The College Bulletin

News for Members of the Texas Bar College · Fall 2016

From the Chair

Patsy Micale

I recently had dinner with a friend who, like me, is also the mother of two young children. When I asked her how she was doing, she responded, "Oh, you know, living the dream!" We both laughed as we caught up on work, family and life in general. It made me reflect on what it means to be living the dream.

My family and I immigrated to the U.S. when I was 1 1/2 years old and my sister was 4 years old. My parents impressed upon my sister and me the importance of education and frequently reminded us that we came to the U.S. so that my sister and I would have better opportunities.

Certainly I have benefited from those "better opportunities" the U.S. has to offer. My parents successfully ran several small businesses, which in turn allowed me to complete college and law school debt-free. As a result, I am the first attorney in my family. In addition to the financial advantages, the experience of working alongside my parents from a young age taught me the values of working hard and getting along with others in the workplace.

It wasn't easy at times. I have seen my parents endure hateful acts of discrimination and had a taste of some myself. We struggled as a family with embracing the American culture while maintaining our Taiwanese heritage. However, watching my family overcome each obstacle we encountered while continuing to be grateful for our many blessings ingrained in me an optimistic outlook on life.

For me, living the dream means finding happiness and success by being the best I can be each day in my various familial and professional roles. It encompasses starting each day with a deep appreciation, being present in the moment, and handling any difficult situations with grace.

For me, living the dream includes attaining membership in the Texas Bar College and being among you, an elite group of attorneys who strive to be at the top of our profession. I am especially honored this year to serve as the College's Chair.

Over the course of this year, I look forward to getting to know you, our members, better, and would love to hear what inspires you and led you to become a member of the Texas Bar College. Please feel free to reach out to me at 972.893.5550 or Patsy.Y.Micale@uscis.dhs.gov. ■

Defendant's Attorney's Fees

By James Pikl[1]

Attorney's fees are often a significant expense in a lawsuit. Naturally, every client would like to have their own attorney's fees paid by the other party, if possible. This article discusses how defendants might get their opponents to pay their attorney's fees.

1. On what bases can a party recover fees?

Under Texas law, which follows the so-called "American Rule,"[2] a party may only recover attorney's fees from the other party if allowed by statute, by contract, or by court rule.[3]

A. By Statute.

There are literally dozens of statutes in Texas law that provide for the recovery of attorney's fees, usually as part of a judgment.[4] Among the statutes allowing for award of attorney's fees is the following non-exhaustive list:

Civil Practice & Remedies Code[5]
Deceptive Trade Practices – Consumer Protection Act (DTPA)[6]
Declaratory Judgment Act[7]
Finance Code[8]
Government Code[9]
Insurance Code[10]

These statutes all say a prevailing defendant may recover his attorney's fees from his opponent as part of a judgment.

Note: the Declaratory Judgment Act allows the court discretion to award fees "in equity" to either the plaintiff or defendant, even if the party to whom fees is awarded did not prevail in the action. In other words, it's possible the "winner pays." *Feldman v. KPMG, LLP*, 438, S.W.3d 678, 685 (Tex.App.–Houston [1st Dist.] 2014, no pet.)("Under section 37.009, a trial court may exercise its discretion to award attorney's fees to the prevailing party, the nonprevailing party, or neither"). Fees under the statute are awarded as are

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2 *Buckhannon Bd & Care Home, Inc., v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001).

3 *1/2 Price Checks Cashed v. United Auto Ins. Co.*, 344 S.W.3d 376, 382 (Tex.2011)(by contract or statute); *Boyaki v. John M. O'Quinn & Assoc., PLLC*, 2014 WL 4856021 at *17 (Tex.App.–Houston [1st Dist.] 2014, rev. denied)(by TRCP 13 and 215). The rules of procedure have the "same force and effect as statutes." *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex.2001).

4 There are also numerous federal statutes (e.g., 42 U.S.C. §1988) that allow for recovery of attorney's fees; federal law is outside the scope of this article.

5 Texas Civil Practice & Remedies Code, Chapter 38, allows recovery in actions involving certain services and contracts. TCP&R Code Chapters 9 and 10 allow a defendant to recover attorney's fees for responding to frivolous or bad-faith pleadings. Chapter 134 allows the successful party – plaintiff or defendant – to recover fees, and it is a "shall" award provision.

6 Texas Business & Commerce Code, §17.50(d)(for claimants) and 17.50(c)(for defending a frivolous DTPA claim).

7 Texas Civil Practice & Remedies Code, Chapter 37. This statute allows a court, in its discretion, to award attorney's fees to any party even if the party did not "prevail" in the litigation. See, e.g., *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Util. Dist. ex rel. Board of Directors*, 198 S.W.3d 300 (Tex.App.–Texarkana 2006, pet. denied). Most other statutes require – either expressly or by case law interpretation – the party recovering attorney's fees to have been the plaintiff in the litigation, bad faith filing being the exception.

8 Texas Finance Code, §§305.003 (usury); 392.403 (unfair debt collection).

9 Texas Government Code, §§552.323 (claims for access to public records); 2253.074 (enforcing claims on payment bonds).

10 Texas Insurance Code, §542.060 (unfair claims settlement or other delays in payment).

"equitable and just," meaning the court decides their award ***and amount***. *Austin Jockey Club, Ltd. v. Dallas City Limits Property Co., L.P.*, 2015 WL3549645 at *8 (Tex.App.–Dallas 2015, pet. denied).

B. By Contract.

Texas courts will enforce a contract provision if the contracting parties have agreed to an award of attorney's fees. These provisions usually provide the "prevailing" party will be allowed to recover its fees. An area of current dispute is what the word "prevailing" means, especially as it relates to defendants.

It is best – and courts will enforce it – when the parties spell out in their contract exactly how a party may be deemed the "prevailing" party and thus entitled to recover attorney's fees. One such case is *Ahmad v. Booth & Booth, Ltd.*, 2000 WL 31970 at *2 (Tex.App.–San Antonio 2000, no pet.). There, the parties had defined "prevailing party" as:

> the party whose last written offer to settle the dispute, before the initiation of the proceeding/arbitration, most closely approximates the final award (excluding any award for attorney's fees, costs, and prejudgment interest, which accrue after the offer is made)

This was deemed sufficiently precise to allow recovery of fees by either party.

On the other hand, if the contract merely states that attorney's fees may be recovered by "the prevailing party" without further definition, the Supreme Court currently holds that the default definition is the one used with §38.001.[11]

While a few recent cases[12] have found the defendant in a contract dispute to be the "prevailing" party in the absence of defining language, these rulings do not seem to track either the history or the express language of §38.001, both of which allow only a contract plaintiff to recover fees. Consider: fees are recovered under §38.001 "in addition to the amount of a valid claim and costs." *Ashford Partners v. Eco Res.*, 401 S.W.3d 35, 40-41 (Tex.2012). Obviously, a prevailing defendant never has any "amount of a valid claim" that the fees would be "in addition to." Further, the §38.002(3) prerequisite to recovery of fees could never be fulfilled by a defendant because a defendant has no claim to "tender." The reasoning behind this rule is spelled out in several cases, including *Energen Res. MAQ, Inc. v. Dalosco*, 23 S.W.3d 551, 558 (Tex.App.–Houston [1st Dist.] 2000, pet. denied)(defendants may not recover fees under §38.001).

C. By Court Rule.

Texas Rules of Civil Procedure 13 and 215 both allow for recovery of attorney's fees as litigation sanctions; Rule 13 for pleading or other administrative issues, and Rule 215 for discovery abuse. No distinction is made between plaintiffs and defendants. Trial courts also have "inherent authority" to sanction parties and counsel appearing before them, and such sanctions frequently include reimbursement of the opposing party's attorney's fees.[13]

2. How much in fees can be recovered?

A. Reasonable fees.

Only reasonable fees are recoverable regardless of the fees that were actually incurred or contracted for. While the amount incurred may be some evidence of what is a "reasonable" fee, it is not conclusive. Indeed, some would

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[11] See *Intercontinental Group Partnership v. KB Home Lone Star L.P.*, 295 S.W.3d 650, 655 (Tex.2009).

[12] See, e.g., *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 2015 WL 5783696 (Tex.App.–Dallas 2015, pet. pending)(mem. op.). The *Rohrmoos* court attempted to distinguish *Intercontinental* by finding that UTSW was not the plaintiff in the action as was Intercontinental, and thus *Intercontinental* was off point. This effort to distinguish *Intercontinental* is interesting in that UTSW actually ***was*** the plaintiff in the trial court and pursued millions of dollars in money damages right up to the day of trial when it abandoned those claims, opting instead to use Rohrmoos's alleged contract breach only defensively.
The *Rohrmoos* court cited in support only a single decision, *Johnson v. Smith*, 2012 WL 140654 at *3 (Tex.App.–Amarillo 2012, no pet.)(mem.op.), for the proposition that if a defendant/tenant in a contract action wins the case and does not have to pay the damages sought by the plaintiff/landlord, the defendant "prevails" and thus can recover its fees. However, *Johnson* cites no authority and performed no analysis in support of ***its*** ruling.
See also: *Helitrans Co. v. Rotorcraft Leasing Co., Inc.*, 2015 WL 593310 (Tex.App.–Houston [1st Dist.] 2015, no pet)(mem. op.); *Weng Enterprises, Inc. v. Embassy World Travel, Inc.*, 837 S.W.2d 217, 222-23 (Tex.App.–Houston [1st Dist.] 1992, no pet.)(this appears to be the first case in Texas where a court awarded a "prevailing defendant" in a contract case its attorney's fees). The old doctrine that held a "net recovery" was the linchpin of an attorney's fees recovery under predecessor statute Art. 2226 (see *L Q Motor Inns v. Boysen*, 503 S.W.2d 411 (Tex.App.–Dallas 1966, writ ref'd n.r.e.)), was disavowed by the Supreme Court in *McKinley v. Drozd*, 685 S.W.2d 7,11 (Tex.1985).

[13] The Supreme Court is cautious of allowing trial courts to award attorney's fees under "inherent authority." See *Travelers Indemnity Co. of Connecticut v. Mayfield*, 923 S.W.2d 590, 594 (Tex.1996)(the risk of allowing "inherent authority" is it may allow an end run around the statutory scheme). But fees awarded ***as sanctions*** will be upheld absent a showing of clear abuse of discretion. *Cisnado v. Shady Oak Estates HOA*, 2013 WL 1511624 (Tex.App.–Houston [14th Dist.] 2013, no pet.)(mem. op.).
Note: courts do ***not*** have "inherent authority" to award fees in situations outside of sanctions. *Tony Gullo*, 212 S.W.3d at 311 ("Absent a contract or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees").

argue it is not even relevant.[14]

We generally allow juries to determine the amount of fees that are "reasonable" even though such a determination involves complex issues regarding what attorneys do for a living.[15]

B. Segregation of fees between claims.

Texas requires a party seeking to shift his fees to his opponent to segregate the fees between claims if some claims allow for recovery and some do not. The classic example is a plaintiff who files claims for both breach of contract (which allows for fee shifting) and some tort such a fraud or breach of fiduciary duty (which does not). Whether this same segregation rule applies to defendants seeking their fees has not been addressed in any reported decision in Texas.

But there seems no good reason it should not also apply to defendants. After all, the reason for segregation is that the party's attorney has spent time on both types of claims and only time spent on a fee-shifting claim should allow fee shifting.

C. Is it claims or facts that can be "intertwined"?

The "inextricably intertwined" doctrine regarding fees comes from *Tony Gullo Motors v. Chapa*, 212 S.W.3d 299 (Tex.2006). In that case, the plaintiff claimed the defendant used bait and switch tactics in selling her a car. Ms. Chapa brought suit for fraud, breach of contract, and violation of the DTPA; only the latter two claims allow for fee shifting. The jury awarded actual damages under all three claims and exemplary damages and attorney's fees. The trial court by judgment disallowed part of the actual damages and all of the exemplary damages and attorney's fees. The court of appeals reversed, reinstated all of the jury's awards but remitted exemplary damages from $250,000 to $125,000. Petition was granted.

Trying to hold its fee award, the plaintiff argued that if certain facts need to be discovered and addressed in trial that support both contract and fraud causes of action, then all legal work relating to those facts should be recoverable. The Supreme Court did not agree:

> Accordingly, we reaffirm the rule that if any attorney's fees relate solely to a ***claim*** for which such fees are unrecoverable, a claimant must segregate recoverable from unrecoverable fees. Intertwined ***facts*** do not make tort fees recoverable; it is only when discrete legal services advance both a recoverable and unrecoverable ***claim*** that they are so intertwined that they need not be segregated.

Tony Gullo, 212 S.W.3d at 313-14 (emphasis added). Two things here: first, the issue is not whether there are ***facts*** relevant to both claims; the issue is whether the legal work in question advances one ***claim*** or the other, and only if it concerns both claims are those fees "intertwined" such that they can be fully recovered. As examples of legal work that concerns more than one cause of action, the Court offered (*id.* at 313):

> Requests for standard disclosures, proof of background facts, depositions of the primary actors, discovery motions and hearings, voir dire of the jury, and a host of other services may be necessary whether a claim is filed alone or with others. To the extent such services would have been incurred on a recoverable claim alone, they are not disallowed simply because they do double service.

The Court went on to further define "intertwined" fees:

> A recognized exception to this duty to segregate arises when the attorney's fees rendered are in connection with claims arising out of the same transaction and are so intertwined that their "prosecution or defense entails proof or denial of essentially the same facts." Therefore, when the cause of action involved in the suit are dependent upon the same set of facts or circumstances and thus are "intertwined to the point of being inseparable," the party suing for attorney's fees may recover the entire amount covering all claims.

Id. at 311. For work performed the nature of which is proven to be useful to both claims (and, arguably *defense* of both claims), the party need not segregate those fees and they are recoverable. Only if a piece of work is strictly useful only to a claim for which fees are not recoverable (like a doctor's deposition for a personal injury negligence claim) will it need to be segregated and will be disallowed.

The proponent of the fees bears the burden of proof on showing which parts of its fees were generated in support of which claim. The party must also segregate between multiple *parties* from whom fees are sought if some have settled and some have not. *Id.* at 310-11.

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[14] But see *Beasley* case below regarding sanctions (only *incurred* fees recoverable).

[15] The fees charged by legal assistants are recoverable as attorney's fees but only to the extant the work of the assistant "has traditionally been done by an attorney." *All Seasons Window & Door Mfg., Inc.*, 181 S.W.3d 490, 504 (Tex.App.–Texarkana 2005, no pet.).
Whatever that means.

D. Must you object to failure to segregate?

If the party against whom fees is awarded does not object to a failure of the recovering party to segregate fees between fees that are recoverable and fees that are not recoverable, the party waives any objection of "failure to segregate." *Metroplex Mailing Services, LLC v. RR Donnelley & Sons Co.*, 410 S.W.3d 889, 901 (Tex.App.–Dallas 2013, no pet.); *Haden v. David J. Sacks, P.C.*, 332 S.W.3d 503, 516 (Tex.App.–Houston [1st Dist.] 2009), *rev'd o.g.*, 266 S.W.3d 447 (Tex.2008).

The *Tony Gullo* case places the burden of proof for fee recovery – when segregation is required – on the party seeking to recover his fees from the opponent. This means counsel is responsible for proffering detailed evidence (testimony and records) in support of not only the total fees sought, but how those fees should be segregated into the proper buckets, and includes the burden of proposing proper jury questions.[16] Because the segregated portion of the total fees can be determined by testimony of a percentage amount, the jury question might read:

> Of the amount of fees you found reasonable in response to the previous jury question [[the question on total amount]], what percentage of the work done to generate those fees do you find was attributed solely to the fraud and negligence claims?
>
> Answer: _____%

This puts the question somewhat backwards from the way proof is made, but is the simplest way in which the trial court may then enter a judgment for segregated fees given the burden of proof. That is, the percentage above represents the only fees that are ***not*** recoverable since fees for "hybrid" work are recoverable.

3. The evidence necessary to prove the fees sought.

Expert testimony is necessary for topics a jury is asked to consider that are not within the common knowledge of the average fact finder, even if it's the trial court.[17] Attorney's fees have been placed in this category.[18]

A. Fee statements.

Several Texas Courts of Appeals and the Texas Supreme Court currently have differing views on this issue. The Supreme Court has been marching deliberately toward requiring details supporting fee awards that are only available from a review of billing statements "in all but the simplest cases." *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 762 (Tex.2012). Yet some trial courts still refuse to allow billing statements into evidence, even though they are the "best evidence" of the actual work performed and some courts of appeal are not critical of this.[19]

It seems odd to require the jury to evaluate individual pieces of legal work for reasonableness and then not allow the jury to review the "best evidence" of what that work consisted of. We anticipate the Supreme Court will soon hold that billing statements ***must*** be introduced into evidence in all fee-shifting situations.

B. Self testimony or expert.

In smaller matters, the party seeking fees will often have the attorney who performed the litigation work and tried the case also offer the expert attorney's fee testimony.

In larger or more complex cases, a party and his attorney will frequently hire a "disinterested" attorney to act as the expert to prove up – or defend against – the fees requested. This frees up the case attorney from having to "brag" about what great work he did in the case to justify his fees, and second, it means the trial attorney does not need to spend time and energy in preparing for and testifying about fees. Finally – and perhaps the best reason to hire an outside expert – it prevents the case attorney from standing for cross examination, which – if it goes badly – may disparage or diminish the force of his ***merits*** advocacy before the jury. Having the jury think poorly of your expert is not good, but if your expert is also the person giving the closing argument in the case, you run the risk of poisoning final argument with the damaging testimony the attorney just gave on cross examination – usually only a few hours before deliberations commence.

C. Pro se representation.

Can an attorney who represents himself recover his attorney's fees from his opponent? The answer is generally "yes." *Beckstrom v. Gilmore*, 886 S.W.2d 845, 847 (Tex. App.–Eastland 1994, no writ)(collecting state and federal cases holding this rule applicable). However, in certain statutory cases, the answer is "no." See, e.g., *Brown v. Kleerekoper*, 2013 WL 816393 at *6 (Tex.App.–Houston [1st Dist.] 2013, rev. denied), *cert. pending* (attorney representing himself in Texas Theft Liability Act case not entitled to recover fees). *Brown* cited several federal cases in support, including *Kay v.*

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[16] Take heart: if you get an award of fees after *failing* to segregate, the remedy is remand for a new trial on fees where you may then try to segregate because "evidence of unsegregated attorney's fees is more than a scintilla of evidence of segregated attorney's fees." *Tony Gullo*, 212 S.W.3d at 312.

[17] *Saulsberry v. Ross*, 485 S.W.3d 35, 45 (Tex.App.–Houston [14th Dist.] 2015, rev. denied).

[18] *Twin City Fire Ins. Co. v. Vega-Garcia*, 223 S.W.3d 762, 770 (Tex. App.–Dallas 2007, rev. denied).

[19] In the *Rohrmoos* case, the plaintiff did not proffer fee records into evidence as part of its attorney's fee testimony. However, when the defendant attempted to do so, arguing from the ruling in the *El Apple* case, the trial court refused to admit them into evidence over hearsay objections. The Court of Appeals was silent on this issue.

Ehrler, 499 U.S. 432 (1991), in which those courts denied pro se attorney litigants recovery of fees under federal statutes, including 42 U.S.C. §1988.

In-house counsel can recover fees for representing the lawyer's employer. *Tesoro Petroleum Corp. v. Coastal Ref. & Mktg, Inc.*, 754 S.W.2d 764, 766 (Tex.App.–Houston [1st Dist.] 1988, writ denied). In Texas, in-house counsel fees are determined by the "market value" approach, in which the going market rate for outside counsel is used, as opposed to the "cost-plus" approach in which the fees are calculated by reference to the actual salary, costs, and overhead of the in-house attorney. *AMX Enterp., LLP v. Master Realty Corp.*, 283 S.W.3d 506, 517-19 (Tex.App.–Fort Worth 2009, no pet.) (collecting cases on both methods).

One case has held that an attorney representing herself was not entitled to collect attorney's fees ***as sanctions***. *Beasley v. Peters*, 870 S.W.2d 191, 196 (Tex.App.–Amarillo 1994, no writ)(since fees are not "incurred" by a pro se litigant, they are unrecoverable).

4. Conclusion.

The law relating to attorney's fees is fairly complex and attorney's fees are often a significant percentage of the monetary consideration in litigation. These two facts mean that trial counsel must become well-versed in the law related to attorney's fees, how they are proved up, and how they are awarded – as well as how to prevent their award.

In closing, this caution: it is a rare client that will be happy about paying you $250,000 in attorney's fees while knowing that only because you messed up, his opponent did not have to reimburse them. ■

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Magna Carta's 800th Anniversary

By Judge Steve Smith, 361st District Court

For many of us, the first recollection of hearing about Magna Carta occurred during a World History class in high school. We had some understanding that this event played a part in the creation of our system of government in the United States and that it was very significant.

On June 15, 1215, King John (forever known as "Bad" King John) met with a number of barons in a nondescript meadow west of London called Runnymede. Had the barons glanced to the northwest, they would likely have seen the outlines of Windsor castle. In the days leading up to June 15th, John had spent most of this time holed up in the Temple Church within the Middle Temple in London. A group of armed barons had confronted him there in January, asking that he accede to their requests for the ancient liberties to which they had become accustomed. John's response was to ask them to agree in writing that they would never demand those liberties. The King remained at the Temple Church, and on May 17th, the barons captured London. John knew he was in trouble and left for Runnymede on June 10th. Days of negotiations led to his sealing of the Great Charter on June 15th. Not known as well is the fact that John requested Pope Innocent III to invalidate the Charter only days later. After John's death in 1216, the supporters of his nine-year old heir, King Henry III, resurrected Magna Carta.

While the Charter had some 63 provisions, most notable to us are Clauses 39 and 40. Clause 39 provides that **"no man shall be seized or imprisoned, or stripped of his rights or possession, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."** Clause 40 simply states that **"To no one will we sell, to no one deny or delay right or justice."**

In the summer of 2015, I was able to attend a celebration of Magna Carta's 800th anniversary, along with several hundred members of the American Bar Association, members of the royal family, the Archbishop of Canterbury, then-Prime Minister David Cameron, Lord Dyson, Master of the Rolls, many solicitors and barristers, and other Britons. Prior to the start of the celebration at Runnymede, HRH Prince William arrived and toured "The Jurors," twelve individualized chairs placed in the meadow that were commissioned by Surrey County and designed by British artist Hew Locke. Each chair has symbols and imagery depicting legal concepts and important moments in British legal history. Later, Her Majesty Queen Elizabeth II and HRH Prince Philip arrived along with HRH the Princess Royal (Anne). All dignitaries provided comments following a musical performance by the London Philharmonic. It was quite an experience to hear the assembled group singing "God Save the Queen." Following the comments, there was a rededication of the ABA memorial, which was first constructed in 1957. Princess Anne and then-ABA President William Hubbard made comments following a prayer of rededication by the Right Reverend Robin Griffith-Jones, Master of the Temple Church.

Interestingly, until last year the ABA memorial was the only monument significantly mentioning Magna Carta located in the meadow. According to some with whom I spoke, the United States has celebrated Magna Carta far more often and to a greater extent than our British cousins. The day's events included the unveiling of a plaque commemorating the Queen's visit and the celebration. ■

Ethical Issues in Handling Special Immigrant Juvenile Cases for the Family Lawyer

By Karon L. Rowden

More than likely, the majority of you reading this article will not have dealt with a case involving Special Immigrant Juvenile Status (SIJS) as either a family lawyer or as an immigration attorney. So, what is SIJS? It is a special immigration status given to undocumented juveniles who are dependent on or under the continuing jurisdiction of the family court, juvenile court or probate court because they cannot be reunited with one or both of their parents due to abuse, neglect, or abandonment, and it is not in the best interest of the child to be returned to the child's home country[1]. A more informal or common name for these children is "unaccompanied minors," minors that have illegally crossed the border into the United States, for the most, on their own. This article will briefly describe who these children are and where they come from and the ethical dilemmas for attorneys that arise from handling these types of cases, and how to avoid falling into an ethical predicament representing these minors. This paper is not intended to discuss all the different immigration relief that may be available or chosen in these cases but instead identify the crossover into family law that is creating an ethical dilemma in both court systems.

Who are these children and where do they come from?

Thousands of children are being held in various detention centers across the United States. In Texas, we have 21 detention center with 2 being dedicated to children and families.[2] These children come mostly from Central America fleeing violence and poverty with a majority of the children arriving from El Salvador, Honduras and Guatemala.[3] As of September 2016, some 52,147 of these children have been released to sponsors for fiscal year 2016.[4] Many of these children travel alone and make the dangerous journey from his or her country to the Mexico/Guatemala border. At the border many of them will make the decision to travel through Mexico by bus or car to get to the United States. When traveling through Mexico they are at risk of being kidnapped by drug cartels and forced into prostitution or forced into becoming drug mules.[5] Others will hop aboard the train which has come to be known as the Beast (La Bestia) or the Death Train and travel a dangerous 1,450 mile trek to reach the United States.[6] Once they begin this journey on La Bestia, they not only face violence from other gangs that rule certain portions of the rail line, but they also face starvation, dismemberment in the event they fall off the train, or ultimately, even death. Both girls and

1 8 U.S.C.A. § 1101 (West), INA §101, 8 C.F.R. § 204.11

2 https://www.ice.gov/detention-facilities, https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses

3 https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016

4 http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors

5 http://www.nydailynews.com/news/world/soldiers-tamaulipas-mexico-rescue-165-migrants-central-america-kidnapped-organized-crime-article-1.1365304

6 http://www.npr.org/sections/parallels/2014/06/05/318905712/riding-the-beast-across-mexico-to-the-u-s-border

boys face the constant threat of being raped or murdered.[7] A popular song has even been released to deter these children from making this dangerous trek, the lyrics warning: "The Beast of the south, that is what they call her, this wretched train of death … hanging on the rail cars of this iron beast the migrants go, as cattle to the slaughterhouse, the route to hell within a cloud of pains …… feud of Mara Salvatrucha, the coyotes payday… a mortar that crushes, a machete that slices.." (Rodolfo Hernandez) [8] If the Train doesn't kill them or dismember them, there are police officers and coyotes that beat them and steal their money. [9]

"In the last two years more than 100,000 immigrant minors have flooded the southern border of the United States. Many of the children seeking refuge are domestic violence survivors whose governments cannot or will not protect them from familiar assault, rape, and torture". [10] Children are also coming because their parents have been killed or they are afraid of being forced into being in a gang. "These children may have histories of abuse or may be seeking safety from threats of violence. They may have been trafficked or smuggled."[11] While victims such as this would normally qualify for asylum or for consideration as a refugee, many attorneys this author spoke with said the immigration judges won't give these children asylum or refugee status but are willing to consider the SIJS status.

These children arrive at the border, often alone, afraid, and ignorant as to what will happen to them, but they have assured themselves that it can be no worse than what they have left behind. Some come hoping to find a parent who came north to work and send money home, or they come to avoid violence, oppression, gangs, etc.[12]

But why can't these children just be sent home? These children, once they are within the borders of the United States, are entitled to equal protection. A state has the duty to protect all children from abuse or neglect no matter the child's legal status within our borders. [13] Further, "the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group."[14]

How can the family, juvenile and probate courts help these children?

Some of these children need guardianships, custody established, or adoptions. While others need representation in juvenile court for juvenile violations or legal representation because they have been placed under the auspices and/or protection of the Texas Department of Family and Protective Services (CPS). In most cases, a child will appear before a family court judge, the subject of a Suit Affecting Parent-Child Relationship (SAPCR). A SAPCR is a suit that outlines provisions for custody and child support for the child and includes the rights and duties of the child's parents plus dictating the rights and duties of whoever the person may be, in most of these cases, a "non-parent," who is appointed the conservator of the child.[15]

For purposes of the immigration court, these types of orders are called **predicate orders**. A predicate order must be in place for relief to be granted by the immigration judge. However, it should be noted that these family law "predicate" orders do not, in themselves, give legal status to these children. They can and do however define the rights and duties of a child's parents or conservator. Most contain findings of abuse, neglect, and abandonment on the part of a parent. A properly done custody order in a SAPCR also establishes the court of continuing jurisdiction over the child.

So, it sounds pretty straight forward, what is the ethical dilemma?

In many cases attorneys are trying to circumvent the rules by using a **declaratory judgment** to obtain the "predicate" order from the family court so that the attorney can proceed with the immigration claim. Many of attorneys that practice Family Law who are reading this article will be thinking: "Wait, did I just read that correctly? Someone is trying to adjudicate a custody case using a declaratory judgment? How is this possible?" It is not and should not be permitted but unfortunately, judges are being encouraged to use this unorthodox "predicate" order by desperate and naïve immigration attorneys who have falsely been lead to believe that this is a valid way to handle the case with the least amount of monetary outlay and within the shortest amount of time. Immigration attorneys are sometimes desperate to use this because the immigration courts may have put their client on the rocket docket (i.e. given them 14 days to get the custody orders or the case is dismissed and the client

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7 Id.

8 http://www.thedailybeast.com/articles/2014/07/12/how-the-government-is-using-subliminal-songs-to-scare-central-american-immigrants.html

9 Enrique's Journey, The Random House Publishing Group (Nazario, 2007).

10 Julie Marzouk, Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases, 22 Clinical L. Rev. 395 (2016), Spring 2016.

11 http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors

12 Julie Marzouk, Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases, 22 Clinical L. Rev. 395 (2016), Spring 2016.

13 Center for Public Policy Priorities – Special Report: Undocumented and Abused: A Texas Case Study of Children in the Child Protective Services System, September 2010, citing to Tex. Hum. Res. Code Ann. § 40.002 (West).

14 A Guide to Children Arriving at the Border: Laws Policies and Responses, American Immigration Council, June 2015.

15 Title 5, Texas Family Code, Chapters 101 -266, O'Connor's Texas Family Code

will be deported). Some of these same attorneys may want to use the declaratory judgments because they do not have the money or time to get the parents served with process in other countries or they are inpatient and don't want to wait for the parents to return the waiver of citation. Many expect that a parent will not execute a waiver of citation due to the costs involved. (in Mexico it can cost $300 to get a document notarized compared to Honduras where it can run about $35.00).

Refresher on Declaratory Judgments

The Civil Practice and Remedies Code provides that the Texas Declaratory Judgments Act is "remedial" only.[16] That act serves only "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations."[17] "The purpose of the [declaratory judgment statute], as evidenced by its own terms, is to declare existing rights, status, or other legal relations."[18] "A declaratory action cannot be used as an affirmative ground of recovery to **alter rights, status or relationships**".[19]

> A state has the duty to protect all children from abuse or neglect no matter the child's legal status within our borders.

"**The court does not have jurisdiction to issue a declaratory judgment for parties who are not before the court".** [20] In fact, every party who has a claim or interest that would be affected by the declaration must be named.

Section 37.004 of the Texas Civil Practice and Remedies Codes describes the subject matter in which a declaratory judgment may be sought. It states that "a person interested under a deed, will, written contract, or other writings constitution a contract or whose rights status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." It goes on to state that it can be used to construe a contract before or after there has been a breech and that it can be used in property disputes when the sole issue concerning title to real property is the determination of the boundary line.[21] Obviously the legislature did not intend for such a serious matter as the rights of a parent and child to be determined by a declaratory judgment. Even declaratory judgments with regards to property rights are only allowed for a very narrowly defined subject matter.

How are Declaratory Judgments being used in Family Court Cases?

The attorneys who are propounding the declaratory judgment as a valid judgment in these SIJS cases argue that declaratory judgments are being used just to show the status of the child as an abused, neglected or abandoned child and not to affect custody.[22] However, the parent(s) are not usually being served properly with process or otherwise notified of the case. This is true whether the parent is here in the United States or living in his/her home country. Some of these parents have no idea that a suit is being filed here in the United States. which can affect his/her right to ever retain custody of his or her child. The practice of not having the person served with process violates the Texas Family Code, the Texas Rules of Civil Procedure, international treaties, letters and conventions.[23] Further, lack of service of citation specifically goes against the CPRC 37.006 (a) which states "when declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties." Additionally, if the parent lives in the U.S., regardless of immigration status, then these orders are violating a parent's constitutional rights and due process of law. [24]

An attorney propounding the use of declaratory judgments will state that this is not affecting the rights of the parents, yet these declaratory judgments have specific findings regarding abuse and neglect or abandonment of the child. Therefore, it specifically affects the rights of a parent. Under the Texas Family Code (TFC) section 153.004 (b), the court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse or a child, including sexual assault. Additionally, under TFC §161.001 a parent's rights to a child may be terminated if the court finds the parent has abused, neglected or abandoned the child.

The attorney will generally file a motion for declaratory judgment, independent of any suit. Frequently family court judges question the use and purpose of these declaratory judgments. The family law or immigration attorney, in response to these questions, will file a trial brief and, at the same time, bring an order for declaratory judgment stating

16 Tex. Civ. Prac. & Rem. Code Ann. § 37.002(b) (West).

17 Id.

18 Emmco Ins. Co. v. Burrows, 419 S.W.2d 665, 670 (Tex. Civ. App. 1967), Dallas Cty. Tax Collector v. Andolina, 303 S.W.3d 926 (Tex. App. 2010), Republic Ins. Co. v. Davis, 856 S.W.2d 158, 164 (Tex. 1993).

19 *O'Connor's Texas Rules*Civil Trials* (2016), pg 146.

20 TRCP 37.006

21 TRCP 37.004

22 In the Interest of W.M., Cause Number 324-587168-15, 324th Judicial District Court, Tarrant County, see original petition, page 4; In the Interest of B.J.M, Cause Number 325-580708-15, Brief in Support of the Findings

23 Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, hereinafter referred to as the Hague Service Convention

24 Intersection of SIJS in Tennessee Courts, Chey Sengkhounmany, www.tsc.state.*tn*.us/sites/default/files/...*sijs_family_law_2015_1*.pptx *Citing to* Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).

the relevant factors for immigration court. *See for Example*, In the Interest of B.J.M.[25]

Joinder

Under the Tex. R. Civ. P. 39 – Joinder of Persons Needed for Just Adjudication states that a party must be joined if feasible especially if the person claims an interest and that disposing of the matter without including said person would effectively "impair or impede the person's ability to protect their interest". [26]

In these cases, the joinder rule is not being followed even though a finding of neglect, abuse or abandonment in these predicate orders would impair or impede the parent to protect his or her interest.

Due Process Concerns

A declaratory judgment does not comply with due process in these cases[27]. It directly affects a parent's rights, relationship and interest in their child without giving the parents notice and an opportunity to be heard as required by law. [28]

When an order affecting custody of a child or the relationship of the child to the parent is issued it invokes the Fourteenth Amendment's Due Process Clause that "provides heightened protection against government interference with certain fundamental rights and liberty interests, Washington V. Glucksberg, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody and control of their children, see, e.g., Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)." [29]

In the United States, if a judgment is issued against a person outside of the United States and due process was not followed, then the judgment is not entitled to full faith and credit in the United States.[30] Do we owe the same duty to follow due process to a person living outside the United States? Is an undocumented person residing in the United States entitled to due process? The answer is yes and no.

First with regards to the undocumented persons residing within the borders of the United States, the answer is yes, they are entitled to due process and equal protection of our laws. The Supreme Court has stated, the "Due process clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary or permanent."[31]

With regards to the non-residents, persons residing outside the borders of the United States, both Federal Rules [32]and Texas Rules[33] address service of process to persons in foreign countries. Both the Federal Rules and Texas Rules indicate service of process should be made in the manner prescribed by the particular country or by the applicable treaty or convention. Additionally, many countries subscribe to or are members of The Hague Convention[34], The Apostille Convention and/or The Inter-American Convention. The American Bar Association publishes good basic primer on service of process abroad that is available for free on their website.[35]

So, although the person living in a foreign country is not entitled to our due process protections, there are still laws that must be followed. Some of these are found in our own rules of procedure. Others are found in treaties to which the United States is a signatory. Either way, it is clear that foreign persons living outside of the United States are still entitled to be put on notice. They are entitled to know that their rights are possibly being affected by a suit filed here in the United States. "[T]he court's consideration of both the parent's constitutional rights and the rights of the child, without subordinating one to the other, but rather considering them in tandem to arrive at a just outcome," is what is needed in these cases. [36]

Ethical Duty to the Court

Let's first look at the **Texas Lawyer's Creed:**

- **"Lawyer To Client:** A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate legal means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest".
    - 1. "I will advise my client of the contents of this creed when undertaking representation".
    - 2. "I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible".

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25 In the Interest of B.J.M, Cause Number 325-580708-15, Brief in Support of the Findings

26 TRCP 39.

27 Venturing into Family Courts – SAPCR basics for the SIJS Attorney, Karon L. Rowden https://www.linkedin.com/in/karonrowden

28 Plyler, 457 U.S. 202

29 Troxel et vir. V. Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 2056, 147 L. Ed. 2d 49 (2000)

30 Griffin v. Griffin, 327 U.S. 220, 228, 66 S. Ct. 556, 90 L. Ed. 635 (1946)

31 Nina Rabin, Disappearing Parents: Immigration Enforcement and the Child Welfare System, 44 Conn. L. Rev. 99 (2011) citing to Zadvydas v. Davis, 533 U.S. 678, 679, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

32 Fed. R. Civ. P. 4 (f)

33 Tex. R. Civ. P. 108a

34 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Article 19.

35 http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/oct99bur.html

36 Sarah Rogerson, Lack of Detained Parents' Access to the Family Justice System and the Unjust Severance of the Parent-Child Relationship, 47 Fam. L.Q. 141, 159 (2013).

- 9. I will advise my client that we will not pursue any course of action which is without merit." [37]

In reading the Lawyer to Client portion, clearly an argument can be made that the declaratory judgment is in furtherance of obtaining the client's legal objective of obtaining a predicate order for the immigration court. Unfortunately, this is contrary to mandate number 9 cited above. Specifically, obtaining a declaratory judgment in lieu of an actual custody order is without merit and should not be allowed in any circumstance to adjudicate custody.

Now, with regard to our duty to the Court, the Creed instructs us:

- **"Lawyer and Judge: Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession".**

  - 2. "I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law. (How to cite correctly portions of creed)"
  - 6. "I will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities to gain an advantage."[38]

It is my belief that the declaratory judgment is a misrepresentation that mischaracterizes facts or authorities to gain an advantage. The advantage in this instance is an advantage over the immigration courts who are not aware that a declaratory judgment in a family law case does not create a court of continuing jurisdiction and therefore does not qualify as a predicate order for immigration purposes. The attorney presenting this "predicate order" to the immigration court is presenting an "order" that does not create the necessary continuing jurisdiction for the SIJS relief but is filing the "order" with the court as if the "order" were a valid order creating continuing jurisdiction.

Further, the **Texas Rules of Professional Responsibility**, Rule 3.03 and 3.01 add that:

Rule 3.03 Candor Toward the Tribunal

(a) "A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;
(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;
(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(5) offer or use evidence that the lawyer knows to be false".

(b) "If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts".

(c) "The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible".[39]

Although it could be argued that a declaratory judgment falls short of this rule on almost every prong, for the purpose of this article's focus, the author will be focusing on a false statement of law. A lawyer shall not make a false statement of material fact or law to a tribunal.[40] It is a false statement of law to the immigration court when the attorney presents the declaratory judgment to the court alleging that the client has an order that creates continuing jurisdiction in the family court, this is a false statement of law to a tribunal.

Rule 3.01 Meritorious Claims and Contentions

"A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous".[41]

A declaratory judgment is a frivolous filing. It is a filing that technically creates no continuing jurisdiction, that in principle does not affect a parent's rights because the parent was not served with process and fails to create any enforceable order or establish any right. Therefore, arguably, it is a frivolous filing.

At this point one could imagine a judge reading this article and pondering as to when the Court might get a little respect.

The courts getting a little tired
They keep on trying to do what's right (for these kids)
All they want is a little RESPECT!
R-E-S-P-E-C-T... [42]

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[37] The Texas Lawyer's Creed: A Mandate for Professionalism – Supreme Ct. Texas and Ct. Crim. App. – November 7, 1989.

[38] Id.

[39] Texas Disciplinary Rules of Professional Conduct, (Amended March 1, 2005), Rule 3.03 – Candor Toward the Tribunal.

[40] Id.

[41] Id. At Rule 301 – Meritorious Claims and Contentions

[42] Based on the song, RESPECT (Aretha Franklin 1967, written by Otis Redding)

Conclusion

Although the writer's heart genuinely aches for these children and what they have been through to get to the United States, it is this author's firm belief that these declaratory judgments do not create the necessary predicate orders required by immigration law and potentially are doing more harm than good by obtaining status based on invalid "orders".

The key players such as attorneys, caseworkers, and judges handling any child custody, termination, or dependency case, or immigration matter should be encouraged or required to attend mandatory training on immigration law and immigration enforcement policies as well as international service of process. This would help ensure ethical handling of cases involving undocumented minors. [43]

Not handling these cases correctly creates potential problems such as a possible scenario whereby the immigration court goes back and reverses their own orders when they realize the deficits of these declaratory judgments. This would have a devastating effect and could leave these children back to square one or worse put them in danger of being deported and back in harms way. A further detriment is a parent's potential loss of any right to his or her own child without due process of law or the opportunity to be heard and defend the allegations against him/herself.

In conclusion, attorneys should stop this practice immediately and remedy any cases in which they have already created this "non-order" or declaratory judgment by correctly filing a suit affecting parent child relationship and getting all parties properly served. Courts should immediately stop accepting these declaratory judgments. They can refuse to issue declaratory judgments and insist that the proper petitions be filed and proper rules followed regarding service of process on the parents. Further the courts can issue findings that are needed, if warranted by the circumstances. Once a proper order is issued, the family court judge has done his or her job and now it is up to the immigration court to determine if the immigration relief requested can be granted.

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[43] Shattered families: the perilous intersection of immigration enforcement and the child welfare system. Executive summary. Applied research center Pub. Colorlines.com November 2011.

KARON L. ROWDEN *is a Supervising Attorney with the Family Law & Benefits Clinic at the Texas A&M University School of Law.*

■ ■ ■

Dan Rugeley Price Award

Congratulations to Immediate Past College Chair Chad Baruch for receiving the Dan Rugeley Price Memorial Award, presented to him by the Texas Bar Foundation at the State Bar Annual Meeting in Fort Worth in June.

The award is given in memory of Austin attorney Dan Price, who passed away in 1994. It celebrates the commitment, dedication, and zeal that characterized Dan's professional and personal life.

The recipient of the award, an outstanding practitioner dedicated to the Bar and the public, is chosen for exhibiting an unreserved commitment to clients and to the practice of the profession. ■

IMMIGRATION
—What Now?

By Cindy Kang Ansbach

After an intense presidential campaign, Donald Trump has been elected as the next President of the United States. One of President-Elect Trump's cornerstones during the campaign has been immigration. Mr. Trump has indicated he would tackle various areas of immigration, including removal or deportation of certain individuals; building a physical wall between the U.S. and Mexico; terminating certain Executive Orders issued under President Obama; and renegotiating treaties between the U.S. and various countries, among other issues. So, the question now is – what will actually happen? There is, of course, no real certainty as to which issues may actually be addressed and what and how policies may be implemented. It is expected, however, that the following areas will be immediately addressed as part of the next administration's immigration platform:

A. Termination of the Deferred Action for Childhood Arrivals (DACA) program established under President Obama's Executive Order. The DACA program allows certain individuals who came to the U.S. as children to be given deferred action from removal and to obtain employment authorization. Under the new administration, the DACA program will most likely be terminated immediately or modified. It is unclear if President-Elect Trump will use or share the information collected through the DACA program for enforcement purposes.

B. Removal of undocumented individuals. Early in the campaign, President-Elect Trump's immigration platform included the immediate removal of up to 11 million undocumented individuals, including their spouses and children, even if born in the U.S. President-Elect Trump has since indicated that his administration's priority will be the removal of undocumented individuals who have criminal records.

C. Building of a physical wall or barrier between U.S. and Mexico. Initially, the President-Elect indicated that a concrete wall would be built between the two countries and that Mexico would pay for such barrier. In the days since the election, Mr. Trump has since modified his position to say that the wall would also include fences.

In light of the anticipated initiatives above (as well as a scheduled December 2016 increase of government filing fees for certain applications), it is highly likely that the government will see a surge of Naturalization Applications (to apply for U.S. citizenship) by eligible individuals in the next month.

Other areas that may be addressed by the next administration include changes to various employment-based immigration visas. President-Elect Trump's immigration plan includes reform to "serve the best interests of America and its workers." However, his plan does not outline which visas may be impacted or how changes would be made. It is anticipated that the next administration will review commonly-used employment-based visas, including those for highly skilled professional occupations (H-1B), intracompany transferees (L-1), NAFTA positions (TN) and investment/trade positions (E-1/E-2). In connection with same, he has expressed his distaste for NAFTA, which includes provisions for work authorization for certain professional positions for citizens of Canada and Mexico. He has also promised to reform the H-1B visa program, with Senator Jeff Sessions (R-Alabama), a harsh critic of the H-1B visa program, recently tapped as U.S. Attorney General. As with the initiatives related to undocumented individuals, it is difficult to predict what issues will be addressed, as well as how and when policies will be implemented. One thing that is certain: individuals, undocumented as well as lawful, and businesses are keen to see what happens next. ■

CINDY KANG ANSBACH *is a Partner with the Dallas firm of Ansbach + Ghouse, PLLC, where she co-manages the practice. Prior to founding Ansbach + Ghouse, Cindy was the head of global immigration for one of the top 10 global law firms.*

Summer Snapshots

Outgoing College Chair Chad Baruch receives a plaque of appreciation for his service from Incoming Chair Patsy Yung Micale.

Chad Baruch presents Morgan Broaddus ▼ and Veronica Jacobs ▶ each with a plaque of appreciation for their service on the College Board.

Russell Blair Ross (left) receives the 2015 Steve Condos Most CLE Hours Award from College Vice-Chair John Grace at the College's 18th Annual Summer School Course in Galveston in July.

Richard L. Spencer (left) receives the 2015 John D. Bowmer Professionalism Award for Outstanding Contribution to the Profession from John Grace.

New Fellows of the Texas Bar College

To become a Fellow, one must be a member of the College for ten consecutive years. In 2016 the College added 168 new Fellows to its ranks, listed below. We congratulate these members and thank them for their dedication to the College.

James Wesley Adams, Jr.
Judge Luis Aguilar
Karen K. Akiens
Amanda Rae Andrae
Mitchell Baddour, Jr.
Beatriz Trillos Ballerini
Jonathan Jay Bates
William Thomas Bayern
Becky Ann Beaver
Elaine Berkeley
Michael S. Bernstein
Martin David Boyd
Melanie Bragg
Howard W. Britain
Clinton Carlton Brown
Patricia Lynne Brown
Claudia Kay Carter Caballero
Denise Lasalle Campbell
William P. Cannon
Sandra Ann Cawley
David Eduardo Cazares
Alberto Elias Chaires
John C. Chunn
Karan Cummings Ciotti
Jeffrey Civins
Sonya B. Coffman
Rudolph Michael Culp
Sharon W. Curtis
Anita Krosby Cutrer
Eric Francis Dankesreiter
Wendell L. Davies
Kathy Ann Dawson
Mark Dettman
Shawn William Dick
Jennifer Lee Doak
Judge Teresa Ann Drum
Robb David Edmonds
Christina Lynn Falkiewicz
Diana L. Faust
Lara Aman Fernandes
David Fernandez, Jr.
Leo Del Figueroa
Raymond Keith Fivecoat
Michael P. Fosher
Jacky B. Franklin
Michael Lee Fuqua
Alicia V. Garcia
Artie G. Giotes
Raed Gonzalez
Ronald Brad Goodwin
Stewart Cameron Graber
Jana Louise Grauberger
Albert M. Gutierrez, Jr.
Judge David C. Hall
Deborah Young Ham
Delilah Chang Hanberry
Melissa Lee Hargis
Holly Ryan Nelson Haseloff
Lisa L. Havens
Jeffrey Thomas Hays
John Robert Hays, Jr.
Christopher J. Hebner
Peggy Heller
Jenny L Henley
Glen Riley Hetherington III
Cindy Hide
Judge Daniel Earle Hinde
James Ronald Horsley
John Bruce Huckeba
Ruth A. Hughes
Stuart Austin Hughes
Edward B. Hymson
Omonzusi Margaretta Imobioh
Ylise Yvonne Janssen
Bethew Bertrand Jennings III
Andrew Shaw Jones
Derbha Ann Houston Jones
Marvin W. Jones
Lori Jayne Kaspar
Phillip Michael Kennedy
Jon E. King
Katie Pearson Klein
Lonnie R. Knowles
Dr. Richard L. Kornblith

(continued next page)

New Fellows
continued

Camila Hart Kunau
J. D. Lambright
Christina Tessier Pierce Lesher
Steven Paul Lindamood
Leticia Lopez
Wendell Phillip Martens, Jr.
William B. Mateja
Robert B. Matthews, Jr.
John Lindsley McCraw III
Jane McEldowney
Robert James McEwan
Keith William McFatridge, Jr.
Cheryl Elaine Slack McGirr
John Mark McPherson
Reynaldo M. Merino
Benjamin Peter Miller
Richard Miller
Peter Gordon Milne
Virginia Moore
Audrey F. Moorehead
Justin Morley
James M. Morris
Richard Charles Mumey
Mark David Myers
Kenneth L. Owens
William G. Owens
Robert Kelly Pace
Cynthia Elaine Palmer
Kevin Land Patrick
Carlton Perkins
James B. Pinson
Sofia Amabel Ramon
Leland A. Reinhard
Jess C. Rickman III
Kelly Kathleen Erickson Robb
James Vincent Roberts
David Romero
Kathy Elizabeth Roux
Rachel Louise Rust
John E. Schneider
Christopher Carl Schoessow
Jeffery Janar Shaver
Bradford L. Shaw
Stephen Lee Shelnutt
Anne K. Shuttee
Jonathan E. Smaby
D. Todd Smith
Leslie Gail Spear-Schmidt
Roy L. Stacy
Michael F. Stauffacher
George Alan Steele
Jack Stoffregen
Paul Daniel Strug
Edwin Sullivan
Mark Wesley Sullivan
Brian James Tagtmeier
Jean S. Taylor
Bruce K. Thomas Andrea
Carroll Timmons
Cindy Venise Tisdale
James Edwin Trainor III
J. Kay Trostle
Mrs. Kimberly Griffin Tucker
Robert Hampton Tuthill
Liet. David C. Vuong
Lauren Elyse Waddell
James David Walker
Pamela Ann Walker
Lynn Davis Ward
H. Michael Warren
R. Leonard Weiner
Ben Harold Welmaker, Jr.
Joe Franklin Wheat
Donald Ray White, Jr.
Cary Robert Wiener
Susan Sikes Wills
Lisa L. Wilson
Judge Lorraine Wilson
Monroe Allen Windsor
Jenny Lee Womack
Robert Leroy Woods
Valin L. Woodward
John S. Young
Sydney Snelling Young

Warren Cole Receives Gene Cavin Award

The Texas Bar College is very proud of Board Member Warren Cole for receiving the Gene Cavin Award for Excellence in Continuing Legal Education! Established in 1989, the Gene Cavin Award recognizes longterm participation in State Bar CLE activities, either seminars or publications. It is named for the founder of the Professional Development Program who, during his service from 1964 to 1987, brought the program to international prominence. The award is for lifetime achievement, not simply for one or two stirring presentations or well-researched papers, so it is fitting that so many past honorees have demonstrated multiple talents as speakers, writers, editors, and course directors. Warren Cole has shared his time and talents in all of these areas and more. Thank you, Warren! ■

(clockwise from left, below:) Richard Orsinger introduces the winner; Orsinger hands the award to Warren Cole; Warren gratefully accepts; Warren and other speakers at the State Bar's Advanced Family Law Course

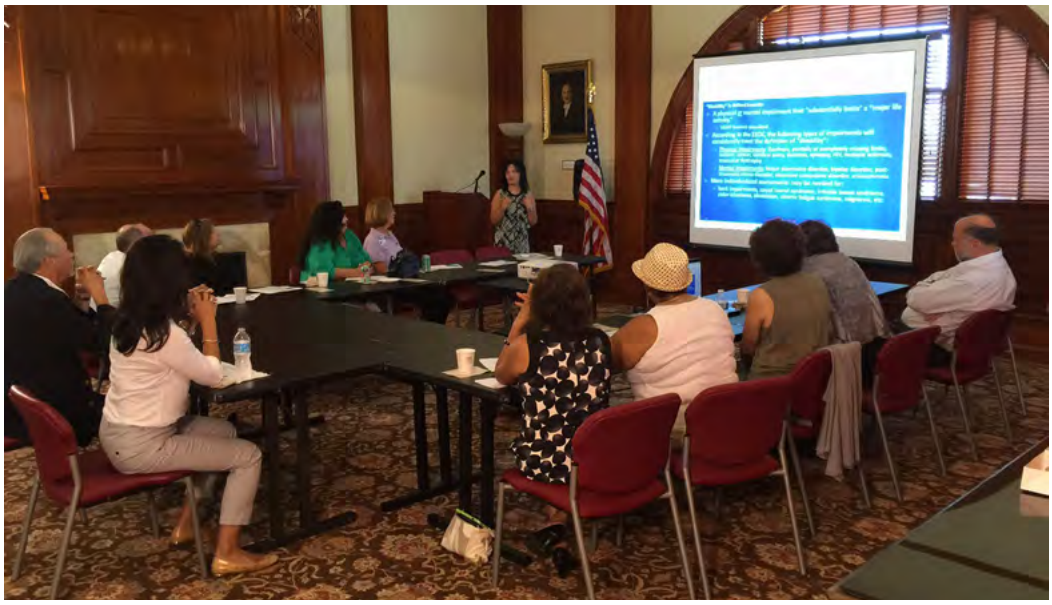
Bar College Repurposes Condos Award

As most members know, the College has long presented an annual award for CLE hours in memory of Steve Condos, a charter member of the College and one of its most influential early board members. The College Board has voted to repurpose that award to honor an outstanding first-year member of the College each year in the calendar year before the award presentation.

Bar College Sponsors CEU with GC-MAP

The Texas Bar College is committed to promoting professionalism through education in its community service projects. For the third consecutive year, Texas Bar College co-sponsored a Continuing Education Unit (CEU) for the members of the Galveston County Mutual Assistance Partnership (GC-MAP), a non-profit organization that connects, strengthens and supports non-profit agencies in the Galveston Bay Area.

This year's CEU was held on July 15, 2016, simultaneously with the Texas Bar College's Summer School CLE program at Moody Gardens in Galveston. Charlene Tsang Kao, Senior Labor & Employment Counsel at Chevron, was the guest speaker. Prior to joining Chevron, Charlene was Deputy General Counsel for Solvay North America, as well as a Partner with the law firm of Baker & McKenzie. Charlene gave an extremely informative and interactive presentation on "An Overview of the ADA and What Employers Need to Know." The presentation was very well received by the attendees. Many warmly asked Charlene to return next year to present on additional challenges that non-profit employers face in the workplace. We are grateful to Charlene for generously donating her time and sharing her wealth of knowledge with members of GC-MAP. ■



(clockwise from upper left:) College Board Member Caren Lock addresses the CEU audience; Guest speaker Charlene Tsang Kao gives her talk; (left to right) Caren Lock, Charlene Tsang Kao, College Chair Patsy Yung Micale

Bar College Supports TMCP

The Texas Bar College supports diversity initiatives throughout Texas! Board representatives attended the State Bar's Texas Minority Counsel Program (TMCP) receptions in Dallas, Fort Worth and Houston in September and donated gift cards to premier local restaurants for the reception raffles. The College also exhibited at the TMCP CLE Program held in Las Colinas in November and again provided a raffle prize to a top-notch Texas restaurant. ■

(clockwise from upper left:) Reception attendees; (left to right) Patsy Yung Micale, College Executive Director Pat Nester, Caren Lock; (left to right) Cindy Kang Anspach, Buffey Klein, Patsy Yung Micale, Caren Lock, State Bar President Frank Stevenson; (left to right) Celeste Flippen, Mona Gupta

A Member's Quote

Membership in the College is my way of telling clients – and colleagues – that in keeping up with the law and my practice I don't do just the minimum or what may be enough, I do more than is required.

— J. Arnold Aguilar, AGUILAR ☆ ZABARTE, LLC, Brownsville

Check Your CLE Hours Requirement for College Membership

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 22,000 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 Endowmend Fund (see last 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, Texas Bar College

THE ENDOWMENT FUND FOR PROFESSIONALISM has been established by the College to underwrite projects and services that contribute to higher standards of educaiton and performance among lawyers. For example, some proceeds for 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 23,000 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.

Membership in the Fund is by invitation of the Texas Bar College. 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 Honored Scholar continues to make annual contributions of at least $200 per year.

Friends of the Endowment Fund for Professionalism
Non-qualifying Texas Bar 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. Consider joining the Fund today!

The Endowment Fund for Professionalism

Texas Bar College P. O. Box 12487 Austin, Texas 78711-2487

As a member of the Texas Bar College for five consecutive years, I hereby accept my invitation to join The Endowment Fund for Professionalism. Enclosed is my **tax-deductible** contribution of $1,000 to fulfill my commitment as an Honored Endowment Fund Scholar or my minimum initial contribution of $200 as an Endowment Fund Scholar (exact amount indicated below). I recognize that my gift supports professionalism of lawyers through education and contributes to the betterment of the legal profession in Texas.

Please make my **tax-deductible** contribution in ❑ honor of or ❑ memory of _____.

Amount of contribution: ❑ $1,000 ❑ $200 ❑ Other $_____

Payment by enclosed ❑ check payable to The Endowment Fund for Professionalism of the Texas Bar College.

Please charge my credit card ❑ $1,000 ❑ $200 now, and annually $200 for the next four years ❑ Other $_____

Credit Card No. _____ ❑ American Express ❑ Visa ❑ MasterCard ❑ Discover

Signature Authorizing Payment_____ Date_____
If paying by credit card, you may fax this form to 512-463-1498 or scan and email it to mgaston@texasbar.com, or you may pay online at **https://texasbarcollege.com/merchandise/endowment-fund**.

Member Name:_____ Bar Card Number: __ __ __ __ __ __ __ __

Firm:_____ Email:_____

Address:_____City/State_____ Zip_____

Office Phone: (_____)_____ Office Fax: (_____)_____

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.