happen to like, they don't need to declare that they don't have a brand relationship.

DISCLOSURES IN ADVERTISING AND PROPER ENDORSEMENTS

In making a disclosure, content creators must ensure people will see and understand the disclosure. Place it so it's hard to miss. If possible, the disclosure should be placed with the endorsement message itself. Disclosures are likely to be missed if they appear only on an "About Me" or profile page, at the end of posts or videos, or anywhere that requires a person to click or look elsewhere for the information.

A content creator should not mix disclosures into a group of hashtags or links. If an endorsement is in a picture on a platform like Snapchat and Instagram stories, they should superimpose the disclosure over the picture and make sure viewers have enough time to notice and read it.

If making an endorsement in a video, the disclosure should be in the video and not just in the description uploaded with the video. Viewers are more likely to notice disclosures made in both audio and video. Some viewers may watch without sound and others may not notice superimposed words. If making an endorsement in a live stream, the disclosure should be repeated periodically so viewers who only see part of the stream will get the disclosure.

In making disclosures, use simple and clear language. Simple explanations like "Thanks to xxxx [brand] for the free product" can be sufficient, as are terms like "advertisement," "ad," and "sponsored." On a space-limited platform like Twitter, the terms "xxxx [brand] Partner" or "xxxx [brand] Ambassador" are also options. It may also be advisable to include a hashtag with the disclosure, such as "#ad" or "#sponsored."

Finally, content creators cannot talk about experience with a product they haven't tried. If a content creator is paid to talk about a product and thought it was terrible, they can't say it is terrific. Also, content creators cannot make up claims about a product that would require proof the advertiser doesn't have, such as scientific proof that a product can treat a health condition.

CONCLUSION

As noted above, the rise of the global influencer market affords opportunities for individuals seeking to become influencers and content creators with very little startup costs. Because content creators often do not have legal guidance, they can face costly legal issues or fail to protect their rights and interests. It is a well-established principle of law that "ignorance of the law is no excuse." As such, content creators must seek and obtain legal counsel to protect their rights, respect the rights of others, and ensure they do not run afoul of any laws or regulations. **TBJ**

This article, which was originally published on the Klemchuk blog, has been edited and reprinted with permission.

NOTES

1. Werner Geyser, *Creator Earnings: Benchmark Report 2022,* Influencer MarketingHub, August 2, 2022, https://influencermarketinghub.com/creator-earnings-benchmark-report/.

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This content is generated by the Texas Center for Legal Ethics and is for informational purposes only.
Look for the detailed analysis behind the answers at legalethicstexas.com/ethics-question-of-the-month.

Will You LEND ME A HAND?

KARL IS A FAMILY LAW ATTORNEY WHOSE FIRM HAS 25 ATTORNEYS. He learns that the local bar association has a legal aid clinic that provides legal advice and representation to low-income residents of the county. Karl has always been interested in providing pro bono services but has been reluctant to take a case on his own. But he is intrigued when he learns about the concept of "limited" pro bono legal services, where he could provide limited advice or assist with pro se documents while other attorneys handle the bulk of the representation. He decides that this would be a great way to give back to his community.

He is assigned to provide limited assistance in a case in which another pro bono attorney is primarily responsible. During his part of the case, he realizes that the client needs some potentially complicated real estate assistance. So he calls a law school friend, Anita, who works for a small real estate law firm and asks her to help. She says she's happy to help but is not a member of the local bar association. Karl tells her she can assist him without going through the local bar. She provides some limited assistance to the client on a real estate document. Both are careful to maintain their files in a manner that prevents other lawyers in their firms from accessing them.

A week after Anita becomes involved, another party is added to the case, and both Karl and Anita realize that they must withdraw from the matter because of a conflict that only implicates them individually. But they both wonder whether the conflict is imputed to others in their respective firms. Under the Texas Disciplinary Rules of Professional Conduct, which firms are conflicted out?

A. Karl's firm

B. Anita's firm

C. Both

D. Neither

ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethicstexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

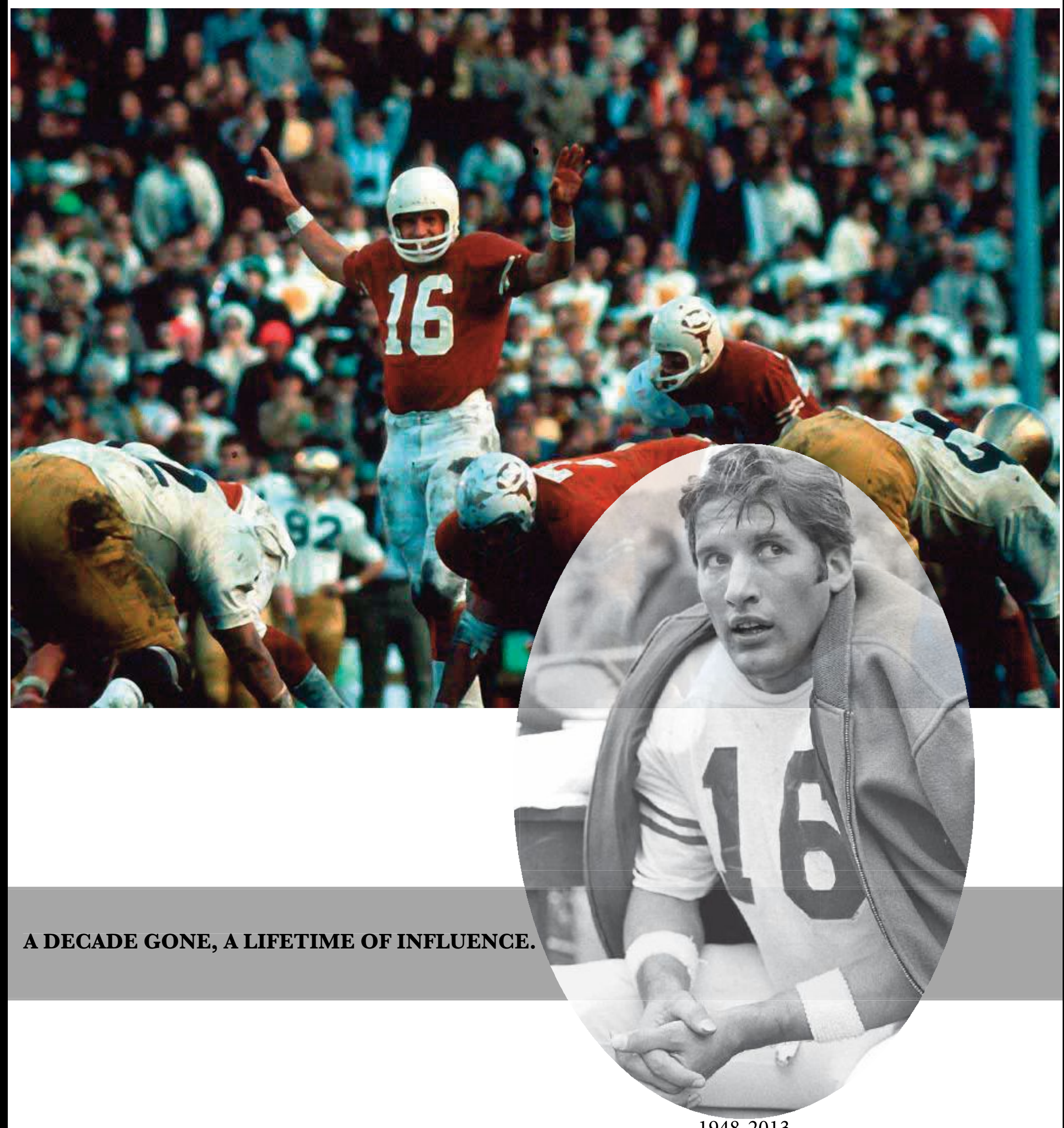
ANSWER: TDRPC Rule 1.06 is the general rule prohibiting conflicts of interest, and Rule 1.06 conflicts are generally imputed to all other attorneys in the firm under Rule 1.06(f). Until recently, that might have been the end of the analysis. But in 2021 the rules were amended to clarify conflicts with respect to pro bono work.

New Rule 6.05 states that the "conflicts of interest limitations on representation" in Rule 1.06 do not prohibit a lawyer from performing "limited pro bono legal services" unless the lawyer is aware of the conflict at the time the services are provided. Rule 6.05(d) defines limited pro bono legal services as "short-term services" provided without "any expectation of extended representation." It also requires that services be offered through a program "sponsored by a court, bar association, accredited law school, or nonprofit legal services program." If those criteria are met, any conflict that arises is not imputed to the pro bono attorney's firm under Rule 6.05(b) provided that the lawyer does not: (1) disclose any confidential information to other attorneys in the firm, and (2) "maintain such information in a manner that would render it accessible to the lawyers in the firm."

Here, both Karl and Anita kept their client files secure from their respective law firms. But only Karl offered his services through a program sponsored by a bar association as required by Rule 6.05(d)(1). The correct response is B. For more analysis, go to legalethicstexas.com/ethics-question-of-the-month.

If you would like to learn more about how you can get involved with providing pro bono in your community, go to probonotexas.org.

Remembering James Street



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A SOLID FOUNDATION

The power and impact of mentoring.

WRITTEN BY **KAREN BENNETT**

What are the goals for mentoring new attorneys? As a supervisor, you want the new attorney to be successful and an example of what you perceive an attorney should be in our profession. As a supervisor, you want to train others to continue the sustainability of your dockets. You want them to help in the short term and to be the succession plan for you one day when you decide to slow down or retire. What does a mentor really do? Is it like one of those questions—I know it when I see it?

In a trucking expert's deposition earlier this year, he said there are four steps to training truck drivers:

(1) Educate
(2) Demonstrate
(3) Assess
(4) Deploy

This made me stop and think about the similarities to mentoring new attorneys.

EDUCATE

New attorneys have already endured law school. We can check off that box. But does law school "educate" a new attorney on how to practice law? Absolutely not! Law school trains an attorney on learning the law, interpreting the law, understanding the law, and where to find the law. Law school does not tell a new attorney how to practice law day in and day out. There are ethics classes in law school, but those classes do not truly teach an attorney on the basics of dealing with everyone in the legal profession. There is still an enormous amount of learning to do once an attorney first starts to practice law. There is a lot to learn and be educated about that is not in a book. New attorneys need guidance in these areas:

- How to deal with clients
- How to deal with opposing counsel
- How to be respectful to those in our profession
- How to evaluate a file
- How to manage time
- How to work up a file/close a deal
- How to document your file
- How to close out a matter
- How to prepare yourself for every hearing/meeting/deposition
- How to manage your files/docket
- How to check and double check yourself 24/7
- How to manage your calendar
- How to respect your staff
- The list goes on and on

DEMONSTRATE

The supervising attorney needs to show the new attorney how to practice law, including how to prepare for hearings, depositions, trials, and how to handle arguments and personalities at those events. There is a bigger obligation as a supervisor—to teach respect and dignity. Our profession is the subject of many jokes, and you can see facial expressions at times when you tell someone that you are an attorney. We, as

a profession, need to spend more time teaching respect for each other and acting as professionals. We can all agree to disagree on issues, but attorneys can carry themselves as professionals when doing so. New attorneys need to learn that to "get respect means to give respect." I was told early in my career that I was to respect everyone from the judge on the bench to those that swept the floors. If the new attorneys think they only have to respect the "important people," then their true colors will come back to haunt them in the future. I apologize for the rant on this issue, but this is an issue that is dear to my heart—respect for each other and respect for the profession.

The mentor will need to demonstrate the bullet points above to the new attorneys. It is a lot of work but is crucial to the mentoring process. Just as a young boy watches his father to learn how to be patient and fish, the mentor needs to be there every step of the way so the new attorney can soak up that wisdom.

ASSESS

Everyone has their own style and their own art of persuasion, and each person needs to be comfortable in how they handle that aspect of practicing law. Confidence is of utmost importance. Allowing new attorneys to handle themselves professionally and with the confidence they need to succeed is important. There are many ways to approach the issue such as when a parent raises a child. Perhaps one of the hardest issues of supervising other attorneys is to take a step back and realize that others can approach issues differently, and to let them. Just because you, the supervising attorney, have always approached an issue in a certain way does not mean it cannot be handled differently. Being a mentor requires patience and being supportive of new attorneys. It requires the ability to encourage others to succeed. As the mentor, you want mentees to want to succeed and make your firm grow.

DEPLOY

The best way to learn is to participate and not sit at a desk watching others. Let your mentees learn their own style with confidence. As the supervisor, you are there to encourage and be the backstop for bouncing off ideas. Give them more responsibility on the files that they handle. Let them take the lead in meetings, depositions, and hearings. Once they get a little confidence under their belt, they will no longer need you there to look over their shoulder. Yes, there will be hiccups and setbacks, just like attorneys with 30-plus years of experience, but the new associates will never forget who trained them. They will never forget the first expert deposition that you let them take the lead on. They will never forget the time that you took to answer their questions and proofread their arguments for trial. Then one day, they will share those same words to the new attorney that they train.

In large firms, there are some personalities that are a better fit to serve as a mentor. Selecting the right mentor for each associate is important. Do not assign an associate to someone if that associate does not have the personality or drive to train and help that new attorney grow in their career. Some people are just better cut out for it than others. Patience and drive are the two keys.

I surveyed some attorneys to see what they thought was important for a mentor:

- Patience;
- Availability for questions;
- Availability to teach the practical side of law—what good is making the best grades in law school when you have no idea how it translates into practice;
- Mentoring non-work-related issues—sometimes a new lawyer needs a partner to say "go home and be with your family" and "take care of your health";
- Letting me fail on issues that were later fixable, and letting me run with issues that no one had any idea whether they would work out;
- Finding things that play to my strength and giving me those opportunities, and then celebrating my successes on those opportunities (a new lawyer is told they are awful by judges, opposing counsel, and clients all the time, so having my bosses celebrating my successes went a long way in fueling my drive to be a better attorney);
- Transparency and not balking at my one million questions;
- Humility/not being pompous;
- Having an open-door policy and fielding any and all questions you have, no matter how embarrassed you feel to ask them;
- Giving you the ability and opportunity to run with cases so you can actually learn how to work a case up instead of taking a backseat to everything—preparing motions, communicating with clients and adjusters and opposing attorneys, preparing evaluations, etc.;
- Letting you join the meetings and including you in discussions with other parties/adjusters/etc., so you can keep learning;
- Leading by example and earning respect and loyalty by showing that they also put in hard work and are involved every step of the way;
- Praising you in front of other parties/adjusters/clients/etc. when things go well, and not throwing you under the bus when things do not go so well; and
- Taking an interest in your life outside of work and giving you support, sympathy, and grace when things get tough—both personally and professionally—and you feel like you can talk to them and be honest about what's going on. How things are going in personal life affects how things go professionally, so it's nice to have mentors who actually care about you as a person outside of the office.

Finally, an important aspect of mentoring is making sure that the new attorney knows that they are making a difference and growing. No one wants to be stagnant. That causes boredom and indifference. Being a mentor is like being the lighthouse for the ships. You are there for them, you encourage them, and you help them along the way. A mentor has to work at it and take it seriously. If you are not there for the attorneys that you mentor, they will wander away like the ship that cannot see the lighthouse. You have to be available, accessible, and a beacon of encouragement. **TBJ**

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is the managing principal of Germer. The firm has offices in Beaumont, Austin, Houston, San Antonio, and Tyler. She has been a practicing attorney in Texas for more than 30 years.

ADVERTISEMENT

HOW TO CHOOSE THE RIGHT LEGAL TECH SOFTWARE FOR YOUR LAW FIRM

By: Adrian Aguilera

What Are the Most Common Legal Software Systems?

The best legal tech tools are designed to diminish time-consuming administrative tasks while improving overall case management. Below are a few common software systems that can elevate attorney processes, productivity, and cash flow.

Basic Features: Legal Billing Software

Legal billing software allows law firms to accept online payments such as debit, credit, and e-check options from clients. Additionally, payment storage and payment plan features enable firms to improve the payment experience for their clients by providing additional flexibility.

Implementing these billing features can benefit the cash flow of one-person businesses to large operations. According to the LawPay and MyCase 2022 Legal Industry Report, 61% of respondents shared that their firms collected more money because of online payment processing software.

This system is typically best for:

- Firms of all sizes, from solo attorneys to big law operations

Pros:

- Great potential for increasing cash flow from exponentially higher transaction speed
- Higher likelihood of client satisfaction through convenient online payment options
- Typically affordable

Cons:

- May require manually syncing your current invoicing process with online payment software
- The inconvenience of managing multiple software programs if paired with other legal software systems

Full Suite of Features: Practice Management Software

If you're looking for the ultimate setup to scale your firm, practice management software that includes full case management features can help your firm increase profit.

According to the American Bar Association (ABA) 2022 Tech Report, practice management software usage is increasing each year among firms of all sizes, from solo practices to firms of 100 or more attorneys. Below are the pros and cons of this complete set of legal tech tools.

This system is typically best for:

- Small to mid-sized firms (especially for legal firms looking to scale and grow)

Pros:

- Potential for increasing the net amount of case leads and conversions via lead management tools
- Improved client satisfaction and case clarity through client communication tools such as client portals
- Easier and more organized case management with tools to organize documents and keep all staff informed through automated workflows

Cons:

- Typically more costly compared to a la carte features
- Can involve a bigger learning curve and setup (although this learning curve is dramatically improved with great software support and onboarding team)

If a software provider passes the test above, it's time to try a demo and/or free trial as the final step toward determining whether the features are right for your firm.

This article was originally published on the LawPay blog.

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Set for Success

How to set up a firm mentoring program for young attorneys.

WRITTEN BY **REAGAN ELIZABETH BOYCE**

Who Should Be Involved in the Firm Mentorship Program?

When you hear the words "mentorship program," you may automatically think the people involved are new, inexperienced professionals. But mentorship occurs at multiple levels. As a young attorney, I was literally thrown in the deep end and told to figure it out. And I did, but only with help from a mid-level associate who was willing to show a brand-new attorney how to do the day-to-day work. It was the simple things from how to prove up a declaration to authenticate documents to analyzing discovery responses for that key piece of information that would win the case. New attorneys come out of law school ready to take on the world, but they know absolutely nothing about how to be an attorney in the practical sense. This is where mentorship comes into play. Throughout my career, I have looked for individuals who have achieved success and made a point to interview them about how they got to the top, so I could follow in their steps and later go on to forge my own path to the top.

Set Realistic Expectations for New Attorneys

Today's young attorneys come into a firm and expect to be handed their own files and be let loose on the legal community. The greatest secret to success you can share with new attorneys is that great attorneys are those who take the time to learn the process from the ground up. When you take on the role of mentor to a new attorney you have to have a frank and honest conversation with the new attorney and set realistic expectations for them. Make them understand that they have to prove they have mastered the basic skills before they will be given more responsibility. You as the mentor must convey to them the importance of having a solid foundation upon which to build their skill set. Winning at trial is the result of preparation, and the preparation that it takes to win at trial is not something you know, it is something you learn by doing over and over. As a mentor, it is your job to impress upon the young attorney the importance of each step of trial preparation, not just the glory of the successful verdict. Have this conversation early on with your new attorneys, make it clear that they will be expected to demonstrate their willingness to do the mundane and do the mundane well before they will be entrusted with more opportunities. Realistic expectations are a key component to effective mentorship.

Feedback, Feedback, Feedback

It is important for the new attorney to understand that the red pen is their friend. This is the only way someone can learn effectively what they are doing well and where they still need improvement. From my early days interning with a federal court judge to my first jobs working in litigation firms, I took the red pen corrections to my work in the spirit in which they were intended—as an instruction on what I could do better. If you are asking a young attorney to write something for you, don't waste this opportunity to provide constructive criticism. Print that document out and take your red pen to it, or if you prefer to work paperless, go through and redline the document and save a redlined copy to share with the associate. Use this opportunity to talk to them about what changes or corrections you made and why. Whether it is the organization of the argument, the word choice, the way in which they cite the law, or whether they provide sufficient or even the right type of evidence in support of their argument. This type of feedback will make your mentee a better writer and attorney.

Templates, Samples, Library of Resources

One of the most valuable tools you can provide to your mentees is the repertoire of resources that they can use every day. One of the first things my first mentor told me was to find good example documents and keep a folder of samples for reference. If you have a reliable library of sample documents you draft repeatedly, then it becomes an easy shortcut to writing the next motion or pleading or contract. Another great piece of advice I was given is to not copy and paste from your samples. Re-type the document. The importance of doing so is that it allows you to catch those misspellings, wrong citations to the law, or other errors that inevitably made it past the prior author's review process. I also keep a library of caselaw on various topics that I refer to often. Most lawyers are familiar with the key cases that affect their practice area, but every so often I have to conduct new research. When I do, I save copies of those cases to a topic-specific folder in my "research library" so if that topic comes up again, I already have a starting point to my next project. This is a great shortcut and time saver that you should encourage new attorneys to do and do consistently. Another area where young attorneys often stumble is local rules. I keep a notebook full of the local judge and local county rules so that every time I am in a new court or a new county, I know what the local expectations are. As someone who practices across Texas (and still maintains my California license) knowing the local rules is key to avoiding a misstep in front of the local judge or opposing counsel.

Teach by Example

When the opportunity presents itself, take the time to discuss with your mentee your case analysis, take them through your strategy step by step, and help them to recognize the importance of doing certain tasks and why these tasks are important. If you are drafting a contract, talk to your mentee about why certain terms are included or why you chose to include or exclude certain provisions. Look for these teaching moments. Concrete, real-life examples make better teaching moments than obscure theoretical discussions in a vacuum.

One of the most useful tools I can give to a young attorney is to share my standard operating procedure, or "SOP." This is a live document that I continuously update. In this document I lay out everything that goes into my day-to-day work, from

organizing my calendar to having tasks laid out with detailed instructions for my associate attorneys, paralegals, and even secretaries. Part of mentorship is teaching young attorneys how to manage their support staff. Successful lawyers recognize the importance of an organized support system. Young attorneys do not have bad habits; they have no habits. So, teach them right the first time and they will be successful from day one.

Be Available

As we progress through our careers, it is harder to take time away from our own work to devote to "teaching moments." Mentorship does not happen in just one moment. Mentorship takes time. If you are committed to ensuring that the new attorneys coming to work for you have the skills to be successful and will want to remain with your firm, then you have to be available. Mentorship does not need to occur daily, but it has to occur regularly. You need to have a real "open door" policy.

If you are a mentee and you are looking for guidance from a mentor, you must take the initiative. Ask questions, ask if you can go along to court or deposition and observe. As a mentee, you have to recognize that opportunities to observe are one of the best ways to learn. Some clients will allow a junior associate to "tag along" but most will not pay for a second attorney to be present. This is especially difficult for attorneys subject to billing requirements. Mentees, if you want to be successful, you have to accept that certain learning opportunities are off the clock. Rather than looking at the unfairness of having to learn on your own time, take this opportunity to recognize that you are only going to be successful if you put in the time. As a mentor, it is incumbent upon us to provide these opportunities to young lawyers, but young lawyers, it is incumbent upon you to take a vested interest in your own career.

Mutual Reward and Benefit

Mentorship truly is a two-way street. There is a feeling of pride in knowing that you have helped someone reach success. Someone took the time to mentor me when I was a new attorney, and I recognize the help I received made me successful. It takes nothing away from your own success to help someone else achieve their own. That is the goal of mentoring—to ensure the next generation carries on our success. TBJ

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is a partner in Chamblee Ryan in Dallas. Her practice is primarily in the areas of medical malpractice defense, but she also handles bankruptcy-related litigation, including representation of trustees, receivers, and assignees. Boyce sits on the board of a nonprofit organization that helps families who cannot afford cancer treatment for their dog, Miranda's People, which provides financial grants and pro bono veterinary services. She is a councilmember of the State Bar of Texas Women and the Law Section and was recently appointed to the Dallas Subcommittee as an investigator for the Unauthorized Practice of Law Committee, which is appointed by the Supreme Court of Texas.

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TIPS ON MARKETING, GROWING REVENUE, AND IMPROVING OPERATIONS

IN THEIR OWN WORDS

How to be a good mentor and a good mentee.

WRITTEN BY **DENISE PAUL** AND **NIKKI CHARGOIS-ALLEN**

THE MENTEE: DENISE PAUL

When I met Mrs. Nikki (as I still call her), I had no idea what to expect out of a mentor experience. I was just an awkward girl in middle school who had been selected to participate in the "I Have A Dream" program. And indeed, I did have a dream that was simple at the time. I wanted to be a lawyer and Mrs. Nikki was an attorney, so as far as my young mind was concerned, we were already a great pair. Little did I know how much this relationship would blossom and how large of a role she would play in my future. Mrs. Nikki provided everything that a mentee might hope for in a mentorship relationship.

1. **Clear Communication.** She was upfront with me about what her role in my life was. The program maintained rules about what mentors could and could not do, as well as what they *should* and should not do. Mrs. Nikki was communicative, responsive, and available for regular check-ins and updates. It is important that mentors take the initiative and schedule regular meetings with their mentees. These meetings do not have to be formal, but could involve shared interests, exposure to new things, or simply having coffee together. Remaining available and responsive is equally important.
2. **Goals/Expectations.** My therapist often says that expectations are the source of much disappointment, but I have come to learn that this is often true when expectations are one-sided. If mentees and mentors work together to establish clear expectations and boundaries for the relationship, this may prevent future disappointment or an unfulfilled mentoring relationship. Mentees should have goals for what they expect from the mentor experience but also understand what the mentor's goals are for the relationship. Both parties should respect established boundaries and not overstep their role in the mentorship relationship.
3. **Support.** Mentees appreciate a mentor that offers *personalized* support, which is support that is tailored to the specific needs and career aspirations of the mentee. A mentor should not try to push a mentee into the path that they think is best but instead respect and support the mentee's aspirations. When Mrs. Nikki and I met, I knew that I wanted to be a lawyer, like her. When I was considering what university to attend, I told her that I wanted to attend Texas A&M University, like her. She took me to visit the campus, and I am happy to say that I am a proud fightin' Texas Aggie. As our relationship grew, I decided that I wanted to be a prosecutor, again like her. However, during law school, I realized that I did not want to litigate at all, and she pivoted with me to support my reformed goals.
4. **Feedback/Guidance.** Mentees must remain open to receive regular feedback and guidance from their mentor regarding personal and professional growth. As a mentee, remember that your mentor shares a common goal with you to further your success, so any feedback, guidance, or constructive criticism is only meant to help you. However, for this feedback to be well-received, the mentoring relationship must be transparent, honest, open, supportive, and non-judgmental, creating a safe space for both mentee and mentor to discuss challenges and aspirations. After all, mentors are still on an ever-learning journey too.
5. **Resources.** Mentors are often in the position to offer useful resources and connections to assist mentees. This was certainly the case between Mrs. Nikki and me. When I decided to pivot during law school and sought a J.D. and an MBA, Mrs. Nikki did not hesitate to introduce me to an individual that had a J.D. and an MBA and was thriving as a commercial attorney. These resources might also be in the form of job shadowing or internships.
6. **Commitment.** Both mentor and mentee must be committed to the mentorship relationship. I am fortunate to have had a relationship with Mrs. Nikki for over 20 years. However, the duration of the relationship is not as important as the commitment during the relationship. A good mentorship relationship is like any other relationship—both parties must be committed for the relationship to be successful.

I am blessed to say that Mrs. Nikki has been with me through all of my most important accomplishments, graduations,

admission to the bar, and getting married. Equally, I have been with her as she transitioned jobs and moved across Texas, got married, and had her own children. Mentorship is certainly a two-way relationship that can be beneficial for both mentee and mentor.

THE MENTOR: NIKKI CHARGOIS-ALLEN

When you make it to a position higher than where you started, reach back and pull someone else up. That motto guided my upbringing. Higher education provided the avenue for moving forward and up. And, at each stage of my life, my attempts at bettering the world have involved mentoring. When I became an attorney, I again looked for the opportunity to mentor and an organization in Beaumont named "I Have A Dream" gave me that.

In 1988, Regina Rogers established the Ben Rogers/Lamar University/Beaumont Public Schools: "I Have A Dream" Program in honor of her late father, Ben Rogers, and she decided to implement it in honor of his 75th birthday. Since its inception, the program has helped more than 400 young people graduate from high school and nearly 300 achieve an associate, bachelor's, or advanced degree. "I Have A Dream" focused in part on mentoring junior high students who had the potential to do great things but came from areas or families that either did not encourage higher education or just did not know how to help their child through the process. It was the perfect opportunity to mentor and reach back.

I was paired with a sassy, smart girl named Denise Paul, who aspired to be a lawyer. Mentoring covered all aspects of life, including education, social life, and future goals. Denise and I spent hours together, as I attempted to guide her as best I could. The advice I gave her during junior high was to stay focused, ignore drama, and definitely avoid being the person causing the drama. The commitment to mentor was for one year, but it continued when Denise entered high school. The advice for high school was to make the highest grades possible, while being involved. The mentorship continued with Denise being accepted into a top Texas university. The advice I gave her during college was that grades might not matter to most students, but high grades open doors to more law schools. Denise graduated college and was accepted into law school. The mentorship continued into law school, where my advice was to write for a law journal because writing positions would open up more job opportunities. Denise graduated law school and was sworn into the legal profession. The advice I gave for Denise as a young lawyer was to reach back and pull someone up.

When I became the chair of the State Bar of Texas Women and the Law Section, there were vacancies on the council that needed to be filled. I focused on diversifying the council by region, age, practice area, firm size, and type of employer. Denise, who was a young, in-house attorney, fit a missing spot. With the passage of time, Denise was elected by the council as the chair of the Women and the Law Section and has recently finished her year at the helm.

Reaching back in the form of mentoring is vital to the practice of law. New lawyers are expected to handle all aspects of practicing law competently. A newly licensed attorney not only has the task of learning how to practice law, but also has to manage ethical obligations, client relations, and relationships with others in the profession. These attorneys have questions that were not addressed in law school, regarding how to practice, how to be a strong advocate for a client while conducting oneself with civility, and how to determine opportunities for growth in and outside of the profession.

Mentoring is the duty of those who have blazed or walked the paths of the legal profession to reach back and guide others through. Mentoring can occur within law firms by pairing an experienced attorney with a younger attorney. Bar associations and sections can facilitate mentoring programs or just provide an avenue by which younger attorneys can connect and speak with experienced attorneys. And, outside of the practice of law, there are many organizations that provide opportunities to mentor and give back.

Denise was determined to accomplish her goals. I was blessed to be part of her journey. In her young career, Denise has already chaired a section for the State Bar of Texas. She has reached back and given to others through her time and talents. The practice of law benefits by us all giving our time and talents to bettering the life of someone other than ourselves. TBJ

DENISE PAUL
is regional legal counsel to Jungheinrich, one of the world's largest suppliers of industrial trucks. She earned a B.A. in communications from Texas A&M University and an MBA and J.D. from the University of Houston. Paul is the immediate past chair of the State Bar of Texas Women and the Law Section, or WALS, and has served as a council member of the State Bar of Texas African American Lawyers Section and WALS for numerous years. She resides in the Houston area with her husband, Franklin, and beloved dog, Maxxie Pooh.

NIKKI CHARGOIS-ALLEN
is a partner with the law firm of Davidson, Troilo, Ream & Garza in San Antonio. She is the head of the litigation department and is on the recruitment and mentoring committees. Chargois-Allen's commitment to mentoring is her way of saying thank you to the lawyers and judges who mentored her and provided her opportunities during her 21 years of practice.

AW
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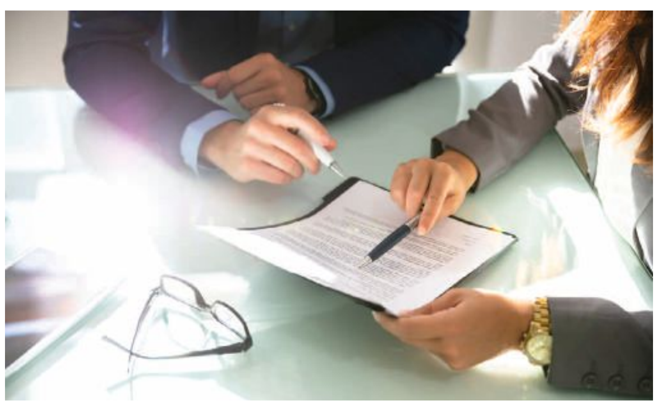

When Is a Waiver of the Right to Arbitrate a Waiver?

A look at caselaw.

WRITTEN BY **TED P. PEARCE**

Arbitration continues to be a growing preference for dispute resolution. Mandatory arbitration provisions are found in a variety of commercial contracts, especially in consumer agreements. In fact, it has been reported in a 2018 study that 81 of America's 100 largest companies use binding arbitration agreements as a standard provision in their consumer contracts.[1] While arbitration is not yet as prevalent in business-to-business agreements, the complexity of these types of agreements encourages using arbitration.[2]

In franchising, mandatory arbitration clauses have grown in popularity because, among other reasons, they can serve as a shield against class actions in the form of an arbitral class waiver.[3] As far back as 1997, one prominent franchise attorney concluded, "franchisors with an arbitration clause in their franchise agreements have an effective tool for managing these new class action risks"—in other words, a "class action shield."[4]

Even with the perceived advantages and the growing reliance on arbitration, it is not uncommon for a party mandating arbitration to waive that right by asserting or defending its claim in court, only to compel arbitration at a later time during the litigation. The question is; Can a party with an arbitration right initially waive that right and then later compel arbitration?

Historically, and seemingly unique to arbitration, a non-waiving party challenging a party's right to compel arbitration after first waiving it must show that it would be prejudiced if it is required to arbitrate a claim that is already in litigation. This element of proof, not found in waiver challenges outside of the arbitration context, appears to give arbitration a special preferred status. The Supreme Court recently muted that status and held that a showing of prejudice in proving waiver is no longer necessary when determining the arbitrability of a claim.

In *Morgan v. Sundance, Inc.,*[5] involving a franchisee and one of its employees, the court addressed the issue of whether a party challenging a party's right to compel arbitration must show prejudice in addition to proving that the party possessing the arbitration right acted inconsistently with that right. Robyn Morgan, the original plaintiff, was an hourly worker at a Taco Bell franchise owned by the franchisee, Sundance. At the time of her employment, the franchisee required Morgan to sign an agreement that mandated confidential binding arbitration, instead of going to court for any employment dispute. A dispute arose concerning her compensation. Morgan's specific complaints were that on numerous occasions, her employer violated the Fair Labor Standards Act by not paying her properly for the hours she worked. Ignoring the agreement's arbitration provision, Morgan sued the franchisee in court. Instead of seeking to stay the litigation to invoke its arbitration rights, the franchisee proceeded with litigation and filed an answer asserting 14 affirmative defenses, which did not include a demand for arbitration. The parties later unsuccessfully attempted mediation. After a total of more than eight months of procedural maneuvering and general inactivity, the franchisee suddenly switched gears and sought to stay the litigation and compel arbitration pursuant to the arbitration agreement and Sections 3 and 4 of the Federal Arbitration Act, or FAA.[6]

As expected, Morgan opposed the franchisee's motion, arguing that the franchisee waived its right to arbitration by engaging in litigation for almost eight months.[7] The franchisee countered Morgan's argument by asserting that the litigation had not yet proceeded to the merits stage, so there was no real harm to Morgan.

On the appellate level, the U.S. Court of Appeals for the 8th Circuit, relying on earlier precedent, found there could be waiver of arbitration only if the non-waiving party could show (1) knowledge of the arbitration right; (2) the party possessing the right to arbitration acted inconsistently with the right; and (3) the non-waiving party suffered prejudice by the waiving party's inconsistent actions.[8] The 8th Circuit previously adopted the prejudice requirement in the arbitration context in the case of *Erdman Co. v. Phoenix Land & Acquisition, LLC,* grounding its decision on the "federal policy favoring arbitration."[9] In this case, however, the 8th Circuit found that no prejudice existed and thus sent the case back to arbitration. The court based its decision on the fact that the parties had not yet contested any matters going to the merits of the case.[10] In a dissenting opinion, Judge Steven Colloton noted that "prejudice is not needed for waiver outside the arbitration context, and therefore should not be part of the waiver test."[11]

In granting certiorari, the Supreme Court noted there being a conflict between the federal circuits, with nine of the 11 courts having invoked the "strong federal policy favoring arbitration" and supporting an arbitration-specific waiver rule requiring a showing of prejudice. Only two circuits rejected

the rule.[12] In this case, the sole issue that the court considered is whether there is an arbitration-specific variant of the federal procedural rules requiring a showing of prejudice to establish waiver. While the FAA's policy is to favor arbitration, the question is whether that preference collides with a general proof of waiver outside the arbitration context, where there is no required showing of prejudice.

In situations outside of arbitration, a federal court in assessing waiver does not generally ask about prejudice. Waiver being the intentional relinquishment or abandonment of a known right, a court usually focuses on the actions or the person that held the right and not the effects of those actions on the opposing party. The court considers the requirement of showing prejudice to establish waiver in the arbitration context a bespoke rule.[13] The court noted further that the "FAA policy favoring arbitration does not authorize federal courts to invent special, arbitration-preferring procedural rules."[14] While the policy espoused in *Prima Paint Corp. v. Flood & Conklin Mfg.,* was to make arbitration agreements enforceable as other contracts, it was not to do more.[15] So while a court must hold a party to its arbitration contract, as it would any other contract, it cannot devise novel rules to favor arbitration over litigation.[16]

The court further noted that section 6 of the FAA provides that any application under statute—including an application to stay litigation or compel arbitration—"shall be made and heard in the manner provided by law for the making and hearing of motions." In other words, "apply the usual federal procedural rules, including any rules relating to a motion's timeliness, or conversely it is a bar to using custom made rules to tilt the playing field in favor of (or against) arbitration."[17]

The court returned the case to the 8th Circuit with instructions to limit its waiver inquiry to the franchisee's conduct; "[did] Sundance, as the rest of the Eighth Circuit's test asks, knowingly relinquish the right to arbitrate by acting inconsistently with that right?"[18] As noted by the appellate court, "A party acts inconsistently with its right to arbitrate if it substantially invokes the litigation machinery before asserting its arbitration right. When for example, it files a lawsuit on arbitrable claims, engages in extensive discovery, or fails to move to compel arbitration and stay in litigation in a timely manner."[19]

That being said, the majority found that the parties' engagement in mediation and the waiting for the district court's procedural findings did not invoke the litigation machinery. Conversely, in his dissent, Judge Colloton makes clear that in his view, *Sundance* did invoke the machinery of litigation by, among other things, answering Morgan's complaint on the merits and listing 14 affirmative defenses in its answer, which made no mention of arbitration or engaging in mediation. And the franchisee moved to compel arbitration only after more than seven months following the case's filing in court.[20] According to Judge Colloton, this conduct constituted waiver.

Arbitration offers parties a bundle of dispute resolution services, but as the recent Supreme Court decision holds, an arbitration agreement does not receive special preference over other contracts when it comes to the issue of waiver. As a practice pointer, practitioners litigating agreements with arbitration provisions should be well advised to compel arbitration at the earliest possible time, or risk waiving that right. **TBJ**

NOTES

1. Imre Stephen Szalai, *The Prevalence of Consumer Arbitration Agreement in America's Top Companies,* UC Davis Law Review, Vol. 52 online 233, 242 (2019), https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf.
2. Douglas Shontz, Fred Kipperman, Vanessa Soma*, Business to Business Arbitration in the United States*, Rand Institute of Civil Justice, p. 19 (2011), https://www.rand.org/content/dam/rand/pubs/technical_reports/2011/RAND_TR781.pdf.
3. See pg 9 footnote 31.
4. Edward Wood Dunham, *The Arbitration Clause as Class Action Shield*, 16 Franchise L.J. 141 (1997).
5. *Morgan v. Sundance, Inc.,* 142 S.Ct., 1708 (2022).
6. Section 3 of the FAA provides a party the ability to seek to stay the proceedings if there is an agreement to arbitrate. Section 4 gives a judge the right to require arbitration if it is provided for in the subject agreement.
7. *Morgan v. Sundance, Inc.,* 142 S.Ct. at 171.1
8. *Erdman Co. V. Phoenix Land & Acquisition, LLC,* 650 F.3d 1115, 1117 (8th Cir. 2011)
9. *Id.* at 1120.
10. *Morgan v. Sundance, Inc.,* 992 F. 3d 711, 715 (8th Cir. 2021).
11. *Id.* at 716.
12. *Morgan v. Sundance, Inc.,* 142 S.Ct. at 1712.
13. *Id.* at 1713; Webster's Dictionary defines the term would be a rule tailored for a specific customer.
14. *Id.,* citing *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.,* 460 U.S 1 at 24, 103 S. Ct. 927.
15. See *Prima Paint Corp. v. Flood & Conklin Mfg.,* 388 U.S. 395, 404 n. 12, 87 S.Ct. 1801 L.Ed, 2d 1270 (1967).
16. *Morgan v. Sundance, Inc.,* 142 S.Ct. at 1713, citing *Dean Witter Reynolds, Inc. v. Byrd,* 470 U.S. 213, 218, 221 (1985).
17. *Id.* at 1714.
18. *Id.*
19. *Morgan v. Sundance, Inc.,* 992 F. 3d 711 at 714.
20. *Id.* at 715.

TED PEARCE
is a senior attorney with the law firm of Bradley Arant Boult Cummings in the Charlotte, North Carolina, office. Among its other offices, Bradley has offices in Houston and Dallas. Pearce concentrates his practice on franchise law, representing both franchisees and franchisors in mostly transactional and relationship issues. He also serves as a commercial arbitrator for the American Arbitration Association.

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SUPREME COURT OF TEXAS

Misc. Docket No. 23-9055

RENEWED EMERGENCY ORDER REGARDING INDIGENT DEFENSE AND THE BORDER SECURITY STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster concerning border security in 58 counties in the State of Texas. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Renewed Emergency Order Regarding Indigent Defense and the Border Security State of Disaster (Misc. Dkt. No. 23-9039) is renewed.

3. To protect the constitutionally and statutorily guaranteed right to counsel of indigent criminal defendants, the following provisions of the Code of Criminal Procedure are modified in the counties affected by the state of disaster concerning border security ("affected counties") for individuals charged or arrested under Operation Lone Star launched by Governor Abbott on March 6, 2021, and: who are brought before magistrates for proceedings under Article 15.17 in facilities designated by the Office of Court Administration ("OCA"), who are detained in a Texas Department of Criminal Justice facility approved by the Texas Commission on Jail Standards ("TCJS") to house Operation Lone Star detainees, or whose request for counsel under Articles 15.17(a) or 15.18 has been transmitted to a judge assigned by the Supreme Court of Texas under Misc. Dkt. No. 22-9045.

   a. Article 26.04(a) is modified to authorize the Executive Director of the Texas Indigent Defense Commission ("TIDC") to approve procedures for appointing counsel that differ from an affected county's procedures, but TIDC may not approve procedures inconsistent with Articles 26.04, 1.051, 15.17, 15.18, 26.05, and 26.052, unless otherwise provided in this Order.

   b. Articles 15.17(a) and 26.04(b), (c), and (h) are modified to authorize a magistrate to appoint counsel for an indigent defendant upon request received at a proceeding under Article 15.17.

   c. Articles 26.04(a), (d), and (e) are modified to waive the requirements to maintain a public appointment list and to appoint only from that list if an alternative appointment list is established by TIDC or its designee, and appointments may be made to attorneys from an appointment list established by TIDC or its designee.

   d. Articles 26.04(g) and (h) are modified to authorize TIDC to approve and establish an alternative program for appointing counsel.

   e. Article 26.04(i) is modified to authorize the appointment of an attorney from any Texas county to represent a felony defendant.

   f. Article 26.04(k) is modified to authorize TIDC or its designee to remove any attorney from consideration for an appointment for any reason.

   g. Article 26.044 is modified to authorize TIDC as an additional entity permitted to designate an existing governmental entity or nonprofit corporation operating as a public defender's office to provide counsel.

   h. Article 26.047 is modified to authorize TIDC as an additional entity permitted to appoint an existing governmental entity, nonprofit corporation, or bar association operating as a managed assigned counsel program to appoint counsel.

   i. Should the costs for compensation of court-appointed counsel, investigators, defense interpreters, or experts be paid or reimbursed by the state, Article 26.05 is modified to authorize TIDC to adopt a fee schedule that differs from an affected county's schedule, to authorize TIDC or its designee to approve payments, and to

remove any attorney from consideration who is shown to have submitted a claim for legal services not performed by the attorney, and to authorize OCA or TIDC or its designee to make payments.

4. Sections 26.011 and 74.052 of the Government Code are also modified to clarify that the Regional Presiding Judge of an affected county should assign judges to assist with the disposition of cases involving individuals who are brought before magistrates for proceedings under Article 15.17 of the Code of Criminal Procedure in facilities designated by OCA or detained in a TDCJ facility approved by the TCJS to house Operation Lone Star detainees. Section 74.061 of the Government Code is modified to provide that:

a. the salary of a former or retired judge assigned by a Regional Presiding Judge to a constitutional or statutory county court to assist with the disposition of these cases should be paid by the state from the funds appropriated by the Legislature for that purpose in Act of September 2, 2021, 87th Leg. 2nd C.S., ch. 8 (HB 9); and

b. the pro rata amount for the period of time that the judge sits on assignment to a constitutional county court is based on the maximum salary a district judge may receive from county and state sources under Section 659.012(a) of the Government Code.

5. Subject to constitutional limitations and review for abuse of discretion, all courts in Texas may in any case involving individuals arrested under Operation Lone Star, without a participant's consent:

a. except as this Order provides otherwise, allow or require a participant involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and

b. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means.

6. In conducting proceedings involving individuals arrested under Operation Lone Star remotely, the court must not:

a. require a lawyer, party, or juror to appear remotely for a jury trial, absent the agreement of the parties; or

b. permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.

7. Subject to constitutional limitations and review for abuse of discretion, a court may, without a participant's consent, conduct proceedings involving individuals arrested under Operation Lone Star away from the court's usual location with reasonable notice and access to the participants and the public if a visiting judge is assigned to the court.

8. OCA must post in a prominent place on its website the designated facilities in which this Order applies.

9. This Order is effective immediately and expires on November 1, 2023, unless extended by the Chief Justice of the Supreme Court. The affected counties should move swiftly to modify, consistent with this Order and TIDC guidance, any procedures necessary to provide for indigent defense in response to Operation Lone Star. An affected county may request to be exempted from this Order before it expires.

10. The Clerk of the Supreme Court is directed to:

a. post a copy of this Order on www.txcourts.gov;

b. file a copy of this Order with the Secretary of State; and

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

11. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: August 21, 2023.

JUSTICE DEVINE dissents.

Nathan L. Hecht, Chief Justice

SUPREME COURT OF TEXAS

Misc. Docket No. 23-9061

AMENDED ORDER GIVING PRELIMINARY APPROVAL OF AMENDMENTS TO CANONS 3B, 5, AND 6 OF THE TEXAS CODE OF JUDICIAL CONDUCT AND THE PROCEDURAL RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES, NOW TITLED THE PROCEDURAL RULES FOR THE STATE COMMISSION ON JUDICIAL CONDUCT

ORDERED that:

1. On August 7, 2023, in Misc. Dkt. No. 23-9054, the Court proposed amendments to Canons 3B, 5, and 6 of the Texas Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges, now titled the Procedural Rules for the State Commission on Judicial Conduct.

2. The Court now amends proposed Rule 16(b) of the Procedural Rules, as set forth in this Order.

3. The Court continues to invite public comments on the proposed amendments to the Texas Code of Judicial Conduct and the Procedural Rules.

4. To effectuate the Act of May 15, 2023, 88th Leg., R.S., ch. 222 (H.B. 367, codified at TEX. GOV'T CODE § 33.02105) and the Act of May 17, 2023, 88th Leg., R.S., ch. 716 (H.B. 2384, codified at TEX. GOV'T CODE §§ 39.003–.004, 33.032), the amendments are effective September 1, 2023. But the amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by November 1, 2023.

5. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 25, 2023.

Nathan L. Hecht, Chief Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice
Evan A. Young, Justice

TEXAS CODE OF JUDICIAL CONDUCT

***

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

***

B. Adjudicative Responsibilities.

***

(2) A judge should be faithful to the law and shall maintain professional competence in it, including by meeting all judicial-education requirements set forth in governing statutes or rules. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

***

Canon 5: Refraining from Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

(5) A judge or judicial candidate shall not knowingly make a false declaration on a statutorily required application for a place on the ballot for any of the courts listed in Canon 6A(1).

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Consistent with section 253.1612 of the Texas Election Code, the Code of Judicial Conduct does not prohibit a joint campaign activity conducted by two or more judicial candidates.

Subpart (5) of Canon 5 is added to reflect new statutory requirements relating to applications for judicial office. See Tex.

Elec. Code § 141.0311; Tex. Gov't Code § 33.032(i).

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court,

(b) the Court of Criminal Appeals,

(c) courts of appeals,

(d) district courts,

(e) criminal district courts,~~ and~~

(f) statutory county courts~~.~~, and

(g) statutory probate courts.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

***

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge or person seeking elective judicial office listed in Canon 6A(1) who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any judge ~~other candidate for~~or person seeking elective judicial office~~, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is~~ may be subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action, as authorized by other statute or rule.

***

PROCEDURAL RULES FOR THE ~~REMOVAL OR RETIREMENT OF JUDGES~~STATE COMMISSION ON JUDICIAL CONDUCT

(Adopted and Promulgated Pursuant to Article V, Section 1-a(11), Texas Constitution)

RULE 1. DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

(a) "Commission" means the State Commission on Judicial Conduct.

(b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts; any County Judge; any Judge of a County Court-at-Law, a Probate Court, or a Municipal Court; any Justice of the Peace;

any Judge or presiding officer of any special court created by the Legislature; any retired judge or former judge who continues as a judicial officer subject to assignment to sit on any court of the state; and, any Master or Magistrate appointed to serve a trial court of this state.

(c) "Judicial Candidate" means any person seeking election as Chief Justice or Justice of the Supreme Court; Presiding Judge or Judge of the Court of Criminal Appeals; Chief Justice or Justice of a Court of Appeals; Judge of a District Court; Judge of a Statutory County Court; or Judge of a Statutory Probate Court.

(~~c~~d) "Chairperson" includes the acting Chairperson of the Commission.

(~~d~~e) "Special Master" means an individual appointed by the Supreme Court upon request of the Commission pursuant to Article V, Section 1-a, Paragraph (8) of the Texas Constitution.

(~~e~~f) "Sanction" means any admonition, warning, reprimand, or requirement that the person obtain additional training or education, issued publicly or privately, by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution. A sanction is remedial in nature. It is issued prior to the institution of formal proceedings to deter similar misconduct by a judge or judg~~es~~icial candidate in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this state neither permits nor condones misconduct.

(~~f~~g) "Censure" means an order issued by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution or an order issued by a Review Tribunal pursuant to the provisions of Article V, Section 1-a, Paragraph (9) of the Texas Constitution. An order of censure is tantamount to denunciation of the offending conduct, and is more severe than the remedial sanctions issued prior to a formal hearing.

(~~g~~h) "Special Court of Review" means a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court on petition, to review a censure or sanction issued by the Commission.

(~~h~~i) "Review Tribunal" means a panel of seven court of appeals justices selected by lot by the Chief Justice of the Supreme Court to review the Commission's recommendation for the removal or retirement of a judge as provided in Article V, Section 1-a, Paragraph (9) of the Texas Constitution.

(~~i~~j) "Formal Proceeding" means the proceedings ordered by the Commission concerning the possibility of a public censure~~,~~ of a judge or judicial candidate or the removal~~,~~ or retirement of a judge.

(~~j~~k) "Examiner" means the person, including appropriate Commission staff or Special Counsel, appointed by the Commission to gather and present evidence before a special master, or the Commission, a Special Court of Review or a Review Tribunal.

(~~k~~l) "Shall" is mandatory and "may" is permissive.

(~~l~~m) "Mail" means First Class United States Mail.

(~~m~~n) The masculine gender includes the feminine gender.

RULE 2. MAILING OF NOTICES AND OF OTHER MATTER

Whenever these rules provide for giving notice or sending any matter to a judge or judicial candidate, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge or judicial candidate, be sent to him by mail at his office or last known place of residence; provided, that when the judge or judicial candidate has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at his office or last known place of residence.

RULE 3. PRELIMINARY INVESTIGATION

(a) The Commission may, upon receipt of a verified statement, upon its own motion, or otherwise, make such

preliminary investigation as is appropriate to the circumstances relating to an allegation or appearance of misconduct or disability of any judge or judicial candidate to determine that such allegation or appearance is neither unfounded nor frivolous.

(b) If the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings.

RULE 4. FULL INVESTIGATION

(a) If the preliminary investigation discloses that the allegations or appearances are neither unfounded nor frivolous, or if sufficient cause exists to warrant full inquiry into the facts and circumstances indicating that a judge or judicial candidate may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, the Commission shall conduct a full investigation into the matter.

(b) The Commission shall inform the judge or judicial candidate in writing that an investigation has commenced and of the nature of the matters being investigated.

(c) The Commission may request the judge's or judicial candidate's response in writing to the matters being investigated.

RULE 5. ISSUANCE, SERVICE, AND RETURN OF SUBPOENAS

(a) In conducting an investigation, formal proceedings, or proceedings before a Special Court of Review, the Chairperson or any member of the Commission, or a special master when a hearing is being conducted before a special master, or member of a Special Court of Review, may, on his own motion, or on request of appropriate Commission staff, the examiner, or the judge or judicial candidate, issue a subpoena for attendance of any witness or witnesses who may be represented to reside within the State of Texas.

(b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the Chairperson or some other member of the Commission, or by the special master when a hearing is before the special master, and the date of its issuance shall be noted thereon. It shall be addressed to any peace officer of the State of Texas or to a person designated by the Chairperson to make service thereof.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.

(d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness; the person serving the subpoena shall make due return thereof, showing the time and manner of service, or service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

RULE 6. INFORMAL APPEARANCE

(a) Before terminating an investigation, the Commission may offer a judge or judicial candidate an opportunity to appear informally before the Commission.

(b) An informal appearance is confidential except that the judge or judicial candidate may elect to have the appearance open to the public or to any person or persons designated by the judge or judicial candidate. The right to an open appearance does not preclude placing of witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.

(c) No oral testimony other than the judge's or judicial candidate's shall be received during an informal

appearance, although documentary evidence may be received. Testimony of the judge or judicial candidate shall be under oath, and a recording of such testimony taken. A copy of such recording shall be furnished to the judge or judicial candidate upon request.

(d) The judge or judicial candidate may be represented by counsel at the informal appearance.

(e) Notice of the opportunity to appear informally before the Commission shall be given by mail at least ten (10) days prior to the date of the scheduled appearance.

RULE 7. COMMISSION VOTING

(a) A quorum shall consist of seven (7) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension or removal of any Judge shall be by affirmative vote of at least seven (7) members.

RULE 8. RESERVED FOR FUTURE PROMULGATION

RULE 9. REVIEW OF COMMISSION DECISION

(a) A judge or judicial candidate who has received from the Commission a sanction in connection with a complaint filed subsequent to September 1, 1987, may file with the Chief Justice of the Supreme Court a written request for appointment of a Special Court of Review, not later than the 30th day after the date on which the Commission issued its sanction.

(b) Within 15 days after appointment of the Special Court of Review, the Commission shall furnish the petitioner and each justice on the Special Court of Review a charging document which shall include a copy of the sanction issued as well as any additional charges to be considered in the de novo proceeding and the papers, documents, records, and evidence upon which the Commission based its decision. The sanction and other records filed with the Special Court of Review are public information upon filing with the Special Court of Review.

(c) Within 30 days after the date upon which the Commission files the charging document and related materials with the Special Court of Review, the Special Court of Review shall conduct a hearing. The Special Court of Review may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. The procedure for the hearing shall be governed by the rules of law, evidence, and procedure that apply to civil actions, except the judge or judicial candidate is not entitled to trial by jury, and the Special Court of Review's decision shall not be appealable. The hearing shall be held at a location determined by the Special Court of Review, and shall be public.

(d) Decision by the Special Court of Review may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings.

(e) The opinion by the Special Court of Review shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 10. FORMAL PROCEEDINGS

(a) NOTICE

(1) If after the investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge or judicial candidate without delay. Such proceedings shall be entitled:

“Before the State Commission on Judicial Conduct Inquiry Concerning a Judge or Judicial Candidate, No. _________”

(2) The notice shall specify in ordinary and concise language the charges against the judge or judicial candidate, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge or judicial candidate of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(3) The notice shall be served by personal service of a copy thereof upon the judge or judicial candidate by a member of the Commission or by some person designated by the Chairperson, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the Chairperson upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing, by registered or certified mail, copies of the notice addressed to the judge ~~at his chambers and~~or judicial candidate at his last known residence and, if a judge, at his chambers, and the date of mailing shall be entered in the docket.

(b) ANSWER

Within 15 days after service of the notice of formal proceedings, the judge or judicial candidate may file with the Commission an original answer, which shall be verified, and twelve legible copies thereof.

(c) SETTING DATE FOR HEARING AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER

(1) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a special master and shall give notice of such hearing by mail to the judge or judicial candidate at least 20 days prior to the date set.

(2) If the Commission directs that the hearing be before a special master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a special master for such hearing, and the Supreme Court shall, within 10 days from receipt of such request, appoint an active or retired District Judge, a Judge of a Court of Civil Appeals, either active or retired, or a retired Justice of the Court of Criminal Appeals or Supreme Court to hear and take evidence in such matters.

(d) HEARING

(1) At the time and place set for hearing, the Commission, or the special master when the hearing is before a special master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 5, whether or not the judge or judicial candidate has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.

(2) The failure of the judge or judicial candidate to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge or judicial candidate to testify in his own behalf or his failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

(3) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an official court reporter.

(4) When the hearing is before the Commission, not less than seven members shall be present while the hearing is in active progress. The Chairperson, when present, the Vice-Chairperson in the absence of the Chairperson, or the member designated by the Chairperson in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

(e) EVIDENCE

At a hearing before the Commission or a special master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

(f) AMENDMENTS TO NOTICE OR ANSWER

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge or judicial candidate shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

(g) PROCEDURAL RIGHTS OF JUDGES AND JUDICIAL CANDIDATES

(1) In the proceedings for his removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge or judicial candidate and his counsel in connection with the proceedings, or the judge or judicial candidate may arrange to procure a copy at his expense. The judge or judicial candidate shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(3) If the judge or judicial candidate is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge or judicial candidate has a guardian who will represent him. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's or judicial candidate's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge or judicial candidate with the same force and effect as if claimed, exercised, or made by the judge or judicial candidate, if competent.

(h) REPORT OF SPECIAL MASTER

(1) After the conclusion of the hearing before a special master, he shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and his findings of fact based on a preponderance of the evidence with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the notice of formal proceedings. The report shall be accompanied by an original and two copies of a transcript of the proceedings before the special master.

(2) Upon receiving the report of the special master, the Commission shall promptly send a copy to the judge or judicial candidate, and one copy of the transcript shall be retained for the judge's or judicial candidate's use.

(i) OBJECTIONS TO REPORT OF SPECIAL MASTER

Within 15 days after mailing of the copy of the special master's report to the judge or judicial candidate, the examiner or the judge or judicial candidate may file with the Commission an original and twelve legible copies of a statement of objections to the report of the special master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge or judicial candidate.

(j) APPEARANCE BEFORE COMMISSION

If no statement of objections to the report of the special master is filed within the time provided, the findings of the special master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the special master, the Commission shall give the judge or judicial candidate and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge or judicial candidate at least ten days prior thereto.

(k) EXTENSION OF TIME

The Chairperson of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a special master, and a special master may similarly extend the time for the commencement of a hearing before him.

(l) HEARING ADDITIONAL EVIDENCE

(1) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge or judicial candidate at least ten days prior to the date of the hearing.

(2) The hearing of additional evidence may be before the Commission itself or before the special master, as the Commission shall direct; and if before a special master, the proceedings shall be in conformance with the provisions of Rule 10(d) to 10(g) inclusive.

(m) COMMISSION RECOMMENDATION

If, after hearing, upon considering the record and report of the special master, the Commission finds good cause therefore, it shall recommend to the Review Tribunal the removal, or retirement, as the case may be; or in the alternative, the Commission may dismiss the case or publicly order a censure, reprimand, warning, or admonition.

RULE 11. REQUEST BY COMMISSION FOR APPOINTMENT OF REVIEW TRIBUNAL

Upon making a determination to recommend the removal or retirement of a judge, the Commission shall promptly file a copy of a request for appointment of a Review Tribunal with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing.

RULE 12. REVIEW OF FORMAL PROCEEDINGS

(a) A recommendation of the Commission for the removal or retirement, of a judge shall be determined by a Review Tribunal of seven Justices selected from the Courts of Appeals. Members of the Review Tribunal shall be selected by lot by the Chief Justice of the Supreme Court from all Appeals Justices sitting at the time of selection. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made, except that no Justice who is a member of the Commission shall serve on the Review Tribunal. The Justice whose name is drawn first shall be chairperson of the Review Tribunal. The clerk of the Supreme Court will serve as the Review Tribunal's staff, and will notify the Commission when selection of the Review Tribunal is complete.

(b) After receipt of notice that the Review Tribunal has been constituted, the Commission shall promptly file a copy of its recommendation certified by the Chairperson or Secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court. The Commission shall immediately send the judge notice of such filing and a copy of the recommendation, findings and conclusions.

(c) A petition to reject the recommendation of the Commission for removal or retirement of a judge or justice may be filed with the clerk of the Supreme Court within thirty days after the filing with the clerk of the Supreme Court of a

certified copy of the Commission's recommendation. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by seven copies of petitioner's brief and proof of service of one copy of the petition and of the brief on the Chairperson of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file seven copies of the Commission's brief, and shall serve a copy thereof on the judge.

(d) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(e) Rules 4 and 74, Texas Rules of Appellate Procedure, shall govern the form and contents of briefs except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

(f) The Review Tribunal, may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the special master or the Commission and be filed as a part of the record in the Court.

(g) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than thirty days nor more than forty days from the date of receipt thereof. The order and length of time of argument shall, if not otherwise ordered or permitted by the Review Tribunal, be governed by Rule 172, Texas Rules of Appellate Procedure.

(h) Within 90 days after the date on which the record is filed with the Review Tribunal, it shall order public censure, retirement, or removal, as it finds just and proper, or wholly reject the recommendation. The Review Tribunal, in an order for involuntary retirement for disability or an order for removal, may also prohibit such person from holding judicial office in the future.

(i) The opinion by the Review Tribunal shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 13. APPEAL TO SUPREME COURT

A judge may appeal a decision of the Review Tribunal to the Supreme Court under the substantial evidence rule.

RULE 14. MOTION FOR REHEARING

A motion for rehearing may not be filed as a matter of right. In entering its judgment the Supreme Court or Review Tribunal may direct that no motion for rehearing will be entertained, in which event the judgment will be final on the day and date of its entry. If the Supreme Court or Review Tribunal does not so direct and the judge wishes to file a motion for rehearing, he shall present the motion together with a motion for leave to file the same to the clerk of the Supreme Court or Review Tribunal within fifteen days of the date of the judgment, and the clerk of the Supreme Court shall transmit it to the Supreme Court or Review Tribunal for such action as the appropriate body deems proper.

RULE 15. SUSPENSION OF A JUDGE

(a) Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. However, the suspended judge has the right to a post-suspension hearing to demonstrate that continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside nor impair public confidence in the judiciary. A written request for a post-suspension hearing must be filed with the Commission within 30 days from receipt of the Order of Suspension. Within 30 days from the receipt of a request, a hearing will be scheduled before one or more members or the executive director of the Commission as designated by

the Chairperson of the Commission. The person or persons designated will report findings and make recommendations, and within 60 days from the close of the hearing, the Commission shall notify the judge whether the suspension will be continued, terminated, or modified.

(b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

RULE 16. RECORD OF COMMISSION PROCEEDINGS AND EDUCATION NONCOMPLIANCE

(a) The Commission shall keep a record of all informal appearances and formal proceedings concerning a judge or judicial candidate. In all proceedings resulting in a recommendation to the Review Tribunal for removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding.

(b) The Commission must publicly list on its website judges who have been suspended for noncompliance with judicial-education requirements set forth in governing statutes or rules.

RULE 17. CONFIDENTIALITY AND PRIVILEGE OF PROCEEDINGS

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

(a) The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.

(b) If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.

(c) The judge or judicial candidate may elect to open the informal appearance hearing pursuant to Rule 6(b).

(d) Any hearings of the Special Court of Review shall be public and held at the location determined by the Special Court of Review. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed in the proceedings, is public.

RULE 18. *EX PARTE* CONTACTS BY MEMBERS OF THE COMMISSION

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* contacts with any judge or judicial candidate who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission.

When Results Matter

Negligent Equipment Maintenance
Badly Fractured Feet/Ankles
$18,600,000
(Settlement During Trial)

Premises Liability
Brain Injury/Fractured Legs
Settlement
$17,500,000

Maritime-Brain Injury Settlement
$15,100,000

Trucking– Below Knee Amputation Verdict
$6,028,000
($10,000 pre-trial offer)

Aviation-Death Settlement
$9,600,000

Scott C. Krist
Owner & Lead Trial Lawyer

Our firm handles a broad array of personal injury litigation. Whether it is Maritime, Trucking, Aviation, or General Negligence, we get results.

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SUPREME COURT OF TEXAS

Misc. Docket No. 23-9062

PRELIMINARY APPROVAL OF AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 24.1 AND 24.2

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Appellate Procedure 24.1 and 24.2. All the proposed amendments, except the amendments to Texas Rule of Appellate Procedure 24.1(b)(2), are in accordance with the Act of May 17, 2023, 88th Leg., R.S., ch. 763 (H.B. 4381, codified at TEX. CIV. PRAC. and REM. CODE § 52.007).

2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by December 1, 2023.

3. The Court will issue an order finalizing the rule after the close of the comment period. The Court may change the amendments in response to public comments.

4. The Court expects the amendments to Texas Rule of Appellate Procedure 24.1(b)(2) to take effect on January 1, 2024.

5. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 763, all the other amendments proposed in this Order are effective September 1, 2023. Those amendments apply only to a civil action commenced on or after September 1, 2023.

6. The Clerk is directed to:

    a. file a copy of this Order with the Secretary of State;

    b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

    c. send a copy of this Order to each elected member of the Legislature; and

    d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 25, 2023.

Nathan L. Hecht, Chief Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice
Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.1. Suspension of Enforcement

(a) *Methods*. Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:

(1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;

(2) filing with the trial court clerk a good and sufficient bond;

(3) making a deposit with the trial court clerk in lieu of a bond; or

(4) providing alternate security under Rule 24.2(e) or ordered by the court.

(b) *Bonds*.

(1) A bond must be:

(A) in the amount required by 24.2;

(B) payable to the judgment creditor;

(C) signed by the judgment debtor or the debtor's agent;

(D) signed by a sufficient surety or sureties as obligors; and

(E) conditioned as required by (d).

(2) ~~To be effective a bond must be approved by the trial court clerk~~A bond is effective upon filing. On motion of any party, the trial court will review the bond.

(c) *Deposit in Lieu of Bond.*

(1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:

(A) cash;

(B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state-chartered bank or savings-and-loan association; or

(C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association.

(2) Amount of Deposit. The deposit must be in the amount required by 24.2.

(3) Clerk's Duties; Interest. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.

(d) *Conditions of Liability.* The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security under Rule 24.2(e) or ordered by the court is subject to liability for all damages and costs that may

be awarded against the debtor — up to the amount of the bond, deposit, or security — if:

(1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;

(2) the debtor does not perform an adverse judgment final on appeal; or

(3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.

(e) *Orders of Trial Court*. The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.

(f) *Effect of Supersedeas*. Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

24.2. Amount of Bond, Deposit, or Security

(a) *Type of Judgment.*

(1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:

(A) 50 percent of the judgment debtor's current net worth; or

(B) 25 million dollars.

(2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

(4) Conservatorship or Custody. When the judgment involves the conservatorship or custody of a minor or other person under legal disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

(5) For a Governmental Entity. When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to

suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) *Lesser Amount*. The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(c) *Determination of Net Worth*.

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) <u>or (e)</u> in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

(d) *Injunction*. The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

<u>(e) *Alternative Security in Certain Cases*.</u>

<u>(1) Applicability. Paragraph (e) applies only to a judgment debtor with a net worth of less than $10 million.</u>

<u>(2) Alternative Security; Required Showing. On a showing by the judgment debtor that posting security in the amount required under (a)(1) would require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to the normal course of the judgment debtor's business, the trial court must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.</u>

<u>(3) Earnings on Appeal. During an appeal, the judgment debtor may continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.</u>

<u>(f) Redetermination. If an appellate court reduces the amount of the judgment that the trial court used to set the bond, deposit, or security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination by the trial court of the amount of the bond, deposit, or security required to suspend enforcement.</u>

Comment to 2023 change: Rule 24.1(b)(2) is amended to provide that a bond is effective upon filing, though the bond is still subject to challenge. New Rule 24.2(e) and (f) are added to implement section 52.007 of the Texas Civil Practice and Remedies Code.

SUPREME COURT OF TEXAS

Misc. Docket No. 23-9063

ORDER APPROVING REVISED PROTECTIVE ORDER FORMS

ORDERED that:

1. In accordance with the Act of May 24, 2023, 88th Leg., R.S., ch. 688 (H.B. 1432); Act of May 24, 2023, 88th Leg., R.S., ch. 839 (H.B. 2715); and Act of May 9, 2023, 88th Leg., R.S., ch. 146 (S.B. 578), the Court approves revised protective order forms as set forth in this Order, effective September 1, 2023.

2. The forms approved by this Order supersede the forms previously approved in Misc. Dkt. No. 22-9053 on July 11, 2022.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 25, 2023.

Nathan L. Hecht, Chief Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice
Evan A. Young, Justice

To read the forms included in this order (and listed below), go to www.txcourts.gov/forms.

Protective Order Kit:
PROTECTIVE ORDERS: FAQ
GET READY FOR COURT
MAKE A SAFETY PLAN
SAMPLE: Protective Order Application, Affidavit, and Declaration Forms
Protective Order Application, Affidavit, and Declaration Forms
SAMPLE: Temporary Ex Parte Protective Order Form
Temporary Ex Parte Protective Order Form
SAMPLE: Protective Order Form
Protective Order Form

SUPREME COURT OF TEXAS

Misc. Docket No. 23-9067

PRELIMINARY APPROVAL OF AMENDMENTS TO TEXAS RULES OF DISCIPLINARY PROCEDURE 1.06, 2.10, 2.17, 7.08, AND 7.11

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11.

2. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 716 (H.B. 2384, codified at TEX. GOV'T CODE § 81.075(f)) and the Act of May 24, 2023, 88th Leg., R.S., ch. 1020 (H.B. 5010, codified at TEX. GOV'T CODE §§ 81.073 and 81.074), the amendments are effective September 1, 2023. But the amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by December 1, 2023.

3. The amendments apply only to a grievance filed on or after September 1, 2023. The amendments to Rule 2.17 apply only to an application for a place on the ballot filed for an election ordered on or after September 1, 2023.

4. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 25, 2023.

Nathan L. Hecht, Chief Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice
Evan A. Young, Justice

TEXAS RULES OF DICIPLINARY PROCEDURE

***

1.06. Definitions:

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F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.

G. "Complaint" means ~~those written matters~~a Grievance received by the Office of the Chief Disciplinary Counsel that~~,~~:

1. either on ~~the~~its face~~ thereof ~~or upon screening or preliminary investigation, alleges Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct~~.~~; and

2. is submitted by any of the following:

a. a family member of a ward in a guardianship proceeding that is the subject of the Grievance;

b. a family member of a decedent in a probate matter that is the subject of the Grievance;

c. a trustee of a trust or an executor of an estate if the matter that is the subject of the Grievance relates to the trust or estate;

d. the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the Grievance;

e. a trustee in a bankruptcy that is the subject of the Grievance; or

f. any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the Grievance.

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R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

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T. "Inquiry" means ~~any written matter concerning attorney conduct~~a Grievance received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability or is not submitted by a person listed in paragraph G.

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FF. "Sanction" means any of the following:

1. Disbarment.

2. Resignation in lieu of discipline.

3. Indefinite Disability suspension.

4. Suspension for a term certain.

5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

6. Interim suspension.

7. Public reprimand.

8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements:

a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

***

2.10. Classification of Grievances: The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral.

A. If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Complaint as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted.

B. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice. The Respondent may, within thirty days after receipt of notice to respond, appeal to the Board of Disciplinary Appeals the Chief Disciplinary Counsel's determination that the Grievance constitutes a Complaint. If the Respondent perfects an appeal, the pendency of the appeal automatically stays the Respondent's deadline to respond to the Complaint and the deadlines pertaining to the investigation and determination of Just Cause. If the Board of Disciplinary Appeals reverses the Chief Disciplinary Counsel's determination, the Grievance must be dismissed immediately as an Inquiry. If the Board of Disciplinary Appeals affirms the Chief Disciplinary Counsel's determination, the Respondent must respond to the allegations in the Complaint within thirty days after the Respondent receives notice of the affirmance.

C. If the Grievance is determined to be a Discretionary Referral, the Chief Disciplinary Counsel will notify the Complainant and the Respondent of the referral to the State Bar's Client Attorney Assistance Program (CAAP). No later than sixty days after the Grievance is referred, CAAP will notify the Chief Disciplinary Counsel of the outcome of the referral. The Chief Disciplinary Counsel must, within fifteen days of notification from CAAP, determine whether the Grievance should be dismissed as an Inquiry or proceed as a Complaint. The Chief Disciplinary Counsel and CAAP may share confidential information for all Grievances classified as Discretionary Referrals.

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2.17. Evidentiary Hearings: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include

any person who served on a Summary Disposition or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

***

P. Decision:

1. After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed.

2. The Evidentiary Panel may:

~~1.~~ a. dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;

~~2.~~ b. find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or

~~3.~~ c. find that Professional Misconduct occurred and impose Sanctions.

3. The Evidentiary Panel must impose a public sanction listed in Rule 1.06(FF)(1)-(7) against the Respondent if the Evidentiary Panel finds that the Respondent knowingly made a false declaration on an application for a place on the ballot as a candidate for the following judicial offices:

a. chief justice or justice of the supreme court;

b. presiding judge or judge of the court of criminal appeals;

c. chief justice or justice of a court of appeals;

d. district judge, including a criminal district judge; or

e. judge of a statutory county court.

***

7.08. Powers and Duties: The Board of Disciplinary Appeals shall exercise the following powers and duties:

A. Propose rules of procedure and administration for its own operation to the Supreme Court of Texas for promulgation.

B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.

C. Affirm or reverse a determination by the Chief of Disciplinary Counsel that a ~~statement~~Grievance constitutes either:

1. an Inquiry as opposed to a Complaint; or

2. a Complaint as opposed to an Inquiry.

***

7.11. Judicial Review: An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes either an Inquiry or a Complaint, or transferring cases, are conclusive, and may not be appealed to the Supreme Court.

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SUPREME COURT OF TEXAS

Misc. Docket No. 23-9068

PRELIMINARY APPROVAL OF AMENDMENTS TO TEXAS RULE OF JUDICIAL ADMINISTRATION 7

ORDERED that:

1. In accordance with Act of May 19, 2023, 88th Leg., R.S., ch. 1054 (S.B. 372, codified at Tex. Gov't Code § 21.013), the Court invites public comments on proposed amendments to Texas Rule of Judicial Administration 7. The proposed amendments are shown in clean and redline form.

2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by February 1, 2024.

3. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect on March 1, 2024.

4. Each court must adopt a confidentiality policy, as required by Rule of Judicial Administration 7.1, by May 1, 2024. Each court must also provide that policy to current court staff members and train them on it by May 1, 2024.

5. The Court's confidentiality policy is attached to this Order and may serve as a model.

6. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 25, 2023.

Nathan L. Hecht, Chief Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice
Evan A. Young, Justice

TEXAS RULES OF JUDICIAL ADMINISTRATION

Rule 7. Administrative Responsibilities. (Clean Version)

Rule 7.1. All Courts.

(a) *Court Confidentiality Policy Required.* A court, including an appellate court, district court, statutory county court, statutory probate court, constitutional county court, justice court, and municipal court, must adopt a policy governing court confidentiality.

(b) *Policy Contents.* The policy must:

(1) define who the policy applies to;

(2) define confidential information;

(3) impose a duty of confidentiality on all court staff that continues after employment at the court ends;

(4) address when, if ever, the disclosure of confidential information is authorized;

(5) provide the language of relevant laws, including section 21.013 of the Texas Government Code and section 39.06 of the Texas Penal Code;

(6) address negligent or accidental disclosure of confidential information;

(7) warn of potential penalties for the unauthorized disclosure of confidential information, including:

(A) referral to relevant law enforcement agencies for investigation and prosecution;

(B) termination of employment;

(C) for attorneys, referral to the State Bar of Texas for discipline;

(D) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law in Texas; and

(8) require all court staff to acknowledge receipt of the policy in writing.

(c) Distribution and Training Required. The court must:

(1) for all new court staff members, provide the policy and train on it before the new staff member begins any substantive work for the court;

(2) provide the policy to all existing court staff at least biannually.

Rule 7.2. District and County Courts.

A district or statutory county court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(f) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:

(1) adherence to firm trial dates with strict continuance policies;

(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;

(3) pretrial conferences to encourage settlements and to narrow trial issues;

(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.

Rule 7. Administrative Responsibilities. (Redline)

Rule 7.1. All Courts.

(a) *Court Confidentiality Policy Required.* A court, including an appellate court, district court, statutory county court, statutory probate court, constitutional county court, justice court, and municipal court, must adopt a policy governing court confidentiality.

(b) Policy Contents. The policy must:

(1) define who the policy applies to;

(2) define confidential information;

(3) impose a duty of confidentiality on all court staff that continues after employment at the court ends;

(4) address when, if ever, the disclosure of confidential information is authorized;

(5) provide the language of relevant laws, including section 21.013 of the Texas Government Code and section 39.06 of the Texas Penal Code;

(6) address negligent or accidental disclosure of confidential information;

(7) warn of potential penalties for the unauthorized disclosure of confidential information, including:

(A) referral to relevant law enforcement agencies for investigation and prosecution;

(B) termination of employment;

(C) for attorneys, referral to the State Bar of Texas for discipline;

(D) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law in Texas; and

(8) require all court staff to acknowledge receipt of the policy in writing.

(c) Distribution and Training Required. The court must:

(1) for all new court staff members, provide the policy and train on it before the new staff member begins any substantive work for the court;

(2) provide the policy to all existing court staff at least biannually.

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A district or statutory county court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(f) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:

(1) adherence to firm trial dates with strict continuance policies;

(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;

(3) pretrial conferences to encourage settlements and to narrow trial issues;

(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.

Supreme Court of Texas
Confidentiality Policy and Agreement

Employees of this Court occupy positions of public trust. In the course of your duties, you will encounter confidential information about the prospective disposition of cases and the inner workings of the Court.

Preserving the confidentiality of the Court's documents and private deliberations is **crucial to the Court's work**. More specifically, confidentiality furthers the ability of judges and judicial staff to communicate openly and honestly and to reach the most legally correct outcomes for litigants. Confidentiality also builds public respect for the judiciary and impresses on others the gravity of the judicial process. Any breach of confidentiality would betray not only the Court and the individuals who work here, but also the public's interest in thorough, considered justice.

Confidentiality has long been an expectation within Texas courts. Canon 3B(10) of the Texas Code of Judicial Conduct demands that judges and court staff refrain from "public comment about a pending or impending proceeding which may come before the judge's court." Canon 3B(11) of the Texas Code of Judicial Conduct provides that "[t]he discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project."

Texas Government Code Section 21.013 creates a Class A misdemeanor criminal offense for the unauthorized disclosure of non-public judicial work product, stating "[a] person . . . with access to non-public judicial work product commits an offense if the person knowingly discloses, wholly or partly, the contents of any nonpublic judicial work product . . . ." Additionally, Texas Penal Code Section 39.06 criminalizes the misuse of official information by a public servant who "discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) has not been made public", with penalties ranging from a Class C misdemeanor to a felony of the third degree.

This confidentiality policy incorporates the Canons as well as the statutory penalties of both Texas Government Code Section 21.013 and Texas Penal Code Section 39.06. This policy applies to all Court staff, including interns.

1. **Protection of information.** Confidential information must not be shared with persons not employed within the Court, except as provided in Section 3 below. Employees must refrain from commenting about cases that are or may come before the Court to family, friends, or acquaintances.

2. **Confidential information defined.** Confidential information includes:

    a) drafts of opinions not yet released, internal memoranda, emails between judges or staff, and any other document not intended for public use;

    b) conversations between judges or court staff about litigants or cases before, previously before, or expected to come before the Court;

    c) the private views of judges or court staff concerning the disposition of cases, litigants, anticipated cases, or each other;

    d) the authorship of per curiam opinions or orders, the timing of opinion or order release, and any other procedural mechanism not ordinarily public;

    e) documents submitted by litigants under seal; and

    f) other information, however communicated, that is not authorized to be made public.

3. **Disclosures of confidential information.**

    a) **Intentional disclosure** of confidential information outside of the boundaries of (1) above may be met with maximum disciplinary action. See (5) below.

b) **Negligent or accidental disclosure** is an extremely serious matter that may, but will not necessarily, be met with penalties as described in (5) below. Employees who accidentally disclose confidential information have a duty to promptly report the disclosure to their supervisor, appointing authority, or human resources department so that mitigation can be attempted.

Employees are expected to exercise their discretion and judgment to minimize the risk of inadvertent disclosure. For example, employees should refrain from communicating about sensitive matters in crowded or public spaces where others may overhear, even within the public areas of the Court. Employees should use court-issued, password-protected equipment to transmit confidential documents. Employees should be mindful of who can see their screen when working at home, on aircraft, public transit, or in public spaces. Employees should carefully keep track of and password protect electronic devices containing confidential information and immediately report any loss or theft of those devices.

c) **Authorized disclosure** occurs when the Chief Justice or a Justice who supervises the employee authorizes the employee to share work product with a specific person or organization. For example, employees may be authorized to share draft rules or administrative orders with other judicial branch entities for review and comment before they are released to the public, and the Clerk of Court may be authorized to disclose information relating to case status as part of their job duties, provided the Court's internal, confidential deliberations are not disclosed.

d) **Disclosure as necessary to report misconduct or illegal acts** is permitted. Employees may disclose confidential information when such disclosure is necessary to adequately report to an appropriate authority the misconduct or illegal acts of any person, including sexual or other forms of harassment.

4. Continuing confidentiality obligation. An employee's duty to preserve confidentiality survives the employee's departure from the Court. An employee who leaves the Court has the same ongoing duty to protect confidential information that they had during their employment.

Further, the duty to protect information related to the disposition of cases, such as the substance of the Court's deliberations, persists even after an opinion or order is publicly released. Employees asked about a decision of the Court should offer no comment beyond a referral to the released opinion or order.

Finally, employees who depart from Court employment may not retain confidential materials. Employees should return or securely dispose of materials, such as in designated Court shredding bins, prior to an anticipated departure, or as soon as possible after an unanticipated departure.

5. Penalties for unauthorized disclosure: In the event of an unauthorized disclosure of confidential information, the Court will investigate the circumstances and take appropriate disciplinary action, as necessary. Potential disciplinary actions may include but are not limited to:

a) referral of the matter to the relevant law enforcement agency for investigation and prosecution. *See* Texas Government Code Section 21.013 and Texas Penal Code Section 39.06;

b) termination of employment;

c) for attorneys, referral to the State Bar of Texas or of other states for discipline and possible loss of the privilege to practice before Texas or other courts; and

d) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law.

6. Acknowledgement. Please acknowledge your understanding and agreement to this policy by signing below.

______________________________ ________________________

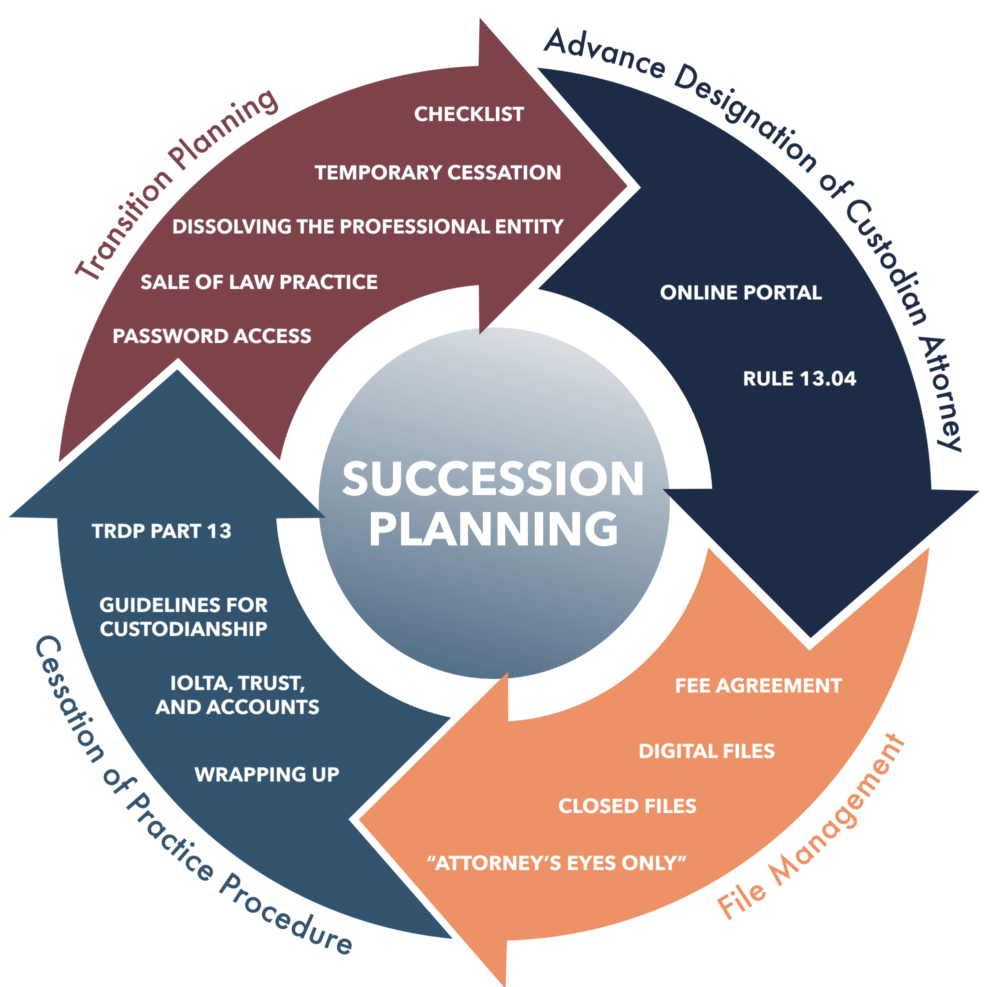
Employee's or Intern's Signature Date

STATE BAR *of* TEXAS

SUCCESSION TOOLKIT

Every lawyer's practice eventually ends. Do you have a plan for what comes next? Our toolkit can help.

- *Advance Designation of Custodian Attorney*
- *File Management*
- *Cessation of Practice Procedure*
- *Transition Planning*



Access the toolkit at: texasbar.com/successiontoolkit

Somebody's Watching Me (AND YOU!)

> *"But why do I always feel like I'm in the Twilight Zone*
> *I always feel like somebody's watching me, oh*
> *I always feel like somebody's watching me*
> *And I have no privacy"*
>
> —Rockwell

IN 1982, KENNEDY WILLIAM GORDY BROUGHT HIS FATHER A POP-FUNK DEMO HE HAD CREATED ON A FOUR-TRACK recorder in his tiny Hollywood apartment. His father, Berry Gordy, had hundreds of hit songs to his name, but he rejected his son's demo. One year later, under the new band name Rockwell and with background vocal assistance from Michael Jackson, Kennedy would turn the demo into an international and (thanks to a recent resurgence on TikTok) enduring smash hit. Over 40 years later, the song "Somebody's Watching Me" remains a standing go-to for Halloween parties with its not-so-subtle paranoia theme.

No one likes the idea of always being watched, but the phrase "somebody's watching me" doesn't always have to be your catalyst for seeking a restraining order. I think it also perfectly captures the essence of mentorship—the watchful guidance and support provided by experienced legal professionals to their burgeoning counterparts. Mentorship can shape not only the skills and knowledge of mentees but also their ethical compass and professional growth.

Mentorship in our profession ensures that aspiring lawyers are not alone. Offering insights derived from years of practice, a mentor can help mentees avoid pitfalls and make informed choices. This guidance is especially invaluable where legal missteps can have far-reaching consequences, underscoring the importance of learning from those who have traversed similar paths.

Mentorship also fosters a sense of accountability. Mentors, often acting as ethical compasses, impart the importance of integrity, professionalism, and adherence to the rule of law—values that are fundamental to the legal profession's credibility and effectiveness.

Moreover, "watching" underscores the power of observational learning. Through observation, mentees absorb not only legal expertise but also the nuances of effective communication, negotiation, and courtroom strategy. Witnessing a mentor's actions and decisions in real-world scenarios provides invaluable lessons that textbooks cannot replicate.

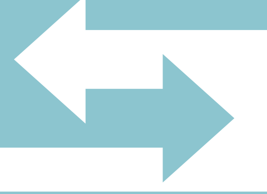
Mentorship also opens doors to opportunities that might otherwise remain inaccessible. The guidance and endorsement of an established legal figure can amplify a mentee's visibility, introducing mentees to a broader spectrum of experiences, clients, and colleagues.

Several years ago, the State Bar of Texas launched Transition to Practice to assist lawyers in developing strong mentorship relationships. This year, the Texas Young Lawyers Association hopes to breathe new life into the program by updating the resources and encouraging mentorship across all levels of the bar.

So, when you hear "Somebody's Watching Me" cycle through your Halloween playlist this month, just remember that a watchful eye can be a good thing for our profession. Find a mentor (or be a mentor) that makes law practice a little less scary for us all.

LAURA PRATT

2023-2024 President, Texas Young Lawyers Association



TO FIND OUT MORE, SCAN THE CODE:

Online Reputation MANAGEMENT

WHAT LAWYERS AND LAW FIRMS NEED TO KNOW TO ACCENTUATE THE POSITIVE AND MITIGATE THE NEGATIVE.

WRITTEN BY **ZACK McKAMIE**

IF A PROSPECTIVE CLIENT VISITED YOUR law firm, it's highly unlikely he or she would be met in your lobby by an unhappy former client who has negative comments about your law firm. But when your prospective clients plug your firm's name into a search engine, there's a decent chance they'll encounter one or more results that paint an unfairly negative impression of your firm.

Except in extremely rare instances, it is nearly impossible to "kill" negative search results. If, however, the information is demonstrably false or libelous, and the content provider is a publication or other reputable website, then it is possible to have the information removed through legal action.

Most negative search results, however, are likely to remain on the web and must be dealt with using other tools. Particularly when the information appears on a site with high domain and page authority (i.e., sites that search engines trust, value, and reward with prominent rankings), it can take an extensive and concerted effort to combat the negative content.

The key to managing your online reputation is to provide relevant and positive content about your organization. Ensuring continued success, however, requires consistent, ongoing content creation over an extended period of time. Otherwise, any content you are able to push off the first page of search results will often resurface.

The first step is to perform a **content audit** to review existing web content about your firm, both favorable and unfavorable. It's important to begin with an understanding of everything that exists on the internet about your firm, including articles, blog postings, reviews, comments, etc. You'll also want to assess where the various pieces of content are housed, as some sites are stronger than others in terms of search engine prominence. Once you know what's out there, it's time to map out your strategy to accentuate the positive and mitigate the negative.

Engage with social media. Social media is more prevalent now than ever before. You'll want to evaluate, update, and/or create pages for your firm on platforms such as LinkedIn, Yelp, YP.com, YouTube, Facebook, Instagram, and X (formerly Twitter). All of these sites have high domain authority, so the more prolific and engaged you are with these platforms, the better. Keep your pages updated regularly with fresh content and actively build your network to ensure you are engaging with others and expanding your online presence.

Generating positive content is key. This includes news releases, blog posts, news articles, and any other public information about your firm. Positive content can include:

- New hires
- Positive results in deals or lawsuits
- Community/charitable involvement
- Pro bono work
- New clients
- Speeches and articles by your attorneys
- Awards and other recognition for your firm and its lawyers (best lawyers/law firms lists, etc.)
- Anytime your lawyers are quoted or published in the news media

You'll want to maintain **ongoing public relations efforts** to actively seek out and promote items involving your firm and your lawyers in the hope that reputable news sites will publish content about your firm. Generally, news outlets and publications are seen as trustworthy and valuable by search engines, which is why they are rewarded with high domain and page authorities. Continuing to tell your firm's story and ensuring that you're providing a regular supply of positive content can help promote favorable items and drive down negative search results.

If you are unable to see results after three to six months of providing a steady stream of positive content, then consider embarking on a more **concentrated reputation management effort**. This entails creating extremely focused microsites or blogs that are frequently updated with positive content about your firm (e.g., highlighting particular practice groups).

Although creating and maintaining such microsites can be both costly and time consuming, they can help create a steady stream of positive content that not only ranks highly in search results, but also provides an effective channel to communicate and engage with your potential customers and peers. **TBJ**

This article, which was originally published on the Androvett blog, has been edited and reprinted with permission.

ZACK McKAMIE is the vice president of marketing at Androvett, where he leads integrated marketing strategies for legal industry clients, professional services firms, and related businesses. Since joining the agency in 2010, he has helped a wide range of businesses develop comprehensive and impactful marketing strategies to help them stand out, reach the right audiences, and positively impact the bottom line.

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October Events

Workers' Compensation Law 101
Webcast Replay   Oct 2, 2023 from 8:50 am to 4:00 pm CT
MCLE Credit: 6 hrs (1 hr ethics)

20th Annual Advanced Workers' Compensation Law Course
Webcast Replay   Oct 3-4 from 8:50 am to 5:30 pm CT on first day
MCLE Credit: 12.25 hrs (2 hrs ethics)

46th Annual Advanced Civil Trial Course
Live   Houston   Oct 4-6   Hotel Derek
MCLE Credit: 17.25 hrs (6.75 hrs ethics)

21st Annual Governance of Nonprofit Organizations Course
Webcast Replay   Oct 5-6 from 8:50 am to 4:45 pm CT on first day
MCLE Credit: 12 hrs (1.75 hrs ethics)

28th Annual New Frontiers in Marital Property Law Course
Live   Charleston   Oct 5-6   Francis Marion Hotel
MCLE Credit: 9 hrs (2 hrs ethics)

Civil Appellate Practice 101
Webcast Replay   Oct 11 from 8:35 am to 5:00 pm CT
MCLE Credit: 6.25 hrs (.75 hrs ethics)

37th Annual Advanced Civil Appellate Practice Course
Webcast Replay   Oct 12-13 from 8:35 am to 5:15 pm CT on first day
MCLE Credit: 12 hrs (2.75 hrs ethics)

34th Annual Estate Planning and Probate Drafting Course
Live   Houston   Oct 12-13   Hyatt Regency Houston West
MCLE Credit: 13 hrs (3.5 hrs ethics)

Handling Your First (or Next) Aviation Law Matter: How to Transact & Litigate Aviation Matters in Texas
Webcast Replay   Oct 17 from 8:40 am to 4:45 pm CT
MCLE Credit: 7 hrs (.75 hr ethics)

Advanced Property Owners Association Law Course
Webcast Replay   Oct 20 from 8:50 am to 5:15 pm CT
MCLE Credit: 7.25 hrs (includes 2.5 hrs ethics)

Handling Your First (or Next) End of Life Planning Case
Webcast Replay   Oct 25 from 8:50 am to 4:15 pm CT
MCLE Credit: 6.25 hrs (1 hr ethics)

31st Annual Texas Minority Counsel Program
Live   Houston   Oct 25-27   Westin Houston - Memorial City
MCLE Credit: 8.75 hrs (4.25 hrs ethics)

19th Annual Advanced Consumer and Commercial Law Course
Webcast Replay   Oct 26-27 from 8:50 am to 4:15 pm CT on first day
MCLE Credit: 12.25 hrs (2.75 hrs ethics)

41st Annual Advanced Oil, Gas & Energy Resources Law Course
Video   Midland   Oct 26-27
Webcast Replay   Oct 26-27 from 8:50 am to 5:30 pm CT on first day
MCLE Credit: 13.5 hrs (3.25 hrs ethics)

Listings may change without notice. To verify information or to register, call (512) 427-1574, M-F 8a-5p CT or visit TexasBarCLE.com.

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JUDICIAL ACTIONS

To read the entire public sanctions, go to scjc.texas.gov.

On August 2, 2023, the State Commission on Judicial Conduct issued a public reprimand to **JOSHUA RITTER**, justice of the peace, Precinct No. 4, Tenaha, Shelby County.

On August 16, 2023, the State Commission on Judicial Conduct issued a public reprimand to **MIKE BENNETT**, county judge, Goliad, Goliad County.

BODA

On July 31, 2023, the Board of Disciplinary Appeals entered an agreed judgment of suspension in the reciprocal discipline case against Oviedo, Florida, attorney **PATRICK MICHAEL MEGARO** [#24091024]. On April 27, 2021, the Disciplinary Hearing Commission of the North Carolina State Bar entered an order of discipline in the case styled *The North Carolina State Bar v. Patrick Michael Megaro, Attorney,* 18 DHC 41. The commission found that Megaro violated Rules of Professional Conduct of the North Carolina State Bar 1.1 (competence), 1.3 (diligence), 1.5(a) (improper fee), 1.7 (conflict of interest), 1.8(a, e) (conflict of interest, prohibited business transaction), 1.15-2(a) (misuse of entrusted funds), 1.15-2(g) (failure to disburse funds), 3.3(a) (false statement to a tribunal), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice). Megaro was suspended from the practice of law for five years. By agreement, he is suspended from the practice of law in Texas beginning July 31, 2023, and extending through July 30, 2028. BODA Case No. 65568.

On July 31, 2023, the Board of Disciplinary Appeals entered an agreed judgment of public reprimand in the reciprocal discipline case against San Antonio attorney **RUMIT RANJIT KANAKIA** [#24124286]. On May 8, 2023, a final order pursuant to 37 C.F.R. § 11.26 was entered by the director of the United States Patent and Trademark Office in a matter styled *In the Matter of Rumit R. Kanakia,* Proceeding No. D2023-25. By agreement, Kanakia was found in violation of 37 C.F.R. § 11.103 (diligence) and 37 C.F.R. § 11.804(d) (conduct prejudicial to the administration of the USPTO patent process), and publicly reprimanded. BODA Case No. 68045.

On July 31, 2023, the Board of Disciplinary Appeals entered a judgment of disbarment in the compulsory discipline case against Rathdrum, Idaho, attorney **JOHN O'NEILL GREEN** [#00785927]. On June 28, 2021, a judgment in a criminal case was entered in Cause No. 3:18-cr-00356-S, styled *United States of America v. John O. Green,* in the United States District Court for the Northern District of Texas, Dallas Division, wherein Green was found guilty of conspiracy to defraud the United States. This offense constitutes an intentional crime as defined by the Texas Rules of Disciplinary Procedure. The court ordered Green to be committed to the custody of the Federal Bureau of Prisons for a term of six months and, upon release, to be on supervised release for a term of three years. BODA Case No. 65862.

On July 31, 2023, the Board of Disciplinary Appeals entered a judgment of disbarment in the reciprocal discipline case against Alexandria, Louisiana, attorney **DARRELL KEITH HICKMAN** [#09572980]. On March

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14, 2023, the Supreme Court of Louisiana issued an order in which the court granted a joint petition for permanent resignation from the practice of law in lieu of discipline in a matter styled *In Re: Darrell Keith Hickman (Louisiana Bar Roll No. 22797),* Docket No. 23-OB-0093. BODA Case No. 67899.

On August 25, 2023, the Board of Disciplinary Appeals entered an agreed judgment of probated suspension in the reciprocal discipline case against Monroe, Louisiana, attorney **BOBBY RAY MANNING** [#24063266]. On June 21, 2023, an order was issued by the Supreme Court of Louisiana in the matter styled *In Re: Bobby R. Manning,* Attorney Disciplinary Proceeding, No. 2023-B-0616, suspending Manning from the practice of law in Louisiana for six months, with the suspension deferred in its entirety, subject to a one-year period of probation. Manning agreed he violated Louisiana Rule of Professional Conduct 1.15(a), (b), (d), and (f) (safekeeping property). He is suspended from the practice of law in Texas for one year with the suspension fully probated, beginning August 25, 2023, and extending through August 24, 2024. BODA Case No. 68196.

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REINSTATEMENT

CHRISTOPHER L. GRAHAM [#24047549], of Dallas, filed a petition in the 95th Judicial District Court of Dallas County—Cause No. DC-23-10843—for reinstatement as a member of the State Bar of Texas.

SUSPENSIONS

On August 3, 2023, **MARK STEVEN BYRNE** [#03566400], of Alvin, accepted a one-year fully probated suspension effective August 1, 2023. The 239th Judicial District Court of Brazoria County found that Byrne failed to abide by the client's decisions concerning the objectives and general methods of representation and that he failed to keep his client reasonably informed about the status of the legal matter and promptly comply with reasonable requests for information. Byrne also failed to explain the matter to the extent reasonably necessary to permit his client to make an informed decision.

Byrne violated rules 1.02(a)(1), 1.03(a), and 1.03(b). He was ordered to pay $2,000 in attorneys' fees and direct expenses.

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On August 2, 2023, **RONALD EVANS HARDEN** [#00792079], of Terrell, agreed to a six-month fully probated suspension effective August 1, 2023. An investigatory panel of the District 6 Grievance Committee found that the complainant and his mother hired Harden for representation in a civil suit related to damages to the complainant's mother's house and personal property loss suffered during an asbestos abatement of the residence by a restoration company. In representing the complainant and his mother, Harden neglected the legal matter entrusted to him and frequently failed to carry out completely the obligations Harden owed to the complainant and his mother. Harden failed to promptly comply with reasonable requests for information from the complainant and his mother about the legal matter and failed to explain the legal matter to the extent reasonably necessary to permit the complainant and his mother to make informed decisions regarding the representation.

Harden violated rules 1.01(b)(1), 1.01(b)(2), 1.03(a), and 1.03(b). He agreed to pay $1,000 in attorneys' fees and direct expenses.

On August 4, 2023, **EDWARD ALEXANDER NOLEN** [#24048693], of Laredo, accepted a two-year fully probated suspension effective August 1, 2023. An evidentiary panel of the District 12 Grievance Committee found that Nolen neglected client matters, failed to communicate with clients, and failed to respond to a grievance in a timely manner.

Nolen violated rules 1.01(b)(1), 1.03(b), and 8.04(a)(8). He agreed to pay $400 in attorneys' fees and direct expenses.

On August 24, 2023, **RICHARD J.W. NUNEZ** [#15134600], of Brownsville, accepted a six-month fully probated suspension effective October 1, 2023. An evidentiary panel of the District 12 Grievance Committee found that Nunez failed to communicate with his client and failed to return an unearned fee.

Nunez violated rules 1.03(a), 1.03(b), and 1.15(d). He agreed to pay $6,150 in restitution and $800 in attorneys' fees and direct expenses.

On August 24, 2023, **KIRBY JEROME PORTLEY** [#24085865], of Austin, accepted a five-year partially probated suspension effective September 1, 2023, with the first 28 months actively served and the remainder probated. The 37th District Court of Bexar County found that Portley violated Rules 1.03(a) [failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information], 1.14(a) [failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property], 1.15(d) [failing, upon termination of representation, to reasonably protect a client's interests], 8.04(a)(7) [violating any disciplinary or disability order or judgment], and 8.04(a)(11) [engaging in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated].

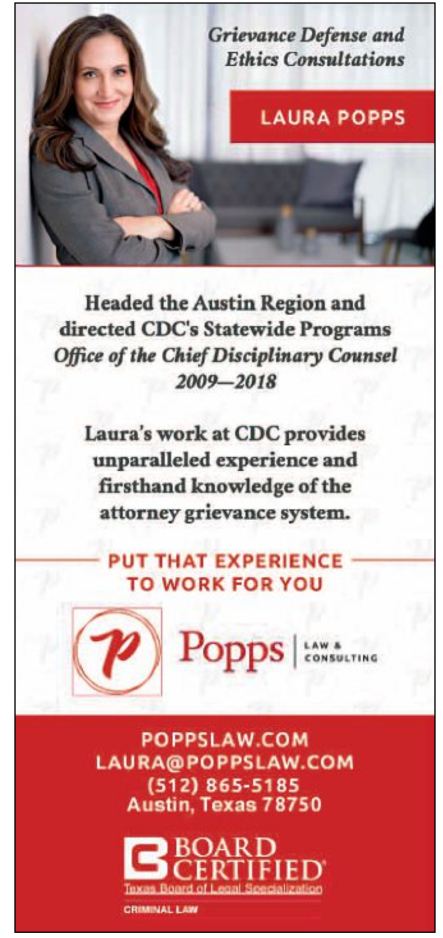
Portley was ordered to pay $2,000 in attorneys' fees.

PUBLIC REPRIMANDS

On August 3, 2023, **LEONARD MARC-CHARLES GIRLING** [#24074283], of Plano, agreed to a public reprimand. An evidentiary panel of the District 7 Grievance Committee found that in August 2021, the complainant retained Girling for representation in a lawsuit filed against the complainant by his tenants. The complainant paid Girling $3,500 to defend him in the suit. Additionally, the complainant retained Girling to file an eviction suit against the tenants (eviction case). The complainant paid Girling $2,500 to handle the eviction matter. In representing the complainant in the lawsuit, Girling neglected the legal matter entrusted to him by failing to file an answer to the lawsuit, causing the complainant to default in the matter and resulting in a judgment entered against the complainant. Girling applied the funds earmarked for the complainant's defense in the case filed against him by his tenants for attorneys' fees incurred by the complainant in the eviction case. Girling did not have the complainant's consent to apply his funds in this manner.

Girling violated rules 1.01(b)(1) and 1.14(c). He was ordered to pay $3,500 in restitution and $1,500 in attorneys' fees and direct expenses.

On August 29, 2023, **OLU MCGUINNIS OTUBUSIN** [#15346150], of Houston, accepted a public reprimand. An evidentiary panel of the District 4 Grievance Committee found that Otubusin assisted a person who is not a member of the bar in the performance of activity that constitutes the



unauthorized practice of law.

Otubusin violated rule 5.05(b). He was ordered to pay $1,000 in attorneys' fees and direct expenses.

PRIVATE REPRIMANDS

Listed here is a breakdown of Texas Disciplinary Rules of Professional Conduct violations for five attorneys, with the number in parentheses indicating the frequency of the violation. Please note that an attorney may be reprimanded for more than one rule violation.

1.01(b)(1)—In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer (3).

1.03(a)—A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (1).

1.14(a)—Failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property (1).

1.14(b)—Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property (1).

1.15(d)—Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fees that have not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation (1).

4.02(a)—In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so (1).

8.04(a)(8)—A lawyer shall not fail to timely furnish to the Office of Chief Disciplinary Counsel or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so (1). TBJ

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CENTRAL

TODD TINKER is now an attorney with Leger Ketchum & Cohoon in Boerne.

MARY EVELYN MCNAMARA, of Rivers McNamara in Austin, received the Joseph W. McKnight Award from the State Bar of Texas Family Law Section.

ZUBIN KHAMBATTA is now a partner in Holland & Knight in Austin.

GULF

MICAH DORTCH, CHRISTOPHER D. LINDSTROM, and **LANCE LIVINGSTON** established Dortch Lindstrom Livingston Law Group at 4306 Yoakum Blvd., Ste. 270, Houston 77006.

EMMANUEL ALMARAZ, MARY "KATY" ANDRADE, GREG HENSON, LUCAS MENG, JONATHAN M. STASNEY, and **HANNAH STRAWSER** are now associates of Chamberlain, Hrdlicka, White, Williams & Aughtry in Houston.

CADE WHITE is now a partner in McGinnis Lochridge in Houston.

SOLACE SOUTHWICK and **JENNIFER JOSEPHSON** are now of counsel to and **CODY RUTOWSKI** is now an associate of Hogan Thompson Schuelke in Houston.

FELICIA HARRIS HOSS, of Harris Hoss in Houston, was appointed co-chair of the Early Dispute Resolution Committee of the American Bar Association Section of Dispute Resolution.

GARY HEBERT is now a partner in Squire Patton Boggs in Houston.

JOHN G. GEORGE JR., of George PLLC in Friendswood, was appointed as co-chair of the Texas Real Estate Commission Broker-Lawyer Committee in Austin.

CLARISSA LEVINGSTON is now an attorney with McFarland in Houston.

DUSTIN APPEL is now a senior attorney with and **ANDREW W. BELL** is now an associate of Bradley Arant Boult Cummings in Houston.

MICHELE Y. SMITH, of MehaffyWeber in Houston, was elected 2023-2024 president of the International Association of Defense Counsel.

MITCH TIRAS is now a partner in King & Spalding in Houston.

NORTH

CHRISTOPHER JOHN is now an associate of McGlinchey Stafford in Dallas. **AIMEE GUIDRY SZYGENDA** is now of counsel to the firm in its Dallas office.

SCOTT DELANEY and **MATTHEW A. DURFEE** are now partners in Winston & Strawn in Dallas.

JOHN J. TUCKER is now a partner in Munck Wilson Mandala in Dallas.

MEAGAN LONG is now an associate of Angel Reyes and Associates-Reyes Brown Law in Dallas.

FERDOSE AL-TAIE, of Baker Donelson in Dallas, was elected co-chair of the American Bar Association Litigation Section White Collar and Criminal Litigation Committee.

MICAH DORTCH, CHRISTOPHER D. LINDSTROM, and **LANCE LIVINGSTON** established Dortch Lindstrom Livingston Law Group at 2911 Turtle Creek Blvd., Ste. 1000, Dallas 75219.

SOUTH

KELLY CHRISTY is now an attorney with Santoyo Wehmeyer in San Antonio.

ELIZABETH H. LAWRENCE is now an attorney with Prichard Young in San Antonio.

OUT OF STATE

STEPHEN E. KAPLAN is now of counsel to Hecht Walker Jordan in Atlanta, Georgia.

CARLTON T. KINCAID is now assistant general counsel to the U.S. Department of Defense in the National Capital Region in Leesburg, Virginia. **TBJ**

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JAMES R. "JIM" LOVELL

Lovell, 96, of Amarillo, died July 4, 2023. He received his law degree from Southern Methodist University School of Law and was admitted to the Texas Bar in 1951. Lovell served in the U.S. Navy from April 1945 to August 1946. He was an associate of C.D. Bourne in Dumas from 1951 to 1953; principal in Lovell & Lyle in Dumas from 1953 to 2016; and of counsel to Lovell, Lovell, Isern & Farabough in Amarillo from 2016 to 2020. Lovell was a State Bar of Texas director from 1972 to 1975; the recipient of several awards, including the State Bar of Texas President's Award in 1979; and was respectively the founder, inaugural president, director, and chair of the Texas Lawyer's Insurance Exchange from 1978 to 2009. He is remembered for his unrelenting optimism; love of his family; and serving his community, church, and profession. Lovell was survived by his daughters, paralegal Nita Dyslin, Laura Taylor, and Leslie Hawkins; sons, attorney John Lovell, Jim Lovell, attorney Joe Lovell, Jeff Lovell, and Jesse Lovell; stepdaughters, Carol Colunga, Linda Wolever, and Jenny Zeller; and 26 grandchildren and 26 great-grandchildren.

RUDY MACK GROOM

Groom, 91, of Mabank, died May 22, 2023. He received his law degree from the University of Houston School of Law and was admitted to the Texas Bar in 1961. Groom served in the U.S. Navy. He was a partner in Engel, Groom, Miglicco & Sullins in Houston from 1963 to 1967; a partner in Engel, Groom, Miglicco & Gibson in Houston from 1967 to 1985; a shareholder in Rudy M. Groom, P.C., in Houston from 1985 to 1988; and a shareholder in Groom & Groom, P.C., in Mabank from 1988 to 2018. Groom is remembered for his love of hunting, fishing, and watching his beloved Texas Longhorns. He is survived by his wife of three years, Glenda Groom; sons, Mike Groom and William Groom; daughters, Deborah Massey, Kathleen Durante, and Laurie Carder; brother, Donnie Groom; 13 grandchildren; and numerous great-grandchildren.

KENNETH GERALD BIDDLE JOYCE

Joyce, 83, of Mt. Juliet, Tennessee, died August 15, 2023. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1965. Joyce was also a member of the Tennessee Bar. He served in the U.S. Air Force in the Judge Advocate General's Corps from 1966 to 1996. Joyce was an attorney at Phan Rang Air Base in the Republic of Vietnam; assistant staff judge advocate at Bitburg Air Base in Germany; head lawyer at the Air Force Military Personnel Center in Texas; chief of personnel law at Headquarters United States Air Force at the Pentagon; chief of military law at Air Combat Command; staff judge advocate at the Air Force Communications Command; and staff judge advocate at the Air Education and Training Command. He received numerous military decorations, including the Bronze Star Medal, the Vietnam Service Medal, the Meritorious Service Medal, and the Legion of Merit; served on the Brookstone Homeowners Association Board of Directors; and was an usher, elder, and member of the Mission Team at Emmanuel Lutheran Church in Hermitage, Tennessee. Joyce is remembered for his love of collecting miniature automobile and aircraft models, spending time with his grandchildren, and taking walks and trips with Mary. He is survived by his wife of 58 years, Mary Ann Joyce; son, Scott Hardin Joyce; daughter, Kristen Joyce Parrish; brothers, Stuart Joyce and Christopher Joyce; sister, Debbie Dewey; five grandchildren; and two great-grandchildren.

JOHN ELZIE SIMPSON III

Simpson, 74, of Lubbock, died August 3, 2023. He received his law degree from Texas Tech University School of Law and was admitted to the Texas Bar in 1974. Simpson was also a member of the Virginia State Bar. He was an associate of the Splawn Law Firm from 1974 to 1978; a partner in Splawn and Simpson from 1979 to 2004; a partner in Splawn Simpson Pitts from 2004 to 2021; and of counsel to Craig, Terrill, Hale & Grantham from 2022 to 2023. Simpson received the Justice James G. Denton Distinguished Lawyer Award from the Lubbock Area Bar Association and the Distinguished Service Award from Texas Tech University School of Law and served on the American College of Trial Lawyers and the American Board of Trial Advocates. He is remembered as an avid golfer; a fierce fan of Texas Tech sports; and having an ongoing curiosity for history, religion, and music. Simpson is survived by his wife of 50 years, Carolyn; daughters, Corey Simpson Booker and Mary Kendall Simpson; sister, Dixie Cook; and four grandchildren.

CARLA JO BISHOP

Bishop, 72, of Houston, died April 24, 2023. She received her law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1976. Bishop was an attorney with the U.S. Department of Energy; the Coastal Corporation; Conoco Inc.; Coburn and Croft; and Marathon Oil Company. She was recognized by the *National Law Journal* in 1990 for her defense work. Bishop is remembered for being passionate for animal welfare, the environment, and human rights. She is survived by her brother, Mark Bishop and wife Luann; sister, Patricia Hollingsworth and husband Jay; and nieces, Kristin, Melissa, and Lauren.

SWANSON "ROCKY" WOODSON ANGLE

Angle, 82, of Frisco, died January 2, 2023. He received his law degree from the George Washington University Law School and was admitted to the Texas Bar in 1998. Angle served in the U.S. Air Force. He was also a member of the Virginia Bar. Angle was a NATO trial observer in Turkish criminal courts; a judge advocate, advising the commander and staff of the largest tactical wing in Europe; senior legal member of the Strategic Air Command at Offutt Air Force Base, Nebraska; private legal counsel specializing in contracts in St. Louis, Missouri, and Dallas; and retired as general counsel to Dallas Area Rapid Transit. Angle received the Commendation Medal, Meritorious Service Medal, and National Defense Medal from the U.S. Air Force. He is remembered for his devotion to loved ones; his love of music, especially the Eagles; and his appreciation of slapstick humor. Angle is survived by his wife of 55 years, Karen; son, Brian; daughter, Jill; and three grandchildren.

JOHN MICHAEL THOMA

Thoma, 78, of Centerville, died January 22, 2023. He received his law degree from the University of Houston School of Law and was admitted to the Texas Bar in 1969. Thoma served in the U.S. Army from 1969 to 1971 as a Signal Corps group legal officer stationed in the Republic of Vietnam. He was an attorney in the Galveston District Attorney's Office in 1971; an attorney with Tramonte & Tramonte in 1974; an attorney with the Galveston District Attorney's Office a second time from 1978 to 1981; judge of Galveston County Court at Law No. 1 for three terms; a private practitioner with David Cook from 1994 to 2000; and a solo practitioner from 2001 to 2014. Thoma was a fellow of the College of the State Bar of Texas; served with the Texas Forestry Association; and received the Bronze Star Medal, Meritorious Service Medal, and the Commendation Medal from the U.S. Army. He is remembered for his easygoing manner, friendly smiling face, and his willing and generous ability to make things better in any way he could. Thoma is survived by his wife of 55 years, Jennell Coy Thoma; daughters, Dawn Thoma and Eve Thoma; sister, Ann Cook; and two grandsons.

ROBERT MARCUS CADY

Cady, 80, of Dallas, died March 15, 2023. He received his law degree from Southern Methodist University School of Law and was admitted to the Texas Bar in 1966. Cady practiced criminal defense and family law. He is remembered for being an avid outdoorsman, having hunted on four continents and especially loving hunting quail, and for his love of golf. He is survived by his son, Robert Marcus Cady II; daughter, Marla Cady Gober; and brother, John Cady.

JOE W. STEELMAN

Steelman, 86, of Houston, died August 2, 2022. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1963. Steelman served in the U.S. Army from 1955 to 1958. He was an attorney with the Law Offices of Joseph W. Steelman. Steelman is remembered for his love of gliding; sailing on his boat the Discovery for decades, joining regattas to Mexico; and speaking, reading, and writing in Spanish. He is survived by his wife of 63 years, Peggy Steelman; daughters, Cindy E. Steelman, Laura A. Steelman, Ki Browning, and Jessica Shepherd; sister, Barbara Steelman; and two grandchildren.

SELDEN B. HALE III

Hale, 84, of Amarillo, died September 7, 2022. He received his law degree from St. Mary's University School of Law and was admitted to the Texas Bar in 1967. Hale served in the U.S. Marine Corps in 1960 and enlisted in the Amarillo reserve unit on active and reserve duty. He was also admitted to the Bar of the Supreme Court of the United States. Hale was counsel to the Pioneer Natural Gas Company; a Texas ACLU cooperating lawyer in the Panhandle; and a professor of criminal justice and weapons courses at Amarillo College, where he established a corrections officer scholarship out of his teaching salary for students going into corrections. He was appointed by Gov. Ann Richards as chair of the Texas Board of Criminal Justice, where he was instrumental in the construction of state prison units in Amarillo, Dalhart, Plainview, Pampa, and Tulia and establishing drug and alcohol treatment programs for prisoners; was instrumental in the development of the Texas Sentencing Standards Commission; and was active in many civic and charitable organizations. Hale is remembered for his love of mules, hunting, and building fences in Gruver. He is survived by his wife, Claudia DeLaughter Stravato; daughters, Sarah Hale Uselding, Mona Maria Hale, and Anna Stravato Ashby; sons, Selden B. Hale IV and Michael Stravato; brother, Thomas Hale; and 10 grandchildren. **TBJ**

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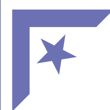

STATE BAR OF TEXAS
AT-LARGE DIRECTOR SOUGHT

The State Bar of Texas is accepting nominations for an at-large director position on the Board of Directors. Four at-large positions on the board are required to be appointed by the president of the State Bar subject to confirmation by the board of directors. One position will become vacant in 2024. At-large directors serve three-year terms, and this year the term begins June 20, 2024.

In making the appointments, the president is required to appoint directors who demonstrate knowledge gained from experience in the legal profession and community necessary to ensure the board represents the interests of attorneys from the varied backgrounds that compose the membership of the State Bar of Texas.

An Ad Hoc Committee to Nominate At-large Directors will recommend two candidates to the State Bar president, who will select one candidate for appointment subject to ratification of the State Bar board. Nominees will be responsible for their own expenses related to the interview process.

CRITERIA FOR SELECTION

Any active, licensed lawyer in good standing with the State Bar is eligible to be nominated, provided such lawyer is not currently serving as an elected director or appointed director. The Ad Hoc Committee shall nominate only persons who demonstrate knowledge gained from experience in the legal profession and community necessary to ensure the board represents the interests of attorneys from the varied backgrounds that compose the membership of the State Bar of Texas.

The Ad Hoc Committee shall be guided by, but not limited by, the following criteria in selecting its nominees for at-large director:

- The degree of representation already on the State Bar Board of Directors from a particular geographic area, substantive area of practice, and size of practice.
- The population of the area in which the nominee resides and practices.
- The content of a nominee's recommendation letters.
- The size of a nominee's practice.
- A nominee's:
  - substantive areas of practice;
  - demonstration of leadership ability;
  - involvement in civic activities within the community;
  - participation in local and specialty bar associations;
  - participation in local bar, State Bar, and American Bar Association committees, sections, and activities; and
  - years of licensure.

The deadline for nominations is December 1, 2023. Persons interested in being nominated for the position should submit the following: an application (found at texasbar.com/atlarge), a nomination letter from a third party (self-nominations will not be accepted), a resume, three to five letters of recommendation, and a brief personal statement of no more than 500 words explaining why they have "knowledge gained from experience in the legal profession and community necessary to ensure the board represents the interests of attorneys from the varied backgrounds that compose the membership of the State Bar." For more information, go to texasbar.com/atlarge.

Submit the information to:

AD HOC COMMITTEE TO NOMINATE AT-LARGE DIRECTORS

jennifer.reames@texasbar.com

Or by regular mail, c/o State Bar of Texas
P.O. Box 12487
Austin, TX 78711-2487

Email questions to jennifer.reames@texasbar.com.

Please note that an application for at-large director does not preclude an applicant from seeking election to a geographic area board position. Petitions for the elected board member positions must be received at the State Bar headquarters by March 1, 2024.

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Swifties, IN LAW

WRITTEN BY **JOHN G. BROWNING**

I'M RAPIDLY COMING TO THE CONCLUSION that it's Taylor Swift's world and we just live in it. She recently finished the U.S. leg of her 146-show, five-continent "Eras" tour that some experts estimate will gross $1.4 billion and set the record for highest grossing tour ever. Taylor Swift has boosted economies everywhere; in Philadelphia, the Federal Reserve credited the city's highest month of hotel revenue in the post-COVID-19 era to "an influx of guests for the Taylor Swift concerts in the city." World leaders like Canada's Justin Trudeau have pleaded online with her to add concert dates in their countries. And her tour has been literally earth-shaking: in Seattle the dancing of joyous concertgoers produced the "Swift Quake," a seismic effect equivalent to a 2.3 magnitude earthquake. People from all walks of life, from pre-teen girls to NFL quarterbacks, make up the "Swiftie" fanbase.

Apparently, that includes a number of judges, who have no qualms about proudly flying their Taylor Swift flag. Take U.S. District Court Judge Gail Standish, of California, for example. In 2015, Judge Standish presided over a copyright infringement suit brought against the pop star by musician Jessie Braham. Braham claimed that 92% of Swift's hit song "Shake It Off" came from his song "Haters Gone Hate." As Swifties know, her song has the lyrics "Cause the players gonna play, play, play, play, play/And the haters gonna hate, hate, hate, hate, hate/And the fakers gonna fake, fake, fake, fake, fake."

Judge Standish dismissed Braham's case, but cheekily included lyrics from Taylor Swift songs throughout her opinion. She wrote, "At present, the Court is not saying that Braham can never, ever, ever get his case back in court. But, for now, we have got problems, and the Court is not sure Braham can solve them." Judge Standish continued as the plaintiff's $42 million suit circled around the drain:

> As currently drafted, the Complaint has a blank space—one that requires Braham to do more than write his name. And, upon consideration of the Court's explanation . . . Braham may discover that mere pleading BandAids will not fix the bullet holes in his case. At least for the moment, Defendants have shaken off this lawsuit.

Look what you made me do, judge. Judge Standish is hardly alone. In 2021, Judge Joshua Wolson, of the U.S. District Court for the Eastern District of Pennsylvania, channeled his inner Swiftie in a free speech lawsuit. In a case filed by Crash Proof Retirement, LLC, a retirement-planning consulting business, against Paul Price, a former stockbroker who wrote about Crash Proof Retirement, Judge Wolson quoted "Shake It Off." He wrote:

> If free speech means anything, it means that you do not get to sue people because you don't like their opinion of you. In the immortal words of Taylor Swift, although "haters gonna hate, hate, hate . . . ," sometimes you just have to "shake it off." "Shake it off," however, Crash Proof Retirement did not. Instead, it sued Paul M. Price . . .

Holding that Price's article was neither commercial speech nor did it promote or advertise a product, Judge Wolson dismissed Crash Proof's case because Price was merely voicing an opinion.

Even our U.S. Supreme Court justices seem to be aware that an understanding of all things Taylor Swift is the key to modern jurisprudence. During a 2021 oral argument in a case involving whether two Georgia students could sue their college for nominal damages, multiple justices like Justice Elena Kagan, Justice Amy Coney Barrett, and Justice Neil Gorsuch analogized the situation to Taylor Swift's lawsuit against a Denver radio host she said had groped her. Swift famously sought (and won) $1 in nominal damages, a figure that Justice Kagan said "is going to represent something both to me and to the world of women who have experienced what I've experienced."

The ranks of "Swiftie jurists" are not just limited to American borders, either. Justice Arturo Zaldívar Lelo de Larrea, of Mexico's Supreme Court of Justice of the Nation, is an unabashed fan who has shared his affection for the singer and her music in multiple writings and social media posts. Justice Zaldívar even authored an op-ed in the newspaper *Milenio* titled "This is Why I Like Taylor Swift." Calling Swift "a cry of rebellion, an example of intellectual honesty, and a cascade of dreams of all colors and sounds," Justice Zaldívar wrote that her "lyrics remind us that it's OK to be vulnerable, to be different, to make mistakes, and to love oneself fully."

Our nation's lawmakers are also well-versed in Taylor Swift discography. When the U.S. Senate Committee on the Judiciary convened to question executives from ticketing giant Live Nation over its business practices regarding ticket sales for the "Eras" tour, there was no shortage of bad blood (see what I did there?). Senators like Amy Klobuchar, of Minnesota, and Mike Lee, of Utah, produced some cringeworthy Swift references, with Lee calling the situation a "nightmare dressed like a daydream."

Senators, don't quit your day jobs. As Taylor Swift herself might say, "This is why we can't have nice things." **TBJ**

JOHN G. BROWNING is a former justice of the 5th Court of Appeals in Dallas. He is a past chair of the State Bar of Texas Computer & Technology Section. The author of five books and numerous articles on social media and the law, Browning is a nationally recognized thought leader in technology and the law.

From left: State Bar of Texas President Cindy Tisdale, Kim J. Askew, and incoming ABA Texas Delegate Judge Lora Livingston at the ABA Annual Meeting on August 8 in Denver. Photo courtesy of Kim J. Askew

Judge Lora Livingston succeeds Kim J. Askew as ABA's Texas delegate

After a maximum of nine years of service, Kim J. Askew was succeeded by retired Judge Lora Livingston as the Texas state delegate in the American Bar Association House of Delegates. Askew, a partner in DLA Piper in Dallas, is a longtime member of the house, having previously served as the delegate for the ABA Section of Litigation and the Dallas Bar Association. She continues ABA service as the delegate for the American Law Institute. "I have long supported the State Bar of Texas and worked on behalf of Texas lawyers," Askew said in an email to the *Texas Bar Journal.* "Serving as the ABA Texas delegate was a continuation of my service to Texas lawyers. Plus, I enjoy being at the heart of debates on some of the major issues facing lawyers and courts." Livingston was elected to Travis Country's 261st District Court in 1999, becoming the first African American woman to preside over that court. She assumed the mantle of Texas' delegate following the ABA's 2023 Annual Meeting on August 8 in Denver. She is eligible to serve up to three, three-year terms as delegate. State delegates are elected by eligible ABA members in that state. Once elected, they become members of the ABA's House of Delegates, the legislative and policy arm of the ABA. Delegates serve on the nominating committee that selects ABA officers and the board of governors, vote on ABA policy, and work with various state and local bars. For more information about the ABA, go to americanbar.org.

DENISE SCOFIELD, SANTOS VARGAS RECOMMENDED AS STATE BAR PRESIDENT-ELECT NOMINEES

The State Bar of Texas Board of Directors Nominations and Elections Subcommittee voted August 28 to recommend the nomination of Denise Scofield, of Houston, and Santos Vargas, of San Antonio, as candidates for 2024-2025 State Bar president-elect. If the board approves their nominations, Scofield and Vargas would appear on the ballot in April 2024 along with any certified petition candidates. Potential petition candidates can begin collecting signatures on September 1, 2023, and have until March 1, 2024, to submit their nominating petitions to the State Bar for certification. This year, the subcommittee considered candidates from metropolitan counties of the state (Bexar, Dallas, Harris, Tarrant, and Travis), in compliance with State Bar rules. Nominations and Elections is a subcommittee of the State Bar board co-chaired by Immediate Past President Laura Gibson and Immediate Past Board Chair Chad Baruch.

STATE BAR OF TEXAS OFFERS ATTORNEYS FREE TOOLKIT FOR SUCCESSION PLANNING

What happens when an attorney stops practicing without warning? Health issues, unexpected deaths, and other emergencies can cause attorneys to cease practicing abruptly. Recent studies undertaken by the State Bar of Texas show such instances are on the rise and can leave attorneys' law partners or even family members scrambling to access client documents and close practices. Now the bar is offering a free Succession Planning Toolkit to help. "The new Succession Planning Toolkit is a one-stop shop for attorneys to find everything they need to plan ahead and prevent their partners or loved ones from being left to handle everything if the unexpected happens," State Bar of Texas President Cindy Tisdale said. Succession planning was one of the top initiatives of State Bar of Texas Immediate Past President Laura Gibson. The toolkit takes attorneys through a series of steps, beginning with designating a custodian and including managing files, closing IOLTA accounts, and more. The toolkit was created by the State Bar of Texas Law Practice Management Committee and Law Practice Management Program. To access the toolkit, go to texasbar.com/successiontoolkit.

TAJC VETERANS COMMITTEE TO PROVIDE FREE LEGAL CLINICS FOR VETERANS

The Veterans Committee of the Texas Access to Justice Commission, or TAJC, is partnering with legal service providers, bar associations, and other organizations throughout the state to provide free legal clinics for low-income Texas veterans on November 4. In recognition of Veterans Day, clinics are being set up on November 4 at VA outpatient clinics and other venues. Legal issues may include family law, wills and probate, consumer law, tax law, property issues, and disability benefits, among other civil issues. The Veterans Committee is chaired by State Bar of Texas Past President Terry Tottenham (2010 to 2011) and retired U.S. Army Maj. Gen. Alfred Valenzuela. "Post-COVID, we are renewing our efforts to provide free civil legal services to all Texas veterans who qualify for this assistance," Tottenham said in a press release. "The need is now more apparent than ever, and we know Texas lawyers will answer this call." To volunteer for a veterans clinic or for more information, please email Dominga Titus at dominga.titus@texasbar.com.

SUELLEN PERRY NAMED LAW-RELATED EDUCATION TEACHER OF THE YEAR

Suellen Perry, a legal studies career and technical education instructor at Henderson High School in Henderson, has been named a Law-Related Education Teacher of the Year by the American Lawyers Alliance, a nonprofit whose mission is to promote understanding and appreciation of the law and the American legal system. Perry, a graduate of UC Berkeley School of Law, was selected based on her innovative course curriculum, which features topics such as "Principles of Law," "Court Systems and Practices," and dual credit criminal justice courses among several others. With her experience as a law clerk to the Hon. John Hannah, U.S. District Court judge in Tyler, as a Tyler-based assistant U.S. attorney, and as an attorney in private practice for 20 years, Perry has a background in the law that provides her students a real-world experience. In 2022, she was also named the TEX-ABOTA Champion of Civil Justice. **TBJ**

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UPCOMING TOPICS

October	Laura Frederick, founder and CEO of "How to Contract"
November	Serving Veterans' Legal Needs
December	Year in Review

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The Pro Bono Spotlight features attorneys chosen by the Texas Access to Justice Commission or the State Bar of Texas for their exceptional commitment to pro bono work. Find pro bono opportunities, support, and inspiration at probonotexas.org.

Richard PENA

RICHARD PENA'S REASON FOR TAKING ON PRO BONO WORK IS STRAIGHTFORWARD: HE BELIEVES IT IS SIMPLY THE RIGHT THING TO DO. IN THE WORLD OF WORKERS' COMPENSATION CLAIMS, WORKERS WHO SUFFER INJURIES, AFFLICTIONS, OR THREATS TO THEIR INCOME BENEFITS SOMETIMES FACE IMMEDIATE FINANCIAL HARDSHIP IN THE ABSENCE OF SUCH BENEFITS. IN THESE SITUATIONS, PENA KNOWS HIS COMMITMENT TO OFFERING LEGAL ASSISTANCE AT MINIMAL OR NO CHARGE CAN MAKE A PROFOUND DIFFERENCE IN BENEFIT RECOVERY. THE AUSTIN-BASED SMALL FIRM PRACTITIONER AND 1998-1999 STATE BAR OF TEXAS PRESIDENT CAUGHT UP WITH THE *TEXAS BAR JOURNAL* TO DISCUSS THE IMPORTANCE OF PRO BONO WORK IN BOTH HIS CAREER AND LIFE.

INTERVIEW BY **WILL KORN**
PHOTO COURTESY OF **RICHARD PENA**

WHAT KIND OF PRO BONO WORK DO YOU DO AND HOW LONG HAVE YOU BEEN DOING IT?

I represent people who have been injured on the job and have been doing this for over 40 years. I have been doing pro bono work for the same amount of time. I am fortunate in that the type of work I do gives me multiple opportunities daily to represent people on a pro bono basis. In fact, probably over half of my caseload is composed of pro bono cases. A typical scenario I see on a daily basis has to do with an individual who is being denied income benefits and treatment under the Texas Workers' Compensation system. It is not unusual for this person to have suffered a serious injury at work, have a family with small children, and live paycheck to paycheck. Suddenly he or she cannot work, therefore does not get a paycheck, and is not receiving weekly income workers' compensation benefits as the carrier is contending the injury is a sprain rather than a herniated disc or rotator cuff tear.

WHY DO YOU DO PRO BONO WORK?

I feel fortunate that I can help people who need help. I am honored to be an attorney and have always felt that our duty is to help those who need our help. I tell the college students who work for me that a lawyer carries a shield and a sword. The shield is to protect the clients and the sword is to strike for justice. I represent these people because it is the right thing, they need me, and I have faith that the fees will take care of themselves.

HOW WOULD YOU SAY HANDLING PRO BONO WORK HAS BENEFITED YOUR LAW CAREER?

I have found that the more pro bono work I do, the greater the tangible rewards are to my office and personal career. The reality is that most people become lawyers to make a positive difference in people's lives. Doing pro bono work allows you to do that. Along the way, doing pro bono work allows a lawyer to develop and fine tune legal skills, network with other lawyers, and fulfill your professional responsibility. I have found that doing pro bono work brings positive energy to me and those around me. In a broader sense, it also helps the lawyer lead a more balanced professional life. It really is a win-win situation between the client and the lawyer.

DESCRIBE A PARTICULARLY MEMORABLE PRO BONO CASE YOU'VE HAD.

Years ago, I was representing a state worker in a workers' compensation case. She had limited vision, had stumbled, and fallen onto her knees. Shortly after her fall, her legs started swelling. As the insurance company was accepting only a knee strain, it would not pay for her to see a proper doctor for the swelling of her legs. Doctors would not see her because they said it was a workers' compensation case. The condition progressed to massive swelling and gross enlargement of the legs and other parts of the body. We pleaded with a specialist to see her without payment, and he concluded she probably had a condition similar to elephantiasis, which is caused by obstruction of the lymphatic system and can be caused by trauma. I asked for an emergency hearing. The doctors said her organs were being affected, and she continued to grow to the point where she weighed well over 500 pounds.

We found a hospital in Houston who would accept her for emergency surgery if the workers' compensation carrier would accept the condition and pay the bill. Doctors said she had days to live. I went to the benefit review conference and asked for an interlocutory order, which is seldom given. The hospital in Houston was on call waiting for her if we won. She was so heavy that a pully was needed to get her out of bed, and she was put in the back of a U-Haul as she would not fit in a car. The hospital was on alert and waiting for her if we got the emergency order. The U-Haul was waiting in the parking lot outside the hearing. After arguments of both sides, the benefit review officer issued the emergency interlocutory order. We got a copy of the order, gave it to the driver of the U-Haul, and notified the hospital. Upon her arrival, they took her into surgery, and they saved her life. In what I do, every day brings a new memorable case. I feel lucky to have this opportunity and every day is a challenge.

WHAT WOULD YOU SAY TO AN ATTORNEY WHO IS CONSIDERING PRO BONO FOR THE FIRST TIME?

Just do it. **TBJ**

Opinions expressed on the Texas Bar Blog and in the *Texas Bar Journal* are solely those of the authors. Have an opinion to share? Email us your letters to the editor or articles for consideration at tbj@texasbar.com. View our submission guidelines at texasbar.com/submissions.

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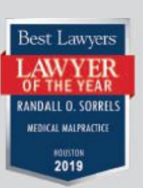

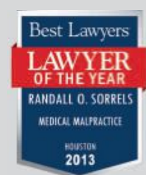

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