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The College Bulletin

News for Members of the College of the State Bar of Texas

Fall 2014

Lawyers and Learning

I AM HONORED TO SERVE AS CHAIR of the State Bar College. Becoming a member of the College was a result of my efforts as a recently licensed attorney to obtain the knowledge necessary to provide high quality legal services to clients and to improve the public perception of lawyers.

After passing the bar exam I quickly realized that I knew a lot of law but not a lot about the practice of law. However, family, friends, and even strangers assumed that I practiced in all areas of the law. Whenever someone said "She's a lawyer" I could see the questions coming. I discovered that these were not all random encounters with persons seeking legal advice. Family members were telling their neighbors, co-workers, and friends that I could answer their legal questions. My uncle was giving my home telephone number to the members of his church. I had to act quickly in order to respond to these inquiries. Changing my telephone number was not an option I wanted to take.

I began to sign up for CLE courses that would teach me the practice of law. As I attended courses I realized that learning not only consisted of the course content but also of being in the midst of colleagues intent on becoming better lawyers. Exchanging emails and telephone calls paled in comparison to the face-to-face conversations I had with attorneys attending CLE courses. I am still not sure if all of the stories of their days in court were true but they were entertaining. I asked a seasoned attorney how to prepare for the kinds of cases that crossed my desk. He looked at me, smiled, and said "You just keep on living and keep on learning."

In my quest to learn as much I could I struck gold. I attended the State Bar College Summer

School. The course was held at Moody Gardens in Galveston.. The two and a half day course included topics ranging from the ABC's of Divorce to the Basics of Texas Water Law. The speakers were excellent. The focus was on the application of the law rather than reciting case holdings.

One of the greatest things about Summer School was the participants. There were about two hundred attorneys in attendance. The atmosphere was relaxed and the attorneys did not mind sharing their knowledge with a newly licensed attorney. I began friendships that have continued over the years. Whenever I am approached by a less-experienced attorney I pay it forward because I am eternally grateful to those attorneys who helped me.

After that Summer School session I was hooked. Every year the third week of July is blocked out for me to attend Summer School. Family members have calendared it as well. They want to enjoy Moody Gardens while I attend Summer School. I assume this is their on-going recruitment bonus. I encourage attorneys to attend the course. An attorney can be submerged in various areas of the law, accumulate from fifteen to eighteen hours of CLE, and meet lots of other attorneys, while the family enjoys Moody Gardens. It's a win-win situation.

From the Chair



Veronica Jacobs

Shortly after attending Summer School I received information about joining the State Bar College. I had no idea what the College was or why it would be beneficial to be a member.

The State Bar College was established by the Texas Supreme Court in 1981 to promote and recognize attorneys who pursue excellence through voluntary attendance at CLE programs. To qualify for membership attorneys must complete twice the minimum CLE requirement. Sponsorship or assistance in the sponsorship of educational activities of significant merit and relevance to the legal profession is an additional purpose of the College. The College also recognizes attorneys for outstanding service to the legal profession and the public by presenting annual awards.

When told that the price to join was only \$45 (the cost to join is currently \$60) I wanted to know what I would get for my money. I can now say that it was and continues to be money well spent. The benefits of being a member of the College of the State Bar of Texas are:

- **A free annual subscription to the Online Library**, a service of TexasBarCLE.com, which provides searchable, 24-7 access to TexasBarCLE course materials from 1998 to date.
- **Joining forces** with the elite group of lawyers and judges who lead our profession.
- **Distinguishing yourself as member of the College** by displaying The College membership logo on your letterhead, your business cards, on your web site, and in professional notices in public media.
- **Creating an opportunity** to adjust your compensation as an attorney, commensurate with your special status as a member of The College.
- **Qualifying for discounts** when attending live or video programs of TexasBarCLE, the State Bar's award-winning CLE department.
- **Receiving a discount** on the registration fee for The College's annual "Summer School," presented by TexasBarCLE, which provides updates in all major areas of practice.

Being a member of the College has benefitted me professionally and personally. I have been able to keep up to date on the latest changes in major areas of the law. I have networked with attorneys that I would not encounter in my daily practice, and I have made some great friends. I encourage each of you to become a member of the College if you have not joined, maintain your membership if you have already joined us, and to encourage other attorneys to go that extra mile to qualify and become a member of the College.

Please contact the College and share your feedback on being a member of the College. I am looking forward to serving as your chair.



State Bar College Creates New Standing Committee

By Hon. Leta Parks

For several years, members of the Board of Directors of The College of The State Bar have informally donated time, money and expertise to service projects during the annual Summer School Program.

Projects have included such things as donating backpacks filled with back-to-school necessities to elementary school students, presenting students with information and pamphlets on the United States Constitution, and donating funds from their own pockets to the Gulf Coast AIDS Coalition. At its Fall 2013 meeting, the Board of Directors voted to make the Service Project a permanent committee with a focus on education.

As its first official annual project the Service Project Committee produced a 2 ½ hour presentation to the Family Service Center of Galveston and its invitees, on responding to subpoenas and testifying in court. (See photos next page.) The Family Service Center is a non-profit organization that offers services to families who are involved in the Criminal Justice or Child Protective System. The title of the presentation, which was held July 14, 2014 during Summer School, was "What To Do When The Subpoena Comes." Approximately 50 attendees, primarily Mental Health Professionals, came to the Galveston Public Library to hear College board members discuss topics such as responding to a subpoena, appropriate courtroom demeanor and dress, as well as legal issues involving HIPAA and mental health privileges.

Making the presentation were Board Chair Veronica Jacobs, Former Chair Judge Leta Parks, Patsy Micale, John Grace and Warren Cole. The presentation was very enthusiastically received and the audience expressed tremendous appreciation for the information imparted.

Participation in the annual Service Project is not limited to Board members. Ideas for projects and participation by any College member are encouraged. Please contact Merianne Gaston at merianne.gaston@texasbar.com and she will share with the Service Project Committee.



(above, left to right:) John Grace, Patsy Micale, Warren Cole, Hon. Leta Parks, and Veronica Jacobs. (below:) Attendees.



Make your tax-deductible donation today and become an Endowment Fund Scholar!

The Endowment Fund for Professionalism has been established by the College to underwrite projects and services that contribute to higher standards of education and performance among lawyers. For example, some proceeds from the fund will be used to establish free access for all College members to the State Bar of Texas' Online Library, which provides immediate, word-searchable access to more than 20,000 CLE articles written by experienced members of the bar. Many lawyers find that beginning their research in the Online Library gets them the practical information and analysis they need more quickly and more thoroughly.

After five continuous years of College membership, a lawyer becomes eligible to join the Fund. Levels of membership vary according to the lawyer's financial commitment. Choose your membership level:

- **Endowment Fund Scholar.** The Scholar commits to at least a \$1,000 contribution which may be paid out at \$200 per year.
- **Honored Endowment Fund Scholar.** The Scholar has reached the \$1,000 contribution level.
- **Sustaining Endowment Fund Scholar.** The Scholar continues to make annual contributions of at least \$200 per year.
- **Friends of the Endowment Fund for Professionalism.** Non-qualifying College members or non-College members may contribute to the Fund.

Members of the Fund and Friends of the Endowment Fund will be acknowledged by the College. Remember, the Fund will achieve its goals with your commitment. See the back page of this *Bulletin* to consider joining the Fund today! ■



I Could Have Danced All Night

By Warren Wolf

ONE OF THE GREAT EXPERIENCES OF MY LEGAL CAREER was to argue before the United States Supreme Court. This is a summary of some of my impressions from that experience. On reflection of my impressions, two books come to mind, both of which later became musical plays on Broadway.

The first book is *The Once and Future King*, by T. H. White, which served as the basis for the play *Camelot*. The story of getting a Writ of Certiorari granted by the Supreme Court can be compared to that of young King Arthur as he pulled the sword out of the stone.

The second book that comes to mind is *Pygmalion*, by George Bernard Shaw, which later came to life on the Broadway stage as *My Fair Lady*. My experience getting learning every aspect of Supreme Court advocacy was similar to that of Eliza Doolittle preparing to go to the ball.

Getting the Word

I found out that Cert was granted on October 29, 2012 the day Hurricane Sandy crippled the East Coast. Washington had shut down but the nine Justices of the Supreme Court weathered the storm and came in to work that morning. They granted only four writs and turned away several hundred others. One of the grants was *Trevino v. Thaler*.

I was standing at the bench in the 436th District Court, a juvenile court. My cell phone vibrated. I looked at it and the caller was Dick Burr. Dick is a death penalty and habeas resource attorney who has been helping me with Carlos Trevino's case ever since I had been appointed in 2002.

As soon as the hearing was over I called. Dick told me that Cert had been granted. I later found out that approximately 80 out of 8,000 are granted annually. I felt as if I had pulled the sword out of the stone. Magical!

You Don't Do This Alone

Many offers started to pour in from Supreme Court "specialists." Some were former briefing attorneys. All were from big firms with partners who argue before the Supreme Court on a regular basis. I resisted their entry into the case. I

really wanted to do the oral argument but to get ready meant a lot of preparation.

I cast a wide net seeking guidance and help from everyone I knew in the habeas community. Many people helped along the way. Bud Ritenour has been my co-counsel for the past 6 years, replacing Alan Futrell. Bud was chiefly responsible for writing the Cert petition. Alan recruited others to write the original successor. I had become a mitigation investigator after we were denied assistance from the Court.

Where others getting ready for oral argument might endure two or three moots (practice oral arguments) I wound up doing ELEVEN! I was determined to make this work.¹ Not only did I endure the eleven moots but we videotaped them as well. Not only could I go over each moot but at the suggestion of Jack Carter I could turn off the sound and watch them to see if I had any annoying idiosyncratic gestures that I needed to control.

A huge addition to the team came through Dick Burr's acquaintance with Seth Waxman. Seth, a partner with the

¹ Professor David Dow at the University of Houston Law School hosted the first and the eighth. I did two at Texas Tech Law School in Lubbock thanks to Prof Pat Metzger. One was held in Austin before the death penalty clinical professors at the University of Texas. (They also combined with Professor Dow to write an amicus brief.) Two were done in San Antonio: one was at St Mary's Law School, my alma mater; and the other was before members of the Federal Public Defenders office in San Antonio's Western District, which boasts of two successful first time oral advocates before the Supreme Court (Carolyn Fuentes and Jack Carter). An added bonus was a guest appearance by Professor Robert Bartels of Arizona State University in Tucson Arizona, who was the attorney who argued the *Martinez* case before the Supreme Court. Wanting a non-Texas point of view, we persuaded Prof. Andrea Lyon at DePaul University in Chicago to host a moot as well. Bud accompanied me to every moot except the one in Chicago.

Washington D.C. based firm Wilmer Hale had been the U. S. Solicitor General during the Clinton administration. He agreed to help Bud and me write the brief and reply and put together the joint appendix.²

Others were called in to help, including Prof. Tony Amsterdam at NYU Law School whose insight into the Justices' idiosyncrasies was invaluable in shaping the brief and the oral argument.

Another extremely important person in this effort was Buck Files, who was then President of the State Bar of Texas. It's beyond current memory since a criminal defense attorney had last been state bar president. We agreed that it would be helpful for the State Bar to reassert its desire to improve the quality of capital defense as it set out in the Texas Guide for Capital Defense. Buck made it happen within the short time frame for the amicus briefs to be filed. And Justices Kennedy and Breyer favorably referred to the State Bar's brief as least four times during oral argument.

Commitment

When I decided to make this effort I realized that it would take a lot of sacrifice. I sent a "vacation letter" to all of the court's suspending my availability to take any new court appointments.

Financially, it was not going to be easy. Bud and I have still not been paid for our work in the 5th Circuit to get the case to this point. As Benjamin's (Dustin Hoffman) dad's friend advised in the movie "The Graduate" "PLASTICS!" I am lucky to have good credit. But I knew that the experience would be priceless.

As the time grew closer, the pressures to give up the oral argument became stronger. I had many people from around the country who said I should defer to Seth for all of the obvious reasons. But I really wanted to do this oral argument. In the final analysis I have a lot to thank Seth for. I told him how I felt about doing the argument and he replied "Everybody has to have his first..." and we never looked back.

The people who knew me best—local lawyers including Gerry Goldstein, Stan Schneider, Mark Stevens, and Mike Gross among countless others—to a man and a woman all advised me to keep the case. I was not going to give it up.

The circle of people helping on the case, at one time literally numbered into the hundreds now became a very tight knit group. Bud Ritenour; co-counsel, advisor, deputy and trusted friend never wavered in his support. My wife, Teresa (who had sacrificed enormously in many respects during this ordeal) and my daughter Robin who grew up watching her dad defend numerous clients stood fast and were an unfaltering source of support.

² Just an aside. Everything in the Supreme Court is dictated by special rules. The forms of the brief—booklet form—the number of words, the size of the font and on and on. The number of people and man/woman hours Seth contributed to this effort is staggering.

Becoming Familiar With the Court

How do you prepare for your first oral argument before the Supreme Court? Not living in the DC area, not going to law school in the DC area, and not clerking for a Supreme Court Justice as my opponent had, I needed to be creative in my preparation.

Eleven moots before former briefing attorneys, some who had appeared before the Court and others who were students of the Supreme Court aided my preparation.

In addition, I listened to over 100 hours of oral arguments especially the *Martinez v Ryan* case that ours was so inextricably linked. (Oyez.com, now Scotus.com, is a wonderful website.) I listened to Justice Abe Fortas, who argued *Gideon v. Wainwright*, and watched the Henry Fonda movie version just to see the courtroom scene over and over again.

I watched a DVD of a CNN documentary on the Court. Not only did the DVD show the courtroom but also it explained the history of the Court. It contained interviews with many of the Justices, including Justice Clarence Thomas (whose voice no one would hear as always during the oral argument). It discussed not only the oral argument but also the process of how Cert is granted and how cases are decided. It actually showed the room where only the nine Justices sit to decide the cases and NO ONE else is permitted entry. (One interesting note was that when discussing the cases, the order follows seniority and no one is allowed to speak a second time until all nine have an opportunity to voice their opinions.)

I read biographies about all of the Justices; where they went to school where they grew up, what part of the country they were raised.

I researched the profile of my opponents; that changed at the last minute.

I read about Supreme Court procedure, the history of oral argument, and techniques to better present oral argument.

I read books by the Justices, including Justice Scalia, as well as books by Professors Dow and Lyon.

A great mental and moral boost came the previous August when one of the Supreme Court clerks, Mrs. Tyce, gave my wife and I a special tour after we took the public tour. She took us into the courtroom—not just the area where the general public sits but inside the bar. She said, "This is where you will be sitting". She grabbed me by the arm and placed me at the lectern and said, "This is where you will be standing" "Look how close you are to the Chief Justice." How prophetic. Mind you all of this occurred before Cert was granted.

When we returned in February for argument Ms. Tyce met us again and this time gave Bud and me (for a second time) an opportunity to stand at the lectern. (It's not a podium.)

The Day Before (February 24, 2013)

After a moot at the Supreme Court Institute at Georgetown University on Friday and two more at the office of Wilmer Hale on Saturday, Bud and I agreed I needed to just relax. I thought about basketball players such as Kobe Bryant and Tim Duncan before a big basketball game. They always had ear buds inserted listening to music. Teresa and Robin vacated the hotel room and went to visit Arlington. I opted to remain in the room. I went to my Pandora app and listened to show tunes, which included My Fair Lady and Camelot. Teresa and Robin brought me something light to eat and I went to bed around 9:00 pm.

February 25, 2013

We got up early and went downstairs for breakfast. We were scheduled to be the second argument of the day beginning at 11:00 am. (I did not want to run out of steam before I began.)

At 9:00 am all of the lawyers met with the Chief Clerk General Suter. He put us at ease. He reminded us of some basic Supreme Court protocol. We then proceeded into the courtroom.

At 10:00 a.m. I got a chance to witness in person my first Supreme Court argument. At 11:00 a.m., sitting at the right hand of Seth Waxman, with Bud and Catherine Carroll, one of Seth's attorneys who was so instrumental in getting the case and me ready, Chief Justice Roberts called the case and my name.

I opened in the obligatory fashion, "Mr. Chief Justice and may it please the Court".

In an hour it was over; 30 minutes a side.

Conclusion

I have been a trial lawyer now for 39 years. I have argued cases before the 4th Judicial District Court of Appeals in San Antonio, the Texas Court of Criminal Appeals in Austin, the 5th Circuit Court of Appeals in New Orleans.

And now I have argued before the United States Supreme Court. It was a dream come true. I have returned to my practice back in San Antonio. But for one brief shining moment I was in Camelot. I could have danced all night.

Link to *Trevino v. Thaler*

http://www.oyez.org/cases/2010-2019/2012/2012_11_10189



WARREN ALAN WOLF. *a longtime College member and Fellow, is a solo practitioner voted by his peers in 2013 to be one of San Antonio's Best Criminal Defense Attorneys by SA Scene Magazine.*

Family Code §262: What I Learned About TDFPS Adversary Hearings From *In Re Tomica Henderson*

By Qiana Manns

Children deserve to have child welfare proceedings conducted in a manner least harmful to them and most likely to produce all necessary facts for judges to properly decide the case.

The United States Supreme Court has described society's goals in these proceedings as keeping the best interests of the children at the center of the Court's attention while also ensuring the constitutionally protected parent-child relationship is uncompromised in a just and fair court system. *Santosky v. Kramer*, 455 U.S. 745 (1982). To accomplish these goals, the Texas Legislature enacted Chapter 262 of the Texas Family Code to outline procedure that should be followed in a suit brought by the Texas Department of Family and Protective Services ("TDFPS").

Chapter 262 provides for a Full Adversary Hearing very early in the litigation, regardless of whether TDFPS acts to remove a child from abuse or neglect in an emergency or nonemergency situation. §262.201(a). This hearing is one of the most important hearings in a termination case, and the Legislature has clearly established the elements of TDFPS's case and the findings the Court must make to rule in its favor. §262.201(a).

However, the Legislature's framework for these cases is undermined unless both the state and the parent's attorney are diligent in investigating the facts of the case and preparing to litigate the real issues concerning their respective positions. Often, TDFPS has been allowed to come to the Adversary hearing with a sad story and prevail, simply because the parents' attorney failed to force TDFPS to adhere to the mandates of §262.201(b). If they did so, we would have more accurate decisions in child welfare cases and fewer children in foster care. We would also reduce the number of "risk" cases in court to those where governmental intervention is clearly needed.

Before The Adversary Hearing

The Family Code gives TDFPS clear procedures to follow prior to the Adversary Hearing. Specifically, it must:

1. “Perform a background and criminal history of the relatives or other designated individuals identified as a potential relative or designated caregiver”
2. “The department shall evaluate each person listed on the form provided to determine the relative or other designated individual who would be the most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver”
3. “the department must continue to explore substitute caregiver options.”

Under §262.114(a-2), “If the child has not been placed with the relative or other designated caregiver by the time of the full adversary hearing under Section 262.201, the department shall file with the court a statement that explains:

1. “The reasons why the department has not placed the child with a relative or other designated caregiver listed on the proposed child placement resources form; and
2. The actions the department is taking, if any, to place the child with a relative or other designated caregiver.”

In fact, the department “may place a child with the relative or designated individual before conducting the background and criminal history check or home study under Subsection (a).” §262.114(b)

The Adversary Hearing (§262.201)

Reduction in foster care placements and the increase in relative and designated caregiver placements appear to be the intent of our 83rd Legislature with the recent statutory language added and effective for termination suits filed on or after September 1, 2013. Thus, it is the responsibility of an attorney for a parent to force TDFPS to follow the law and encourage Courts to implement the new mandates of §262.201. At the Adversary Hearing, TDFPS has the burden to show that conservatorship by the government and placement in a foster home is in the child’s best interest.

At Hearing, TDFPS is required to present sufficient evidence on a few elements:

- there was a danger to the physical health or safety

of the child which was caused by an act or failure to act of the person entitled to possession; §262.201(b)(1)

- for the child to remain in the home is contrary to the welfare of the child; §262.201(b)(1)
- the urgent need for protection required the immediate removal of the child; §262.201(b)(2)
- reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child’s removal; §262.201(b)(2)
- reasonable efforts have been made to enable the child to return home; §262.201 (b)(3)
- there is a substantial risk of a continuing danger if the child is returned home. §262.201(b)(3)

Additional statutory language regarding the appropriateness of the child’s placement are important indicators in the Texas Family Code that suggest TDFPS is expected to provide sufficient evidence at the Adversary Hearing that it complied with §262.114(a), **prior to the hearing**. The parents’ attorney should insist that the laws be followed and direct the Court to the statutory provisions below:

At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession.” §262.201(b)(3).

The court shall place a child removed from the child’s custodial parent with the child’s noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or a relative is not in the best interest of the child. “§262.201(e).

After The Adversary Hearing

If TDFPS prevails at the Adversary Hearing without having met its burden of proof, preserving a record for review by an appellate court may be the parent’s best option for relief. I represented a mother in such a case, entitled *In re Tomica Henderson*. That case taught me a great lesson in listening to the legislature’s intent, as found in the recent enactments in the Texas Family Code.

My Mandamus — Effective Assistance of Counsel

On or about September 20, 2012, Tomica Henderson was involuntarily placed in University of Texas County Psychiatric Center. She was discharged on September 26, 2012 without any psychiatric diagnosis or recommendation for further psychological or psychiatric treatment. Upon her discharge, a representative from TDFPS contacted her threatening that she could not pick up the children

from the paternal grandparents' home or she would be in trouble. After learning that the paternal grandmother was hospitalized on September 30, 2012, TDFPS, again threatened the mother that she could not go to pick up her children.

On October 2, 2012, without prior notice or a court order, TDFPS removed Tomica Henderson's children from the care of relatives and delivered them into foster care placement. The next day, the trial court signed an emergency order to authorize TDFPS possession and temporary conservatorship. Without notice and a hearing, again the Court authorized TDFPS possession and temporary conservatorship per an extension of the emergency order signed October 11, 2012.

On October 25, 2012, the Court conducted an Adversary Hearing with mother and one of the alleged fathers of the children. Some relatives were also present as witnesses. The adversary hearing was approximately two hours. The mother requested immediate return of the children and dismissal of the case. At the conclusion of the hearing, the trial court appointed DFPS as Temporary Sole Managing Conservator of the children and ordered that they be placed immediately back with the oldest child's paternal grandmother.

Mother filed a petition for writ of mandamus, complaining the trial court abused its discretion in signing the temporary orders because there was insufficient evidence under section 262.201 presented at the hearing to allow TDFPS conservatorship of the children. The Court of Appeals conditionally granted the writ. *In re Tomica Henderson* (No. 14-12-01074-CV) (Tex. App.—Houston [14th Dist]) (Jan. 15, 2013) (original proceeding). The Court held that, based on the record, the trial court "could have come to only one reasonable conclusion—that the Department failed to satisfy the requirements of section 262.201(b) of the Texas Family Code and that possession of the children should have been returned to relator as required under section 262.201." The Court of Appeals directed the trial court to vacate its temporary order and order the return of the present possession of the children to the relator.

Adversary Hearing Tips from *In re Tomica Henderson*

Some lawyers may think it is a sign of weakness to carry notes or read the Family Code during a hearing or trial, perhaps because they think it makes them look unprepared. Through my experience with Tomica Henderson's mandamus proceeding, however, I discovered that reading verbatim what the legislature wrote and using it during the hearing was helpful in clearly presenting the case to the trial court and preserving any error for review. I unashamedly use my Texas Family Code and notes in most Adversary hearings.

There are a few other tips you may consider using which I believe ultimately resulted in the Court of Appeals granting Tomica Henderson relief:

1. Use the TDFPS affidavit and statements to your advantage, especially to create a time line regarding the "urgent need of protection"
2. Use the affidavit to investigate potential witnesses that you can use because most affidavits contain statements from other people. Actually talk to those people!
3. Have the investigator to provide details about "reasonable efforts" to prevent removal
4. Get TDFPS witness to testify and use documents obtained from any source about current conditions, circumstances as to knowledge of "continuing danger of child returned home."
5. Look at documents (medical records, psychiatric evaluation, safety plans) that TDFPS want to introduce thoroughly before or during the hearing because some of them may be helpful to YOU!

Conclusion

Our belief in this country has always been that "[c]hoices about marriage, family life, and the upbringing of children are . . . ranked as "of basic importance in our society", and are "sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971)). Thus courts have singled out for heightened protection the "most essential and basic aspect of familial privacy – the right of the family to remain together without the coercive interference of the awesome power of the state." *Hodorowski v. Ray*, 844 F.2d 1210, 1216 (5th Cir.1988) (quoting *Duchesne v. Sugarman*, 566 F.2d 817,825(2d Cir.1977.)

Strong advocacy for parents at the adversary hearing—insisting on the safeguards provided by the Constitution and the Legislature—will result in better outcomes for children in Texas. Even if you have to wait a few months for a mandamus decision, your zealous advocacy can help change the direction of how we deal with abuse and neglect cases for other people in similar circumstances, like *In re Tomica Henderson* has done for me.



QIANA MANNS is the managing attorney and certified mediator for R.I.P. Law Office PLLC in Houston, where she is well known in the historic Third Ward community for promoting issues affecting children and minorities.

Summer Snapshots

College Board Members Leta Parks, J. Morgan Broadus, and Tamara Kurtz pose with plaques commemorating their service.



College Board Member Tamara Kurtz presents John G. Browning with the 2014 Jim Bowmer Professionalism Award for Outstanding Contributions to the Profession as College Board Member Hon. David E. Keltner looks on.



College Board Member Warren Cole and College Executive Director Pat Nester flank Richard R. Orsinger, winner of the 2014 Franklin Jones, Jr. CLE Article Award for Outstanding Achievement in Continuing Legal Education for his article, "170 Years of Texas Contract Law."





Why Civility Matters

By Hon. Patricia O. Alvarez

IN MY TWENTY-SIX YEARS OF TRIAL PRACTICE I, like you, experienced abusive, antagonistic, and uncivil behavior by opposing attorneys. We all remember the attorney who referred to us with demeaning adjectives, or that never returned our calls, or that engaged in silly and expensive discovery and trial tactics. Due mainly to competitive greed, many many—lawyer and non-lawyers—perceive our profession as disgraceful and attorneys as being disrespectful to others. *This is the reason why “civility” matters today.*

“Civility is an attitude that lawyers will treat everyone (opponents, witnesses and judges) with dignity and respect.” The term is defined as a “civilized conduct; especially courtesy, politeness.” Synonyms include affability, amenity, attention, courtesy, comity, decorum, pleasantries, politeness, respect and tact. Civility also includes preparation of your case, your arguments, and not engaging in unnecessary discovery tactics.

The antonym of “civility” is “incivility,” which is defined as “a rude or discourteous act.” “Incivility” is synonymous of discourteousness, disrespect, disrespectfulness, impertinence, impoliteness, impudence, discourtesy, inconsiderateness, insolence, rudeness, and ungraciousness. “Uncivil” behavior encompasses the following: rude, abrupt, barbaric, blunt, boorish, coarse, curt, discourteous, gross, gruff, ill-mannered, impolite, inconsiderate, insulting, mannerless, uncouth, uncultured, unfriendly, ungentlemanly, unmannerly, unpolished, unrefined, and vulgar.

In our legal profession, incivility takes various forms. It includes bad behavior during discovery, groundless and harassing arguments and claims, name-calling or insulting opposing counsel, baseless accusations against opposing counsel or their clients, lying, distasteful advertising, and rudeness to judges or their staffs. As attorneys, we have a duty to be zealous and aggressive advocates, to fight for our client’s rights. However, we can seek to fulfill that duty by

either acting professionally with integrity and honesty (i.e., with civility) or acting as a rude and vulgar barbarian (i.e., with incivility).

Incivility not only lowers the image of our profession, it reduces a lawyer’s effectiveness. You may be an incisive cross-examiner and knowledgeable about the law, but if you are uncivil you will be less effective than you could be. Incivility adversely affects your reputation. It is not conducive to positive outcomes. For some, having a reputation as the “Wicked Witch of The West” or the “Ivan the Terrible” of the legal profession may gratify the ego, but in the long term it will undercut their success as an advocate for their clients. In real life—Clarence Darrow—or in fiction—Atticus Finch—great attorneys are known and respected for their professionalism, integrity and honesty.

I encourage you to cultivate the values of civility in every hearing, every pleading, every phone call, and every letter. It is up to each of us to champion high standards of civility among our peers. It is up to us to be the example of civility. Our “civil” actions will make a positive impact on our communities’ perception of the legal profession!¹ I have no doubt that “civility” matters. ■

¹ For more information on “civility” matters, visit the American Board of Trial Advocates (ABOTA)’s website at <http://www.abota.org>.



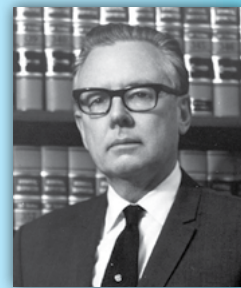
JUSTICE PATRICIA O. ALVAREZ was elected to Place 3 on the Fourth Court of Appeals in 2012. Prior to joining the court, she was in private practice for 25 years, becoming Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization. She currently serves as a Board Member of the State Bar College.

Nominations for Awards

We want to hear from you! Each year the College accepts nominations for two awards:

The Jim Bowmer Professionalism Award

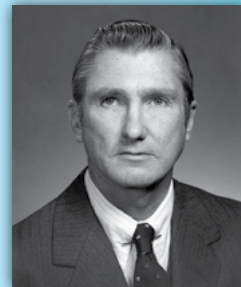
Awarded annually since 1994 to an outstanding College member based on achievement or contribution to professionalism. A plaque is given to the recipient and a cash award of \$1,000 is given to the Texas Equal Access to Justice Foundation, or the law school of their choice, in the name of the award recipient. The award is named in honor of Jim D. Bowmer, of Temple, Texas, the originator of the idea of the State Bar College and a co-founding father of the College.



Jim Bowmer

The Franklin Jones Best CLE Article Award

A plaque is awarded to an author of an outstanding CLE article presented during the year. All articles must be submitted no later than December 1 of each year in order to be considered for the Best CLE Article Award. The award is named in honor of Franklin Jones, Jr. of Marshall, Texas, a co-founding father of the College.



Franklin Jones

To make a nomination, download and complete either form found the College website, TexasBarCollege.com/awards.html. Don't delay — the deadline is Monday, January 26, 2015.

Check Your College Hours Requirement

To start, visit **www.texasbar.com** and click on the shaded **My Bar Page** box (right side of the screen).

Log in with your Bar Number and Password, revealing a page with your name and basic contact information.

Scroll down to the **My MCLE Hours** tab and click on **VIEW/REPORT HOURS**, arriving at your **MCLE Member Home Page**. At the bottom of the gray box, you will see a link for **View State Bar College Transcript Record**. Clicking this link should show your hours for the current or immediate past compliance year. Hours for the next College compliance year are not available until the most recent one has been closed out (usually May).

You may claim 6 hours of self-study each year. Self-study is allowed for reading substantive legal articles such as ones found in the *Texas Bar Journal* or other legal publications.

Time to Renew

We greatly value your College membership and hope that you will renew. Along with the pride and prestige of belonging to an elite group of lawyers that strives to promote professionalism and legal education, with your membership you also gain free access to TexasBarCLE's Online Library, an ongoing database of over 20,000 CLE articles. An annual Library subscription is \$295, but free to College members! You also receive a \$25 discount to most TexasBarCLE live and video seminar presentations.

While the fee is not due until December 31, you can submit it any time between now and then. Consider renewing by credit card online at TexasBarCollege.com; you'll help us save time, paper, and postage! If you'd like an e-mailed invoice, let me know and I am happy to send it.

Consider, too, making a year-end tax deductible donation to the Endowment Fund (see back page of this Bulletin).

If you have questions about your College membership record, please call our office at 800-204-2222 ext. 1819 or 512- 427-1819, or contact me at merianne.gaston@texasbar.com.

Merianne Gaston

Managing Director, State Bar College

Going Digital in 2015

We are delighted to announce that the *Bulletin* will become a digital-only publication. This should enable us to expand content without increasing costs, and provide greater service to our members. We hope you will enjoy the *Bulletin's* new look. Please stay tuned for other exciting changes in the upcoming year!

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The College Bulletin
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The Endowment Fund for Professionalism

The College of the State Bar of Texas P. O. Box 12487 Austin, Texas 78711-2487

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College Members who wish to contribute or pledge less than \$1,000 or who have not achieved five consecutive years of College membership and non-College members may make tax deductible contributions and become a Friend of the Endowment Fund for Professionalism by completing and returning this form.